

Canadian Embassy



Ambassade du Canada

501 Pennsylvania Ave., N.W.  
Washington, D.C. 20001

August 8, 2003

Grant D. Aldonas  
Under Secretary for International Trade  
Central Records Unit  
Room 1870, U.S. Department of Commerce  
Pennsylvania Avenue and 14th Street, NW  
Washington, DC 20230

Attention: Softwood Lumber Policy Bulletin.

Dear Mr. Secretary:

On behalf of the Government of Canada, we submit the attached comments with regard to the draft policy bulletin regarding the conduct of changed circumstance reviews of the countervailing duty order on Softwood Lumber from Canada, 68 Fed. Reg. 37,456 (June 24, 2003).

The Government of Canada notes, for the record, that the draft policy bulletin reflects the views of the U.S. Department of Commerce regarding subsidies under U.S. law and the nature of Canadian stumpage programs, not those of the Government of Canada.

Yours sincerely,

A handwritten signature in black ink that reads "William R. Crosbie".

William R. Crosbie  
Minister-Counsellor  
(Economic & Trade Policy)

Comments of the Government of Canada  
on Draft Policy Bulletin Regarding the Conduct of Changed Circumstance Reviews  
of the Countervailing Duty Order on Softwood Lumber From Canada

Purpose of the Policy Bulletin, paragraphs 1 through 4

Comment:

This policy bulletin reflects the views of the U.S. Department of Commerce regarding subsidies under U.S. law and the nature of Canadian stumpage programs. The Government of Canada notes, for the record, that it does not share these views and it continues to consider the countervailing duties imposed on Canadian softwood lumber exports to be inconsistent with U.S. and international law.

Summary of the Comment:

The draft policy bulletin contains a footnote 3 under the heading General Statement of Policy which reads as follows:

“Revocation is also contingent on the absence of any other countervailable subsidies (above *de minimis* in the aggregate), whether such subsidies are new or preexisting.”

The Government of Canada recommends deletion of this footnote as it undermines the stated purpose of the policy bulletin and is unnecessary in light of the existing authority of the Department of Commerce to conduct changed circumstance reviews.

Comment:

Footnote 3 applies to the following sentence in the paragraph under the heading “General Statement of Policy: “If [the described] standards are met, the Department will determine that the provincial system does not provide a countervailable subsidy and will revoke the countervailing duty order with respect to lumber produced in that province.” As is made clear in the introduction to the bulletin, the bulletin is concerned with how Commerce will evaluate changes to provincial forest management policies in determining whether to revoke the countervailing duty order through a changed circumstance review. We understand the intention of the footnote to be to make clear that revocation would not occur if it were substantiated that a non-*de minimis* subsidy not alleged in the investigation exists. As Commerce already has authority to examine properly substantiated new subsidy allegations in a changed circumstance review, the footnote is unnecessary and should be deleted. A further reason for deleting the footnote is that it suggests, contrary to U.S. law, that the burden is on the respondent to demonstrate the “absence” of non-*de minimis* subsidies.

While, as noted, we do not understand the footnote to be intended to create authority that is not inherent in the conduct of a changed circumstance review, its language can be read to undermine the stated intent of the policy bulletin. That stated purpose is to encourage the modification of provincial forest management measures examined in the investigation so as to eliminate the alleged subsidy. Allegations of other subsidies made in the investigation were addressed in the investigation, and absent substantial new evidence that Commerce’s treatment of those alleged subsidies is no longer correct, they would not, under Commerce practice, be revisited. Yet the footnote suggests that other subsidies currently may exist that would inhibit revocation of the order. As such, it undermines the Department’s stated intention to provide an incentive for reform and the benefit of clear guidance as to the reforms deemed necessary to justify revocation.