

25 May 1987

UNITED STATES - INITIATION OF A COUNTERVAILING DUTY
INVESTIGATION INTO SOFTWOOD LUMBER PRODUCTS FROM CANADA

*Report of the Panel to the Committee on Subsidies
and Countervailing Measures on 3 June 1987
(SCM/83 - 34S/194)*

1. In a communication dated 30 July 1986 (document SCM/76), Canada requested the Committee on Subsidies and Countervailing Measures ("the Committee") to establish a Panel to examine a dispute between Canada and the United States concerning the decision taken by the United States on 5 June 1986 to initiate a countervailing duty investigation on imports of softwood lumber products from Canada. This matter had previously been referred to the Committee by Canada (in document SCM/73) for the purpose of conciliation under Article 17 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Code"). It had, however, not been possible for the Committee to resolve this dispute under the conciliation procedures of the Code.

2. At its meeting held on 1 August 1986, the Committee agreed to establish a Panel and authorized the Chairman to decide, in consultation with the two parties to the dispute, on the terms of reference and to decide, after securing the agreement of the two parties concerned, on the composition of the panel (SCM/M/Spec/12, paragraphs 12 and 13).

3. On 31 October 1986, the Chairman informed the Committee that, after consultations with the two parties, the terms of reference of the Panel, which had already started its work, had been agreed as follows:

"To review the facts of the matter referred to the committee by Canada in SCM/73 and, in the light of such facts, present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted and applied by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade."

At the same meeting the Chairman informed the Committee that the composition of the Panel was as follows:

Chairman: Mr. Michael D. Cartland

Members: Mr. Ulrich Mohrmann
Mr. Luzius Wasescha

4. The Panel met with the parties to the dispute on 10 October, 3 November and 12 December 1986. In addition, the Panel met on 13 and 27 November 1986 and on 13 May 1987.

5. The dispute before the Panel concerned the initiation, on 5 June 1986, by the United States of a countervailing duty investigation of certain softwood lumber products from Canada. The petition which had caused the United States authorities to initiate this investigation had been filed by the Coalition for Fair Lumber Imports on behalf of the United States industry producing certain softwood lumber products. The investigation covered various programmes of the Canadian provincial and federal authorities. One of these programmes, which was the subject of the dispute, concerned the sale by the provincial governments of Alberta, British Columbia, Ontario and Quebec of the right to harvest softwood timber ("stumpage"). The petitioner alleged that those programmes involved the provision of goods at preferential rates. In document SCM/73 Canada recalled that Canadian provincial stumpage pricing practices had already been the subject of a countervailing duty investigation by the United States in 1982-1983 and that the United States Department of Commerce had concluded at that

time that these practices did not constitute an export or a domestic subsidy to Canadian lumber producers. In the Canadian view there had been no material changes in the United States countervailing duty law and consequently there was insufficient evidence of the existence of a subsidy to justify the opening of a new investigation by the United States. Canada therefore considered that, in initiating a second investigation of these practices, the United States had acted in violation of Article 2:1 of the Code. In addition, Canada was of the view that an interpretation of the GATT which allowed the use of countervailing duties to offset another country's comparative advantage in natural resources was never intended by the contracting parties and that this would be an abuse of the remedy provided for in Article VI as elaborated in the Code.

6. On 26 June 1986, the United States International Trade Commission preliminarily determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports from Canada of the products which were the subject of the investigation.

7. On 16 October 1986, the United States Department of Commerce preliminarily determined that benefits which constitute subsidies within the meaning of the countervailing duty law of the United States were being provided to manufacturers, producers or exporters in Canada of certain softwood lumber products. The Department of Commerce estimated the net. Subsidy at 15 per cent ad valorem. This affirmative preliminary determination applied to the stumpage programmes of the provincial governments of Alberta, British Columbia, Ontario and Quebec.

8. On 13 January and 29 January 1987, respectively, the Panel was informed by Canada and the United States that a mutually satisfactory settlement of the dispute had been reached. In accordance with Article 18:7 of the Code the Panel presents the following outline of the Memorandum of Understanding (a copy of which was provided to the Panel) entered into by Canada and the United States on 30 December 1986, to resolve differences with respect to the conditions affecting trade in softwood lumber products.¹ The provisions of this Memorandum of Understanding would be implemented upon the withdrawal of the countervailing duty petition and the termination by the United States of the countervailing duty investigation. The Memorandum of Understanding further states that it is without prejudice to the position of either Government as to whether the stumpage programmes and practices of the Canadian Governments constitute subsidies under United States law or any international agreement.

9. Under the terms of the Memorandum of Understanding, the United States is required to release bonds and refund deposits made pursuant to the preliminary affirmative countervailing duty determination, and to state in the notice of termination of the investigation that this preliminary determination is henceforth without legal force and effect. Canada has undertaken to collect an export charge of 15 per cent ad valorem on exports of certain softwood lumber products made on or after 8 January 1987 from Canada to the United States. The Memorandum of Understanding lays down a number of conditions with respect to the manner in which the export charge will be collected by the Canadian authorities. The Memorandum of Understanding also allows the Canadian Government to reduce or eliminate the export charge on the basis of increased stumpage or other charges by provinces on softwood lumber production. In this respect it is provided that any such modification in the export charge will be made by the Government of Canada while the calculation of the value of any replacement measures in relation to the export charge will be subject to further consultations and agreement between the two Governments. Several provisions concern the exchange of information necessary for the implementation and monitoring of the Understanding as well as the avoidance of its circumvention. The two Governments will consult semi-annually and otherwise at the request of either Government regarding any matter concerning the Understanding. Consultations will in particular take place if exports of softwood lumber products from Canada to the United States show a rapid and substantial increase or decrease. Either Government may terminate the Understanding at any time upon thirty days' written notice.

¹A copy of this Memorandum of Understanding is available in the secretariat for consultation by interested delegations.

10. Given the fact that both parties to the dispute have informed the Panel that the Memorandum of Understanding constitutes in their view a mutually satisfactory resolution of the dispute, the Panel considers that the work in accordance with its mandate could now be regarded as having been completed.