

FACT SHEET

NAFTA Panel Decision: Fifth Remand Determination Countervailing Duty Investigation on Softwood Lumber from Canada

On March 17, the NAFTA Panel issued its decision affirming the Department's Fifth Remand Determination on the countervailing duty (CVD) investigation on softwood lumber from Canada. The Panel affirmed the *de minimis* rate the Department submitted on November 22, 2005. In addition, the Panel refused Canada's request that it order retroactive revocation of the CVD order.

Under the NAFTA rules, the Panel should issue its Notice of Final Panel Action within 11 days. The issuance of that Notice triggers the 30-day period for filing a request for Extraordinary Challenge Committee. The current cash deposit rate of 8.70% remains in effect until the litigation is concluded, *i.e.*, until such time as the ECC, if one is requested, issues a decision.

The key subsidy programs under review in this case involve the provision of stumpage – softwood timber – by Canadian provincial governments to softwood lumber producers for less than market rates. In the investigation, the Department measured whether there was a benefit from these programs by comparing the government stumpage rates in Canada with market rates charged in the United States, because the available in-country prices (private prices in the provinces) were determined to be inappropriate benchmarks. The use of these cross-border comparisons was challenged by Canada, and a NAFTA panel limited the use of cross-border benchmarks. In response to the NAFTA panel's original remand, because the administrative record still lacked any usable private prices for timber in Canada, the Department used domestic Canadian log prices including internal log prices and import log prices as benchmarks and determined a subsidy rate of 13.23%.

The NAFTA panel accepted the use of these Canadian log prices as benchmarks, but remanded the determination to the Department four additional times for consideration of certain benchmark and calculation issues. As a consequence of the Panel's decisions, the subsidy rate calculated by the Department declined with each successive remand determination, *i.e.*, 7.82% -1.88% - 1.21%, until the *de minimis* result in the Fifth Remand Determination. It is that result that today's Panel decision affirms.