

**BEFORE THE
WORLD TRADE ORGANIZATION**

***United States - Final Dumping Determination on
Softwood Lumber from Canada***

WT/DS264

EXECUTIVE SUMMARY OF THE ORAL PRESENTATION OF THE

UNITED STATES

AT THE SECOND MEETING OF THE PANEL

August 21, 2003

Opening Statement

1. At this stage in the proceedings, the United States recognizes that the issues have been laid out in great detail and are well known to the Panel. However, in its responses to questions and in its rebuttal submission, Canada has made numerous statements that (1) wrongly assert that the United States concedes or acknowledges certain points; (2) take U.S. statements out of context; or (3) otherwise mischaracterize the arguments of the United States. The effect of these misstatements is to seriously distort the facts and issues. The United States will address Canada's most significant misstatements to clarify the facts and the issues in this dispute.

2. First, it is necessary to revisit briefly the issue of the appropriate **standard of review**. In our first submission, we recalled the explanation of the Appellate Body and several panels that Article 17.6(i) precludes *de novo* review of an investigating authority's findings of fact. We also noted that, notwithstanding this limitation, Canada seemed to be asking the Panel to decide certain questions as if *it* were the investigating authority. For example, we pointed to Canada's request that the Panel examine "whether the authority has given proper weight to the facts." In our answers to the Panel's questions, we identified other instances in which Canada appears to be asking for *de novo* review of Commerce's findings of fact. We cited, for example, Canada's presentation to the Panel of a regression analysis that was not before Commerce in the softwood lumber investigation, along with a seven-page expert's memorandum. We also cited arguments Canada made in connection with certain company-specific calculation issues. Now, in its rebuttal submission, Canada accuses the United States of arguing "that Commerce has absolute discretion and must be accorded absolute deference on questions of fact."¹ This accusation is patently false. The United States has never urged the standard Canada alleges.

3. On the question of Commerce's **initiation of the softwood lumber investigation** Canada has made arguments under Articles 5.2, 5.3, and 5.8 of the AD Agreement. Canada argued that Commerce violated Article 5.2 by initiating on the basis of an application that lacked certain information alleged to be reasonably available to one of the applicants. The U.S. response was two-fold. First, the United States argued that Article 5.2 does not impose an obligation on investigating authorities independent of the obligation under Article 5.3 to "examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation." Where various paragraphs of Article 5 impose obligations on investigating authorities, they do so in unmistakable terms. Article 5.2 contains no such mandate. It describes the contents of an application and thereby provides context for an authority's obligation under Article 5.3.

4. Second, the United States argued that Canada improperly read into Article 5.2 a requirement that an application contain *all* information reasonably available to the applicant on the subjects enumerated in that provision. However, Article 5.2 states only that "[t]he application shall contain such information as is reasonably available to the applicant" on certain specified matters. The phrase "such information as is reasonably available" does not mean *all* information that is reasonably available.

¹Canada Second Written Submission, para. 6.

5. In its rebuttal submission, Canada made several statements regarding the U.S. argument on Article 5.2 that call for reply. First, Canada incorrectly asserted that Commerce “admits knowing at the time of initiation” that the application “did not contain certain highly pertinent transaction-specific information, reasonably available to the Applicant in violation of Article 5.2.”² The statement from which Canada infers this supposed admission is not an admission of the relevance of the Weldwood data, nor of any obligation on the investigating authority under Article 5.2.

6. Second, Canada erroneously characterizes the U.S. argument as rendering Article 5.2 a nullity. Canada argues that, unless Article 5.2 imposes a free-standing obligation on investigating authorities it is “reduced to redundancy and inutility.” This theory fails to read Article 5.2 in its context. In particular, it fails to consider the relationship between Article 5.2 and Article 5.3. By specifying the information that must be contained in an application, Article 5.2 informs the sufficiency inquiry an authority must undertake pursuant to Article 5.3. Therefore, Article 5.2 is not rendered a nullity, as Canada contends.

7. In its rebuttal submission, Canada argues that if a document purporting to be an “application” under Article 5.1 does not contain “such information as is reasonably available to the applicant” on the matters described in Article 5.2, then it is not in fact an “application” and cannot serve as the basis for initiation by way of “application.”³ This is a variation on Canada’s argument that an investigating authority must prove a negative before initiating. Aside from its impracticability, Canada’s suggestion would require a pre-initiation investigation that simply is not contemplated by the AD Agreement.

