

# GENERAL AGREEMENT ON

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## TARIFFS AND TRADE

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Committee on Subsidies and  
Countervailing Measures

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### UNITED STATES - MEASURES AFFECTING THE EXPORT OF SOFTWOOD LUMBER FROM CANADA

#### Request by Canada for Conciliation under Article 17 of the Agreement

The following communication, dated 1 November 1991, has been received by the Chairman of the Committee from the Permanent Mission of Canada.

My authorities have instructed me to request, pursuant to Articles 16 and 17 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code"), that you convene as soon as possible a special meeting of the Committee on Subsidies and Countervailing Measures for conciliation in respect of the matters referred to below regarding "United States - Measures Affecting the Export of Softwood Lumber from Canada".

In October 1986 the US Department of Commerce made a preliminary determination that the fee charged for harvesting standing timber (stumpage) constituted a countervailable subsidy and imposed a 15 per cent provisional duty on Canadian exports of softwood lumber to the United States. Without prejudice to that issue, Canada entered into a Memorandum of Understanding (MOU) with the United States as of 30 December 1986 wherein Canada agreed to impose a 15 per cent export tax on lumber exported to the United States. This arrangement was not envisaged as permanent. Certain Canadian provinces have implemented changes in provincial forest policies. To the extent that such changes involved increases in charges to the industry, the MOU provided for reduction and elimination of the export charge as these increased costs were implemented. By 1991, the 15 per cent export charge applied to less than 10 per cent of Canadian lumber exports to the United States.

Termination by either party was explicitly provided for in the MOU with 30 days notice. On 3 September 1991 Canada gave the United States notice of its intention to terminate the softwood lumber Memorandum of Understanding.

On 4 October, the United States Government announced that the Department of Commerce intended to self-initiate a countervailing duty investigation of softwood lumber imports from Canada. This represents the third such investigation of this industry in eight years. (In 1983, the US Department of Commerce held that Canadian stumpage practices were neither export nor domestic subsidies.)

As well on 4 October, pursuant to an investigation under Section 302 of the Trade Act of 1974, the USTR took action to withhold or extend liquidation of entries of softwood lumber products from Canada and imposed a bonding requirement as of 4 October 1991. The Federal Register of 8 October 1991 (Vol:56 No.195, pp 50738-50740) indicated:

"... the USTR further determined that imports of softwood lumber products originating in certain provinces and territories of Canada will be subject to duties of up to 15 per cent ad valorem. The imposition of such duties will be contingent upon affirmative final subsidy and injury determinations in the countervailing duty investigation, and will apply with respect to entries filed on or after 4 October 1991. The withholding or extension of liquidation and the bonding requirements will apply to entries filed prior to the preliminary subsidy determination."

It has been the consistent position of the Government of Canada that government policies related to the exploitation and pricing of natural resources, in particular Canada's provincial practices for harvesting standing timber, are among the fundamental rôles of government and do not constitute subsidies within the meaning of the Subsidies Code.

Canada considers the initiation of a countervailing duty investigation by the United States Government on exports of softwood lumber from Canada to be contrary to Article 2:1 of the Agreement on Interpretation and Application of Article VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code). Article 2 of the Code requires that authorities may only proceed where they have self-initiated a countervailing duty investigation, if they have sufficient evidence of the existence of (a) a subsidy, (b) injury within the meaning of Article VI of the General Agreement and (c) a causal link between the subsidized imports and the alleged injury. It is Canada's position that none of these criteria is met in this case, as no subsidy exists, and the United States softwood lumber industry has not suffered injury from Canadian softwood lumber exports.

Moreover, the suspension of liquidation of entries and the bonding requirement, as provisional measures for imposition of duties contingent upon affirmative final subsidy and injury determinations in the countervailing duty investigation, are contrary to United States obligations under Article 5:1 of the Code.

Canada held consultations with the United States on 16 October 1991 under Article 3:1 of the Code. These consultations have not led to a satisfactory resolution of the matter. Indeed, on 31 October 1991, the United States self-initiated the countervailing duty investigation on certain softwood lumber products from Canada, on the basis that provincial "programs", which establish rights to cut and remove timber from provincial lands, are subsidies. The United States, in initiating the investigation, also indicated that it was willing to investigate whether export restrictions on logs represent a countervailable benefit, if sufficient evidence is submitted by an interested party.

Accordingly, Canada requests the Chairman to convene a special meeting of the Committee on Subsidies and Countervailing Measures for conciliation under Article 17 of the Code, at the earliest possible occasion. The specific issues to be determined during conciliation are that (a) government policies related to the exploitation and pricing of natural resources, in particular Canada's provincial practices for harvesting standing timber, do not constitute subsidies within the meaning of the Code; (b) the United States has not met the requirements of Article 2 of the Code in self-initiating the investigation; and (c) the suspension of liquidation of entries and the bonding requirement imposed by the United States are contrary to Article 5 of the Code.