ANNEX C

Submissions of Third Parties

ANNEX C-1

THIRD PARTY SUBMISSION OF CHINA

17 March 2005

I. Introduction

1. China welcomes this opportunity to present its views in these proceedings involving the United States' compliance with the DSB recommendations and rulings in *United States – Final Countervailing Duty Determination With Respect to Certain Softwood Lumber from Canada*. China believes these proceedings relate to the correct understanding of Article 21.5 of the DSU and Article VI:3 of GATT 1994 as well as the rulings by the original Panel and the Appellate Body in the original dispute in which China has systemic interests.

2. In this third party submission, China will focus on the following two key issues:

(i) the threshold issue of whether the USDOC administrative review determination is properly before this Panel;

(ii) whether the five external factors identified by the USDOC can be used to exempt the US from conducting pass-through analysis as required by the rulings of the original panel and the Appellate Body with respect to sales of logs between tenured harvesters/sawmills and unrelated sawmills.

II. Whether the USDOC Administrative Review Determination Is Properly Before This Compliance Panel

A. The Threshold Issue Presented in These Proceedings

3. In the *Request for Establishment of A Panel*, Canada refers to the following measures by the US: (i) the Section 129 Determination[1]; and (ii) the First Administrative Review Determination (the "Review Determination")[2]. In its First Written Submission, Canada argues that the US, by adopting these "measures taken to comply", "continues to violate its obligations under Article VI:3 of the GATT 1994 and Articles 10 and 32.1 of the SCM Agreements"[3] and failed to implement the recommendations and rulings of the DSB. The US, in turn, request a preliminary ruling that the Review Determination is not a "measure[] taken to comply" and thus falls outside the scope of these Article 21.5 proceedings[4].

4. Thus, a threshold issue presented in this dispute is whether the Review Determination is properly before this compliance panel.

B. Terms of Reference of An Article 21.5 Panel

5. In China's view, WTO jurisprudence establishes that the mandate of an Article 21.5 panel is subject to two limitations.

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[1] *Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Softwood Lumber Products from Canada*, 69 Fed. Reg. 75,305; *Section 129 Determination: Final Countervailing Duty Determination, Certain Softwood Lumber from Canada*; *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 Fed. Reg. 36,070.

[2] *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Com -1.14 97 T D-l.1(rv)by-S97 T D-ecificws: i ano5.56 28 6 -1.19[(udencefm)8 odeooode-4 .9(n)-4 .9ctys fr0 .1(a6 4 .4 (l Re.9*

6. First, the mandate of a compliance panel shall be confined by the coverage of the measures referred to by the complaining party in its panel request. If the parties to a dispute do not agree otherwise, a compliance panel, as an ordinary panel, shall have the standard terms of reference set forth in Article 7.1 of the DSU. Specifically, the outer edge of the terms of reference of a compliance panel shall be the scope of the panel request by the complaining party at a given dispute. This has been confirmed by many compliance panels.[5]

7. Second, the mandate of a compliance panel shall be limited by the scope of "measures taken to comply" with DSB recommendations and rulings. The Appellate Body in *Canada – Aircraft (Article 21.5 – Brazil)* held that,

> Proceedings under Article 21.5 do not concern just *any* measure of a Member of the WTO; rather, Article 21.5 proceedings are limited to those "measures *taken to comply* with the recommendations and rulings" of the DSB[6]. (original emphasis)

In *EC - Bed Linen (21.5)*, the Appellate Body explicitly stated that "[i]f a *claim* challenges a *measure* which is not a 'measure taken to comply', that *claim* cannot properly be raised in Article 21.5 proceedings."[7] (Original Emphasis)

8. Practically, there may be fewer disputes over whether a measure is cited by the complaining party in its panel request. Rather, many of the disputes rest with whether a particular measure, although cited by the complaining party, is a "measure[] taken to comply". This is exactly the case in this dispute.

C. China's Views on The Threshold Issue

9. In these proceedings, both parties seem to have no dispute on whether the Review Determination was cited by Canada in its panel request. As noted on the document WT/DS257/19, the parties to this dispute agreed that the Panel should have standard terms of reference. As a result, the Panel's terms of reference shall be defined by Canada's Request for Establishment of a Panel (WT/DS257/15). In that document, Canada manifestly referred to the Review Determination issued by the USDOC. However, "Article 21.5 proceedings are limited to those 'measures *taken to comply* with the recommendations and rulings' of the DSB"[8] and "it is, ultimately, for an Article 21.5 panel — and not for the complainant or the respondent — to determine which of the measures listed in the request for its establishment are "measures taken to comply"[9]. Therefore, the threshold issue in this dispute is whether the Review Determination cited by Canada in its panel request is properly before this panel.

10. In this dispute, it may be argued, on the one hand, that the Review Determination was made in a totally separate investigation procedure and based on the import data that is irrelevant to that of the original investigation. On the other hand, it is arguable that the two determinations at issue were made under the framework of the same set of proceedings which effectively affects import of softwood lumber from Canada and the Review Determination supersedes the Section 129 Determination. In China's view, the first argument relates to the question of whether the Review Determination is a "measure[] taken to comply" while the second argument concerns the matter whether the Section 129 Determination is rendered non-existent.

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[5] *EC - Bananas (21.5)*, WT/DS27/RW/ECU, para.6.5; *Australia - Leather (21.5)*, WT/DS126/RW, para.6.3.

