

News Release

December 15, 1994

No. 248

MACLAREN WELCOMES U.S. ANNOUNCEMENT OF A FULL REFUND OF SOFTWOOD LUMBER DUTIES

The Honourable Roy MacLaren, Minister for International Trade, welcomed today's announcement by the U.S. government that there will be a full refund with interest of the estimated \$800 million in interim duties collected on Canadian softwood lumber. The completion of the refund process will give full effect to the outcome of the Canada-U.S. Free Trade Agreement (FTA) binational softwood panel review.

"With this U.S. action, we can now put this case behind us. The close co-operation and teamwork among industry, the federal and provincial governments throughout this difficult case is largely responsible for this satisfactory result," Mr. MacLaren stated. "The resources spent in litigating this case would have been better focussed on the many forestry issues common to both countries."

"We must now take into consideration the fact that the lumber situation in North American markets has changed dramatically," Mr. MacLaren said. "Canada and the United States must place a high priority on ensuring the sustainable development of the North American forest resource."

Mr. MacLaren announced that, in order to provide a forum for future bilateral co-operation in this sector, the U.S. Trade Representative and he have agreed to establish a Canada-U.S. consultative process on forestry issues. The overall mandate of this consultative process is to enhance bilateral co-operation in areas of mutual concern and interest within the forestry sector.



"This case has clearly demonstrated the disruptive effects on producers and consumers in the use of trade remedy laws in a free trade area," said Mr. MacLaren. "The creation of a consultative process is an important step in moving from a litigious to a co-operative bilateral relationship on lumber."

- 30 -

For further information, media representatives may contact:

Media Relations Office
Department of Foreign Affairs and International Trade
(613) 995-1874

News Release



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Minister for International Trade



Ministre du Commerce International

Ottawa, Canada K1A 0G2

December 15, 1994

The Honourable Michael Kantor
U.S. Trade Representative
600 - 17th Street N.W.
Washington, D.C. 20506

Dear Ambassador Kantor:

I confirm receipt of your letter of today's date which reads as follows:

Dear Minister MacLaren:

I have the honor to confirm my government's acceptance of the attached paper, "Elements of a Consultative Process", representing our mutual agreement to begin a consultative process on trade in softwood lumber and related forestry resource issues.

Further, it is understood by both governments that this consultative process will be undertaken without prejudice to the rights of either side to take measures under domestic law or international agreements, and without diminishing the obligations of either side under domestic law or international agreements.

I propose that this letter, and your confirmation in reply, shall constitute acceptance by your government of the consultative process as outlined in the attached paper.

Sincerely,

Michael Kantor

This exchange of letters constitutes acceptance by our two governments of a consultative process as outlined in the attached paper.

Yours sincerely,

A handwritten signature in cursive script that reads "Roy MacLaren".

Roy MacLaren

ELEMENTS OF A CONSULTATIVE PROCESS

- The United States and Canada wish to encourage a bilateral dialogue on trade in softwood lumber and related forestry resource issues. To that end, the governments announce the establishment of a bilateral consultative process. This process will establish an ongoing dialogue to create better understanding, to resolve problems, and to try to avoid litigation. Both sides acknowledge that such a dialogue is most likely to be productive in an atmosphere of co-operation and conciliation, not contentiousness and litigation.
- The consultative process will be government-to-government. Both governments will seek the views and input of the industries and other interested parties as appropriate.
- The Government of Canada intends to involve fully in the process the provincial governments, with respect to matters falling under provincial jurisdiction.
- Both sides agree to consult on a full range of issues, including, but not limited to: current and future policies and practices, as well as barriers, that affect trade in softwood lumber and related forestry resource issues; and challenges facing the industry in either or both countries. To this end, both sides will exchange factual information.
- The consultative process will include working together to resolve problems that may arise on either side, including ways to ensure that progress made in addressing problems is not eroded. Both sides will work to explore mechanisms to try to resolve problems or disputes without litigation.
- The United States and Canada note the significant changes that have taken place in forestry resource management programs and practices. Both sides recognize that a system of forestry resource management oriented to market forces will contribute to attaining a fair financial return from forest resources, and will assist in mitigating the possibility of contentiousness and litigation.
- The consultations will commence no later than March 1, 1995. At the initial session, the governments will agree on an agenda and schedule for the first year.
- Representatives will report periodically to ministers on progress made in the consultations.

