



news release

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MACLAREN WELCOMES PANEL'S RULING ON SOFTWOOD LUMBER

The Honourable Roy MacLaren, Minister for International Trade, welcomed today's ruling by a Canada-United States Free Trade Agreement (FTA) binational panel in the long-standing dispute over Canadian softwood lumber exports to the United States.

"The panel result is an important victory which reaffirms the Canadian position that there is no valid basis for the countervailing duty on softwood lumber from Canada," Mr. MacLaren stated. "We fully expect the United States to implement the recommendations of the panel and remove countervailing duties promptly."

The panel ruled that the U.S. Department of Commerce (DOC), under U.S. trade law, should not have found a countervailable subsidy on either provincial stumpage programs or British Columbia's log export restrictions. The DOC will now have 20 days, until January 6, 1994, to act upon today's panel ruling. The results of the panel's review are binding on the United States.

This is the second ruling by this panel, reviewing the DOC's subsidy determination that provincial stumpage programs and British Columbia's log export restrictions confer a countervailable subsidy of 6.51 percent. On May 6, 1993, the panel unanimously instructed the DOC to re-examine its determination on virtually every major issue in the case. On September 17, the DOC reaffirmed its original finding, concluding that provincial stumpage programs and British Columbia's log export measures do confer a countervailable subsidy. In today's ruling, the Subsidy Panel found no basis under U.S. trade law for the U.S. decision to impose a duty on imports of Canadian softwood lumber.

This ruling is very important to the Canadian lumber industry. Canadian lumber exports to the United States exceeded \$4 billion in 1992, accounting for roughly 54 percent of Canada's total lumber production. The value of Canadian lumber shipments to the United States is expected to reach roughly \$6 billion in 1993.

While the duty will remain at the current rate of 6.51 percent for the time being, today's ruling should lead to the eventual

refund of more than \$500 million in duties paid to date by Canadian lumber producers.

"Canada's success in appealing the U.S. action is due in large part to strong co-operation between the federal government, provincial governments and the industry in defending Canada's trade interests in the United States," said Mr. MacLaren. "All parties concerned worked together in overturning the U.S. decision. I am very pleased with the results of this combined effort."

"This ruling should convince the United States to finally bring this case to a close," said Mr. MacLaren. "This is a long and costly process for the Canadian lumber industry, and further emphasizes the importance of the achievements in the Subsidies Code of the Uruguay Round. Moreover, it underscores the importance of the recent announcement by the Prime Minister to establish North American Free Trade Agreement (NAFTA) Working Groups on trade remedy rules."

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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 U.S. 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 (DOC) reversed itself in October 1986, making a preliminary determination that Canadian programs did confer a countervailable subsidy of 15 percent 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 15 percent 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 payment of the export charge;
- the export charge was reduced to 0 percent for exports of British Columbia lumber; and
- the export charge had gradually been reduced for exports of Quebec lumber, to a rate of 3.1 percent by late 1991.

In addition, Alberta and Ontario made various changes in their forest-management regimes that would almost certainly have

reduced the rate of export charge for these provinces. The MOU had not yet been amended to reflect these changes before it was terminated.

On September 3, 1991, the Government of Canada informed the Government of the United States of its intention to terminate the 1986 Softwood Lumber 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 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 percent 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-U.S. 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 forest industry is one of Canada's most important industries. It employed almost 300 000 people in 1992 and contributed \$17.5 billion to Canada's gross domestic product in 1991. 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. The softwood lumber industry accounted for 19 percent of employment in the forestry sector in 1990. Canada is one of the largest producers of softwood lumber in the world. In 1991, Canada accounted for 16 percent of total world softwood lumber production, following only the United States (at 24 percent) and the former Soviet Union (at 19 percent). Within Canada, British Columbia is the principal producer of softwood lumber, accounting for 61 percent (by volume) of production in 1991. The next largest producer was Quebec, accounting for 17 percent of production by volume.

In 1991, Canada exported more softwood lumber than any other country, accounting for 36 percent (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 the United States, valued at approximately \$4.2 billion. The value of exports in 1993 is expected to approach \$6 billion.

NORTH AMERICAN LUMBER PRICES AND DEMAND

Western spruce-pine-fir two-by-four prices peaked at a record US\$475 per thousand board feet (MBF) in mid-March 1993, double the 1992 average price of US\$231 and 80 percent greater than the previous peak of US\$262 per MBF in 1979.

