

**BEFORE THE  
WORLD TRADE ORGANIZATION**

*United States – Investigation of the International Trade  
Commission in Softwood Lumber from Canada*

**Recourse to Article 21.5 of the DSU by Canada**

**(WT/DS277)**

**ANSWERS OF THE UNITED STATES  
TO THE PANEL'S QUESTIONS**

**July 11, 2005**

*United States – Investigation of the International Trade  
Commission in Softwood Lumber from Canada*

**Answers of the United States of America  
to Questions from the Panel to the Parties  
in Connection with the Substantive Meeting**

**January 11, 2005**

1. The following responses answer the June 30, 2005 questions to the United States. In two instances (Questions 6 and 8), the United States has also addressed questions posed by the Panel to Canada.

**To Canada:**

**6. Please explain why, in Canada's view, the USITC erred by considering the rate of increase in imports over the period 1991-2001 (2.8 %) rather than the rate of increase year over year from 1999-2001 (1.4 %)?**

2. Canada's emphasis on the year over year rate of increase of softwood lumber imports from 1999 to 2001<sup>1</sup> is misleading, because it masks trends toward the end of the period of investigation, particularly after expiration of the Softwood Lumber Agreement (SLA) on March 31, 2001. Canada itself asserts that "evidence from the last year of the POI" is especially relevant in making a threat determination.<sup>2</sup> A year over year rate of increase (*i.e.*, a simple averaging of the total change for period of investigation by year) does not reveal the pattern of significant increases in subject imports at the end of the period examined. By contrast, the ITC looked at the absolute volume, the increase in absolute volume, and subject import trends at particular moments during the period of investigation with reference to what was happening at

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<sup>1</sup>See Oral Statement of Canada, para. 12 (June 28, 2005).

<sup>2</sup>See, *e.g.*, Oral Statement of Canada, para. 46 (June 28, 2005) ("Canada has properly put more emphasis on evidence from the last year of the POI, as opposed to the earlier part of the POI, because this case involves a threat determination, not a present injury determination.").

those moments. For example, from 1999 to 2000, a period in which the SLA was in effect from start to finish, the ITC found that subject imports increased by 0.4 percent.<sup>3</sup> In 2001, a period in which the SLA was in effect only for the first quarter, the ITC found that subject imports increased by 2.4 percent, compared with their level in 2000.<sup>4</sup> The ITC also looked at the period from April to December 2001 – *i.e.*, that part of 2001 during which the SLA was not in force – and found an even more significant rate of increase, 4.9 percent, compared with the corresponding period in 2000.<sup>5</sup> The additional evidence gathered in the Section 129 proceeding showed subject imports continuing to increase rapidly, by 14.6 percent, during the first quarter of 2002 as compared with the first quarter of 2001.<sup>6</sup> Because the ITC's examination of trends during each of the foregoing segments of the period of investigation looked at what was happening to subject imports in light of other relevant circumstances (notably, the presence or absence of the SLA), that examination, in conjunction with consideration of the absolute volume and increases in such volume, was more informative of a threat of injury determination than an identification of a simple year over year rate of increase.

**8. Focussing on the standard of review under which this Panel is operating,**

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<sup>3</sup>Section 129 Report at Table C-1 (Exhibit US-5); USITC Pub. 3509 at Table C-1 (Exhibit CDA-2). From 1999 to 2000, U.S. apparent consumption declined by 0.6 percent and thus the increase in subject imports resulted in an increase in its share of the U.S. market from 33.2 percent to 33.6 percent. *Id.*

<sup>4</sup>Section 129 Report at Table C-1 (Exhibit US-5); USITC Pub. 3509 at Table C-1 (Exhibit CDA-2).

<sup>5</sup>Section 129 Report at Table C-1 (Exhibit US-5) and official import statistics (Exhibit US-8).

<sup>6</sup>Section 129 Report at Table C-1B (129) (Exhibit US-5).