8. Next, the United States responds to Canada’s contention that its interpretation of Article 5.2 is supported by the panel report in *United States–Anti-Dumping Act of 1916*.⁴ The report in that matter is not relevant to this dispute and certainly does not support the proposition that Article 5.2 imposes an independent obligation on investigating authorities. The panel in the *1916 Act* dispute said nothing about obligations of investigating authorities under Article 5.2. It spoke of a *complainant* respecting obligations under that provision.

9. As a final note on this provision, we observe that Canada persists in its argument that Article 5.2 requires an applicant to provide *all* information reasonably available to it on the specified subjects. It bases this assertion entirely on the word “such” in the phrase “such information as is reasonably available to the applicant.” Nothing in the definition of that word even suggests the word “all.” Thus, even if the Panel were to find an obligation on investigating authorities under Article 5.2, that obligation would not be violated by an initiation based on an application that did not contain *all* information reasonably available to the applicant.

²*Id.*, para. 10

³*Id.*, para. 21.

⁴*Id.*, paras. 16, 24.

10. Canada has also argued that Commerce initiated the softwood lumber investigation based on insufficient evidence of dumping, in violation of Article 5.3. On rebuttal, Canada raises new objections to the evidence of dumping in the application. For example, Canada misleadingly asserts that there was no actual cost data for purposes of initiation. It is true that, in evaluating the petition, Commerce relied on *usage factors* from U.S. mills. However, all significant *production costs* were valued on the basis of actual cost data from Canadian sources. Canada's claim that the usage factor data in the petition were "not representative" is equally misleading. Canada purports to measure representativeness of the data in the application relative to the six companies that were ultimately examined during the investigation. But, the selection of companies after initiation to serve as respondents has nothing to do with the data relied on prior to initiation. Commerce's decision to initiate was based on costs and prices for a broad range of producers. Canada also continues to assert that the application contained insufficient evidence on prices to justify initiation, dismissing applicants' use of *Random Lengths* data by questioning whether they represent actual transactions. The United States has responded to this allegation in prior submissions, demonstrating that *Random Lengths* data do represent actual transactions.

11. Finally, Canada continues to argue that Commerce violated Article 5.8 by declining to evaluate "the Weldwood data or any other data that may have been available in the light of the ongoing sufficiency of evidence requirement."⁵ This argument is flawed for several reasons. First, the United States explained that these data *could not* have negated the sufficiency of the data on which Commerce relied at the time of initiation because they reflect the experience of a single company, whereas the data actually relied upon for initiation reflected the experience of a broad cross-section of Canada's lumber producing and exporting industry. Second, Canada ignores the fact that Weldwood's data were submitted two months after the initiation of the investigation, as a "voluntary" response. The data were received concurrently with the submissions of the six examined Canadian respondents, each of whose data demonstrated dumping. In light of the evidence of dumping obtained during the investigation, it is not at all clear how Canada believes the United States violated its obligation under Article 5.8. That provision requires termination of an investigation "as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case." Yet, here, the evidence accumulated during the investigation reenforced rather than weakened the basis for concluding that there was dumping. Canada seems to argue that, having received the Weldwood data, Commerce should have looked back to determine whether there would have been sufficient evidence to initiate had the data been included in the petition. But, Article 5.8 contains no such look-back requirement.

12. Turning to Canada's **product-under-consideration claim**, Canada claims that Commerce's identification of "softwood lumber products" as a single product under consideration amounted to a violation of Article 2.6. The United States has responded by explaining that Article 2.6 contains no obligation on how an investigating authority is to identify the product under consideration in an antidumping investigation. This point is underscored by

⁵*Id.*, para. 63.

the fact that in pending negotiations, certain WTO Members have proposed that there should be such an obligation. Such a proposal would be superfluous if the obligation already existed. Even Canada acknowledges that the support for its theory is mere inference, rather than any express rule.⁶

13. In its rebuttal submission, Canada focuses on two U.S. statements. In each case, Canada mischaracterizes the statement, reading it in isolation and assigning a significance clearly not warranted when the statement is read in context. First, Canada focuses on the U.S. statement that “[a]s part of its analysis in determining whether ‘clear dividing lines’ exist within the product under consideration identified within the petition, Commerce reviews [the] five [*Diversified Products*] factors.”⁷ Canada asserts that this means that Commerce “subordinated its use of the *Diversified Products* criteria to a ‘no clear dividing line’/‘continuum’ test.”⁸ But, Canada misunderstands the analysis that was actually applied. It is clear from both the Scope Memorandum and the Final Determination that Commerce applied the *Diversified Products* criteria to each of the four products at issue. In other words, Commerce’s assessment of whether there are “clear dividing lines” between products is *part of* the *Diversified Products* analysis, not subordinate to that analysis.

