

Minister of Industry,
Science and Technology and
Minister for International Trade



Ministre de l'Industrie, des
Sciences et de la Technologie et
ministre du Commerce extérieur

News Release

Communiqué

ERRATUM

In a News Release issued May 6, 1993, entitled **GOVERNMENT WELCOMES SOFTWOOD LUMBER RULING (No. 107)**, it is noted that Canadian exports to the United States accounted for 29 per cent of Canada's total lumber production.

Dans le communiqué n° 107 du 6 mai 1993 intitulé **LE GOUVERNEMENT SE RÉJOUIT DE LA DÉCISION SUR LE BOIS D'OEUVRE**, il est mentionné que les exportations canadiennes aux États-Unis ont compté pour 29 p. 100 de toute la production canadienne de bois d'oeuvre.

In fact, Canadian lumber exports to the U.S. in 1991 accounted for 54 per cent of total Canadian lumber production. The 29 per cent figure refers to Canada's share of the U.S. market.

En réalité, nos exportations de bois d'oeuvre aux États-Unis en 1991 ont compté pour 54 p. 100 de l'ensemble de la production canadienne. Le chiffre 29 p. 100 désigne la part canadienne du marché américain.



News Release

Communiqué

No. 107

May 6, 1993

GOVERNMENT WELCOMES SOFTWOOD LUMBER RULING

The Honourable Michael Wilson, Minister of Industry, Science and Technology and Minister for International Trade, welcomed today's decision by a Canada-United States Free Trade Agreement (FTA) binational dispute settlement panel in the long-standing dispute over Canadian softwood lumber exports to the United States.

Minister Wilson expressed satisfaction that the panel unanimously instructed the U.S. Department of Commerce (DOC) to re-examine its determinations on each of the key issues in this case, apart from the question of provincial exclusions. The DOC has 90 days to respond to the panel's findings.

"This is a very positive result for the Canadian lumber industry and demonstrates that the FTA dispute settlement mechanism is working. We have used the FTA successfully to defend the Canadian lumber industry's access to the United States market."

The U.S. market is critical to the economic well-being of the Canadian industry. Canadian lumber exports to the United States exceeded \$4 billion in 1992, accounting for roughly 29 per cent of Canada's total lumber production.

The United States government initiated the countervailing duty investigation of softwood lumber on October 31, 1991. The third such investigation in 10 years, the action followed Canada's decision to terminate the 1986 Softwood Lumber Memorandum of Understanding (MOU) on October 4, 1991.

On May 28, 1992, the U.S. Department of Commerce found that the provincial programs conferred a countervailable subsidy of 6.51 per cent. The Canadian government, the provinces and the Canadian industry immediately appealed this subsidy determination to binding binational panel review under the FTA Chapter 19 dispute settlement mechanism.

"The federal government, the provincial governments and the industry mounted a strong defence before the panel," Minister Wilson stated. "All parties concerned have worked together

closely over the past two years. I have been very pleased with this co-operative effort."

A second FTA binational panel is reviewing the injury determination made by the United States International Trade Commission in this case. That panel is expected to report its findings on July 27, 1993.

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CHRONOLOGY

SOFTWOOD LUMBER

- 1982-83** The United States conducts the first countervailing duty investigation of softwood lumber from Canada. The Department of Commerce (DOC) concludes that Canadian programs do not confer subsidies to Canadian lumber producers.
- 1986** The United States conducts the second countervailing duty 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 countervailing duty petition and the U.S. government terminating the investigation.
- 1987-1991** 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 Memorandum of Understanding, effective October 4, 1991.
- October 4** Canada terminates the Softwood Lumber Memorandum of Understanding.
- The United States announces its intention to self-initiate the third countervailing duty investigation and to impose interim bonding requirement on imports of softwood lumber from Canada.
- October 31** The DOC self-initiates the third countervailing duty investigation.

December 16 The U.S. International Trade Commission (ITC) makes affirmative Preliminary Determination of Injury.

At Canada's request, the General Agreement on Tariffs and Trade (GATT) Subsidies Code Committee establishes a panel to examine whether the U.S. imposition of interim bonding measures and the self-initiation of the countervailing duty investigation violated U.S. international 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 Canada-United States Free Trade Agreement (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 final report to members of the Subsidies Code Committee. The panel concludes that the United States violated its international trade obligations when it used Section 301 of the Trade Act to impose an interim bonding requirement, but that it possessed sufficient evidence to initiate the countervailing duty investigation.

May 6 The FTA Chapter 19 Subsidy Panel is due to report its findings.

July 27 The FTA Chapter 19 Injury Panel is due to report its findings.

May 1993

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 an important and dependable supplier of quality lumber products. As a result of the need to import softwood lumber, Canada has had a relatively constant share of the U.S. market over the last 10 years.

Softwood lumber has been the subject of a difficult trade dispute for Canada and the United States for over a decade.

In 1982-83, the United States conducted its first countervailing duty (CVD) investigation of softwood lumber from Canada and concluded that Canadian programs did not confer a countervailable subsidy to lumber producers.

In May 1986, the United States initiated its second CVD investigation of softwood lumber from Canada. The U.S. Department of Commerce reversed itself in October 1986 and made a preliminary determination that Canadian programs did confer a countervailable subsidy of 15 per cent on lumber producers. To resolve this contentious trade dispute, Canada and the United States entered into the Softwood Lumber Memorandum of Understanding (MOU). Under the MOU, Canada agreed to collect an export charge of up to 15 per cent on the value of softwood lumber exported to the United States. In return, the U.S. industry agreed to withdraw its CVD petition and the United States terminated the investigation.