Backgrounder

SOFTWOOD LUMBER

HISTORICAL BACKGROUND

For the past 40 years, the United States has consumed more softwood lumber than it has produced. Canada has been, and continues to be, an important and dependable supplier of quality lumber products. As a result of the U.S. need to import softwood lumber, Canada has had a relatively constant share of the U.S. market during the last decade.

Despite constant U.S. demands for Canadian lumber, softwood lumber continues to be an area of trade friction between Canada and the United States.

LUMBER I (1982-83)

In October 1982, certain U.S. lumber interests filed a petition alleging that Canadian federal and provincial governments were subsidizing Canadian softwood lumber producers through their "stumpage" systems. Stumpage refers to the right to cut timber on government lands, subject to certain fees and other obligations.

In May 1983, the investigation was terminated when the U.S. Department of Commerce (DOC) issued a final determination that Canadian stumpage programs did not confer a subsidy, because they were not provided to a specific enterprise or industry, or group of enterprises or industries, and conferred no subsidy in any event.

LUMBER II (1986)

In May 1986, U.S. lumber interests filed a second petition repeating the 1982 allegations that Canadian stumpage programs were subsidizing Canadian softwood lumber products exported to the United States. No material changes had been made to the Canadian forestry programs or stumpage fee systems.

In October 1986, the DOC issued a preliminary determination contradicting its 1983 finding. In this preliminary decision, the DOC found that Canadian provincial stumpage systems were providing a subsidy of 15 per cent — exactly half the amount alleged by the U.S. industry group — and that this subsidy was provided to a specific industry or group of industries.

The DOC calculated the amount of the subsidy by comparing provincial governments' forestry-related costs with revenues from stumpage (invoking the "cost to government" methodology). However, in determining costs, the DOC added to the actual costs incurred by the provincial governments a so-called "imputed cost" for the value of

standing timber based upon the selling price of selected timber. The difference between costs (including the "imputed cost" of timber) and revenues was then apportioned over total lumber production to set the 15 per cent subsidy rate.

MEMORANDUM OF UNDERSTANDING (1986-91)

On December 30, 1986, the United States and Canada entered into a Memorandum of Understanding (MOU) on Softwood Lumber, pursuant to which Canada agreed to impose a 15 per cent charge on softwood lumber exports to the United States. This charge could be reduced or eliminated if Canadian provinces implemented replacement measures increasing stumpage fees or other costs imposed on timber production. U.S. lumber interests withdrew their petition, and the DOC terminated the investigation, stating that its preliminary determination was "henceforth without legal force and effect."

During the period of the MOU, British Columbia and Quebec adopted replacement measures that included both increasing stumpage fees and transferring to industry additional legal responsibilities and costs for silviculture and forest management. Canada and the United States consulted, and agreed on the value of these replacement measures, with the result that exports of softwood lumber products produced in British Columbia (about three-quarters of all Canadian lumber exports to the United States) were totally exempted from the 15 per cent export charge. The rate for exports of products from Quebec was reduced in stages to 3.1 per cent. Also during the period of the MOU, Alberta significantly revised its forestry-management programs, resulting in substantial increases in costs to industry, but the two countries did not consult on the value of these replacement measures before the termination of the MOU. Thus, the vast majority of Canadian softwood lumber exports to the United States — in excess of 92 per cent — was subject to substantially increased stumpage fees and related charges by the time the MOU was terminated.

In February 1991, a high-ranking official of the DOC 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, Canada exercised its right under the termination provision of the MOU, and notified the United States that it was terminating the MOU, effective October 4, 1991. Before taking this action, Canada used the U.S. government's own timber cost-accounting system to compare governments' forestry costs and revenues in the four major timber-producing provinces. The analysis showed that each province obtained stumpage revenues far in excess of its allocated forestry costs.

Since October 4, 1991, all replacement measures and other forestry management changes adopted during the period of the MOU have remained

in effect. Provincial governments publicly stated their intentions to retain these measures for the foreseeable future.

