

The preliminary determination is required to be made on the basis of the best information available at the time which would include the federal and provincial governments' 7000 page questionnaire response submitted on August 13, 1986 and the several legal briefs filed by U.S. counsel for the Canadian industry. However, for a final determination Commerce can use only information which is "verified". Before the final decision, Commerce officials will travel to Canada (starting next week) to interview government and industry officials and to verify the information used for the preliminary decision against actual records. Further legal arguments can also be made before the final determination.

The Commerce final determination must be issued no later than December 30, 1986. If this decision is affirmative (i.e. subsidies confirmed), the USITC must proceed to a final injury determination and the bonding requirement for entries continues. If the Commerce final decision is negative (i.e. no subsidies), the whole process terminates.

In the event of an affirmative Commerce final decision, the USITC will likely have to make its final decision no later than February 13, 1986. If injury is found, Commerce must issue a CVD order within seven days to impose the duty. If the USITC finds no injury, the process, again, will terminate with no duty imposed.

The U.S. law also provides for two types of "out of court" settlements. In the first, the investigation can be terminated, upon the withdrawal of the underlying petition by the U.S. industry. In these circumstances, the U.S. industry typically may be satisfied with changes proposed by a foreign government, might simply run out of funds or may decide its case was very weak. A termination may occur at any time in the process and could even take place after the USITC final vote on injury just before Commerce is formally notified of the result.

In the second type, Commerce can suspend its investigation, before its final subsidy determination, upon the acceptance of an agreement that eliminates the subsidy or the injurious effects on the U.S. industry. Since a 30 day notice period is required, any suspension agreement on the softwood lumber case would have to be negotiated before November 30, 1986.