Minister for International Trade | Ministre du Commerce extérieur

COMMUNIQUÉ

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CANADIAN PROPOSAL PUT FORWARD TO RESOLVE LUMBER DISPUTE

The Minister for International Trade, the Honourable Pat Carney, announced today that Canada has put forward a proposal to the U.S. Administration designed to provide a solution to the softwood lumber dispute between the two countries.

Mr. Donald Campbell, External Affairs Assistant Deputy Minister, United States Branch, presented the offer of settlement today to his U.S. counterpart, Mr. Alan Woods from the Office of the U.S. Trade Representative. Mr. Woods in turn will consult with U.S. industry. It is not known when the U.S. Administration will report back to the Canadian Government.

"This proposal was developed with the full participation of the provinces and in close consultation with Canadian industry and unions," said Miss Carney. "It represents a major effort to ward off continuing attacks on Canadian softwood lumber exports to the U.S."

The four provinces were already actively reviewing their forestry management practices and decided to accelerate the implementation of their conclusions in order to resolve the dispute. The four provinces under attack from U.S. lumber producers have made proposals to revise their forest management practices in order to raise additional revenues annually which will flow into provincial treasuries.

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"The commitment to implement these proposals is conditional upon a withdrawal of the petition by the U.S. industry before the preliminary determination of subsidy by the Department of Commerce expected on October 9, 1986," said Miss Carney. "We also require assurances from the U.S. industry that companies will not pursue restrictive legislation against softwood lumber exports from Canada."

"It is our only offer, it is done on a 'without prejudice' basis to our legal case, and it is not open to negotiation," she added. "We are seeking to protect one of Canada's largest employers, the forest industry, from continuing harassment from American producers."

If the offer is rejected, the countervail process will continue to its conclusion. To ensure that Canada's position will not be prejudiced by the offer, a diplomatic note setting out Canada's legal arguments has been sent under separate cover to the U.S. State Department. (A copy of the text of the note is attached).

In addition, the federal government has identified problems in U.S. forestry policies and practices which the U.S. should resolve. These include increasing the amount of timber made available to the U.S. industry from public lands and resolving rail and shipping transportation problems.

"The provinces have made a reasonable offer that is acceptable to the forest industry and labour. We are confident that, if accepted, it will ensure continued access to the U.S. market. We are moving to ensure that any additional revenues raised will stay in Canada rather than flow to the U.S. Treasury should a U.S. tariff be applied."

NOTE

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the current countervailing duty investigation of certain softwood lumber products imported from Canada.

As the Department of State will be aware, the Canadian authorities have already expressed the view that such an investigation is neither necessary nor justifiable. The major contention of the petitioner is that the resource pricing policies of certain Canadian provinces constitute a subsidy warranting the application of countervailing duties. The Canadian authorities believe strongly that resource pricing, particularly when, as in the case of Canadian stumpage, costs to the owner over the years are more than covered, cannot be considered as a subsidy under Article VI of the General Agreement on Tariffs and Trade. A countervailing duty investigation accordingly constitutes an abuse of the remedy provided for under that Article. This view has been brought to the attention of the Contracting Parties and dispute settlement proceedings have been commenced. In the circumstances, it is the contention of the Canadian authorities that neither the current nor the previous investigation should have been initiated.

Since a new petition has in fact been accepted, however, it would seem useful to recall the outcome of the earlier case, the criteria used by the Department of Commerce in making its determination, and their relevance to the current situation, particularly as regards stumpage. It will be recalled that, following a long and exhaustive examination of similar charges in 1982, Commerce determined that the main government program at issue, that of provincial stumpage, did not in fact confer a subsidy on Canadian lumber producers. This was based on a number of independent considerations. The first and most important of these was that it was not targeted to a specific enterprise or industry, within the meaning of Section 771 (5)(B) of the Tariff Act of 1930, but was generally available to all those who could make use of it.

