



Minister for
International Trade

Ministre du
Commerce extérieur

STATEMENT DISCOURS

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Statement by
the Honourable Pat Carney,
Minister for International Trade,
on softwood lumber

OTTAWA

October 16, 1986.

Canada

The U.S. Department of Commerce has just announced that it has made a preliminary subsidy determination which could result eventually in the imposition of a countervailing duty on exports of softwood lumber from Canada.

I deplore today's preliminary determination which cannot be justified either under U.S. law or GATT rules. I am deeply disappointed that Secretary of Commerce Baldrige has decided to reverse the decision which he made in 1983 in the previous countervailing duty investigation involving softwood lumber. Stumpage does not provide a subsidy to Canadian lumber producers.

Political leaders cannot stop the process of industries petitioning to restrict imports under existing U.S. trade laws. This is why it is so important that we pursue our bilateral trade talks with the United States. Today's decision is a graphic illustration of how protectionist pressures in the United States impact on Canadians and Canadian jobs. That's why we are at the table. Canadians need a trade agreement with the U.S. to secure our access to U.S. markets and to deal with trade disputes. This Government is vigorously pursuing these objectives because it is in Canada's best interest to do so. That's why the Prime Minister launched this historic initiative a year ago.

I want to emphasize that today's decision is not the end of the road. It is just another step in a long quasi-judicial process. We will pursue all avenues available to us to argue against this determination. We have already invoked GATT dispute settlement procedures.

The U.S. Commerce Department must now verify its determination and make a final decision by late December. Even if the preliminary determination is confirmed, countervailing duties would not be applied unless the United States International Trade Commission finds injury in its final determination due in mid-February. If either of these rulings is in Canada's favour the case is terminated. In addition, both sides have the right to appeal the outcome in the U.S. courts.

It is important to note that today's preliminary determination does not result in any duty being imposed on Canadian lumber. Canadian exporters will be required to post bonds until there is a final disposition of the case. This will be a burden to Canadian softwood lumber exporters and represents a potential liability.

Today it's lumber, tomorrow it could be any number of issues. Uncertainty prevails. This is not the way to conduct business between the world's largest trading partners. There is a better way. We must change the rules in order to stop the harassment by U.S. interest groups against competitive and fairly traded Canadian exports.

We have worked closely with the provinces, industry and labour throughout this investigation. Early next week, we will be meeting to review in detail the basis on which Secretary Baldrige has reversed his earlier decision and to plan our strategy for the next phase of this investigation.

U.S. Countervailing Duty Process

The U.S. countervailing duty process is quite strictly defined by the U.S. law and regulations and includes several key determinations.

The process begins with the filing of a petition by a U.S. domestic industry that alleges the industry is being injured by imports which benefit from countervailable subsidies. If the petition contains sufficient information, as specified in the law, the U.S. Commerce Department (Commerce) and the U.S. International Trade Commission (USITC) initiate countervailing duty investigations. In the lumber case, a petition was submitted by the U.S. "Coalition for Fair Lumber Imports" on May 19, 1986 and Commerce initiated an investigation on June 6, 1986.

The countervailing duty investigation includes the following key determinations which occur in the following order:

- 1) USITC preliminary injury determination.
- 2) Commerce preliminary subsidy determination.
- 3) Commerce final subsidy determination.
- 4) USITC final injury determination.
- 5) Commerce publication of a countervailing duty order (CVD order).

The USITC ruled on June 26, 1986, that there was a reasonable indication of injury caused by imports from Canada and issued an affirmative preliminary injury determination. The Commerce preliminary determination on subsidy is the second key decision in the process. However, before Commerce can issue a CVD order to impose a duty, there must be a final Commerce determination of subsidy and a final USITC determination of injury.

The October 16, 1986 preliminary determination by Commerce does not result in the imposition of a duty but does have several effects. The Commerce subsidy investigation continues to a final determination even if no subsidies (or de minimis subsidies) are found at the preliminary. However, if Commerce rules that countervailable subsidies are being provided, the preliminary determination must contain an estimated net subsidy. The liquidation (finalization) of customs entries is immediately suspended and surety bonds must be posted to cover the estimated subsidy in the event a duty is confirmed at the end of the process.

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.