

DEPARTMENT OF COMMERCE

International Trade Administration

C-122-839

**Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act;
Countervailing Measures Concerning Certain Softwood Lumber Products from Canada**

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: December 10, 2004

FOR FURTHER INFORMATION CONTACT: James Terpstra or Stephanie Moore, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3965 or (202) 482-3692, respectively.

Background

On February 17, 2004, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) adopted the reports of the panel and Appellate Body in United States - Final Countervailing Duty Determination with Respect to Softwood Lumber from Canada, WT/DS257 (“Softwood Lumber”). The Appellate Body concluded that Commerce’s Softwood Lumber determination was inconsistent with the WTO Agreement on Subsidies and Countervailing Measures because the Department of Commerce (the Department) failed to conduct an analysis of certain sales of subsidized Crown logs, which Canadian parties claimed were sold at arm’s length, to determine if the subsidy benefit “passes through” to the purchasing sawmill. On March 5, 2004, the United States notified the

DSB of its intention to implement the findings of the Appellate Body. The Government of Canada and the United States agreed that 10 months was a reasonable period of time for implementation.

Pursuant to section 129(b)(2) of the Uruguay Round Agreements Act (URAA)¹, on November 9, 2004, the U.S. Trade Representative requested the Department to issue a revised determination not inconsistent with the findings of the Appellate Body. On November 19, 2004, the Department issued a draft Section 129 Determination and provided an opportunity for the parties to comment. On December 6, 2004, the Department issued its final Section 129 Determination. See “Issues and Decision Memorandum for the Section 129 Determination: Final Affirmative Countervailing Duty Determination, Certain Softwood Lumber from Canada” from Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed December 6, 2004 (“Issues and Decision Memorandum”).

Pursuant to section 129(b)(4) of the URAA, following consultations with the Department and congressional committees concerning the revised determination, on December 10, 2004, the U.S. Trade Representative directed the Department to implement the Section 129 Determination.

Implementation

Accordingly, the Department is publishing this notice of its revised final affirmative countervailing duty determination with respect to Certain Softwood Lumber from Canada. Consistent with the recommendations and findings of the Appellate Body in Softwood Lumber, the revised final determination reflects the results of the Department’s analysis of whether there were “arm’s-length”

¹Section 129 of the URAA is the provision governing administrative action following WTO panel and Appellate Body reports.

transactions involving Crown timber in which some or all of the stumpage subsidy benefit did not “pass through” to the purchasing sawmills. Copies of the Issues and Decision Memorandum detailing our Section 129 determination are available online at <http://ia.ita.doc.gov/ia-highlights-and-news.html> as well as in the Central Records Unit in room B-099 of the main Department building.²

In accordance with section 129(c)(1)(B), we will instruct U.S. Customs and Border Protection to collect cash deposits of estimated countervailing duties of 18.62 percent ad valorem on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 10, 2004, i.e., the date on which the U.S. Trade Representative directed the Department to implement the Section 129 Determination. These instructions will remain in effect until further notice.

This notice of implementation is issued and published in accordance with section 129(c)(2)(A) of the URAA.

James J. Jochum
Assistant Secretary
for Import Administration

Date

²All issues raised in the comments submitted by the parties concerning this Section 129 Determination are addressed in the Issues and Decision Memorandum.