This continues to be the case. Canadian governments in no way limit the availability of Crown-owned timber, either by industry, nationality of user, previous use of cutting rights or any other means. Any limitations would result not from government action but from the inherent nature of the resource and the current state of technology. The uses of Canadian timber are in fact many and diverse. A range of industries and thousands of independent companies are involved, including producers of pulp and paper products, newsprint, dimension lumber, wood chips, veneer, shakes and shingles, fencing, railway ties, waterboard, particleboard, linerboard, furniture components, posts and poles, fuel, charcoal and a host of other products.

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In addition, Commerce noted that, even had stumpage not been generally available, it would still not be considered countervailable since, under Section 771 (5)(B)(ii) of the Tariff Act, it did not provide goods or services at preferential rates. That is to say, stumpage was not made available to certain users at a price lower than that charged to others but was available on the same terms to all those who cared to make use of it. There has been no subsequent change in this policy. Finally, in examining under section 771 (5)(B)(iv) of the Tariff Act whether governments had assumed any costs of manufacture, production or distribution, Commerce found that the opposite was in fact the case and that costs were imposed by the provinces on the producers. Consequently, under any test, there was no government assumption of costs. This situation also remains the same.

In the current investigation, petitioners have placed a great deal of emphasis on Commerce's recent review of the Mexican carbon black decision and on what they consider to be new interpretations of "specificity" and "preferentiality". With regard to specificity, it is clear that the review dealt only with the emphasis placed on certain factors in the Mexican case and that its findings in no way affect the earlier decision on lumber. The use of carbon black feedstock in Mexico was limited to a single industry and to only two companies, in contrast to the multiplicity of industries and users in Canada. Unlike timber, moreover, such feedstock is not a natural resource but a semi-processed product. There can consequently be no comparison between the two cases.

With regard to preferentiality, petitioners have noted the various alternative tests for "preferentiality" which were laid out in Commerce's notice of the preliminary results of its review and have suggested that these be applied to the softwood lumber case in place of the traditional approach outlined above. These tests, however, generally do not fit the circumstances. In the case of standing timber, there can scarcely be a comparison with the prices charged by provincial governments for a similar or related good. So far as a comparison with the prices charged by other sellers is concerned, private prices are generally comparable under comparable conditions. While sometimes they may be somewhat higher, this is largely due to the fact that successful bidders need not bear the costs of forest management, road building and the other responsibilities required of those with Crown tenure. As for the third alternative, that of comparing the price charged for the good with the government's cost of providing it, it is clear that over time revenues related to timber sales more than cover government costs when such an analysis is properly carried out.

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The final alternative, which Commerce acknowledged to be the least desirable, was to compare the price charged with the price paid for the same good in an outside jurisdiction. Petitioners have continued to claim, as they did in the previous investigation, that the proper benchmark for stumpage prices in Canada should be those charged in the United States. It will be recalled that, in its earlier determination, Commerce dismissed the notion of any such cross-border comparisons as "arbitrary and capricious". This judgment was based on a number of considerations. Timber in the two countries differs significantly with regard to size, quality, accessability and a wide range of other factors. There are differences in forest policies as well in that Canadian holders of timber rights are, as noted above, generally subject to certain in-kind costs which their counterparts in the United States are not. Thirdly, buyers in the United States operate on the basis of a competitive bidding system which has encouraged speculation and distorted prices. U.S. prices have been further distorted, Commerce noted, by restrictions on timber supplies as a result of both U.S. Forest Service policies and Congressional budgetary restraints.

This case has already involved great uncertainty and expense to all parties concerned and has created serious strains in our trade relations. The Canadian authorities strongly believe that the use of countervailing duties to impose a unilateral solution would constitute a violation of United States obligations under the GATT and would greatly exacerbate the situation. Moreover, a unilateral departure from current GATT rules would be counterproductive in terms of the strong U.S. interest in renegotiating the Subsidies Code, as well as undermining the Administration's opposition to proposals in the Congress to change the ground rules on natural resource pricing. More broadly, a positive finding in this case would constitute an unfortunate precedent for other imported resource products with adverse implications for U.S. users and consumers, and if adopted by other countries could adversely affect U.S. exports.

On the basis of the facts and arguments outlined above, the Canadian authorities would urge that the Department of Commerce reaffirm its earlier findings and bring the investigation promptly to an end.

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