14. The second statement on which Canada focuses in its rebuttal is Commerce’s statement that “[p]aradoxically, it is as much the *diversity* of lumber production as the characteristics that all softwood lumber have in common that leads us to continue to treat all softwood lumber as a single class or kind of merchandise.”⁹ Canada erroneously takes a passing observation by Commerce and treats it as if it were the very foundation for Commerce’s decision. Read in context, it is clear that this is not the case. Commerce expressly acknowledged that it could not base its determination on the diversity of characteristics among lumber products. Rather, it recognized an obligation under its own practice to apply the *Diversified Products* factors.

15. Moreover, even on its own terms, Canada’s product-under-consideration claim must fail. Canada infers from Article 2.6 a rule governing the definition of the product under consideration. Although none of the key terms in Article 2.6 refer to the quality of two things being identical, Canada somehow infers a requirement “that the essential, distinctive traits of one product must be very nearly *identical* to the essential distinctive traits of the other product.”¹⁰ Not only is such a requirement entirely absent from Article 2.6, even an inference of such a requirement is not supported by the language of Article 2.6.

⁶See *id.*, para. 70.

⁷*Id.*, para. 70 & note 66 (*citing* U.S. First Written Submission, para. 103).

⁸*Id.*, paras. 70, 87.

⁹*Id.*, paras. 71, 87.

¹⁰*Id.*, para. 76 (*emphasis added*).

16. Finally, in its rebuttal submission, Canada seeks support for its position from the panel report in *Indonesia–Autos*.¹¹ Its reliance on that case is misplaced for at least two reasons. First, and most importantly, the panel in *Indonesia–Autos* was not reviewing an investigating authority’s determination under the standard in Article 17.6 of the AD Agreement. Second, unlike the present case, there was no question in *Indonesia–Autos* as to the identity of the product under consideration.

17. The next issue is Canada’s “**due allowance for physical differences**” claim. Canada’s claim under Article 2.4 of the AD Agreement is that Commerce was required to make calculation adjustments to account for certain dimensional differences in the transactions it compared. But Canada omits critical pieces of the puzzle which, when put in their proper place, reveal that width, thickness and length *were* taken into account in the product comparisons.

18. Canada’s submissions also contain significant distortions of fact and mischaracterizations of the U.S. position. For example, Canada continues to grossly misrepresent the impact on the margin of the non-identical dimensional comparisons made. Understood correctly, the vast majority of comparisons by weight were of identical softwood lumber products, thereby significantly limiting the impact of these non-identical comparisons. Second, Canada mistakenly claims that the United States has created a new, unattainable standard for establishing price adjustments for physical differences, requiring a showing of stable prices. Canada has entirely misread the U.S. submissions. In doing so, it is asking this Panel to find that Article 2.4 mandates an automatic price adjustment for physical differences, irrespective of the impact of such differences on price comparability. As the panel in *Egypt–Rebar* explained, under Article 2.4, a due allowance is warranted only if an effect on price comparability is demonstrated.¹²

19. What the United States has argued, and what Canada is unable to refute, is that prices of softwood lumber products of different dimensions *relative to each other* must show *some discernible relationship*. The only specific evidence Canada arguably provided demonstrating an effect on price comparability is a regression analysis based on data of one respondent company. It was presented for the first time to this Panel, and thus, as we explained in prior submissions, may not be considered by the Panel in its examination, under Article 17.5(ii). For all physical characteristics, except dimension, Commerce had cost data to connect the physical differences to the impact on price, pursuant to its normal methodology. Therefore, Commerce’s treatment of dimension was necessarily distinct from its treatment of other physical characteristics. Because the Canadian respondents failed to demonstrate that dimensional differences affected price comparability, Commerce was not required to make a price adjustment under Article 2.4.

