BEFORE THE

WORLD TRADE ORGANIZATION

United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada

WT/DS257

EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF THE UNITED STATES

March 14, 2003

1. The standard of review set forth in Article 11 of the DSU applies to disputes arising under the SCM Agreement. Article 11 requires a panel to "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements." In conducting this inquiry, the Panel may only address those provisions of the covered agreements that Canada cited in relation to specific claims in its request for the formation of a panel. With few citations to the record, Canada recites a laundry list of facts and figures in support of its arguments, failing to note the substantial record evidence that contradicts its arguments. Canada is asking the Panel to step into the shoes of the U.S. Department of Commerce ("Commerce Department") and engage in a *de novo* review and evaluate the facts. It is well-established, however, that panels may not engage in such an exercise.

2. The parties' answers to the Panel's questions have confirmed that companies enter into tenure agreements with the provinces for the sole purpose of obtaining timber. In return for fulfilling the tenure obligations and paying the stumpage fee, the tenure holder acquires ownership of the timber, not a "right" to harvest timber.

3. The ordinary meaning of "goods" is broad and encompasses, at the very least, all tangible property, including "growing crops, and other identified things to be severed from real property." Simply labeling standing timber a "natural resource" does not remove it from the ordinary meaning of the term "goods." Canada has acknowledged that provincial tenures identify specific, defined areas of forest from which the tenure holder may harvest trees. The identified trees to be severed from provincial land fall squarely within the ordinary meaning of the term "goods."

4. Canada's argument suggests that tenures are simply about forest management obligations that, almost incidentally, also confer an intangible "right" to harvest. Canada's analytical approach is based on the flawed premise that the existence of a financial contribution is a matter to be determined from the government's perspective. However, a financial contribution, as defined in Article 1.1(a)(1)(iii) of the SCM Agreement, exists whenever the government provides a good. As the *U.S. – Lumber Preliminary Determination* panel recognized, the existence of a subsidy is determined from the perspective of the benefit to the recipient, not the perspective of the government. Specifically, the *U.S. – Lumber Preliminary Determination* panel found that in spite of the fact that the provincial governments have certain policy objectives, "the fact of the matter remains that from the harvesting company's point of view, the only reason to enter into such tenure or licensing agreements is to cut trees for processing or sale."

5. As detailed in the United States' response to the Panel's questions, the record demonstrates that tenure holders do not acquire a freely transferable "right" to harvest. All provinces prohibit the transfer of tenures without government approval. Without any citation to record evidence, Canada asserts that the right to harvest is freely transferrable, without approval. There is an obvious conflict, however, between the record evidence and Canada's suggestion that tenure holders may freely sell or subcontract the "right to harvest." Despite Canada's efforts to sever the right to harvest from the sale of the trees, the facts demonstrate that tenure holders are buying trees. In doing so, the provinces make a financial contribution within the meaning of Article 1.1(a)(1)(iii) of the SCM Agreement.

6. As the United States pointed out in its first written submission, the *Canada – Aircraft* panel stated that a benefit exists where "the financial contribution places the recipient in a *more advantageous position than would have been the case but for the financial contribution*." In reviewing that report, the Appellate Body affirmed that a benefit exists where "the 'financial contribution' makes the recipient '*better off" than it would otherwise have been, absent that contribution*." In determining the existence of a benefit, therefore, the issue is the position of the recipient "but for" or "absent" the government's financial contribution.

7. Moreover, the Appellate Body has stated that the point of comparison is "the marketplace," i.e., a benefit exists where the financial contribution is received on terms more favorable than those available in the market. Finally, as the United States has pointed out, following the reasoning of the Appellate Body in *Canada – Aircraft*, the *Brazil – Aircraft* panel concluded that the concept of a comparison market necessarily means a "*commercial* market, i.e., a market undistorted by the government's financial contribution."

8. Canada erroneously argues that the *Brazil – Aircraft* report is inapposite because that panel was considering Article 14(b) of the SCM Agreement, which establishes commercial lending rates as the benchmark for a government loan. The panel found that the financial contribution at issue was in the form of a non-refundable payment, however, rather than in the form of a loan. Thus, as Canada argued in that case, the payments at issue were "essentially grants." In the passage cited by the United States, the *Brazil – Aircraft* panel was not discussing Article 14(b) of the SCM Agreement. In fact, there is no reference at all to Article 14 of the SCM Agreement in the panel's report. Rather, the panel was discussing the concept of benefit generally. The panel's reasoning, which follows logically from the findings of the Appellate Body, is compelling. Only by comparison to a market undistorted by the government's financial contribution is it possible to determine whether the recipient is better off than it otherwise would have been absent the financial contribution. That is true regardless of the form of the financial contribution.

