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PANEL REPORT ON CANADA/JAPAN: TARIFF ON IMPORTS OF SPRUCE, PINE, FIR (SPF) DIMENSION LUMBER

Communication from Canada

The following communication, dated 16 June 1989, has been received from the Permanent Mission of Canada, with the request that it be circulated to contracting parties in connection with the Council's consideration of the above-mentioned Panel report (L/6470).

GATT PANEL ON SPF DIMENSION LUMBER

The Government of Canada wishes to raise certain concerns over the interpretations contained in the findings of the GATT Panel report entitled "Canada/Japan: Tariff on Imports of Spruce, Pine, Fir (SPF) Dimension Lumber" (L/6470). We are concerned that these interpretations could alter the rights and obligations of contracting parties under Article I:1 of the General Agreement, as these rights and obligations have been generally understood.

The Panel concluded that it was unable to establish that the tariff treatment of SPF dimension lumber was inconsistent with Japan's obligations. It is Canada's view that this conclusion was based on an interpretation that can fundamentally alter the rights and obligations of a contracting party under Article I:1 of the General Agreement.

Specifically, Canada is concerned with the conclusion in paragraph 5.13 of the Panel report. The final sentence of this paragraph states, in part, that:

"If a claim of likeness was raised by a contracting party in relation to the tariff treatment of its goods on importation by some other contracting party, such a claim should be based on the classification of the latter, i.e., the importing country's tariff."

Canada is concerned that this interpretation could lead to pre-eminence being given to the tariff classification system of a contracting party when determining "like products" under Article I.

Canada agrees with the Panel's observation that "a tariff classification going beyond the harmonized system's structure is a legitimate means of adapting the tariff scheme to each contracting party's

trade policy interests" (paragraph 5.9). However, it was noted by the Panel itself that differentiations under tariff classification systems could "lend themselves to abuse insofar as they may serve to circumscribe tariff advantages in such a way that they are conducive to discrimination among like products originating in different contracting parties".

The Panel noted that dimension lumber was a concept extraneous to the Japanese tariff and concluded that the concept of dimension lumber "was not an appropriate basis for establishing 'likeness' of products under Article I:1 of the General Agreement" (paragraph 5.14). Canada is concerned that this interpretation would well preclude a contracting party from exercising its rights under Article I:1 for equal treatment of like products if the products involved were not specifically identified in the tariff classification system of the importing contracting party.

The harmonized system of tariff classification was not designed with Article I:1 rights in mind. Rather it was designed to provide for the grouping of products by industry or broad commodity classification, and takes into account a variety of factors, including historical trade patterns, volumes of trade in specific products and requirements of statistical record keeping. Tariff classification systems cannot identify specifically each and every possible product which may be imported.

In the tariff classification systems of contracting parties it is regularly the case that an individual tariff line or description will cover a wide range of different products, particularly in the example of lines which read "other" or "not elsewhere specified". Additionally, there are new products continually entering the market place which are not identified in tariff schedules. Canada is concerned that if the interpretations in the SPF Panel report were to be adopted, they could deny Article I:1 rights on these products and could lead to the classification of goods in such a way as to deny imported products the benefit of the like product requirement of Article I:1.

Canada requests other contracting parties to consider the possible implications for the General Agreement of the conclusions in this Panel report.