¹¹See *id.*, paras. 78-81 (discussing Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, adopted July 23, 1998 (“*Indonesia–Autos*”)).

¹²Panel Report, *Egypt–Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, WT/DS211/R, adopted Oct. 1, 2002, para. 7.352.

20. We turn now to Canada's claim regarding **calculation of the overall dumping margin**. Canada has failed to establish that the AD Agreement requires Members to offset dumping margins with non-dumping amounts found in distinct comparisons. Throughout this proceeding, the United States has maintained that (1) Articles 2.4 and 2.4.2 do not create an offset obligation; (2) the *EC–Bed Linen* report¹³ is not binding on this Panel, and the Panel should not rely on it; and (3) the negotiating history confirms the U.S. interpretation, that Article 2.4.2 was crafted to address the symmetry of comparisons in dumping calculations, not the offset issue.

21. In its rebuttal submission, the United States demonstrated that Canada effectively is seeking to isolate different parts of the phrase “all comparable export transactions” for different purposes. Under Canada's theory, the term “comparable” export transactions would apply in the first stage of the dumping calculation, and “all” export transactions would apply in the second stage. In its rebuttal submission, rather than explain or justify this position, Canada takes a new position. Now, it would have the Panel find that the meaning of each term—“all” and “comparable”—changes depending on the stage of the calculation. Canada's theory that the same word takes on a different meaning depending on the stage of the dumping calculation at issue finds no support in ordinary rules of treaty interpretation.

22. Moreover, Canada's new theory fails to address the fact that under Article 2.4.2 there are three alternative bases for establishing dumping margins. Two of those bases provide for comparisons using individual export transactions. The availability of these transaction-specific options makes it clear that Article 2.4.2 applies to the first stage of the calculation—that is, prior to the establishment of an overall margin. At the same time, it is equally clear that Article 2.4.2 does not address how these transaction-specific margins are to be combined to establish an overall margin. Under Canada's argument, the first basis for establishing dumping margins—the weighted-average-to-weighted-average basis—would apply to both stages of the calculation. However, the other two bases for establishing dumping margins plainly apply only to the first stage. Thus, Canada's theory leads to an interpretation of Article 2.4.2 in which the scope of the obligation differs depending on the basis for establishing dumping margins. Yet, the provision itself does not support such differential interpretation.

23. With respect to the Appellate Body report in *EC–Bed Linen*, we have just two points to make. First, Canada mistakenly asserts that the United States has not denied that its practice is identical to the EC's practice addressed in *EC–Bed Linen*. Here again, Canada mischaracterizes a statement by the United States where we explained that, without access to the details of the EC calculation, we could not assess the similarities or differences in the practices. Second, Canada argues that as an adopted Appellate Body report, *EC–Bed Linen* should be taken into account where it is relevant. As discussed in our first written submission, the concept of *stare decisis* does not apply to WTO disputes.¹⁴ This Panel is not bound to follow *EC–Bed Linen*. Like the

¹³Appellate Body Report, *European Communities–Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R, adopted March 12, 2001 (“*EC–Bed Linen*”).

¹⁴U.S. First Written Submission, paras. 173-177.

panel in *Argentina–Peaches*,¹⁵ this Panel should not refrain from reevaluating an adopted report where appropriate. The United States respectfully suggests that, in this case, such reevaluation is appropriate. The Panel should find that *EC–Bed Linen* is not persuasive.

24. With respect to the negotiating history of Article 2.4.2, there are two points to make. First, Canada does not dispute that the AD Agreement negotiations clearly distinguished between two separate issues: (1) the symmetry of comparisons, and (2) whether offsets would be required when combining the results of comparisons. Canada improperly seeks to use language addressing the symmetry issue to create an obligation with respect to offsets. Second, Canada suggests that the United States’ reference to the negotiating history is based upon an ambiguity or manifest absurdity, which Canada claims derives from “the United States’ own unilateral interpretation of Article 2.4.2.”¹⁶ To the contrary, the United States refers to the negotiating history to confirm the ordinary meaning of the terms of Article 2.4.2. Given Canada’s own practice and the practice of other Members in calculating overall dumping margins,¹⁷ the U.S. interpretation can hardly be described as “unilateral.”