9. Article 14 does not redefine the concept of benefit in Article 1.1(b), as interpreted by the Appellate Body and prior panels. Article 14 merely provides guidelines that must be followed in establishing "methods" for applying that concept to particular types of financial contributions. Each guideline in Article 14, including Article 14(d), must therefore be interpreted in a manner that is consistent with the interpretation of the term "benefit" as used in Article 1.1(b) of the SCM Agreement.

10. When the government provides a good, Article 14(d) states that a benefit is conferred if the government receives "less than adequate remuneration" for that good. Applying the reasoning of the Appellate Body, "less than adequate remuneration" must mean a price less than would otherwise be available in the marketplace absent the government's financial contribution. The proper benchmark therefore is an independent market-driven price for the good, i.e., fair market value – which is also the standard applied under Canadian law.

11. Article 14(d) does not specify the type of evidence that must be used to establish the fair market value of goods in the country of provision. Rather, Article 14(d) establishes the general principle that adequate remuneration (fair market value) must be determined "in relation to prevailing *market* conditions" in the country of provision. There is no basis in the SCM Agreement to conclude that "benefit" means anything less when the government provides a good than when it makes any other type of financial contribution. Thus, "market" conditions must be interpreted in a manner consistent with the concept of benefit in Article 1.1(b) of the SCM Agreement. Following the reasoning of the Appellate Body and the *Brazil – Aircraft* panel, therefore, the point of comparison under Article 14(d) must be prevailing commercial market conditions, i.e., a market undistorted by the government's financial contribution, in the country of provision. It is the view of the United States that where such benchmark prices exist in the country of provision, they must be used. However, where such benchmark prices do not exist in the country of provision or are unreliable, a Member may, consistent with Article 14(d), rely on data from outside the country of provision to assess the fair market value of the goods in the country of provision. This is the case with respect to Canadian timber.

12. As the United States demonstrated in its response to the Panel's questions, the actual data on private stumpage prices is virtually non-existent for four of the six provinces. Canada does not dispute the fact that Manitoba and Saskatchewan did not provide any data on private stumpage prices. With respect to Alberta, as the United States explained in response to the Panel's questions, the record demonstrates that the Timber Damage Assessments ("TDAs") that Alberta provided are simply voluntary guidelines for settling disputes for damages. Moreover, TDAs are based on *log* prices and do not differentiate between private and Crown logs. With respect to B.C., Canada acknowledges that the evidence provided establishes that the private market for stumpage in B.C. is "limited" and that "nearly all private wood fibre sales are of logs rather than standing timber." The data on sales of standing timber accounted for only 0.1 percent of the B.C. harvest.

13. Recognizing the lack of any private stumpage benchmark data for these four provinces (Alberta, B.C., Manitoba, and Saskatchewan), Canada continues to argue, without any basis in the SCM Agreement, that evidence demonstrating that the provinces made a profit on their timber sales suffices. A benefit, however, is not determined based on the cost to the government in making the financial contribution, e.g., whether the government incurred a loss. The issue is whether there is a benefit to the recipient.

14. With respect to Ontario and Quebec, as discussed in response to the Panel's questions, some data on private stumpage prices exists. However, prices that are distorted by the government's financial contribution do not reflect "market" conditions. It is undisputed that Canadian timber sales are overwhelmingly dominated by the provincial governments. The fact that the government is a price leader does not in and of itself establish the absence of independent commercial market conditions. As the Appellate Body has cautioned, however, governments have the ability to obtain certain results from the market by shaping the circumstances and conditions in which the market operates. The dominance of the government in the marketplace

can, therefore, warrant further examination in determining the adequacy of remuneration for government-owned goods. Ultimately, as noted by the European Communities, the issue must be determined on a case-by-case basis.

