

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

Investigation Nos. 701-TA-414 and 731-TA-928 (Section 129 Consistency Determination)

SOFTWOOD LUMBER FROM CANADA

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a proceeding under section 129(a)(4) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. § 3538(a)(4)).

SUMMARY: The Commission hereby gives notice of the scheduling of this proceeding following receipt on July 27, 2004, of a request from the United States Trade Representative (USTR) for a determination under section 129(a)(4) of the URAA that would render the Commission's action in connection with Investigations Nos. 701-TA-414 and 731-TA-928 not inconsistent with the findings of the dispute settlement panel of the World Trade Organization (WTO) in its report entitled, "United States – Investigation of the International Trade Commission in Softwood Lumber From Canada," WT/DS277/R. A notice of institution for this proceeding was issued on July 30, 2004 (69 Fed. Reg. 47461, Aug. 5, 2004).

For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 20, 2004.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-205-3191), Office of Investigations, or Robin L. Turner (202-205-3103), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.--On May 16, 2002, the Commission determined that an industry in the United States is threatened with material injury by reason of imports from Canada of softwood lumber found to be subsidized and sold in the United States at less than fair value (LTFV) (investigations Nos. 701-TA-414 and 731-TA-928, *Softwood Lumber from Canada*, USITC Pub. 3509 (May 2002)). The Government of Canada subsequently requested review under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*. A WTO dispute settlement panel issued its final report, and found, *inter alia*, that action by the Commission in connection with its *Softwood Lumber* investigation under Title VII of the Tariff Act of 1930, ITC Investigation Nos. 701-TA-414 and 731-TA-928, is not in conformity with the obligations of the United States under the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and the WTO *Agreement on Subsidies*

*and Countervailing Measures.* The panel's findings in this regard are set out in paragraphs 7.87 to 7.96 and 7.122 of the panel report. Its conclusions based on these findings are set out in paragraphs 8.1 and 8.2 of the report. The panel report was adopted by the WTO Dispute Settlement Body on April 26, 2004. The USTR transmitted his request for this determination following receipt from the Commission on July 14, 2004, of an advisory report under section 129(a)(1) stating that the Commission has concluded that Title VII of the Tariff Act of 1930 permits it to take steps in connection with its action in *Softwood Lumber from Canada*, Investigations Nos. 701-TA-414 and 731-TA-928, that would render its action in that proceeding not inconsistent with the findings of the dispute settlement panel.

Participation in this proceeding.— Only those persons who were interested parties to the original investigation (i.e., persons listed on the Commission Secretary's service list) may participate in this proceeding. See the Commission's notice of institution of this proceeding for information regarding participation and the limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) (69 Fed. Reg. 47461, Aug. 5, 2004).

Limitations on the scope of this proceeding. — This proceeding is being conducted in order for the Commission to make a determination that would render its action in *Softwood Lumber from Canada*, Investigations Nos. 701-TA-414 and 731-TA-928, not inconsistent with the findings of the WTO dispute settlement panel. Thus, this proceeding only involves issues related to the WTO dispute settlement findings and does not involve issues that were not in dispute in the WTO proceeding or on which the WTO dispute settlement panel found the United States in conformity with its obligations under the WTO. (The panel's findings are set out in paragraphs 7.87 to 7.96 and 7.122 of the panel report. Its conclusions based on these findings are set out in paragraphs 8.1 and 8.2 of the report.) Therefore, this proceeding will not involve any issue relating to the Commission's definitions of the domestic like product and domestic industry (including related parties), and the Commission's findings regarding the Maritime Provinces, effects of the subsidies or dumping, consideration of the nature of the subsidy and its likely trade effects, and cross-cumulation. Any material in the interested parties' oral or written submissions that addresses any of these excluded issues will be disregarded.

Staff report.--The prehearing staff report in this proceeding will be placed in the nonpublic record on September 30, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.--The Commission will hold a hearing in connection with this proceeding beginning at 9:30 a.m. on October 13, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 6. All parties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 8, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written submissions.--Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules and shall be limited to no more than fifty (50) double-spaced and single-sided pages of textual material; the deadline for filing is October 6. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 20; witness testimony must be filed no later than

three days before the hearing. On October 29, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 1, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

AUTHORITY: This investigation is being conducted under authority of title VII of the Tariff Act of 1930 and section 129 of the URAA.

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: August 23, 2004