LUMBER III (1991-92)

In October 1991, the United States took two extraordinary actions. First, the DOC self-initiated a countervailing duty case on Canadian softwood lumber products. By self-initiating the investigation, the DOC did not require a petition from the allegedly affected U.S. industry, as it had in all previous countervailing duty cases.

Second, the United States Trade Representative (USTR), invoking the retaliatory authority of Section 301 of the Trade Act of 1974, ordered that softwood lumber products imported from Canada after October 4, 1991, be subject to a customs bonding requirement imposed at rates reflecting those of the Canadian export charge prior to termination of the MOU. These actions were taken outside of the countervailing duty law, and were not based on any rights under the MOU; the Government of Canada challenged their legality in a proceeding brought under the GATT Subsidies Code.

In its notice of self-initiation, the DOC rejected the use of "cost to government" calculations, the methodology used in 1986, alleging instead subsidies based on comparisons of selected stumpage fees for timber in Canada and the United States.

In December 1991, the DOC expanded its countervailing duty investigation to include Canadian export restrictions on logs.

Under U.S. trade remedy law, four decisions must be taken by two separate government agencies before a final 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 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 requested review of the duty action by a binational panel under Chapter 19 of the Canada-U.S. Free Trade Agreement (FTA).

THE CANADIAN LUMBER INDUSTRY

The forest industry is one of Canada's most important industries. It employed almost 311 000 people in 1993, and contributed \$18.7 billion to Canada's gross domestic product in 1992. As an earner of export

dollars, the forest industry is Canada's most important industrial sector. About 350 communities across Canada are dependent on the forest sector as their primary source of employment.

The softwood lumber industry is a significant component of the Canadian forest industry, accounting for 19 per cent of employment in the forestry sector in 1991. Canada is one of the largest producers of softwood lumber in the world. In 1991, Canada accounted for 16 per cent of total world softwood lumber production, following only the U.S. (at 24 per cent) and the former Soviet Union (at 19 per cent). Within Canada, British Columbia is the principal producer of softwood lumber, accounting for 58 per cent (by volume) of production in 1993. The next largest producer was Quebec, accounting for 19.5 per cent of production by volume.

In 1991, Canada exported more softwood lumber than any other country, accounting for 36 per cent (by value) of total world exports. The principal destination for these exports was the United States. In 1992, Canada exported over 13 billion board feet of softwood lumber to the United States, valued at approximately \$4.2 billion. In 1993, Canadian exports of softwood lumber to the United States totalled nearly 15 billion board feet, valued at approximately \$6.4 billion. For the first 10 months of 1994, Canada exported more than 11 billion board feet of softwood lumber to the United States, valued at more than \$6 billion dollars.

NORTH AMERICAN LUMBER PRICES AND DEMAND

After peaking at a record US\$475 per thousand board feet (MBF) in mid-March 1993, Western spruce-pine-fir two-by-four prices are now averaging around US\$310 per MBF.

The sharp increase in lumber prices reflected the anticipated timber supply reductions in the U.S. Pacific Northwest, along with a forecast increase in housing starts in the United States. While the anticipated timber shortage in the Pacific Northwest has become a reality, mills in the southern United States and eastern Canada have been able to boost production to make up for losses in production elsewhere.

Between March and June 1993, lumber prices dropped significantly. Since June 1993, however, prices have recovered. The February 1994 average price for softwood lumber was US\$411.50 per MBF, an increase of 0.5 per cent over the previous month. This reflects a strengthening in U.S. demand. Housing starts are expected to reach 1.4 million units by the end of 1994. However, the recent rise in interest rates may well curb the demand for housing.

Lumber analysts suggest that high lumber prices have yet to impact significantly on mortgage affordability. In 1993, an increase of \$3000 to \$4000 in new home prices due to lumber was more than offset by declining mortgage rates. However, as a result of lower transportation costs, market demand is expected to shift to cheaper materials, such as

oriented strand board, paperboards and plastics, in 1994. Otherwise, U.S. lumber demand would exceed available domestic and import supplies by a wide margin (at least several billion board feet).