15. The facts of this case demonstrate that the provincial governments not only dominate the Canadian timber market, but also that the governments do not participate in the market as commercial actors. Rather, the provincial governments administer the sale of the overwhelming majority of Canadian timber in a manner designed to further social policy goals. The evidence further demonstrates that, as a result, the administration of provincial timber sales systems distorts the small private timber market.

16. All of the provinces generally restrict the sale of Crown timber to purchasers that own a processing facility in the province. These local processing requirements artificially reduce the demand for Crown timber. In addition, the vast majority of Crown timber is under some form of renewable ("evergreen"), long-term tenure. These tenures are not freely transferrable. The existence of evergreen, non-transferrable tenures creates significant barriers to entry into the timber market. For example, Canada offers no support for its assertion that a newcomer in Quebec could obtain a provincial tenure, even though 100 percent of the Crown timber is currently under tenure or reserved and not subject to harvest. Nor does Canada reconcile this claim with its subsequent statement that the vast majority of mills in Quebec are "shut out of the public forest." Moreover, "transfers" of tenure are, in fact, normally cases in which the entity that holds the tenure is acquired. No new tenure is created in such cases.

17. Other aspects of tenures artificially increase supply. For example, B.C. imposes minimum cut requirements and restricts mill closures, thus forcing tenure holders to harvest timber even in down markets and thereby artificially increasing the supply of Crown timber. Nevertheless, the record demonstrates that, during the period of investigation, tenure holders in all of the provinces except Alberta did not harvest their full AAC, thus demonstrating an ample supply of additional Crown timber available at administered prices.

18. Central to each of the provincial systems is, of course, administered rather than competitive pricing of that timber supply. The evidence demonstrates that the price leaders, i.e., the provincial governments, do not price to the market. Rather, they administer prices under systems designed to promote employment and keep mills operating even in down markets.

19. A study by Economists Inc. ("EI Study"), which the United States found compelling, addressed the impact of the administered provincial systems on the private market. The EI Study applied generally accepted economic analysis to demonstrate that when a single supplier controls the overwhelming portion of market share, that supplier will necessarily influence non-administered prices. It found that "[t]he lower the market share of the firms in the non-administered sector relative to the administered sector, the less the ability of the non-administered sector to raise price above the administered (subsidized) level." The essence of this analysis is that private (non-administered) sellers cannot increase prices significantly above

administered price levels of the competing supply because, if they did, demand would shift to the administered sector. The study referred to record evidence establishing that provincial governments not only supply the vast majority of timber, but also are willing to provide yet more timber to the major licensees that comprise most of the demand. The study showed that if private landowners attempted to raise their prices significantly above government-set levels, the major licensees would rely relatively more on administered timber sales and less on private or auctioned timber. Therefore, while local variations will exist, overall the government price effectively sets the average province-wide price as well.

20. Canada criticizes this study and cites to other evidence it finds compelling. The issue, however, is not which evidence Canada finds persuasive. The issue is whether the record evidence supports the United States' determination. The EI Study and other record evidence, some of which is summarized in the United States' first written submission and oral statements at the first substantive meeting of the Panel, support that determination. There also is significant documentary evidence confirming this economic analysis and demonstrating that each provinces' system of public timber sales distorted private timber prices.

21. The evidence demonstrates that the provincial governments shape the timber market to achieve public policy goals, and that the government-controlled, public-policy driven sector of the timber market distorts the private timber market. There was therefore ample support for the United States' conclusion that there are no independent, market-driven timber prices available in Canada. The United States' use of data from other sources to assess the fair market value of timber in Canada was therefore warranted and was consistent with Article 14(d) of the SCM Agreement.

22. The evidence also supports the United States' decision to use timber prices in the northern United States, properly adjusted to reflect conditions of sale in Canada, as an alternative source for assessing the fair market value of timber in Canada. The rationale for the United States' choice of data for establishing market benchmarks is sound. As the United States explained in its first written submission, the value of timber depends on the demand for the downstream products. U.S. and Canadian timber satisfies the same demand in the integrated North American lumber market, and Canada has no comparative advantage in serving that demand. In addition, the record demonstrates that U.S. timber is commercially available to lumber producers in Canada. The U.S. timber is also comparable to Canadian timber, and the United States established species-specific, province-specific benchmarks to conduct the comparison.