**Canada indicates that the Panel is to look at the totality of the information in carrying out its review of the USITC section 129 determination, but makes specific claims with respect to particular factors and focuses on particular elements of information in support of its claims. Would Canada agree with the proposition that, with respect to its assessment of each claim made by Canada, the standard of review requires the Panel to, after reviewing the particular information relied upon by Canada, go on to consider that claim in light of the totality of the information and the determination as a whole? In that context, could Canada indicate how, in its view, the Panel is to apply the standard of "objective" decision-making – what provides guidance in the consideration of the information and determination as a whole?**

3. The United States agrees with the proposition that the Panel should look at each claim asserted by Canada in light of the totality of the information and the determination as a whole. Such an examination is inherent in the concept of “objective assessment,” the standard under Article 11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)* which, together with the standard under Article 17.6 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement)*, is applicable to this proceeding.<sup>7</sup> The reason that “objective assessment” requires an examination of individual claims not in isolation, but in light of the totality of the information and the determination as a whole, is to ensure that the Panel is reviewing the investigating authority’s determination, rather than making its own determination. If the Panel were to look at individual claims or individual pieces of evidence in isolation, without considering their relationship to the totality of the information and the determination as a whole, it in effect would be conducting its own review of the evidence rather than evaluating the review that the investigating authority in

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<sup>7</sup>See e.g. Panel Report, *United States Investigation of the International Trade Commission in Softwood Lumber from Canada*, WT/DS277/R, adopted April 26, 2004 (“Panel Report”), paras. 7.11 to 7.18.

fact undertook. That would be a *de novo* review.

4. This aspect of “objective assessment” was well explained by the Appellate Body in its recent report in *United States - Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea (US - DRAMS)*.<sup>8</sup> There, the Appellate Body found that the panel had misapplied the applicable standard of review due, in part, to the fact that it had examined individual pieces of evidence in isolation with a view to determining whether each piece, on its own, established the ultimate conclusion at issue. As the Appellate Body found, “The Panel thus failed to assess the agency’s determination.”<sup>9</sup> By assessing the evidence in a fragmented way, the panel in that dispute effectively made its own determination, as if it were the investigating authority rather than a reviewing panel.<sup>10</sup>

5. In reaching this conclusion, the Appellate Body explained that “[i]ndividual pieces of circumstantial evidence, by their very nature, are not likely to establish a proposition, unless and until viewed in conjunction with other pieces of evidence.”<sup>11</sup> That observation is equally relevant to the present dispute. As the United States explained in its written submissions and

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<sup>8</sup>Appellate Body Report, *United States - Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/AB/R, issued June 27, 2005 (not yet adopted).

<sup>9</sup>AB Report, *US - DRAMS*, para. 188.

<sup>10</sup>*Id.*

<sup>11</sup>AB Report, *US - DRAMS*, para. 150; *see also id.*, para. 157 (“In our view, when an investigating authority relies on the totality of circumstantial evidence, this imposes upon a panel the obligation to consider, in the context of the *totality* of the evidence, how the *interaction* of certain pieces of evidence may justify certain inferences that could not have been justified by a review of the individual pieces of evidence in isolation.”).

oral statements, the conclusion reached by the ITC in its Section 129 Determination was based not on individual pieces of evidence, but on the totality of the evidence, taken as a whole. In other words, the ITC did not make a determination of threat of injury based solely on individual pieces of evidence regarding particular factors considered, including increases in subject imports, excess production capacity, price effects, or the vulnerability of the domestic industry. Rather, it looked at all of the evidence bearing on all of the relevant factors and reached its conclusion on that basis.

6. The need to look at individual pieces of evidence in context, as they relate to other pieces of evidence and to the determination as a whole, is one aspect of what it means for the Panel to make an objective assessment of the matter before it. Other aspects, too, are identified in the Appellate Body report in *US - DRAMS*. For example, the Appellate Body in that dispute cited approvingly the panel's decision "to follow the agency's approach to the examination of the evidence,"<sup>12</sup> (though it found that the panel failed to carry through with its decision to do so). The Appellate Body went on to explain that "in order to examine the evidence in the light of the investigating authority's methodology, a panel's analysis usually should seek to review the agency's decision on its own terms, in particular, by identifying the inference drawn by the *agency* from the evidence, and then by considering whether the evidence could sustain that inference."<sup>13</sup> Like viewing the evidence in its totality, following the agency's approach helps to

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<sup>12</sup>AB Report, *US - DRAMS*, para. 143; *see also id.*, para. 150 ("In our view, having accepted an investigating authority's approach, a panel normally should examine the probative value of a piece of evidence in a similar manner to that followed by the investigating authority.").

