UNITED STATES – ANTI-DUMPING MEASURES APPLYING DIFFERENTIAL PRICING METHODOLOGY TO SOFTWOOD LUMBER FROM CANADA

(DS534)

CLOSING STATEMENT OF THE UNITED STATES OF AMERICA AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL

December 4, 2018

TABLE OF REPORTS

Short Form	Full Citation
US – Softwood Lumber V (AB)	Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, adopted 31 August 2004
US – Washing Machines (AB)	Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R, adopted 26 September 2016

Mr. Chairperson, members of the Panel:

1. As the United States has demonstrated, Canada simply has not rebutted, and has made no serious attempt to rebut, the interpretive arguments advanced by the United States. In particular, Canada has not engaged and responded to the U.S. identification of errors in the *US – Washing Machines* Appellate Body report, on which Canada so heavily relies.

2. One possible explanation may be that Canada does not truly disagree with the U.S. interpretation of the second sentence of Article 2.4.2 of the AD Agreement.[1] Indeed, the United States recalls that, in *US – Softwood Lumber V*, the Appellate Body noted, at footnote 164 of its report, "Canada argued that zeroing is permitted under the third methodology but prohibited under the first two methodologies set out in Article 2.4.2." I will repeat that. "Canada argued that zeroing is permitted under the third methodology".

3. What has changed from then to now? Certainly not the text of the AD Agreement. One difference is that two Members of the Appellate Body found in *US – Washing Machines* that zeroing is not permitted under the third methodology, as Canada has forcefully reminded us all throughout this panel proceeding. A troubling implication of Canada's change in view from *US – Softwood Lumber V* to now is the possibility that Canada accepts that the Appellate Body has added to or diminished the rights and obligations of Members – and that this was an appropriate thing for the Appellate Body to have done. But adding to or diminishing the rights and obligations of Members is something that is strictly prohibited under the DSU – twice.[2]

4. The Panel has the U.S. submissions, and based on the questions that the Panel has posed, it is clear you have carefully reviewed and considered the arguments of the parties. The United States hopes that it has contributed positively to the Panel's work, and that our contribution will help the Panel fulfill its role under the DSU to make "an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements."[3]

5. In closing, the United States once again would like to thank the Panel members, as well as the Secretariat staff assisting you, for your time and for the careful attention you are giving to this matter.

---

[1] *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement").

[2] *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Arts. 3.2 and 19.2.

[3] DSU, Art. 11.