23. In response to the Panel's questions, Canada stated that out-of-country benchmarks that are available to purchasers in the country of provision would be suitable benchmarks because they "would then form part of prevailing market conditions 'in' the country of provision." As discussed in the *Final Determination*, the evidence demonstrates that U.S. timber is, in fact, commercially available to lumber producers in Canada. Further, Canada asserts that the United States could have used an alternate methodology, i.e., evaluation of the government's prices

based on evidence of the government's costs and profitability. The standard is not the cost to the government, but rather the benefit to the recipient. We have demonstrated that the use of prices for U.S. timber in the northern United States, adjusted for differences in conditions of sale in Canada, is consistent with Article 14(d) of the SCM Agreement.

24. Canada cites to Articles 10, 19.1, 19.4, and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994 as the basis for its calculation-related claims. As the United States previously indicated, Canada's claims under Articles 10, 19.1, and 32.1 of the SCM Agreement are necessarily derivative claims that cannot succeed because Canada has failed to establish that the United States has breached its obligations under another provision of the SCM Agreement.

25. Canada admits that neither Article 19.4 of the SCM Agreement nor Article VI:3 of GATT 1994 contain any obligation regarding the methodology a Member may use in calculating the *ad valorem* subsidy rate. None of the provisions of the SCM Agreement that Canada cited in support of its claim establish the calculation obligations Canada suggests the United States has violated. Given that a panel's terms of reference "establish the jurisdiction of the panel by defining the precise claims at issue in the dispute," and that the identification of the specific provision of the covered agreements is a "minimum prerequisite" for stating the legal basis of the claim, this Panel should reject Canada's attempts to bootstrap claims that the *ad valorem* rate calculation is inconsistent with other provisions of the SCM Agreement.

26. Article 19.4 of the SCM Agreement and Article VI:3 of GATT 1994 merely provide that the countervailing duty rate imposed may not exceed the amount of the subsidy the investigating authority has found to exist. Neither provision contains particular calculation obligations of the sort Canada asserts have been violated. Canada, therefore, has failed to present a *prima facie* case on this issue.

27. The United States' calculation of the *ad valorem* subsidy rate is consistent with the SCM Agreement and the evidence developed through the investigation. The United States included in the numerator the volume of provincial softwood timber entering sawmills, multiplied by the benefit per cubic meter. This method captured the total value of the subsidy provided to sawmills. The United States then allocated that benefit over all sales of products that resulted from the lumber production process. This methodology accounted for the fact that the production process yields other products as well as lumber.

28. The United States conducted this investigation on an aggregate basis, calculating the total benefit provided by each province, as discussed above. Canada does not dispute the United States' authority to conduct this aggregate analysis, but it continues to assert that the United States was obligated to conduct a pass-through analysis to establish the amount of any benefit received by certain producers of the subject merchandise, i.e., independent remanufacturers.

29. In Canada's first response to the Panel's questions, it acknowledged that, "[w]here the timber harvester and the producer of subject merchandise are the same 'recipient' of the alleged

subsidy, no pass-through analysis would be required." This fact pattern describes the vast majority of the producers of the subject merchandise and includes both sawmills and remanufacturers. Thus, Canada's statement acknowledges that the United States was not required to conduct a pass-through analysis for at least the vast majority of the lumber at issue. Canada also fails to address Article 19.3 of the SCM Agreement, which specifically allows Members to apply definitive countervailing duties to exports of an uninvestigated exporter or producer as long as the exporter or producer may obtain an expedited review to establish its own rate.

30. Additionally, Canada overreaches when it contends that a "[s]ubsidy pass-through analysis is required in every instance where the subsidy found to exist is allegedly bestowed on one person while the countervailing duty is imposed on the products of another." Canada's attempt to read such an obligation into Article 19.4 of the SCM Agreement has no basis in the text. If Canada were correct, every time a Member investigates one or more companies and applies their subsidy rate to uninvestigated exporters or producers – a common practice – that Member violates the SCM Agreement. Such practices do not, however, violate the SCM Agreement, as evidenced by the last sentence of Article 19.3 of the Agreement.

31. Canada argues that the United States understated the denominator by failing to include the value of certain "residual products" in the denominator. Canada failed to submit any evidence from which the United States could separate the value of additional products resulting from the lumber production process from the broader residual products category. Accordingly, the United States did not include the residual products category in the denominator. Canada also disputes the value used to represent remanufactured products that the United States selected and used in the denominator. As noted above, the Panel should decline Canada's request to engage in a *de novo* review and re-weigh the evidence before the administering authority.