<sup>13</sup>AB Report, *US - DRAMS*, para. 151.

ensure that the assessment the Panel is making is a review of what the agency in fact did and not an independent finding of what the panel would have done had it been in the agency's place.

7. Finally, the Appellate Body gave examples of the inquiries a panel should undertake in making an objective assessment of the conclusion reached by an investigating authority. It stated that "a panel should focus on issues such as the accuracy of a piece of evidence, or whether that piece of evidence may reasonably be relied on in support of the particular inference drawn by the investigating authority."<sup>14</sup>

8. The findings of the Appellate Body in the *US - DRAMS* dispute provide clear, concise guidance on what is meant by "objective" assessment, as the Panel seeks in Question 8 to Canada. For the reasons set forth in the submissions and oral statements of the United States, an objective assessment would yield the conclusion that the Section 129 Determination is consistent with the obligations of the United States under the covered agreements.

**To the United States:**

**12. Referring to paragraph 15 of its oral statement, could the United States explain what, in its view, is the relevance of the absence of discrete "present injury" and "threat of injury" sections in the section 129 determination and the discussion of evidence in a "holistic way"?**

9. The absence of discrete "present injury" and "threat of injury" sections in the Section 129 Determination and the discussion of evidence in a "holistic way" are relevant to an understanding of how the ITC evaluated the evidence before it. As discussed in response to

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<sup>14</sup>AB Report, *US - DRAMS*, para. 188.

Question 8, the manner in which such evidence was evaluated will inform the Panel in making an objective assessment of whether the Section 129 Determination is consistent with the obligations of the United States under the covered agreements. The threat and present injury analyses are intertwined, with many of the same factors necessarily being considered in both analyses. Yet, in the underlying proceeding, Canada made much of the analytical structure of the original determination, which contained separate sections for present injury and threat of injury. Canada contended that in its present injury analysis the ITC had found a non-injurious status quo and argued that, absent a finding that there would be a particular change in circumstances (such as a significant increase in subject imports), a determination of threat could not be made. Canada ignored the fact that in its present injury analysis, the ITC had found subject imports during the period of investigation to be at levels that would be injurious, if combined with significant price and impact effects. The ITC found that a separate factor – oversupply by the domestic industry – had to be taken into account, in addition to subject imports and the resultant effects on prices and impact, and this fact precluded establishing the necessary causal link and reaching a present material injury determination.

10. The structure of the ITC's analysis in the Section 129 Determination makes clear that the ITC was not looking at particular pieces of evidence as solely relevant to present injury or solely relevant to threat of injury. This structure emphasizes that evidence that is relevant to a determination of present injury also bears on a determination of threat of injury. This is important because, as in the original proceeding, Canada argues in the present proceeding that the ITC's affirmative threat determination cannot be reconciled with its negative present injury



determination.<sup>15</sup> By treating the evidence in a holistic way, the ITC has made clear that evidence that would be probative of a present injury determination – such as a significant and large volume of subject imports increasing at a significant rate<sup>16</sup> their effect on price, and an industry in a vulnerable state – establishes the background and is also probative of threat.

**13. Referring to paragraph 40 of its oral statement, could the United States respond to the proposition that the total volume of third country imports is equal to the volume of the increase in Canadian over the POI, and that if the latter is significant, so too should the former be?**

11. The Commission recognized that the incremental increase in subject import volume in mmbf between 1999 and 2001 was approximately the same as the increase in non-subject import volume.<sup>17</sup> But, for a number of reasons, it is incorrect to assert (as Canada has)<sup>18</sup> that a rough equivalence between the total volume increase of third country imports and the total volume increase of subject imports during the period of investigation means that if the latter is significant, so too should the former be.

