

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Subsidies and
Countervailing Measures

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REQUEST FOR CONCILIATION UNDER ARTICLE 17 OF THE AGREEMENT

Communication from Canada

The following communication, dated 26 June 1986, has been received from the Permanent Mission of Canada.

My authorities have instructed me to request that a meeting of the Committee on Subsidies and Countervailing Measures be convened during the week of 14-18 July 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 (hereinafter referred to as "the Agreement").

Pursuant to the International Trade Administration's decision of 6 June 1986, the United States opened an investigation into softwood lumber products from Canada. It will be recalled that the same basic issues were addressed in an exhaustive fashion by the United States Department of Commerce in the 1982-83 countervailing duty action against imports of softwood lumber from Canada. With respect to the primary issue at stake, namely provincial stumpage (the price for government-owned standing timber), the International Trade Administration rejected in 1983 the allegation that it conferred either an export or a domestic subsidy to Canadian lumber producers.

Bilateral consultations with officials of the Department of Commerce on 4 June 1986, under Article 3(1) of the Agreement did not resolve the problem. A copy of the Aide-Memoire passed to the United States is attached.

Because of the size of Canada's forest industry, any disruption of so important a segment of Canada's trade must be viewed very seriously. Canadian softwood lumber exports to the United States in 1985 were valued at Can\$3.6 billion. Over 60,000 Canadian jobs are directly dependent on those exports. The forest products industries in Canada are of vital importance to hundreds of communities throughout the country, many of which have no other source of income or employment and would find it next to impossible to survive without them. The United States authorities' decision to accept the petition is already creating serious uncertainties for trade and investment. In Canada's view, the United States is improperly using the countervailing

duty investigation process as an instrument of trade harrassment. There have been no material changes in United States countervail law. Canada's view, therefore, is that there was insufficient evidence of the existence of subsidy as required under Article 2 of the Agreement to proceed with an investigation.

The initiation of a new investigation could also lead to the unjustifiable application of countervailing duties. The major contention of the petitioner is that the resource pricing policies of certain Canadian provinces constitute a subsidy warranting the application of countervailing duties. In effect the petitioner is arguing that countervailing duties should be used to offset another country's comparative advantage in natural resources. The Canadian authorities believe strongly that such an interpretation of the GATT was never intended by the contracting parties and in particular that it would be an abuse of the remedy provided for in Article VI as elaborated in the Agreement.

Canada therefore requests conciliation on an urgent basis pursuant to Article 17 of the Agreement. Canada refers the Committee's attention to its statements on this matter in GATT Council on 22 May and 17 June 1986, respectively. Canada wishes to draw the Committee's attention also to the documents submitted to the Committee at the time of the first countervailing duty petition against softwood lumber products in 1982-83 (SCM/40, 17 February 1983).

AIDE-MEMOIRE

This refers to the petition filed by the U.S. lumber coalition that calls for a countervailing duty investigation on softwood lumber imports from Canada.

Softwood lumber is one of the most important single items of trade between Canada and the USA. For over half a century Canada has been an important and dependable supplier of the USA's needs for softwood lumber. In 1985 Canadian lumber exports to the U.S. were in excess of Canadian \$3.5 billion. Over 60,000 Canadian jobs are directly dependent on those exports.

Canadian authorities request that careful consideration be given to the following points in the determination of whether to initiate the petition:

1. It will be recalled that, with the exception of minor new industry assistance programs, the same basic issues were addressed in an exhaustive fashion by the Department of Commerce in the 1982-83 countervailing duty action against imports of softwood lumber from Canada. With respect to the primary issue at stake, namely provincial stumpage, the International Trade Administration rejected the allegation that it conferred either an export or a domestic subsidy to Canadian lumber producers. All countervailable Canadian programmes were found to be de minimis. The USA lumber industry did not exercise its rights to appeal the Department of Commerce's decision to the courts.
2. Since the petition provides no evidence of material changes in Canadian practices after the 1983 decision, or substantiation of economically significant new programmes, and no basis to argue a change in U.S. countervail law, the Department of Commerce is in effect being asked to act as its own court of appeal.

3. Acceptance of the petition as filed would be a denial of established legal principles that preclude reassertion of claims already decided and of the Commerce Department's own guidelines. Commerce has never accepted a second petition on the same product where it has previously come to a final negative determination of subsidy. Therefore for Commerce to accept the petition would be an arbitrary decision that would set a troublesome policy precedent.
4. The Department of Commerce has the authority to dismiss a petition in whole or in part. Therefore, if it accepts the petition at all, the Commerce Department should limit its investigation to new programmes and those programmes previously found to be countervailable. To do otherwise would be to subject Canadian governments and industry to unwarranted costs and harassment.
5. The Canadian authorities would find it particularly objectionable if the new countervailing duty investigation was to examine Canadian stumpage systems. It is the Canadian position that the GATT contracting parties never intended Article VI to be used to address perceived problems of natural resource pricing. Therefore, stumpage should not be addressed in the context of countervailing duty law. In fact, the administration has argued on a number of occasions that the expansion of U.S. countervailing duty law to include natural resource pricing programmes would be inconsistent with USA obligations under the GATT. ...

In light of the above considerations, Canadian authorities strongly urge that the petition be rejected.