WORLD TRADE ORGANIZATION

RESTRICTED

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14 March 2005

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Dispute Settlement Body
25 February 2005

MINUTES OF MEETING

Held in the Centre William Rappard
on 25 February 2005

Chairman: Mr. Eirik Glenne (Norway)

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1. United States – Investigation of the International Trade Commission in softwood lumber from Canada

(a) Recourse to Article 21.5 of the DSU by Canada (WT/DS277/8)

1. The Chairman drew attention to the communication from Canada contained in document WT/DS277/8 and invited the representative of Canada to speak.

2. The representative of Canada said that, once again, his country wished to thank the Panel and the Secretariat for their work on the dispute between Canada and the United States in the softwood lumber injury case. He recalled that at its special meeting on 26 April 2004, the DSB had adopted the Report of the Panel in the case: "United States – Investigation of the International Trade Commission in Softwood Lumber from Canada". The Panel had found that the threat of injury determination by the US International Trade Commission was inconsistent with US obligations under the Anti-Dumping Agreement and the SCM Agreement. The Panel had found that the US International Trade Commission's (ITC) determination that there would be a likely imminent substantial increase in imports of softwood lumber products from Canada was not one that could have been reached by an objective and unbiased investigating authority. As the US ITC's causation analysis was based on this same finding, the Panel had also found it to be inconsistent with the previously-mentioned Agreements. Consequently, the DSB had recommended that the United States bring its measures into conformity with its obligations under the Anti-Dumping Agreement and the SCM Agreement. Unfortunately, the United States had not done so. The United States could have easily and rightly issued the only determination that was consistent with both its WTO obligations and US law – that was a determination that imports of Canadian softwood lumber did not threaten to injure the US industry. Such an action would bring long overdue finality to a dispute that was unduly affecting

consumers and producers on both sides of the borders. Instead, the United States had asserted that it had complied with the DSB's rulings and recommendations by issuing a new threat of injury determination. That determination had simply reaffirmed the ITC's original determination and had also relied on the same faulty analysis that had been criticized by the Panel. Almost three years had passed since the ITC had issued its original final affirmative threat of injury determination. The US failure to respect its international trade obligations was not inconsequential. In fact, based on the illegal threat of injury determination issued by the ITC in May 2002, the Canadian lumber industry had paid over Can$4.25 billion in cash deposits to the United States to date, an amount that was growing at a rate of approximately Can$150 million per month. The enormous financial burden resulting from the illegal US trade actions continued to have a tremendous negative impact on hundreds of companies, their workers and communities across Canada. As if this weren't enough, the over Can$4.25 billion in cash deposits could ultimately be distributed to the US lumber industry under another WTO-inconsistent US measure that remained in place: i.e. the US Byrd Amendment. Canada considered that the United States had failed to comply with the DSB's recommendations and rulings. The United States continued to impose anti-dumping and countervailing duties based on an illegal threat of injury determination. The United States, therefore, continued to violate its obligations under both the Anti-Dumping Agreement and the SCM Agreements. In the light of the US failure to bring its measure into conformity with its obligations, Canada sought recourse in this matter to Article 21.5 of the DSU.

3. The representative of the United States said that his country regretted that Canada had chosen to request the establishment of a compliance panel under Article 21.5 of the DSU with respect to the measures taken by the United States to comply with the recommendations and rulings of the DSB in this dispute. He recalled that the United States had informed Members at the 25 January 2005 DSB meeting that it had fully implemented these recommendations and rulings within the agreed period of time. In particular, on 24 November 2004, the US International Trade Commission had issued a new determination taking into account the WTO findings. In addition, on 20 December 2004, the United States had amended the anti-dumping and countervailing duty orders on softwood lumber from Canada to reflect the new determination. The United States disagreed with Canada's assertion that the new determination and the amendment of the underlying anti-dumping and countervailing duty orders to reflect that determination were not consistent with the Anti-Dumping Agreement and the SCM Agreement. Accordingly, the United States considered that Canada's request for a compliance panel was unnecessary and without basis. In that regard, the United States looked forward to the opportunity for a panel to confirm that the United States had fully complied with its obligations, and the United States accepted the establishment of a panel at the present meeting.

4. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Canada in document WT/DS277/8. The Panel would have standard terms of reference.

5. The representative of the European Communities reserved third-party rights to participate in the Panel's proceedings.

2. United States – Investigation of the International Trade Commission in softwood lumber from Canada

(a) Recourse to Article 22.2 of the DSU by Canada (WT/DS277/9)

6. The Chairman drew attention to the communication from Canada contained in document WT/DS277/9 and invited the representative of Canada to speak.

7. The representative of Canada said that his country was also requesting authorization from the DSB, pursuant to Article 22.2 of the DSU, to suspend the application to the United States of

concessions or other obligations in an amount to be established yearly equivalent to the level of nullification and impairment caused by improper US implementation. For the year 2005, this amount would be approximately Can$4.25billion which was the amount of the collected and un-refunded illegal countervailing and anti-dumping duties. For future years, the level of suspensions of concessions would equal the amount of total countervailing and anti-dumping duty cash deposits collected and retained on the anniversary date of the filing of this request. Canada wished to inform the DSB that it had entered into an agreement with the United States that provided that any proceedings pursuant to Article 22.6 of the DSU would be requested to be suspended until adoption by the DSB of its recommendations and rulings in the Article 21.5 compliance proceedings.

8. The representative of the United States said that his country regretted that Canada had requested authorization to suspend concessions or other obligations in this dispute. As his delegation had noted in its statement under the previous agenda item, the United States had fully implemented the recommendations and rulings of the DSB prior to the expiration of the agreed-upon reasonable period of time. Therefore, on 23 February 2005, the United States had informed the DSB by letter that, pursuant to Article 22.6 of the DSU, the United States had objected to the level of suspension of concessions proposed by Canada. Under the terms of the DSU, the filing of this objection had automatically resulted in the matter being referred to arbitration, and no further action was required of the DSB. Indeed, Article 22.6 of the DSU did not refer to any decision by the DSB. Consequently, the matter was already being referred to arbitration. Nevertheless, the United States had no objection if the DSB wished to take note of that fact and confirm that it might not consider Canada's request for authorization, which was on the agenda of the present meeting, since the matter had been referred to arbitration. The United States added that, pursuant to an agreement between the United States and Canada, once the Arbitrator was constituted, the United States and Canada would request the Arbitrator to suspend its proceedings until the completion of the Article 21.5 proceedings. The United States was confident that should the Arbitrator ever have to consider the matter, it would find that the US objections to Canada's proposed actions were well-founded.

9. The DSB took note of the statements and it was agreed that the matter raised by the United States in document WT/DS277/10 is referred to arbitration, as required by Article 22.6 of the DSU.