The MOU provided for elimination or reduction of the export charge as a result of changes in provincial forest management regimes, particularly stumpage programs, and other forest management charges. As a result of subsequent amendments to the MOU:

- Atlantic Canada was exempted from the payment of the export charge;
- the export charge was reduced to 0 per cent for exports of British Columbia lumber;
- the export charge had gradually been reduced for exports of Quebec lumber, to a rate of 3.1 per cent by late 1991; and
- Alberta and Ontario had made various changes in their forest management regimes.

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).

THE CANADIAN LUMBER INDUSTRY

The forestry industry is one of Canada's most important industries. It employed almost 300,000 people in 1991 and contributed \$19 billion to Canada's Gross Domestic Product. As an earner of export dollars, the forestry industry is Canada's most important industrial sector. About 350 communities across Canada are dependent on the forestry sector.

The softwood lumber industry is a significant component of the Canadian forestry industry. The softwood lumber industry accounted for 21 per cent of employment in the forestry sector in 1989.

Canada is one of the largest producers of softwood lumber in the world. In 1990, Canada accounted for 14 per cent of total world softwood lumber production, following only the former U.S.S.R. (at 22 per cent) and the United States (at 24 per cent). Within Canada, British Columbia is the principal producer of softwood lumber, accounting for 61 per cent (by volume) of production in 1991. The next largest producer was Quebec, accounting for 17 per cent of production by volume.

In 1990, Canada exported more softwood lumber than any other country, accounting for 37 per cent (by value) of total world exports. The principal destination for these exports is the United States. In 1992, Canada exported over 13 billion board feet of softwood lumber to this market, worth \$4.2 billion. Canada's share of the U.S. market averaged 29 per cent in the first 11 months of 1992. This is down from a peak level of 33 per cent in 1985.

NORTH AMERICAN LUMBER PRICES AND DEMAND

In the last year, most Canadian wood products companies returned to profitability as a result of a dramatic recovery in softwood lumber and panel board prices.

Western spruce/pine/fir two-by-four prices surged to a record US\$475 per thousand board feet (MBF) by mid-March, 1993 -- almost double average break-even costs in the British Columbia Interior. The previous high was US\$262 per MBF in August 1979. Oriented strand board prices are also at record levels. While lumber prices have since retrenched from the March peak, wood products companies should record strong financial results in 1993.

The improvement in lumber prices reflects tightening North American timber supplies linked to protection of the spotted owl in the U.S. Pacific Northwest and a moderate increase in U.S. housing starts. Though some new timber may be freed up for sale in the 1993-94 fiscal year, the cut on the Pacific Northwest public lands in the 1990s will be reduced by about 50 per cent over cutting levels in the late 1980s.

Canadian companies are boosting lumber production to meet rising North American demand. Export volumes rose by 14 per cent in the first 11 months of 1992 and Canada enjoys a roughly 29 per cent share of the U.S. market. However, the ability of Canadian producers to offset decreased U.S. lumber production in the United States will be limited. The allowable cut on some major British Columbia timber management areas was reduced last year, with further reductions expected by the mid-1990s.

At the April 2, 1993 Portland Forestry Conference, both the U.S. National Association of Home Builders and National Lumber Dealers and Building Material Dealers Association advocated the elimination of the U.S. countervailing duty on Canadian lumber.

THE COUNTERVAILING DUTY INVESTIGATION

During the countervailing duty investigation, the U.S. DOC investigated provincial stumpage programs and Canadian log export control measures. An affirmative preliminary determination of injury was made on December 16, 1991, by the United States ITC.

On March 5, 1992, the U.S. DOC announced its affirmative preliminary determination that stumpage programs, and log export restrictions in British Columbia, conferred subsidies to softwood lumber exported to the United States 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 mechanisms, 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 Department also excluded 15 companies from the investigation.

On May 28, 1992, the Government of Canada, the provincial governments, and the Canadian industry appealed the final determination of subsidy to a binding binational review panel under Chapter 19 of the FTA. The panel is scheduled to report its findings on May 6, 1993.

On June 25, the United States International Trade Commission, in a four-to-two vote, determined that subsidized imports of Canadian lumber materially injured U.S. lumber producers. This was the last of four decisions in the United States CVD investigation. On July 24, 1992, the Government of Canada, the affected provinces, and the Canadian industry appealed the final determination of injury to a binding binational review panel

under Chapter 19 of the FTA. The panel is scheduled to report its findings in late July, 1993.

ISSUES BEFORE THE FTA SUBSIDY PANEL

The FTA Chapter 19 panel is reviewing whether U.S. countervailing duty law was correctly applied in the DOC investigation of softwood lumber from Canada. The DOC determined that two types of programs conferred countervailable subsidies:

- provincial stumpage programs, which are the fees charged to forestry companies by provincial governments for the right to harvest standing timber on Crown lands (in British Columbia, for example, approximately 90 per cent of timber harvested in the province is cut on Crown lands); and
- log export measures in British Columbia, which are intended to encourage the further processing of natural resources in the province.

The FTA subsidy panel examined whether the DOC's decision to countervail these two types of programs was consistent with countervailing duty law. In particular, the panel examined the special circumstances warranting the self-initiation of the CVD investigation, whether the programs were of specific benefit to the industries producing the products exported to the United States, the methodology for calculating the rate of subsidy the programs conferred on the lumber exported to the United States and the requests by a number of provinces for exclusion or the granting of province-specific rates.

THE 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 United States had violated its obligations when it imposed the Section 301 interim bonding requirements, but that the United States possessed sufficient evidence to initiate the CVD investigation. The panel report is under discussion in the GATT Subsidies Code Committee, of which both Canada and the United States are members.

May 1993