Canadian companies were able to meet some, but not all, of the increased demand for lumber. Overall, lumber exports to the United States in 1992 increased by 14 per cent over 1991. The market remained relatively strong in 1993, and this trend is expected to continue.

FINAL PLAN FOR PACIFIC NORTHWEST

On February 23, 1994, the U.S. administration announced a plan to protect a host of endangered species by significantly reducing logging levels in the Pacific Northwest to 20 per cent of those in the peak years of the mid-1980s (slightly more than one billion board feet vis-à-vis five billion). The new policy is largely similar to a draft that President Clinton presented last summer.

Subsequent to the above announcement, on November 10, 1994, the U.S. Bureau of Land Management announced an additional 85 per cent reduction in future sales. As a result, harvest levels have been curtailed from 1.2 billion board feet to 221 million board feet. The Government estimates that there are 2.2 million hectares of old-growth forest left in the Northwest, with about 600 000 of that protected in national parks or wilderness areas. The Administration would allow logging in 280 000 hectares, but would keep most of the remaining old-growth forest off limits.

In Canada, British Columbia has imposed increased restrictions on the allowable cut in some of its major timber management areas.

THE COUNTERVAILING DUTY INVESTIGATION

During the countervailing duty (CVD) investigation, the DOC investigated provincial stumpage programs and Canadian log export restrictions.

A preliminary affirmative determination of injury was made on December 12, 1991, by the ITC.

On March 5, 1992, the DOC made an affirmative preliminary determination that stumpage programs and log export restrictions in British Columbia conferred subsidies to softwood lumber exported to the U.S. at a national rate of 14.48 per cent *ad valorem* (stumpage at 6.25 per cent plus log export controls at 8.23 per cent). Effective March 12, 1992, importers of softwood lumber from Canada were required to make cash deposits or post bonds of 14.48 per cent on the value of the imported merchandise.

In its final affirmative determination on May 15, 1992, the DOC confirmed its March 5, 1992 decision that Canada's provincial stumpage programs and log export restrictions in British Columbia provided

countervailable subsidies to softwood lumber imported from Canada. The overall country-wide subsidy rate was reduced to 6.51 per cent *ad valorem* (stumpage at 2.91 per cent plus log export controls at 3.60 per cent). The DOC also excluded 15 companies from the investigation.

On June 25, 1992, the ITC, in a four-to-two vote, determined that imports of Canadian lumber materially injured U.S. lumber producers. This was the last of four decisions in the U.S. CVD investigation.

FTA SUBSIDY PANEL

On May 28, 1992, the Government of Canada, the provincial governments and the Canadian industry appealed the final determination of subsidy by the DOC to a binding binational review panel under Chapter 19 of the FTA. The panel reported its findings on May 6, 1993, unanimously instructing the DOC to re-examine its determinations on virtually all of the key issues in the case, reflecting in large part the arguments made by the Canadian government, provincial governments and industry.

On September 17, 1993, the DOC responded to the FTA panel with a new subsidy determination, reaffirming its original conclusion. The new determination, in fact, sought to increase the subsidy rate from 6.51 per cent to 11.54 per cent. However, the panel reviewed the DOC's conclusions and ruled that the DOC, under U.S. trade law, should not have found a countervailable subsidy on either provincial stumpage programs or British Columbia log export restrictions. Thus, the 11.54 per cent subsidy rate alleged by the DOC on September 17, 1993 did not have any impact on Canadian exporters of softwood lumber to the United States.

On January 6, 1994, the DOC accepted the December 17, 1993 ruling by the FTA Subsidy Panel.

On February 23, 1994, the FTA Subsidy Panel affirmed the DOC's decision. As a result, on March 7, the FTA binational panel secretariat issued a Notice of Final Panel Action, a statement that is issued by the binational secretariat when a panel ruling has been adopted. From the date that the Notice of Final Panel Action was issued, the FTA rules provided for a 30-day period in which an Extraordinary Challenge Committee could be requested either by Canada or the United States. The USTR requested the establishment of an extraordinary challenge committee on April 6, 1994. On August 3, 1994, the extraordinary challenge committee upheld the ruling of the FTA Subsidy Panel. On August 16, 1994, the DOC published a notice to revoke the order and terminate collection of the duties. The notice did, however, limit the refund of countervailing duties collected on entries made on or after March 17, 1994, the date of publication of the FTA Subsidy Panel decision. On December 15, 1994, the DOC announced that it will refund the countervailing duties collected prior to March 17, 1994.