32. In its questions to the parties, the Panel requested Canada to address how the conversion factors that the United States used were based on "manifestly incorrect data." Canada failed to provide the information the Panel requested. Instead, Canada cited alternative sources of conversion factors. The existence of alternative sources, however, does not mean that the United States' selection was "manifestly incorrect."

33. Article 2.1(c) of the SCM Agreement contains clear and objective criteria for determining when a subsidy is specific. Where a subsidy program is used by a limited number of "certain enterprises" – i.e., an enterprise, industry, or group of enterprises or industries – it is specific in fact. Other than considering the extent of diversification of economic activities and the length of time the subsidy program has been operating, Members are not obligated to conduct any further specificity analysis.

34. The United States met its obligation to demonstrate that provincial stumpage subsidies are specific and thus actionable under the SCM Agreement. In the *Final Determination*, the United States found that the users of stumpage were a "limited group of wood product

industries" that included "pulp and paper mills and the saw mills and remanufacturers which are producing the subject merchandise." The industries comprising this limited group fall squarely within the ordinary meaning of the term "industry," which identifies industries by general product, such as automobiles or textiles, or by the type of activity engaged in, such as mining or banking. Thus, the provincial stumpage subsidies are specific under Article 2.1(c) of the SCM Agreement.

35. Canada responds to this finding by attempting to rewrite the specificity test, seeking to redefine terms such as "industry" and "group," and to create exceptions that do not exist in Article 2. For example, Canada claims that the term "industry" requires a "product-based identification of industries," such that individual industries would be distinguished on the basis of a particular end product, or set of end products, that they make. By contrast, both in its ordinary meaning, and within the context of Article 2 of the SCM Agreement, "industry" is used broadly, referring to makers of a general class of products – such as "the steel industry" – regardless of the number or diversity of end products that the industry produces.

36. Canada itself admits, in response to question 27 from the Panel, that a subsidy to a single large industry *could* be found specific, even where its producers make a vast diversity of products, as in the steel, automobile, textile, and telecommunications industries. This admission contradicts Canada's argument that an "industry" must be defined narrowly on the basis of a particular end product or set thereof.

37. Canada likewise admits that a subsidy granted solely to auto and textile producers could be specific under Article 2.1, notwithstanding the dissimilarity of their end products. It nonetheless still insists that the two industries cannot form a single "group" of industries that is specific within the meaning of Article 2.1(c). Instead, Canada maintains that "the industries producing 'autos' and the industries producing 'textiles'" are actually "two groups of industries" that "appear to be a 'limited number' of certain enterprises," and thus specific. Notwithstanding Canada's acceptance of diversity in the product mix of an "industry," Canada finds such dissimilarity incompatible with its view of the term "group," which for Canada requires "similarity and relatedness" of output products. In its ordinary meaning, and in the context of Article 2 of the SCM Agreement, the definition of "group" is far more straightforward, meaning simply "more than one" enterprise or industry, without regard to the "similarity or relatedness" of their end products.

38. Canada continues to argue that each industry is defined by a narrow class of end products, claiming that the "immediate users of stumpage" include "at least 23 categories of industries, and the industries are as unrelated as lumber, agricultural chemicals, paper, and furniture." This argument is not only legally flawed, it rests on misleading evidence. Canada's key exhibit is a survey of forest product industries that lists 201 products made by tenure holders, categorized into 23 categories that Canada claims to be different industries. In reality, Canada's list of industries is little more than an exercise in hairsplitting – assigning multiple industries to a single sawmill based on its output.

39. The fact remains that the vast majority of tenures in Canada are entered into directly between the provincial governments and "wood processing facilities," and in most instances only wood processing facilities – such as sawmills that produce lumber – are eligible to obtain a tenure contract. The record clearly demonstrates that provincial stumpage is used by an extremely limited group of industries in Canada. Changing the definition of "industry" cannot change the objective facts.