12. First, subject imports – unlike non-subject imports – were subject to trade restraining measures during the period of investigation. The rough equivalence between the increases in absolute levels of subject and non-subject imports during the period of investigation had to be considered with that important distinction in mind. Because of that distinction, it was reasonable

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<sup>15</sup>See, e.g., Canada First Written Submission, para. 85.

<sup>16</sup>See Section 129 Determination at 23, n. 56 (Exhibit US-1).

<sup>17</sup>Section 129 Determination at 74 (Exhibit US-1).

<sup>18</sup>Oral Statement of Canada, para. 65 (June 28, 2005).

to conclude that the lifting of restraints would cause subject imports to grow even more significantly than they had while the restraints were in place. Non-subject imports, on the other hand, had not been found to be unfairly traded and had not been subject to restraints. In fact, importers of non-subject imports testified to the ITC that it was the imposition of orders on subject imports that would cause their purchases of non-subject imports to increase.<sup>19</sup> However, the ITC was required to make a determination of what would happen if no import restraints were in place.<sup>20</sup>

13. Second, as the ITC found, average unit values for non-subject imports were 80 to 90 percent higher than average unit values for subject imports during the period of investigation.<sup>21</sup> The ITC recognized that non-subject imports were from a wide variety of other countries, and as such could not be treated generically as a single group having a common impact on the domestic industry.<sup>22</sup> In fact, no individual third country accounted for more than 1.3 percent of imports.

14. Finally, the roughly equivalent volume of the incremental increase must be placed in

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<sup>19</sup>Section 129 Determination at 75, n.222 (Exhibit US-1). Importers of softwood lumber stated that “any restrictions on the supply of Canadian softwood lumber to the U.S. market would result in an increased supply of imports from other sources, particularly European sources, to meet U.S. demand for softwood lumber.” USITC Pub. 3509 at II-3 (Exhibit CDA-2). The share of U.S. imports held in 2001 by European countries was only 2.3 percent of total imports. *Id.* at II-7, n. 23.

<sup>20</sup>Article 3.7 of the *AD Agreement* and Article 15.7 of the *SCM Agreement*.

<sup>21</sup>Section 129 Determination at 73-74 (Exhibit US-1); USITC Pub. 3509 at Table C-1 (Exhibit CDA-2). The average unit values for non-subject imports ranged from \$623.60 to \$712.22 from 1999 to 2001, whereas the average unit values for subject imports ranged from \$323.57 to \$395.72. *Id.*

<sup>22</sup>Section 129 Determination at 73-74 (Exhibit US-1).

perspective. Subject imports already were well over a thousand times as large as the level of non-subject imports during the period of investigation.<sup>23</sup> That is, subject imports already were at a significant level. In contrast, the ITC found that the same simple increase in absolute volume in non-subject imports did not make the still extremely small volume of fairly traded and unrestrained non-subject imports, which never exceeded 3 percent of the market, significant or a threat to be significant.

**14. Could the United States identify those areas in the USITC section 129 determination in which additional information was received by the USITC, and where in the determination that information is addressed?**

15. In the Commission's Section 129 Report and additional memoranda,<sup>24</sup> additional information collected for the Section 129 proceeding<sup>25</sup> is presented in **bold italics** either in tables

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<sup>23</sup>Section 129 Determination at 21-23 and n. 56 (Exhibit US-1). Subject imports are responsible for an enormous volume of imports during the period of investigation, ranging from 17,983 mmbf to 18,483 mmbf per year and accounting for 33.2 percent to 34.3 percent of U.S. apparent consumption per year in the 1999-2001 period, compared with higher valued non-subject imports, which never exceeded 1,378 mmbf or 2.6 percent of apparent domestic consumption per year in the 1999-2001 period. USITC Pub. 3509 at Tables IV-2 and C-1 (Exhibit CDA-2).

<sup>24</sup>Section 129 Report at 5-6 (Exhibit US-5). In addition to the Section 129 Report, the Commission staff presented revised tables in INV-BB-138 and reviews of the demand forecasts and economic submissions in EC-BB-035 and EC-BB-037. These additional memoranda are included with the Section 129 Report in Exhibit US-5.