25. Finally, in its rebuttal submission, Canada asserts that offsets are required by the “fair comparison” language in Article 2.4. However, Canada has not articulated the basis for this argument, other than its reliance on *EC–Bed Linen*. The fair comparison language does not stand alone but is contained within Article 2.4. That provision tells an authority how to achieve a fair comparison by making due allowance for differences in comparisons which affect price comparability. By making Article 2.4.2 subject to Article 2.4, the Members ensured that any transactions being compared, either individually or as a weighted average, would have been identified and, as appropriate, adjusted in accordance with the provisions of Article 2.4. Nothing in Article 2.4 requires an offset of non-dumped amounts against dumping margins.

26. Canada makes a number of **company-specific claims**. Throughout these claims, Canada argues that the United States ignored record evidence and instead, blindly applied standard methodologies. Commerce applied its standard methodologies only after careful consideration of the record evidence. In addition, it is important to make clear that Commerce did in fact depart from its standard methodologies, and in significant respects, where the facts warranted.

27. In its first submission, Canada argued that the cost of goods sold (“COGS”) methodology for allocating **Abitibi’s financial expenses** was unreasonable, because it ignored the lower capital asset requirements of its softwood lumber division. Canada now argues that an allocation based on COGS that included depreciation costs was unreasonable, because it did not consider asset values to a *sufficient* degree. Specifically, Canada argues that financial costs must be allocated based solely on total asset values. However, Canada’s argument only has merit if one

¹⁵Panel Report, *Argentina–Definitive Safeguard Measure on Imports of Preserved Peaches*, WT/DS238/R, adopted April 15, 2003, para. 7.24.

¹⁶Canada Second Written Submission, para. 149.

¹⁷See U.S. Second Written Submission, paras. 60-63.

accepts the underlying assumption that financial costs are related *only* to assets. The United States rejects this assumption because of the fungibility of money, a concept with which Canada explicitly agrees. COGS includes all the direct production costs associated with producing goods, as well as accounting for most assets through the inclusion of depreciation expenses. Depreciation expenses reasonably account for Abitibi's assets because, as Canada admits, the vast majority of Abitibi's assets are capital assets that are depreciated.

28. Canada also argues that Commerce over-allocated general costs for Tembec. Canada rests its argument on the fact that Commerce refused to base **Tembec's G&A costs** on division-specific accounting records. As the United States has explained, Commerce properly rejected this argument, because general costs relate to the company as a whole rather than a particular product or division. Moreover, even if we assumed that general costs could be attributed to divisions within a company, neither Tembec nor Canada has presented any evidence to suggest that Tembec's division-specific internal books were a reasonable basis upon which to calculate costs. First, Tembec's division-specific records were not audited. Moreover, unlike audited financial statements, internal, division-specific records are not intended as objective measures of a company's performance.

29. Canada also argues that Commerce over-allocated G&A expenses when it allocated a portion of **litigation costs incurred by Weyerhaeuser** Canada's parent company to softwood lumber. Canada argues that even if these settlement costs were general costs, they did not pertain to softwood lumber. Canada's argument is inconsistent with the basic definition of "general cost," because general costs do not pertain more or less to a particular product but instead relate to a company as a whole. It is uncontested that Weyerhaeuser's parent company performed functions on behalf of Weyerhaeuser Canada. Thus, consistent with this fact, Commerce included an apportioned amount of the parent company's G&A expenses, including a portion of the litigation costs, within Weyerhaeuser Canada's G&A, resulting in a reasonable allocation of Weyerhaeuser's general costs to softwood lumber consistent with the AD Agreement.

30. During the period of investigation, **West Fraser** sold **wood chips** to affiliated companies in British Columbia. In determining whether a company's records reasonably reflect costs associated with production and sale of a product, Commerce considers whether transactions between affiliated parties occurred at arm's length prices. Here, it concluded that West Fraser's affiliated sales did not occur at arm's length prices. Thus, it relied on West Fraser's unaffiliated sales of chips in valuing the offset. It found these sales to non-affiliates to be arm's-length commercial transactions at market prices and, as such, the best benchmark for West Fraser's affiliated sales. Canada now acknowledges that West Fraser indeed never argued to Commerce that some of its unaffiliated (McBride mill) transactions were unrepresentative of a market value for wood chips. It now argues that, because West Fraser had a large amount of affiliated transactions during the period of investigation, it is "self-evident" that Commerce should have questioned the use of West Fraser's unaffiliated transactions for valuing those wood chips in British Columbia. Contrary to Canada's assertions, however, West Fraser's unaffiliated transactions were significant in number and value relative to West Fraser's total wood chip sales.

