

Canadian Embassy



Ambassade du Canada

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

August 22, 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 rebuttal 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,

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

Rebuttal 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

General Comments on Comments of the Coalition for Fair Lumber Imports

Summary of the Comment:

The comments filed by the Coalition focus on changed circumstances arguments rather than the policy bulletin, and contain numerous inaccuracies. As such, they do not warrant revision of the draft policy bulletin. Further, while the Government of Canada is commenting on two specific issues, silence on other issues does not signal agreement.

Comment:

The Government of Canada does not propose to respond in any detail to the comments filed on behalf of the Coalition for Fair Lumber Imports, Letter from Dewey Ballantine LLP to the Honorable Grant D. Aldonas (August 8, 2003) (“Coalition comments”). Canada notes, however, that they consist largely of arguments the Coalition might make in a changed circumstances review rather than addressing the draft policy bulletin. Moreover, the Coalition comments contain numerous legal and factual inaccuracies. For example, the Coalition asserts that in the investigation of softwood lumber from Canada, the Department found that a variety of forest management practices “confer countervailable benefits” on the production of softwood lumber. Coalition comments at 1 & n.2. The final determination, however, found only that stumpage programs were countervailable; the practices enumerated by the Coalition were neither investigated nor found to be countervailable subsidies. *E.g.*, Issues and Decision Memorandum: Final Results of Countervailing Duty Investigation of Certain Softwood Lumber from Canada at 26 (March 21, 2001).

As a result, the Coalition comments do not warrant revision of the draft policy bulletin.

Purpose of the Policy Bulletin, paragraphs 1 and 2

Summary of the Comment:

Coalition comments relying on the interpretation of the statutory term “adequate remuneration” to mean “fair market value” should be disregarded. That interpretation, which is not necessary to the policy bulletin, has now been squarely rejected by both NAFTA and WTO Panels as inconsistent with U.S. law and the SCM Agreement, and continued reliance on it may call into question the policy bulletin as a whole.

Comment:

Coalition comments that rely on the draft policy bulletin’s interpretation of the statutory term “adequate remuneration” to mean “fair market value” should be disregarded. *See* Coalition comments at 16-17; Draft Policy Bulletin, 68 Fed. Reg. 37,456, 37,457. The NAFTA Panel reviewing the final determination in the softwood lumber case recently found this interpretation to be contrary to the plain meaning of the U.S. statute. *Certain Softwood Lumber Products from Canada*, USA-CDA-2002-1904-03, Decision of the Panel (August 13, 2003) at 35 (“[B]oth the Coalition and the Department suggested that an appropriate measure of adequacy of remuneration would be “fair market value,” or what the sellers of timber would receive absent the involvement of the government. Suffice it to say that these standards are not the law as reflected in the statute, the regulations, or even in the Preamble . . .”). The “fair market value” interpretation has similarly been rejected by the WTO. *See United States – Preliminary Determinations with Respect to Certain Softwood Lumber from Canada, Report of the Panel*, WT/DS236/R, paras. 7.50, 7.51 (Sept. 27, 2002, adopted Nov. 1, 2002).

As Canada stated in its comments dated August 8, 2003, the policy bulletin reflects the views of the U.S. Department of Commerce concerning subsidies under U.S. law and the nature of Canadian stumpage programs – views not shared by the Government of Canada, which continues to consider the countervailing duties imposed on Canadian softwood lumber exports to be inconsistent with U.S. and international law.

## I.B.1 Market-Based Pricing – Reference Prices

### Summary of the Comment:

The Coalition’s assertion that a reference market is not usable if less than a substantial majority of the harvest is sold through “competitive mechanisms” has no economic basis, is not a realistic approach to a durable solution, and has already been thoroughly considered and rejected by the Department.

### Comment:

The Coalition comments at length that the policy bulletin should require that at least 50 percent of wood fibre be sold under “competitive” conditions before the Department would accept that prices in a reference market reflect true market transactions. Coalition comments at 16-24. The Coalition cites the opinion of a number of interested groups and individuals that 50 percent is a desirable number, but cites no economic rationale for such a rule. In fact, there is no economic rationale for such a requirement. Indeed, insistence on an arbitrary and unnecessary 50 percent standard for reference markets would undermine the stated purpose of the policy bulletin by eliminating the incentive for effective and feasible reforms. Finally, the Department has already considered this issue at length, and correctly decided it would be inappropriate to include such a requirement in the policy bulletin.