

***UNITED STATES – COUNTERVAILING MEASURES ON  
SUPERCALENDERED PAPER FROM CANADA***

**(DS505)**

**CLOSING STATEMENT OF THE UNITED STATES OF AMERICA  
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

**March 22, 2017**

Mr. Chairman, members of the Panel:

1. The United States would like to thank once again the Panel and the Secretariat for their service in this dispute and their engagement during the first substantive meeting. In this statement, we would like to briefly address two overarching issues relevant to this dispute.
2. First, in its opening statement and responses to the Panel’s questions, Canada discussed at-length the facts that led to the imposition of the countervailing measures. But, in many instances, even where Canada has cited a provision, it has failed to support its arguments with reference to the applicable *obligations* of the SCM Agreement or the GATT 1994. Mere citation to WTO provisions without explanation is not enough.
3. Canada bears the burden of proof for its claims,<sup>1</sup> including providing sufficient evidence and arguments to make out a *prima facie* case, and a panel is not to make out a party’s case for it.<sup>2</sup> This Panel is charged with making an objective assessment of the matter before it and to clarify the existing provisions of the covered agreements in accordance with customary rules of interpretation of public international law. Rather than engage the Panel on these important interpretive issues, Canada has avoided engaging with the text of the relevant WTO provisions in this Panel meeting. And even where Canada has cited to various provisions of the covered agreement, it has not explained how the United States has breached an obligation.
4. Second, we note the applicable standard of review. A panel is to “undertake an in-depth examination of whether the explanations given disclose how the investigating authority treated the facts and evidence in the record and whether there was positive evidence before it to support

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<sup>1</sup> *US – Wool Shirts and Blouses (AB)*, p. 14; see *China – Autos (US) (Panel)*, para. 7.6.

<sup>2</sup> *US – Gambling (AB)*.

the inferences made and conclusions reached by it,”<sup>3</sup> while not “engaging in a *de novo* review of the facts of the case ‘or substitut[ing] its judgement for that of the competent authorities.’”<sup>4</sup>

5. As the United States demonstrated in our First Written Submission, and again during this meeting, the U.S. Department of Commerce provided a reasoned and adequate explanation of how the evidence in the record supports its findings with respect to each conclusion that led to the imposition of countervailing duties.

6. The arguments advanced by Canada do not support a finding by the Panel that Commerce failed to base its determinations on positive evidence or to provide a reasoned and adequate explanation for those determinations. In some instances, to support its claims Canada has cited to evidence not on the record before the authority. But, such evidence is not appropriate in this proceeding, as Article 11 of the DSU requires the Panel to evaluate Commerce’s evaluation of the facts on the record, in the light of the relevant WTO provisions. In other instances, Canada asks the Panel simply to draw different conclusions from those of Commerce based on the record before the authority. For example, with respect to the meaning of section 52 of the *Public Utilities Act*, Canada asks the Panel to second-guess Commerce’s finding that section 52 requires public utilities to provide electricity, despite Canada’s admission that such a requirement *does* exist and is derived from this provision. Even aside from this admission, Canada cannot demonstrate that Commerce’s finding of entrustment or direction of Nova Scotia Power to

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<sup>3</sup> Appellate Body Report, *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, para. 379, quoting Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 93.

<sup>4</sup> See Appellate Body Report, *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, para. 379, quoting Appellate Body Report, *US – Steel Safeguards*, para. 299 (referring to Appellate Body Report, *Argentina – Footwear (EC)*, para. 121).

provide electricity was not based on positive evidence given all of the evidence Commerce examined. Rather, it is a request for the Panel to substitute its judgment, and the Panel should decline Canada's invitation to engage in such *de novo* review.

7. Because Canada has failed to provide the Panel with a legal basis to overturn Commerce's findings, as explained in our First Written Submission and at this meeting with the Panel, the United States respectfully requests that the Panel reject each of Canada's claims.

8. Mr. Chairman, members of the Panel, this concludes our closing statement. We thank you again for your attention.