

adopted therein by the United States Department of Commerce under authority of the United States Tariff Act of 1930, including section 732(c)(4)(E), to violate the Anti-Dumping Agreement and the GATT 1994 for, among others, the following reasons:

1. The application filed by the U.S. domestic industry and the subsequent initiation of the investigation by Commerce did not comply with Article 5 of the Anti-Dumping Agreement, including Articles 5.1, 5.2, 5.3, 5.4 and 5.8. Specifically:

(a) The application submitted by the U.S. domestic industry did not include evidence reasonably available to it, including pricing of Canadian exports to the United States, pricing of the like products sold in Canada by Canadian producers, and Canadian cost data in respect of the production in Canada of the like products. By Commerce's failure to determine whether the application contained all information reasonably available to the applicant, and by Commerce initiating the investigation where the application failed to contain evidence reasonably available to the applicant, and by Commerce's failure to terminate the investigation when Commerce became aware that the application failed to contain evidence reasonably available to the applicant, the United States violated Articles 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement.

(b) The application submitted by the U.S. domestic industry did not include sufficient evidence of dumping to justify initiation of the investigation. Commerce failed to examine the accuracy and adequacy of the evidence provided in the application and failed to reject the application in view of the lack of sufficient evidence of dumping required to justify the initiation of an investigation, and failed to terminate the investigation when it became evident that the application did not contain sufficient evidence, thereby resulting in violations by the United States of Articles 5.1, 5.2, 5.3 and 5.8.

(c) The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), by requiring that a member of the U.S. industry support the application as a condition of receiving payments under the CDSOA, made an objective and meaningful examination of industry support for the application impossible. The United States violated Articles 5.4 and 5.8 in that Commerce's initiation of the investigation was not based on an objective and meaningful examination and determination of the degree of support for the application by the domestic industry.

(d) The initiation by Commerce was made without a proper establishment of the facts, was based on an evaluation of the facts that was neither unbiased nor objective and does not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the initiation by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

2. Commerce erroneously determined there to be a single like product (under U.S. law, termed "class or kind" of merchandise) rather than several distinct like products, thereby failing to assess domestic industry

support in respect of each distinct like product and failing to assess the sufficiency of evidence of dumping in respect of each distinct like product, thereby resulting in violations by the United States of Articles 2.6, 4.1, 5.1, 5.2, 5.3, 5.4 and 5.8 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994. The like product and industry support determinations by Commerce were made without a proper establishment of the facts, were based on an evaluation of the facts that was neither unbiased nor objective and do not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the like product and industry support determinations by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

3. In making the final determination, the United States acted inconsistently with Article VI of the GATT 1994 and Articles 1, 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.3, 2.4, 2.4.1, 2.4.2, 2.6, and 9.3 of the Anti-Dumping Agreement. Specifically, Commerce improperly applied a number of methodologies based on improper and unfair comparisons between the export price and the normal value, resulting in artificial and/or inflated margins of dumping: (a) The United States violated Article 2 of the Anti-Dumping Agreement, including Articles 2.4 and 2.4.2, and Article VI:1 of the GATT 1994 by Commerce's application of the practice of "zeroing" negative dumping margins, the effect of which was to inflate margins of dumping and which, in the recommendations and rulings of the Dispute Settlement Body in an earlier dispute, was found to be inconsistent with the Anti-Dumping Agreement. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(b) The United States violated Article 2 of the Anti-dumping Agreement, including Article 2.4, and Article VI:1 of the GATT 1994 by Commerce's failure, when conducting comparisons between prices of products sold in the United States and prices of products with different physical characteristics sold in the Canadian market, to make due allowance for differences that affect price comparability, including differences in physical characteristics. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(c) The United States violated Article 2 of the Anti-Dumping Agreement including Articles 2.2, 2.2.1, 2.2.1.1 and 2.2.2, and Article VI:1 of the GATT 1994 by Commerce's failure to apply a reasonable method in calculating amounts for administrative, selling and general expenses for specific exporters, including an improper allocation of general and administrative expenses including financial expenses. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of

dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(d) The United States violated Article 2 of the Anti-Dumping Agreement, including Articles 2.2, 2.2.1, 2.2.1.1, 2.2.2 and paragraph 7 of Annex I, and Article VI:1 of the GATT 1994 by Commerce's failure to apply a reasonable method to account for revenues, including by-product and futures contract revenues, as offsets in calculating costs and export price for specific exporters. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(e) The methodologies, calculations, comparisons and determinations by Commerce were made without a proper establishment of the facts, was based on an evaluation of the facts that was neither unbiased nor objective and does not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the methodologies, calculations, comparisons and determinations by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

(f) The methodologies, calculations, comparisons and determinations by Commerce violated Articles VI:1 and VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement by levying an anti-dumping duty on softwood lumber from Canada in an amount greater than the margin of any dumping.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202-395-3640, or transmit a copy electronically to FR0064@ustr.gov, with "DS264" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business