

Original: English

**UNITED STATES – PROVISIONAL ANTI-DUMPING MEASURE  
ON IMPORTS OF CERTAIN SOFTWOOD LUMBER FROM CANADA**

Request for Consultations by Canada

The following communication, dated 6 March 2002, from the Permanent Mission of Canada to the Permanent Mission of the United States and 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).

On 30 April 2001, pursuant to section 732 of the *Tariff Act of 1930*, the United States initiated anti-dumping proceedings against imports of softwood lumber from Canada by publishing *Notice of Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products From Canada* (66 Fed. Reg. 21,328). On 31 October 2001, in accordance with section 733 of the *Tariff Act of 1930*, the United States preliminarily determined that certain softwood lumber products from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV). The estimated margins of dumping varied from 5.94 to 19.24 per cent. The *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber From Canada* made by the US Department of Commerce on 31 October 2001 was published in the Federal Register (66 Fed. Reg. 56,062) on 6 November 2001. As a result of this preliminary affirmative determination and pursuant to section 733(d) of the *Tariff Act of 1930*, the United States applied provisional measures against imports of softwood lumber from Canada in the form of suspension of liquidation of all entries, and the requirement for a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price or the constructed export price.

Canada considers the initiation of the anti-dumping investigation to be inconsistent with Article 5.2 of the Anti-Dumping Agreement because the petition did not contain "evidence" regarding the existence of dumping. More particularly, the initiation of the anti-dumping investigation is inconsistent with Article 5.2(iii) of the Anti-Dumping Agreement because the petition did not contain reasonably available information on actual transaction prices at which softwood lumber is sold in Canada, although that information was reasonably available to the petitioners. As a whole, the petition did not contain "sufficient evidence" to justify the initiation of an investigation. The initiation of the anti-dumping investigation is, therefore, also inconsistent with Article 5.3 of the Anti-Dumping Agreement. The anti-dumping investigation not having been initiated in accordance with the

provisions of Article 5, the application of provisional measures by the United States is inconsistent with Article 7.1 of the Anti-Dumping Agreement.

Canada also considers the preliminary determination of sales at less than fair value made by the United States in accordance with sections 772 and 773 of the *Tariff Act of 1930* to be inconsistent with the United States' obligations under Articles 2.1 and 2.2 of the Anti-Dumping Agreement. The United States acted inconsistently with these provisions by disregarding certain sales of like products in the domestic market of the exporting country, which resulted in improper price comparisons and an inflation of weighted-average margins of dumping.

Canada also requests consultations with the United States concerning its application of the practice of "zeroing", which the United States has stated is required by sections 771(35)(A) and (B) of the *Tariff Act of 1930*. The "zeroing" methodology is also reflected in the United States Department of Commerce Antidumping Manual (Chapter 6, p. 9 to 10). The application of the "zeroing" methodology in the preliminary investigation at issue resulted in an inflation of weighted-average margins of dumping. The Appellate Body ruled in *European Communities – Anti-Dumping Duties on Imports of Cotton Bed Linen from India* that the practice of "zeroing" negative dumping margins when establishing "the existence of margins of dumping" is inconsistent with the provisions of Article 2.4.2 of the Anti-Dumping Agreement. Canada considers the practice of the United States to also be inconsistent with this provision.

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.

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