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# News Release

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## **WTO PANEL TO REVIEW UNFAIR U.S. DUTIES ON CANADIAN SOFTWOOD LUMBER**

International Trade Minister Pierre Pettigrew today welcomed the World Trade Organization (WTO) decision to establish a panel to review the recent 19.31 percent U.S. duty on Canadian softwood lumber.

"We are taking measures to protect the rights of our industry," said Minister Pettigrew. "The duty is unfair and unwarranted, and while we hope to resolve this issue through negotiations, we are also continuing to pursue the legal options available to us at the WTO."

On August 9, 2001, the United States made a preliminary countervailing duty determination and imposed a 19.31 percent provisional duty on Canadian softwood lumber imports. This newly created panel will consider whether the U.S. Department of Commerce's preliminary subsidy and critical circumstances determinations in the countervailing duty investigation are consistent with the United States' WTO commitments. The panel will also examine the WTO-consistency of the expedited review provisions of U.S. countervailing duty law.

Once the panel is constituted, the proceedings may take about nine months to complete. A final report is expected in September 2002.

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A backgrounder is attached.

For further information, media representatives may contact:

Sébastien Thériault

Office of the Minister for International Trade

(613) 992-7332

Media Relations Office

Department of Foreign Affairs and International Trade

(613) 995-1874

## Background

In April 2001, the United States Department of Commerce initiated its fourth countervailing duty investigation of Canadian softwood lumber in 20 years.

On August 9, 2001, the U.S. made a preliminary countervailing duty determination and imposed a 19.31 percent provisional duty on Canadian softwood lumber imports. The U.S. Department of Commerce also made a preliminary critical circumstances determination on August 9 that could result in the 19.31 percent finding of subsidy being applied retroactively to May 2001.

On September 17, 2001, Canada held World Trade Organization (WTO) consultations with the United States to raise its concerns with these two determinations. The consultations failed to resolve the dispute. As a result, Canada requested the establishment of a panel to hear this challenge at the November 5 meeting of the WTO Dispute Settlement Body. The U.S. blocked the establishment of a panel at that meeting. Following WTO procedure, Canada repeated its request at the December 5 meeting of the Dispute Settlement Body and the panel was formally established.

### Preliminary Countervailing Duty Determination

Canada considers the preliminary countervailing duty determination inconsistent with the United States' WTO obligations on a number of grounds.

Among the WTO inconsistencies in its preliminary determination, the Department of Commerce treated provincial forest management regimes generally, and stumpage, in particular, as "financial contributions" on the basis that provinces are providing a "good." Under provincial forest management regimes, provinces grant a licence or right of access to cut timber, which in Canada's view is not a "financial contribution" as defined under the WTO Agreement. The United States also used cross-border, rather than in-country, benchmarks to determine whether stumpage confers a "benefit" (i.e., it based its benefit finding on U.S. prices, rather than on the prevailing market conditions in Canada). In Canada's view, these actions are inconsistent with the United States' WTO Agreement obligations.

### Preliminary Critical Circumstances Determination

Canada is similarly concerned with the preliminary critical circumstances determination. In Canada's view, such determinations cannot be enforced on a provisional basis. In addition, the preliminary critical circumstances determination was based on an alleged export subsidy that was found to be *de minimis* (i.e., conferring a subsidy rate of less than one percent) in the countervailing duty determination. The use of a *de minimis* alleged subsidy to justify the retroactive application of a preliminary duty rate of 19.31 percent is inconsistent with the United States' WTO Agreement obligations.

### Expedited Review

Exporters subject to countervailing duty action are entitled to individual expedited reviews following an investigation in order to calculate company-specific duty rates. However, U.S. law does not provide for individual expedited company reviews where investigations are conducted on a countrywide basis, which is inconsistent with Article 19.3 of the WTO Subsidies and Countervailing Measures Agreement.



Department of Foreign Affairs  
and International Trade

Ministère des Affaires étrangères  
et du Commerce international

Canada