United States – Investigation of the International Trade Commission in Softwood Lumber from Canada

WT/DS277

Closing Statement of the United States
First Meeting of the Panel

September 5, 2003

1. Mr. Chairman, and members of the Panel, we have appreciated the opportunity to present our views on the issues in this dispute. The issues are varied and complex. Your questions reflect a close and careful reading of the arguments. For this, we are very grateful. We would like to use our closing remarks to address some points raised at yesterday's meeting.

2. First, Canada continues to seek to have the Panel impose requirements on the Commission that have no basis in the covered Agreements. Finding no specific basis to support a given requirement, Canada reverts to a general obligation for an investigating authority to provide a reasoned explanation for its determination.

3. There are numerous instances where Canada was unable to identify a basis in the Agreements for a particular obligation and argued instead that the ITC did not provide a reasoned explanation for a given action. Canada did this, for example, when asked to identify the basis for its claim that the ITC was obligated to explain its decision to cross-cumulate. It did it again when asked to elaborate on what "consideration" of a factor entails. It did it yet again in purporting to find an obligation that the ITC explain its finding that the competing evidence on economic rent theories was inconclusive.[1] And, it did it again in alleging an obligation for the ITC to have considered market share as a factor weighing against an affirmative threat of injury

[1] *See* Canada's Opening Statement at First Panel Meeting (Sep. 4, 2003), para. 53.

determination.

4. The "reasoned explanation" obligation Canada has identified apparently flows from certain provisions in Article 12.2 of the Antidumping Agreement and Article 22.5 of the Subsidies Agreement.[2] Those articles, in relevant part, require an investigating authority to state the facts, law, and reasons supporting its determination. The Commission has done so here. The articles do not provide for the very specific obligations that Canada attempts to read into them. That is, they are not catch-all provisions encompassing the obligations that Canada posits but for which it is unable to find any other basis in the Agreements. The Panel should reject Canada's attempt to rely on a general "reasoned explanation" obligation where it is unable to identify specific bases for particular obligations under the covered Agreements.

5. Next, the United States notes with interest concessions Canada made either in its affirmative presentation or in response to questions. For example, Canada now concedes that:

- "Consider" does not mean "make a finding;"[3]
- Special care does not involve a standard of determining threat that is higher than that for injury;[4] and
- The Commission was not required to make a finding regarding the economic theories concerning the nature of the subsidy if the evidence did not permit one.[5]

Canada's concessions should narrow the issues in dispute and reinforce the conclusion that the ITC's determinations did not violate U.S. obligations under the covered Agreements.

---

[2] *See* Canada's First Written Submission, para. 66

[3] Clarification to Canada's Opening Statement at First Panel Meeting, paras. 25 and 26.

[4] *Contra* Canada's Opening Statement at First Panel Meeting, para. 33.

[5] Canada's Opening Statement at First Panel Meeting, para. 53.

6. Of course, we will elaborate on our arguments in our rebuttal submission and written responses to questions. For now, we will provide a few brief comments clarifying or placing in perspective certain issues Canada raised in its affirmative presentation.

- On the issue of cross-cumulation, Canada listed several alleged specific requirements distinct to each covered Agreement. We note that, with the exception of the nature of the subsidies, these alleged requirements are not distinct but rather common to both Agreements.[6] Thus, none of Canada's claims seem to relate to cross-cumulation.
- On the issue of Articles 3.4 of the Antidumping Agreement and 15.4 of the Subsidies Agreement, Canada's reliance on the Panel's findings in *Mexico-HFCS* to challenge whether the ITC conducted a "meaningful evaluation" of these factors is misplaced.[7] As discussed in the U.S. first written submission, the issue in *Mexico-HFCS* was not the manner in which these factors were evaluated but rather the failure to consider them at all. Unlike *Mexico-HFCS*, it is evident that the ITC conducted a "meaningful evaluation" in this case.[8]
- On the issue of substitutability/attenuated competition, Canada has misstated that the ITC found that "competition was therefore attenuated" and that "products [had] limited substitutability."[9] As discussed in the U.S. first written submission and the ITC Report, the Commission found, based on the evidence in the record, that subject imports and domestic species of softwood lumber are used in the same applications, and that

[6] *See* Canada's Opening Statement at First Panel Meeting, para. 122.

[7] *See* Canada's Opening Statement at First Panel Meeting, paras. 96-97.

[8] U.S. First Written Submission, paras. 253-254.

[9] Canada's Opening Statement at First Panel Meeting, para. 108.

prices of a particular species will affect the prices of other species.[10]

7. Again, we thank you, Mr. Chairman and members of the Panel, for your attention and for your thoughtful consideration of the issues in this dispute.

[10]U.S. First Written Submission, paras. 269-278 and ITC Report at 25-27 (USA-1).