FTA INJURY PANEL

On July 24, 1992, the Government of Canada, the affected provinces and the Canadian industry appealed the final determination of injury by the ITC to a binding binational review panel under Chapter 19 of the FTA. The Injury Panel reported its findings on July 26, 1993, ruling that the ITC's conclusion that imports of lumber from Canada injured the U.S. industry was not supported by substantial evidence.

In response to the Panel's ruling, the ITC reconsidered the information and again concluded, on October 25, 1993, that the U.S. lumber industry was injured by imports of Canadian lumber. On January 28, 1994, the FTA Injury Panel again concluded that the ITC decision was not sustainable.

On March 7, 1994, by a vote of 3 to 2, the ITC maintained its original determination that Canadian softwood lumber exports cause material injury to the U.S. lumber industry. The ITC submitted to the Panel its redetermination to that effect on March 14, 1994.

On July 6, the FTA Injury Panel reaffirmed its January 28, 1994, ruling that the ITC has failed to provide substantial evidence to support its original finding.

On August 4, 1994 the ITC was expected to vote on whether or not to accept the July 6 decision. However, as a result of the August 3, 1994 Extraordinary Challenge Committee decision, and subsequent filings made by the Coalition, the ITC, and Canadian parties, the FTA Injury Panel ordered the ITC on October 11, 1994 to maintain the Panel's order of September 15, 1994 to stay the proceedings until one of the parties requests otherwise.

Now that the countervailing duty issue has been resolved, the Panel will be dissolved.

EXTRAORDINARY CHALLENGE PROCEDURES UNDER THE FTA

Article 1904.13 of the FTA allows for an extraordinary challenge to a panel ruling only in cases where a panel member is guilty of bias or a serious conflict of interest, or has materially violated the code of conduct; or where the panel seriously departs from a fundamental rule of procedure or manifestly exceeds its jurisdiction. In addition, the challenged action must have materially affected the panel's decision, and must threaten the integrity of the binational panel review.

An Extraordinary Challenge Committee must be established within 15 days of a request for such a committee. The Committee comprises three members, who are selected from a 10-person roster of judges or former judges of a federal court of the United States and a court of superior jurisdiction in Canada. Each country selects one panel member, and the third is chosen by both or by lot from the roster.

Written arguments must be filed with the Committee within 21 days after the request for a Committee has been filed.

The Committee was formed on April 25, 1994 and held oral hearings on June 13 and 14, 1994.

Annex 1904.13 of the FTA provides that the Committee must render its decision typically within 30 days of its establishment. The decision of the Committee is binding on both governments. The Committee can extend the time limits in the interest of fairness and justice, as was the case in the two previous extraordinary challenges launched in 1991 and 1993, as well as the current Committee.

In rendering its decision, the Committee can affirm the decision of the binational panel, vacate the decision, or remand the decision back to the panel for further consideration, accompanied by instructions from the Committee.

The current Committee rendered its ruling on August 3, 1994, affirming the decision of the FTA Subsidy Panel that provincial stumpage programs and British Columbia log export restrictions do not constitute a subsidy.

U.S. CONSTITUTIONAL CHALLENGE

On September 14, 1994 the U.S. industry Coalition filed a constitutional challenge to the Chapter 19 process in general and the softwood lumber case in particular. The Coalition requested the U.S. Court of Appeals to declare the Chapter 19 system and the U.S. laws implementing them to be unconstitutional. They further requested that the countervailing duty on softwood lumber be reinstated.

On October 14, separate protective filings were made by the Canadian government, the province of Quebec, and industry associations to safeguard future intervention rights in this case.

On December 15, 1994, the U.S. industry Coalition withdrew its constitutional challenge.