<sup>25</sup>In the Section 129 proceeding, the Commission reopened the record to gather additional information (from public data sources and from questionnaires sent to domestic producers and Canadian producers) to be used to supplement the information gathered in the original investigations. The Commission sought such additional information (specifically for periods in 2002 prior to the original determination) to assist it in considering and addressing issues raised by the original panel report regarding the imminent future. *See* Section 129 Determination at 7-8 (Exhibit US-1).

developed specifically for that proceeding or in tables revised from the original investigation that have been updated with the addition of 2001 annual data (if not available for the original staff report), revised data, and/or January-March 2000-2002 data.<sup>26</sup> Thus, tables developed specifically for the Section 129 proceeding are presented in the Section 129 Report immediately following their companion tables that were developed during the original investigation and are identified with the mark "**B (129),**" and appear in **bold italics** in their entirety (*i.e.*, table III-1 from the original investigation will be followed by **table III-1B (129)** developed for this proceeding). A summary of data collected in the original investigation and in the Section 129 proceeding is presented in appendix C of the Section 129 Report, tables C-1 and **C-1B(129)**, respectively.

16. Finally, the additional information collected in the Section 129 proceeding is addressed throughout the Commission's Section 129 Determination.<sup>27</sup>

**15. Could the United States clarify whether the basis for the conclusion that the 2.8 percent increase in import volumes from 1999 to 2001 was significant based on**

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<sup>26</sup>In the Section 129 Report, tables with additional information collected in the Section 129 proceeding include: Table III-1B(129), Table III-4, Table III-6B(129), Table III-7B(129), Table III-10, Table III-12, Table III-13B(129), Table III-16B(129), Table III-19B(129), Table IV-1B(129), Table IV-2B(129), Table IV-6, Table IV-6B(129), Table IV-7, Table V-1, Table V-2, Table VI-1B(129), Table VI-2B(129), Table VI-3B(129), Table VI-11B(129), Table VII-1(129), Table VII-1B(129), Table VII-2B(129), Table VII-5B(129), Table VII-7B(129), Table VII-8B(129), and Table C-1B. Additional information also is presented on pages 49-82 and in Appendices D, E, F, and G of the Section 129 Report. Finally, additional information collected in the Section 129 proceeding also is presented in revised Table II-4, Table III-6 and Table IV-2 in INV-BB-138.

<sup>27</sup>*See, e.g.*, Section 129 Determination at 20, 21, 22, 24, 25, 27, 29, 31, 33, 34, 35, 36, 37, 38, 39, 40, 44, 45, 46, 53, 55, 58, 59, 60, 62, 63, 66, 67, 69, 70, 71, 72, 73, 76, and 79 (Exhibit US-1).

**the absolute level of imports, and the increase from that baseline, or whether other factors (and if so, what other factors) contributed to that conclusion?**

17. The absolute level of subject imports, and the increase from that baseline, were important factors contributing to the conclusion that a 2.8 percent increase in subject import volumes from 1999 to 2001 was significant, but they were not the only such factors. Other factors demonstrating that a 2.8 percent increase was significant included: (1) the significant restraining effect of the SLA; (2) increases in subject imports after the expiration of the SLA; and (3) substantial increases in subject imports during periods when such imports were not subject to import restraints.<sup>28</sup>

18. The Commission found that subject imports had increased despite the fact that “the SLA had significantly constrained the volume and market share of subject imports.”<sup>29</sup> Moreover, that increase occurred even though apparent U.S. consumption had declined slightly, by 0.4 percent from 1999 to 2001.<sup>30</sup>

19. That subject imports increased after the SLA expired further contributed to the finding that a 2.8 percent increase was significant. As the ITC found, “While 2.8 percent is a significant rate of increase when the baseline volume is already so significant, the even more telling evidence is the significant rate of increase in the volume of subject imports following the

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<sup>28</sup>See Section 129 Determination at 21-31 (Exhibit US-1).

<sup>29</sup>Section 129 Determination at 28 (Exhibit US-1).