The sharp increase in lumber prices reflected the anticipated timber supply reductions in the U.S. Pacific Northwest, along with a forecasted 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 U.S. 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 October 1993 average price for softwood lumber was US\$389 per MBF, an increase of 24 percent over the previous month. This reflects a strengthening in U.S. demand. Housing starts seem to have finally responded to relatively low interest rates. Housing starts in the United States increased by 7.8 percent in August and a further 2.7 percent in September. The seasonally adjusted annual rate of new starts in September was the highest it has been since February 1990.

Canadian companies took advantage of the increased demand for lumber. Overall, lumber exports to the United States in 1992 increased by 14 percent over 1991. The market has remained relatively strong for much of 1993, and this trend is expected to continue into 1994. The U.S. Administration's plan to resolve the Pacific Northwest timber supply problems has been announced.

There will be significant reductions in timber sales from this region. The U.S. Forest Service announced on July 16, 1993, that annual federal timber sales in the region must be limited to between 200 million and 1.7 billion board feet over the next two decades to protect threatened species. In addition, the allowable cut in some major British Columbia timber management areas has already been decreased, with further reductions expected in coming years.

THE COUNTERVAILING DUTY INVESTIGATION

During the countervailing duty investigation, the DOC investigated provincial stumpage programs and Canadian log export control measures.

An affirmative preliminary determination of injury was made on December 12, 1991, by the United States International Trade Commission (ITC).

On March 5, 1992, the 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 percent ad valorem (stumpage at 6.25 percent + log export controls at 8.23 percent). Effective March 12, 1992, importers of softwood lumber from Canada were required to make cash deposits or post bonds of 14.48 percent 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 percent ad valorem (stumpage at 2.91 percent + log export controls at 3.60 percent). The DOC 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 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. The panel reviewed the DOC's conclusions and made its second ruling on December 17, 1993, to make .

On June 25, 1992, the United States ITC, 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. This panel reported its findings on July 26, 1993, ruling that the United States did not possess sufficient evidence to conclude that imports of lumber from Canada injured the U.S. industry.

FTA SUBSIDY PANEL

On May 6, 1993, the FTA Subsidy Panel referred virtually every major issue from the DOC original subsidy determination back to the Department for further review. On September 17, 1993, the DOC reaffirmed its original conclusion that provincial stumpage programs and British Columbia's log export restrictions conferred a countervailable subsidy. The DOC concluded that the subsidy had increased from the original level of 6.51 percent to a rate of 11.54 percent.

The FTA Subsidy Panel has reviewed the September 17 DOC determination, and made its second decision on December 17, 1993.

FTA INJURY PANEL

On July 26, 1993, the FTA Injury Panel concluded that the ITC did not possess sufficient evidence on the record of the investigation to conclude that the alleged subsidized imports of softwood lumber from Canada were injuring the U.S. domestic lumber industry. In response to the panel, 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. The FTA Injury Panel has until January 24, 1994 to make its next decision.

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 was adopted by the GATT Subsidies Code Committee on October 27, 1993. The United States has an obligation to implement the panel's instructions to terminate the Section 301 interim bonding requirement, refund any cash deposits and cancel any bonds resulting from the Section 301 action.

CHRONOLOGY

SOFTWOOD LUMBER

1982-83

The United States conducts the first countervailing duty 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 countervailing duty investigation of softwood lumber from Canada. The DOC reverses itself and concludes that provincial stumpage programs confer subsidies of 15 percent 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 percent 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.

1987-91

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 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 an interim bonding requirement on imports of Canadian softwood lumber.

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 Subsidies Code Committee of the General Agreement on Tariffs and Trade (GATT) 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. trade obligations.

1992

March 5 The DOC makes the preliminary determination of subsidy -- 14.48 percent.

May 28 The DOC makes the final determination of subsidy -- 6.51 percent.

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 the Subsidies Code Committee. The panel concludes that the United States 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 countervailing duty investigation.

May 6 The FTA Chapter 19 Subsidy Panel reports its findings, instructing the DOC to re-examine its original determination on each 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.

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

- October 18 The ITC conducts a vote on injury as a result of the FTA Chapter 19 Injury Panel July 26 decision.
- 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 countervailing duty investigation.
- December 17 The FTA Chapter 19 Subsidy Panel makes its decision on DOC determination on remand.

1994

- January 6 The DOC makes a new subsidy determination on remand as a result of review by the FTA Chapter 19 Subsidy Panel.
- January 24 The FTA Chapter 19 Injury Panel makes its decision on ITC determination on remand.