REQUEST FOR ADMINISTRATIVE REVIEW

An administrative review may be conducted by the DOC at least once during each 12-month period, beginning on the anniversary of the date that a CVD order is issued. The review process is not automatic, and must be requested in writing by an interested party during the anniversary month of the publication of the order. Such reviews are designed to determine the actual amount of subsidization during a particular period, and adjust the CVD accordingly.

An administrative review is essentially a replay of the original investigation, and is therefore an extensive procedure. It involves issuance of questionnaires, presentation of arguments by interested parties and publication of initial and final results of the review.

It also provides a new opportunity for scrutiny into governmental policies affecting the subject merchandise, besides those initially investigated. As a result, the DOC may determine that "new" programs are countervailable, and amend the order to include a duty that offsets the benefits of these additional programs.

If the deposits collected during the review period are greater than the actual margin found, the DOC will refund the overpayments with interest. If the reverse occurs, the DOC will collect the underpayment with interest.

If, after the completion of a review, the DOC determines that the subsidy margin is below 0.5 per cent, then the margin is considered *de minimis* (i.e. too low to act upon) and the DOC waives the duty deposit requirement.

Canada requested the first administrative review of the softwood lumber countervailing duty order on July 30, 1993. The review will cover the period March 1992 to April 1993, and is intended to fix a final duty for shipments during that period.

Due to statutory deadlines, and notwithstanding the ongoing legal appeals under the FTA, Canada filed a request with the DOC on August 1, 1994, for an administrative review for the period April 1, 1993 to March 31, 1994.

The results of final determinations of administrative reviews are subject to binational panel review under Chapter 19 of the North American Free Trade Agreement (NAFTA).

As a result of the December 15, 1994 announcement, the administrative review will be terminated.

GATT SUBSIDIES CODE PANEL

A GATT Subsidies Code Panel was established in December 1991 at Canada's request, to determine whether the U.S. actions were consistent with U.S. international trade obligations. The Panel found that the U.S. had violated its obligations when it imposed the Section 301 interim bonding requirements, but that it possessed sufficient evidence to initiate the CVD investigation. The Panel report was adopted by the GATT Subsidies Code Committee on October 27, 1993. On October 19, 1994, the USTR published in the U.S. Federal Register a notice to terminate the Section 301 action, and to release the existing bonds.

Chronology

SOFTWOOD LUMBER

- 1982-83 The United States conducts the first countervailing duty (CVD) investigation of softwood lumber from Canada. The U.S. Department of Commerce (DOC) concludes that Canadian programs do not confer subsidies to Canadian lumber producers.
- 1986 The United States conducts the second CVD investigation of softwood lumber from Canada. The DOC reverses itself and concludes that provincial stumpage programs confer subsidies of 15 per cent to Canadian lumber producers.
- December 30 Canada and the United States resolve the bitter and highly political trade dispute by entering into the Softwood Lumber Memorandum of Understanding (MOU). Canada agrees to impose an export charge of 15 per cent on softwood lumber exports to the United States, in return for the U.S. industry withdrawing its CVD petition and the U.S. government terminating the investigation.
- 1987-91 The MOU is amended on several occasions to exempt the Atlantic provinces from the Canadian export charge and to reduce the export charge for British Columbia and Quebec as a result of replacement measures implemented by the provinces.
- 1991
- September 3 The Government of Canada serves a Diplomatic Note on the Government of the United States, advising of Canada's intent to terminate the 1986 Softwood Lumber MOU, effective October 4, 1991.
- October 4 Canada terminates the Softwood Lumber MOU.
- The United States announces its intention to self-initiate the third CVD investigation, and to impose an interim bonding requirement on imports of Canadian softwood lumber.
- October 31 The DOC self-initiates the third CVD investigation.
- December 16 The U.S. International Trade Commission (ITC) makes affirmative preliminary determination of injury.
- At Canada's request, the GATT Subsidies Code Committee establishes a panel to examine whether the U.S. imposition of interim bonding measures and the self-initiation of the CVD investigation violated U.S. trade obligations.

1992

March 5 The DOC makes the preliminary determination of subsidy — 14.48 per cent.

May 28 The DOC makes the final determination of subsidy — 6.51 per cent.