<sup>30</sup>Section 129 Determination at 20-21 (Exhibit US-1).

expiration of the SLA on March 31, 2001.”<sup>31</sup> The evidence shows a pattern of substantially increasing subject imports at the end of the period of investigation; increases of 2.4 percent from 2000 to 2001, 4.9 percent from April to December 2001, and 14.6 percent when the first quarter 2002 is compared to the first quarter of 2001.<sup>32</sup> The Commission found that “the significant rate of increase in the subject imports in the most recent periods, after expiration of the SLA, is a clear indicator of likely substantial increases in imports in the imminent future and serves as a basis for our determination that subject imports threaten material injury to the domestic industry.”<sup>33</sup>

20. Finally, it was relevant to the ITC’s conclusion that a 2.8 percent increase was significant that subject imports increased substantially during periods when such imports were not subject to some type of import restraint, including the period immediately preceding the SLA (1994 and 1996) and the period after expiration of the SLA and before the imposition of the preliminary antidumping and countervailing duties. For example, during the period after expiration of the SLA (April 2001) and before the suspension of the liquidation resulting from the investigation (August 2001), subject import volume was substantially higher, by a range of 9.2 percent to 12.3 percent, than the corresponding April-August period in each of the preceding three years (1998-2000).<sup>34</sup> The Commission found that “this behavior is highly probative of how subject imports

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<sup>31</sup>Section 129 Determination at 21 (Exhibit US-1).

<sup>32</sup>Section 129 Report at Tables C-1 and C-1B (Exhibit US-5) and official import statistics (Exhibit US-8).

<sup>33</sup>Section 129 Determination at 23 (Exhibit US-1).

<sup>34</sup>Official monthly import statistics (Exhibit US-8).

have entered the U.S. market, and would enter the U.S. market in the imminent future, when not subject to trade restraints.”<sup>35</sup> That subject imports increased substantially in the absence of import restraints was further evidence that the 2.8 percent increase in subject imports was significant.

**16. Referring to paragraph 14 of its oral statement, the United States asserts that Canada's comparison of percentage increases of information associated with a different baseline are not meaningful, pointing specifically to comparisons of percentage changes in US and Canadian production. Yet, at paragraph 30 of its oral statement, the United States compares the percentage changes in subject imports and apparent US consumption, which is information associated with different baselines, and argues that this comparison is telling. Could the United States explain why the different baselines is not relevant in its comparison, while it is asserted to be so in Canada's comparison?**

21. Comparisons of percentage changes in subject import volumes and percentage changes in apparent consumption are meaningful, because taken together they reveal changes in subject import market share. Recognizing this fact, the original panel had expressed concern that in its original determination the ITC had not considered “increases in imports proportional to the increase in demand.”<sup>36</sup> In contrast, comparing percentage changes in production over different baselines – as Canada does – can be misleading. Such a comparison can amount to an apples-to-oranges comparison, due to differences in the starting points of the factors being compared. Moreover, such comparisons should be placed in the context of the other evidence on the record. Yet, Canada’s presentation of these comparisons takes them in isolation from such other

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<sup>35</sup>Section 129 Determination at 28 (Exhibit US-1).

<sup>36</sup>See Panel Report, para. 7.95 (“The USITC did not make any findings that imports from Canada would increase more than demand, thereby accounting for an increased share of the US market.”).

evidence.

22. In paragraph 30 of its oral statement, the United States explained that the rate of increase in subject imports (2.8 percent from 1999 to 2001 and 14.6 percent in first quarter of 2002 compared with first quarter of 2001) was greater than the rate of increase in U.S. apparent consumption, *i.e.*, demand (0.4 percent decline from 1999 to 2001 and 9.7 percent increase in the first quarter of 2002 compared with the first quarter of 2001). This showed that the actual increases in the volume of subject imports during the period of investigation were not merely adjustments to keep pace with increases in demand. Rather, they substantially outstripped demand. Accordingly, subject import market share, *i.e.*, the volume of subject imports as a share of the volume of U.S. apparent consumption, also increased. These facts, in turn, contributed to the eventual determination of threat.