Moreover, the mere existence of a large volume of affiliated transactions in British Columbia during the period of investigation does not call into question the legitimacy of the market value of wood chips that West Fraser sold to unaffiliated parties. Nor are they called into question by the fact that sales from one of the two mills occurred early in the period of investigation, pursuant to a pre-existing contract.

31. Canada also challenges how Commerce measured the value of transfer prices of **Tembec's wood chips** between its divisions. Commerce analyzed the wood chip sales transactions between Tembec's sawmills and its internal pulp mill division to evaluate whether the internal transfers of wood chips were reasonable approximations of the wood chips' cost. Commerce found that those internal transfer prices were reasonable and not preferential. Canada claims that Tembec's inter-divisional transactions were "arbitrary." In fact, Canada's only real argument is to insist that the United States acted in a biased and unobjective manner by not assessing all costs on a market value basis.¹⁸ But no provision in the AD Agreement requires an investigating authority to replace a company's own valuation of inter-divisional transfers of a product with a market value for sales of the same product. Costs of production are lower than a market value of a product, due to profit paid by an unaffiliated purchaser to the producer. Once Commerce determined that the difference between the market value and the inter-divisional transfer value of Tembec's wood chips was reasonable, the analysis ended, and Article 2.2.1.1 did not require Commerce to do more.

32. Commerce properly accounted for **Slocan's lumber futures hedging profits**, finding, consistent with Article 2.4, that these futures hedging profits are not a part of any conditions and terms of sale of lumber to the United States. Indeed, these profits had no connection with any sales transaction or any customer. Neither Slocan nor Canada has explained how the futures contracts at issue were terms and conditions related to particular sales of lumber in the United States. Absent such a showing in the investigation, there was no basis for an adjustment for differences in conditions and terms of sale under Article 2.4. Commerce also found, consistent with Article 2.2 of the AD Agreement, that the futures contracts were not linked to production, since the profits amounted to revenue related to sales (even though they are not tied to any particular sale of lumber in the United States). Canada asserts that Commerce should have done *something*, even though Slocan itself failed to substantiate either of the alternative treatments that it sought.¹⁹ As the panel in *Egypt-Rebar* noted, responding parties have an obligation to assert and to justify the information and the arguments required to prove their claims.²⁰ Contrary to Canada's assertions, there is no undefined duty to grant adjustments that have been neither requested nor demonstrated by the respondent.²¹ Therefore, Commerce properly did not grant the two offsets requested by Slocan.

¹⁸Canada First Responses to Panel Questions, paras. 178, 180.

¹⁹Canada Second Written Submission, paras. 340-342.

²⁰Panel Report, *Egypt-Rebar*, para. 7.3.

²¹See U.S. First Answers to Panel Questions, paras. 132-138, and 146.

Closing Statement

33. The United States seeks to make clear its position on the recommendation Canada is asking the Panel to make that the United States revoke the anti-dumping duty order and return all cash deposits collected.²² Canada apparently is seeking a suggestion rather than a recommendation, under Article 19.1 of the DSU. In *United States–Hot-Rolled Steel*, the panel rejected a request by Japan similar to Canada’s request in this case.²³ Since the U.S. measures at issue already conform to the WTO agreements, there is no need for either a recommendation or a suggestion. However, even under Canada’s claims and arguments in this dispute, Canada’s request for a suggestion would go beyond anything relevant to implementing a recommendation and instead seeks action nowhere called for under the WTO.

34. Stepping back to consider the big picture, the United States is struck by a pattern, in which Canada initially takes one position, then alters that position following U.S. responses demonstrating the flaws in the initial position. This is particularly noticeable when it comes to initiation, product under consideration, and calculation of an overall dumping margin.

35. The inconsistency in Canada’s argumentation is telling, because Canada appears to have brought this case without knowing whether and how the United States violated its WTO obligations. This should give the Panel pause. For the reasons set forth in our submissions and statements, applying the Article 17.6 standard of review, the Panel should find Commerce’s initiation and conduct of the lumber investigation to have been consistent with WTO obligations.

²²Canada First Written Submission, para. 280; Canada Second Written Submission, para. 346.

²³Panel Report, *United States–Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/R, adopted Aug. 23, 2001, paras. 8.5-8.14.