40. The Panel likewise should reject Canada's attempt to create exceptions to the specificity test contained in Article 2.1(c) of the SCM Agreement. Nothing in the text of Article 2 permits an actionable subsidy to escape the disciplines of the SCM Agreement based on the intent of the granting Member or the "inherent characteristics" of a good provided at below market rates. Nor does Article 2 require the "limited number of certain enterprises" to be established relative to the "eligible users," as Canada claims. Finally, the Panel should dismiss Canada's contention that a finding on the "limited number" prong is not sufficient to support a determination of specificity under Article 2.1(c). Both the language and underlying logic of Article 2.1(c) make clear that it is unnecessary to make findings on all prongs of the test for a determination of specificity in fact. The provisions of the SCM Agreement are clear, and the United States has met those obligations. Canada should not be permitted to rewrite the Agreement in a manner more to its liking.

41. Canada claims that the United States' final decision, in response to comments from Canadian parties, to use data from Minnesota as the basis for calculating the market benchmarks for Alberta and Saskatchewan was inconsistent with Articles 12.1, 12.3, and 12.8 of the SCM Agreement. The United States' conduct of this investigation was entirely consistent with its obligations.

42. Canada's claim under Article 12.1 is premised on the assertion that parties were denied the right to present evidence because the use of alternative states, such as Minnesota, had not been an issue in this investigation. The use of northern U.S. states generally, and the issue of the benchmark state to use for Alberta and Saskatchewan specifically, were very much at issue. Moreover, all parties had ample opportunity to present information and argument on this issue, as evidenced by Saskatchewan's proposal that the United States use Alaska instead of Montana.

43. Canada's claim under Article 12.3 of the SCM Agreement is equally unfounded. Canada has failed to cite to a single piece of record information on market benchmarks to which the parties were denied access.

44. Finally, Canada acknowledges that nothing in Article 12 suggests that an investigating authority must engage in endless cycles of notice and comment. Nevertheless, Canada's claim under Article 12.8 is based on the erroneous premise that Article 12.8 requires the investigating authority to provide an opportunity for notice and comment with respect to the final decision made on each issue before the determination becomes final. Nothing in Article 12.8 imposes such a requirement.

45. In the context of the SCM Agreement, the "essential" facts are those that are necessary to determine whether definitive measures are warranted. A market benchmark is certainly essential to a determination of adequate remuneration, but all of the facts "under consideration" with respect to the calculation of the market benchmarks were made known to the parties. Significantly, Article 12.8 of the SCM Agreement refers to the "essential facts *under consideration*." Thus, by its own terms, Article 12.8 is concerned with the ongoing investigative process during which the investigating authority is still "considering" the facts. Article 12.8, therefore, cannot be interpreted to apply to the investigating authority's final decision, at which point the issues have been decided and the facts are no longer "under consideration."

46. Article 12.8 does not impose any specific method of informing the parties of the "essential facts under consideration." Rather, it specifies that the process used must inform parties "in sufficient time for the parties to defend their interests." The United States' procedural rules are designed to guarantee a very open and transparent process in order to accomplish this goal, which was achieved in this case.

47. The record establishes that the United States provided parties with ample opportunity to provide information and argument on whether the Maine stumpage price should include studwood and pulpwood. Quebec submitted considerable information and argument on this very issue. In the end, the United States agreed with Quebec and adjusted the benchmark calculation accordingly. Canada claims, however, that the United States withheld information from the parties and denied them the opportunity to prepare presentations on the basis of that information, in violation of Article 12.3 of the SCM Agreement. The information allegedly withheld is the December 20, 2001, letter from the Maine Forest Products Council ("MFPC"). As discussed in response to the Panel's questions, this information was provided to the parties in time for them to prepare presentations on the basis of that information. Neither party was afforded an opportunity for sur-rebuttal and there is no obligation in Article 12 to provide such an opportunity.

48. The thrust of Canada's claim is a wholly unsubstantiated allegation that the United States intentionally withheld the MFPC Letter. The U.S. regulations for the filing of information require the parties submitting the information to ensure that the information is placed on the record and provided to all interested parties. The MFPC Letter was not filed in accordance with those regulations. Canada's claim that the United States acted inconsistently with Article 12.3 of the SCM Agreement must therefore fail.

49. For the reasons set forth above as well as in the United States' first written submission, oral statements at the first substantive meeting of the Panel, and first response to the Panel's questions, the United States requests that the Panel reject Canada's claims in their entirety.