23. The probative value of the foregoing comparison can be contrasted to the misleading nature of certain percentage change comparisons that Canada makes. For example, Canada contends that Canadian production declined at a faster rate than U.S. production, pointing out that "from 2000 to 2001, Canadian production declined 4.3 percent while U.S. production declined 3.9 percent."<sup>37</sup> However, a review of the absolute production volume data shows that Canadian production declined by a smaller volume (1,347 mmbf) than did U.S. production (1,386 mmbf) from 2000 to 2001.<sup>38</sup> The evidence also demonstrates that Canadian exports to the

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<sup>37</sup>See, *e.g.*, Oral Statement of Canada, para. 52 (June 28, 2005).

<sup>38</sup>Moreover, when the percentage change is considered over the period of investigation, the evidence shows, based on revised U.S. and Canadian production data, that U.S. production was 5.5 percent lower in 2001 compared with 1999 whereas Canadian production was only 1.2 percent lower in 2001 compared with 1999. Section 129 Determination at 71, n. 213 (Exhibit



U.S. market increased for this period and that Canadian producers projected increases in production of 8.9 percent from 2001 to 2003.<sup>39</sup>

24. Another example of a misleading percentage change comparison is Canada's narrow focus on the incremental change in Canadian and U.S. production in the first quarter of 2002 compared with the first quarter of 2001.<sup>40</sup> Canada fails to put this observation in context. The changes in production levels occurred while demand in Canada declined by 23 percent and demand in the United States increased by 9.7 percent. Indeed, even as Canadian producers made some adjustments to production during this period, Canada's exports to the United States increased by 14.6 percent. Thus, the changes in production on which Canada relies were not necessarily probative of import behavior.

**17. Referring to paragraph 25 of Canada's oral statement, citing paragraph 42 of the US Second Written Submission, Canada asserts that the US has considered the increase in import volume during the period April-August 2001 over the comparable period of 2000 in the context of changes in demand for the entire year 2001 – an increase of 0.4 % – rather than demand for the April to August 2001 period – an asserted increase of 6.2 % over the comparable period of the 2000. Could the US explain the discrepancy between the periods referenced?**

25. The ITC did not compile data for apparent U.S. consumption on a monthly basis for the period examined. Thus, in considering the market conditions as subject imports rose by 11.3 percent in April to August 2001 as compared with the corresponding period in 2000, the ITC referred to the yearly U.S. apparent consumption data. U.S. apparent consumption was relatively

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US-1); Section 129 Report at Tables VII-1 and C-1 and INV-BB-138 at Table III-6 (Exhibit US-5).

<sup>39</sup>Section 129 Report at Table C-1 (Exhibit US-5) and USITC Pub. 3509 at Table VII-2 (Exhibit CDA-2).

<sup>40</sup>See, e.g., Canada First Written Submission, para. 116.

flat (increasing by 0.2 percent) from 2000 to 2001.<sup>41</sup> Canada has proffered monthly U.S. apparent consumption data from a data series that is not necessarily comparable to that used by the ITC.

26. Even assuming, *arguendo*, that Canada were correct – that is, that U.S. apparent consumption was 6.2 percent higher in the April to August 2001 period compared to the corresponding period in 2000 – this would not change the fact that subject imports were higher still – 11.3 percent higher – for the April to August 2001 period as compared with the corresponding period in 2000. Moreover, subject imports were substantially higher, by a range of 9.2 percent to 12.3 percent, in the April to August 2001 period compared with the corresponding period in each of the preceding three years (1998-2000).<sup>42</sup> Additionally, Canada's Slide 3 accompanying its oral statement at the June 28, 2005 Panel meeting shows that subject imports had a 35.8 percent share of the U.S. market (*i.e.*, subject import volume as a share of U.S. apparent consumption volume) for the April to August 2001 period as compared with 34.1 percent for the corresponding period in 2000. By this measure as well, it is evident that increases in subject imports were outpacing increases in demand, thus supporting the ITC's threat of injury determination.

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<sup>41</sup>Section 129 Report at Table C-1 (Exhibit US-5) and official import statistics (Exhibit US-8). The 0.4 percent figure in paragraph 42 of the U.S. Second Written Submission should have been 0.2 percent as indicated in paragraph 20 of the U.S. Second Written Submission and Section 129 Report at Table C-1 (Exhibit US-5).

<sup>42</sup>Official import statistics (Exhibit US-8).