The Government of Canada, provincial governments and Canadian industry appeal the final subsidy determination to binding binational panel review under Chapter 19 of the FTA.

June 25 The ITC makes a final determination of injury — affirmative material injury.

July 24 The Government of Canada, provincial governments and Canadian industry appeal the final injury determination to binding binational panel review under FTA Chapter 19.

1993

February 19 The GATT Subsidies Code Panel distributes its final report to the Subsidies Code Committee. The Panel concludes that the U.S. violated its trade obligations when it used Section 301 of the Trade Act to impose the bonding requirement, but that it possessed sufficient evidence to initiate the CVD investigation.

May 6 The FTA Chapter 19 Subsidy Panel reports its findings, instructing the DOC to re-examine its original determination on virtually all of the major issues.

July 26 The FTA Chapter 19 Injury Panel reports its findings, concluding that the ITC's determination of material injury was not supported by substantial evidence on the record.

July 30 The Government of Canada requests first administrative review.

August 2 The Government of Canada requests company-specific administrative review.

August 24 The DOC initiates first administrative review.

September 17 The DOC makes a new subsidy determination on remand as a result of review by the FTA Chapter 19 Subsidy Panel.

October 14 Government of Canada files company-specific administrative review information as requested by the DOC.

- October 18 The ITC conducts a vote on injury as a result of the FTA Chapter 19 Injury Panel July 26 decision.
- October 19 The DOC issues questionnaires in first administrative review.
- October 25 The ITC submits a new injury determination on remand to the FTA Chapter 19 Injury Panel.
- October 27 The GATT Subsidies Code Committee formally adopts the panel report concerning the U.S. use of Section 301 of the Trade Act to impose an interim bonding requirement in October 1991 and self-initiation of the CVD investigation.
- December 17 The FTA Chapter 19 Subsidy Panel rules that the DOC, under U.S. trade law, should not have found a countervailable subsidy on either provincial stumpage programs or British Columbia log export restrictions.
- 1994
- January 6 The DOC accepts the December 17 Panel ruling.
- January 28 The FTA Chapter 19 Injury Panel affirms its July 26, 1993, ruling that the ITC's determination of material injury was not supported by substantial evidence on the record.
- February 23 The FTA Subsidy Panel affirms the DOC's decision of January 6, 1994.
- February 24 The Office of the United States Trade Representative (USTR) announces that the United States will request the establishment of the Extraordinary Challenge Committee to review the decision of the FTA Subsidy Panel.
- March 7 FTA Panel Secretariat issues Notice of Final Panel Action. From the date that the Notice of Final Panel Action is issued, the FTA rules provide for a 30-day period in which an Extraordinary Challenge Committee can be requested either by Canada or the United States.
- By a vote of 3 to 2, the ITC maintains its original determination that Canadian softwood lumber exports cause material injury to the U.S. lumber industry.
- March 14 The ITC submits its most recent determination to the Panel.
- April 6 The USTR formally requests the establishment of an Extraordinary Challenge Committee.

- April 25** Extraordinary Challenge Committee is formed.
- July 6** The FTA Chapter 19 Injury Panel reports its findings, concluding that the ITC's determination of material injury was not supported by substantial evidence on the record.
- August 1** Canada filed a request for a second administrative review for the period April 1, 1993 to March 31, 1994.
- August 3** Extraordinary Challenge Committee issues its decision with respect to Subsidy Panel decision.
- August 5** The ITC to submit its new injury redetermination to the FTA Chapter 19 Injury Panel.
- August 16** DOC publishes notice to revoke the order and terminate collection of the duties. Refund limited to countervailing duties collected on entries on or after March 17, 1994.
- September 14** U.S. industry Coalition filed a constitutional challenge to the Chapter 19 process.
- October 19** The USTR publishes in the U.S. Federal Register a notice to terminate the Section 301 action and to release the existing bonds.
- December 15** The U.S. industry Coalition announces that it has withdrawn its constitutional challenge.
- The USTR and the DOC announce that it will refund the countervailing duties collected prior to March 17, 1994.
- Canada and the United States announce the establishment of a consultative process to deal with issues in the forestry sector that are of mutual concern to both countries.