

News Release

Communiqué

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Trade



Ministre du
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CANADA ACTS UNDER FTA DISPUTE SETTLEMENT

International Trade Minister John C. Crosbie announced today that Canada is taking initial steps under the dispute settlement provisions of the Canada-United States Free Trade Agreement with respect to trade in plywood and wool.

The government's action is based on the failure of the United States to implement the FTA's tariff reductions on softwood plywood and certain related wood-panel products and on differences between the two countries over the definition of wool for tariff purposes.

The Minister noted that differences between Canada and the U.S. over these issues have been known for some time and that the steps Canada is taking to resolve them are provided for in the FTA itself.

"The Canadian government considers the U.S. decision to delay the agreed tariff cuts on plywood, waferboard, oriented strand board and particle-board to be inconsistent with U.S. obligations under the FTA," Mr. Crosbie said.

As a result of the U.S. decision, Canada has suspended tariff reductions on plywood and the related products and now will seek a satisfactory resolution to the issue under the dispute settlement provisions contained in Chapter 18 of the FTA. (The relevant articles from Chapter 18 are attached as Annex.)

Mr. Crosbie said that Canada is also seeking consultations with the U.S. on the definition of wool for the purposes of administering the tariff rate quotas on textiles and textile articles established under the Agreement. The tariff rate quotas place limits on the availability of FTA tariff preferences for Canadian and U.S. textile and apparel products made with yarns and fabrics from third countries.

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The first step in a Chapter 18 dispute settlement process is the request for bilateral consultations. If these consultations do not resolve a dispute within 30 days, Canada may refer the case to the Canada-United States Trade Commission. If settlement is not reached in this forum within a further 30 days, Canada could request the establishment of a panel of experts to render an objective and independent judgment on the case.

Announcing the request for consultations, Mr. Crosbie said that "this action demonstrates the government's intention to exercise vigorously Canada's rights under the Agreement in order to defend Canadian trade interests in the U.S. market."

The Minister also noted that there may be some confusion in the media and public about the implementation of FTA provisions covering a remuneration regime for the retransmission of television signals.

The FTA provides a full year for the implementation of this regime, with the obligation to establish a remuneration system and to provide remuneration not coming into effect until next January. The government will use the interim period to establish a Copyright Board and to adopt the required technical definitions.

The fact that the Copyright Board is not in place and that amendments to the Copyright Act provided by Bill C-2 have not yet been proclaimed is perfectly consistent with the FTA. These measures will be implemented in due course and within the timetable provided by the FTA.

For further information, contact the Media Relations Office at
(613) 995-1874

Annex

Article 1804: Consultations

1. Either Party may request consultations regarding any actual or proposed measure or any other matter that it considers affects the operation of this Agreement, whether or not the matter has been notified in accordance with Article 1803.
2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions in this Agreement.
3. Each Party shall treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

Article 1805: Initiation of Procedures

1. If the Parties fail to resolve a matter through consultations within 30 days of a request for consultations under Article 1804, either Party may request in writing a meeting of the Commission. The request shall state the matter complained of, and shall indicate what provisions of this Agreement are considered relevant. Unless otherwise agreed, the Commission shall convene within 10 days and shall endeavour to resolve the dispute promptly.
2. The Commission may call on such technical advisors as it deems necessary, or on the assistance of a mediator acceptable to both Parties, in an effort to reach a mutually satisfactory resolution of the dispute.

Article 1806: Arbitration

1. If a dispute has been referred to the Commission under Article 1805 and has not been resolved within a period of 30 days after such referral, the Commission:
 - a) shall refer a dispute regarding actions taken pursuant to Chapter Eleven (Emergency Action), and
 - b) may refer any other dispute,to binding arbitration on such terms as the Commission may adopt.

2. Unless the Commission directs otherwise, an arbitration panel shall be established and perform its functions in a manner consistent with the provisions of paragraphs 1, 3 and 4 of Article 1807.

3. If a Party fails to implement in a timely fashion the findings of a binding arbitration panel and the Parties are unable to agree on appropriate compensation or remedial action, then the other Party shall have the right to suspend the application of equivalent benefits of this Agreement to the non-complying Party.

Article 1807: Panel Procedures

1. The Commission shall develop and maintain a roster of individuals who are willing and able to serve as panelists. Wherever possible, panelists shall be chosen from this roster. In all cases, panelists shall be chosen strictly on the basis of objectivity, reliability and sound judgment and, where appropriate, have expertise in the particular matter under consideration. Panelists shall not be affiliated with or take instructions from either Party.

2. If a dispute has been referred to the Commission under Article 1805 and has not been resolved within a period of 30 days after such referral, or within such other period as the Commission has agreed upon, or has not been referred to arbitration pursuant to Article 1806, the Commission, upon request of either Party, shall establish a panel of experts to consider the matter. A panel shall be deemed to be established from the date of the request of a Party.

3. The panel shall be composed of five members, at least two of whom shall be citizens of Canada and at least two of whom shall be citizens of the United States. Within 15 days of establishment of the panel, each Party, in consultation with the other Party, shall choose two members of the panel and the Commission shall endeavour to agree on the fifth who shall chair the panel. If a Party fails to appoint its panelists within 15 days, such panelists shall be selected by lot from among its citizens on the roster described in paragraph 1. If the Commission is unable to agree on the fifth panelist within such period, then, at the request of either Party, the four appointed panelists shall decide on the fifth panelist within 30 days of establishment of the panel. If no agreement is possible, the fifth panelist shall be selected by lot from the roster described in paragraph 1.

4. The panel shall establish its rules of procedure, unless the Commission has agreed otherwise. The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential. Unless otherwise agreed by the Parties, the panel shall base its decision on the arguments and submissions of the Parties.

5. Unless the Parties otherwise agree, the panel shall, within three months after its chairman is appointed, present to the Parties an initial report containing findings of fact, its determination as to whether the

measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification and impairment in the sense of Article 2011, and its recommendations, if any, for resolution of the dispute. Where feasible, the panel shall afford the Parties opportunity to comment on its preliminary findings of fact prior to completion of its report. If requested by either Party at the time of establishment of the panel, the panel shall also present findings as to the degree of adverse trade effect on the other Party of any measure found not to conform with the obligations of the Agreement. Panelists may furnish separate opinions on matters not unanimously agreed.

6. Within 14 days of issuance of the initial report of the panel, a Party disagreeing in whole or in part shall present a written statement of its objections and the reasons for those objections to the Commission and the panel. In such an event, the panel on its own motion or at the request of the Commission or either Party may request the views of both Parties, reconsider its report, make any further examination that it deems appropriate and issue a final report, together with any separate opinions, within 30 days of issuance of the initial report.

7. Unless the Commission agrees otherwise, the final report of the panel shall be published along with any separate opinions, and any written views that either Party desires to be published.

8. Upon receipt of the final report of the panel, the Commission shall agree on the resolution of the dispute, which normally shall conform with the recommendation of the panel. Whenever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Article 2011 or, failing such a resolution, compensation.

9. If the Commission has not reached agreement on a mutually satisfactory resolution under paragraph 8 within 30 days of receiving the final report of the panel (or such other date as the Commission may decide), and a Party considers that its fundamental rights (under this Agreement) or benefits (anticipated under this Agreement) are or would be impaired by the implementation or maintenance of the measure at issue, the Party shall be free to suspend the application to the other Party of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute.