

# GENERAL AGREEMENT ON

RESTRICTED

SCM/131

11 November 1991

## TARIFFS AND TRADE

Special Distribution

---

Committee on Subsidies and  
Countervailing Measures

Original: English

### COMMUNICATION FROM THE UNITED STATES

The following communication, dated 7 November 1991, has been received by the Chairman of the Committee from the United States Trade Representative with the request that it be circulated to signatories.

---

We are in receipt of a letter that was sent to you on 1 November 1991, by the Government of Canada, requesting a special meeting of the Committee on Subsidies and Countervailing Measures. In the letter, the Government of Canada requested that the Committee conduct conciliation in respect of three issues relating to a US countervailing duty investigation on certain softwood lumber products, which was initiated on 31 October 1991: namely, (1) whether the US suspension of liquidation on entries following Canada's decision to terminate the bilateral Memorandum of Understanding (MOU), an undertaking on the basis of which the US countervailing duty investigation was terminated, is consistent with US obligations under Article 5; (2) whether the initiation was consistent with the provisions of Article 2; and (3) whether Canada's provincial practices for harvesting standing timber constitute subsidies within the meaning of the Code.

The Agreement on Interpretation and Application of Articles VI, XVI and XXIII (the "Subsidies Code") provides that matters may be referred to the Committee for conciliation as to which the parties have failed to achieve a mutually agreed solution after consultation. As Canada concedes in its letter, the only consultations that have been held in respect of this matter were conducted under Article 3:1 of the Code, which explicitly limits the subject matter of such pre-initiation consultations to matters under Article 2:1 of the Code: viz., providing an opportunity to clarify the basis for initiation of an investigation. That was, in fact, the basis on which the consultations were requested, agreed to and conducted. No consultations have been held for the purpose either of considering the validity of the interim measures or whether Canadian provincial timber policy practices constitute a subsidy.

./.

The consultations under Article 3:1 do not provide a basis for proceeding to conciliation even with respect to matters relating to initiation. That is all the more clear from Article 3:2 of the Code, which establishes an obligation on signatories to consult throughout the period of investigation. Footnote 13 to Article 3:2 provides that:

"It is particularly important, in accordance with the provisions of this paragraph, that no affirmative finding whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Part VI of this Agreement."  
(Emphasis supplied.)

The plain meaning of footnote 13 is that a pre-initiation consultation provided for under Article 3:1 does not establish the basis to proceed to conciliation. Indeed, if it did, it could lead to the incongruous circumstance in which the Committee conducted conciliation as to a countervailing duty investigation that had not even been initiated. Clearly, that was not the result intended under the Code.

As to the validity of the interim measures and the question of whether Canadian provincial timber pricing practices constitute a subsidy, we repeat that no consultations have been held. Even if consultations had been held, however, the United States would have had serious concerns as to whether such consultations would have provided the basis for action by the Committee at this time. The purpose of Part I of the Code is to enable parties to conduct investigations into injurious subsidized imports. Obviously, one aspect of this inquiry involves an investigation into the nature and extent of the subsidies provided to such imports. In this case, the US Department of Commerce has not even had an opportunity to investigate the question that Canada now raises for conciliation by the Committee, much less reach a decision on the issue. Canada's letter constitutes a request that the Committee oversee the issuance of an advisory opinion that certain practices may not even be investigated under Part I of the Code. Such an interpretation would clearly be inconsistent with the intended operation of that Part of the Code and would constitute interference with the expeditious conduct of the countervailing duty investigation under Article 3:3.

Finally, as to the validity of the suspension of liquidation imposed following the termination of the MOU undertaking, we fail to understand Canada's concern. The suspension of liquidation was imposed at a zero rate, with minimal bonding requirements. Any potential liability for the eventual payment of duties was made on the basis of the terms agreed by Canada and the United States under the MOU (and bilaterally-negotiated amendments thereto) and would be entirely contingent on final affirmative determinations of subsidization, injury and causation in the countervailing duty investigation.

In light of the foregoing, we consider that it would be inconsistent with the provisions of the Code for the Committee to conduct conciliation at this time. The United States, of course, stands fully prepared to consult in accordance with our obligations under inter alia Article 3:2 of the Code.