

In February 1991, a high-ranking official in the Department of Commerce testified before Congress that the MOU was "sufficient to offset" all alleged subsidies on Canada's softwood lumber exports to the United States, as calculated in the 1986 preliminary decision.

On September 3, 1991, the Government of Canada informed the Government of the United States of its intention to terminate the 1986 Softwood Lumber Memorandum of Understanding (MOU) effective October 4, 1991. The MOU specifically provided for its termination on 30-days' notice. Before taking this action, Canada used the U.S. government's own Timber Sales Program Information Reporting System (TSPIRS) accounting system to compare government forestry costs and revenues in the four major timber-producing provinces. The analysis showed that each province obtained revenues far in excess of its allocated forestry costs. The Canadian government had concluded that circumstances had materially changed from 1986, that there was no subsidy of softwood lumber production in Canada, and that the MOU no longer served any purpose.

The United States government responded to Canada's termination of the MOU by self-initiating a CVD investigation on October 31, 1991, the third CVD investigation of softwood lumber in 10 years. The United States also imposed an interim bonding requirement on imports of lumber from Canada under Section 301 of the U.S Trade Act of 1930. New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland were specifically excluded from the interim bonding requirement and CVD investigation.

Under U.S. trade remedy law, four decisions must be taken by two separate government agencies before a permanent countervailing duty can be imposed: a preliminary determination of injury (i.e., that subsidized imports have caused material injury to the U.S. industry) by the United States International Trade Commission (ITC); a preliminary determination of subsidy by the Department of Commerce (DOC); a final determination of subsidy by the DOC; and a final determination of injury by the ITC.

The Section 301 interim bonding requirement was ended on March 12, 1992 when the United States made a preliminary determination of subsidy in the CVD investigation. On July 13, 1992, the United States completed its investigation and imposed a countervailing duty of 6.51 per cent on imports of softwood lumber from Canada. The Government of Canada, the provinces and the Canadian industry appealed the duty action to binding binational panel review under Chapter 19 of the Canada-United States Free Trade Agreement (FTA). As well, Canada challenged the U.S. Section 301 action and the initiation of the CVD investigation before the General Agreement on Tariffs and Trade (GATT).