

US – SOFTWOOD LUMBER III¹

(DS236)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Canada	ASCM Arts. 1.1, 14, 17 and 20	Establishment of Panel	5 December 2001
			Circulation of Panel Report	27 September 2002
Respondent	United States		Circulation of AB Report	NA
			Adoption	1 November 2002

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Preliminary countervailing duty determination and preliminary critical circumstances determination made by the US authorities in respect of lumber imports and US laws on expedited reviews and “administrative reviews” in the context of countervailing measures.
- **Product at issue:** US softwood lumber imports from Canada.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 1.1(a): (1): (iii) (definition of a subsidy – financial contribution):** The Panel concluded that the US authorities' determination that the Canadian provincial stumpage programme constituted a “financial contribution” by the government within the terms of Art. 1.1(a)(iii) was not inconsistent with the ASCM. The Panel considered that the Canadian government act of allowing companies to cut the trees amounted to the “supply” of standing timber, which is a good within the meaning of Art. 1.1(a)(1)(iii).
- **ASCM Art. 14 and 14(d) (benefit – calculation of amount of subsidy):** The Panel concluded that the US authorities acted inconsistently with Art. 14 and 14(d) by using the US stumpage prices instead of the prevailing market conditions for the product at issue in Canada, the country of provision or purchase, as required by Art. 14(d), in determining whether a “benefit” accrued from the Canadian government to the recipient.
- **ASCM Art. 1.1(b) (definition of a subsidy – benefit):** The Panel found that where a downstream producer of subject merchandise is unrelated to the allegedly subsidized upstream producer of the input, an authority is not allowed to simply assume that a benefit has passed through. Therefore, by failing to examine whether the independent lumber producers had paid an arm's-length price for the logs they purchased, the US authorities' determination that a benefit had accrued to those producers was inconsistent with the ASCM.
- **As such challenge:**² The Panel rejected Canada's as such challenge of the US statute and regulations on expedited and administrative review, as it did not mandate/require the US authorities to act inconsistently with the ASCM.

3. OTHER ISSUES

- **Retroactive application (ASCM Art. 20.6):** The Panel concluded that the US authorities' application of provisional measures retroactively was inconsistent with the ASCM.
- **Provisional measures (ASCM Arts. 17.3 and 17.4):** The Panel concluded that the timing (less than 60 days after initiation of investigation) and duration (for a period more than four months) of the US authorities' application of the provisional measures was in violation of the requirements of Arts. 17.3 and 17.4.

¹ *United States – Preliminary Determination With Respect to Certain Softwood Lumber From Canada*

² The as such challenge was brought under GATT Art. VI:3, ASCM Arts. 10, 19.3, 19.4, 21.2, 32.1 and 32.5 and WTO Agreement Art. XVI:4.