[6] *Canada – Aircraft (Article 21.5 – Brazil)*, WT/DS70/AB/RW, para 36.

[7] *EC - Bed Linen (21.5)*, WT/DS141/AB/RW, para.78.

[8] *Canada – Aircraft (Article 21.5 – Brazil)*, WT/DS70/AB/RW, para 36.

[9] *EC Bed Linen (Article 21.5 – India)*, WT/DS141/AB/RW, para 78.

11. Initially, the Review Determination may not be properly categorized as a "measure[] taken to comply". This point has been elaborated by the US in its First Submission. The date of commencement of the review process was well before the date when the DSB adopted the panel and Appellate Body report. The Review Determination was not issued under the US domestic proceedings that are specifically enacted to address its violation of WTO rules concerning a countervailing duty measure (Section 129(b) of the *Uruguay Round Agreements Act*).

12. However, in China's view, the fact that the Review Determination is not a "measure[] taken to comply" does not lead to a decisive answer to the question of whether this measure is properly before this panel. China recalls that, on the basis of the plain language of Article 21.5, the purpose of the proceedings under this provision is to review and solve the dispute on "the *existence* or *consistency* with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB. China believes that "existence" and "consistency" are two distinct aspects of the subject measure. The latter involves review that is not only "limited to 'the issue of whether or not [a Member] has implemented the DSB recommendation'"[10], but also "in the light of any provision of any of the covered agreements."[11] On the other hand, the former relates to the status of the revised new measure. Both aspects are equally important though the "existence" matter is crucial in solving the threshold issue in these proceedings.

13. The dispute of *Australia – Automotive Leather (21.5 – US)* demonstrates similar fact pattern that deserves the reference by this Panel. In that dispute, Australia, subsequent to the DSB recommendations and rulings, ordered the repayment of the grants of A$8.065 million from Howe on 14 September 1999 and reported to the DSB that it had carried out the recommendations and rulings of the DSB. However, on the same date, Australia provided a loan of A$13.65 million on non-commercial terms to Howe's parent company, ALH. The U.S. requested an Article 21.5 panel and submitted that "it is clear that if the Panel can determine the "existence" of measures taken to comply with the ruling, it can consider whether the measures purportedly taken to comply were effectively any the r]TJ-23.7eDelme"".rmertee6)

assessed on the goods imported during the period of review, but also establish the amount of cash deposit for future imports of the subject product following the review. In this sense, the results of a review may be deemed to replace the original determination except in certain extraordinary cases (e.g., in case where the amount of subsidization found to be zero in a review the result of which will not lead to the termination of the original determination). Thus, China believes, due to the countervailing duty assessment system adopted by the US, the results of an administrative review may, at least in form, replace the original final determination.

15. In the particular factual circumstance of this dispute, the Review Determination was announced ten days after the Section 129 Determination took effect. Thus, the Review Determination established a new rate for cash deposit for the goods from Canada and replaced the rate in the Section 129 Determination. Such changes in the applicable duty rate deserve further consideration on whether the Review Determination, **in substance**, rendered the non-existence of the Section 129 Determination. Therefore, China is of the view that the facts presented by Canada in these proceedings, at least, have demonstrated that there is likelihood that the Review Determination may nullify the Section 129 Determination.

16. On the basis of the above, it follows that if the Review Determination is found not to be a "measure[] taken to comply", it is still of importance to establish whether, as a matter of fact, the Section 129 Determination is nullified by the Review Determination and therefore, no "measure[] taken to comply" exists. In China's opinion, in order to perform the duty of "mak[ing] an objective assessment of the matter before it" as required by Article 11 of the DSU, it is advisable for the Panel to keep the Review Determination within its terms of reference instead of disregarding it at the very beginning of the procedure. In the meantime, however, China wishes to emphasize that, if the Review Determination is held not to be a measure taken to comply, the panel need only review the Review Determination to the extent that it can make a ruling on whether the Section 129 Determination was rendered non-existent and it is not the task of this Panel to review the Review Determination as a "measure[] taken to comply" in parallel with the Section 129 Determination.

17. Furthermore, it has been consistently ruled by compliance panels that it may be appropriate to consider events occurring until the date of panel request.[15] Such a view supports the position that this Panel should consider the Review Determination, as relevant facts, which happened prior to the panel request.

18. In summary, China is of the opinion that, although the Review Determination may not be a measure taken to comply, it is closely linked to and may have an important effect on the existences of the purported measure taken to comply – the Section 129 determination. On such basis, China believes it is the mandate of this Panel to consider the Review Determination in these proceedings. China suggests that the Panel may assess: (i) whether Section 129 Determination fully implements the DSB recommendations and rulings and is consistent with the covered agreements; and (ii) if it does, whether the Review Determination invalidates the Section 129 Determination and consequently renders the non-existence of the latter.

III. Whether "Arm's-Length Transaction" and "Non-affiliation" Are One aedonseqr 703 Tmon" Are 10

and (ii) none of the external factors identified by the USDOC exists.[16] The US, in its First Submission, does not deny its application of these two conditions.[17]

20. In the following, China would like to share with the parties to this dispute as well as this Panel its views on this disputed issue.

A. The Analysis of the Appellate Body

21. In the course of reaching its conclusion, the Appellate Body largely relied on the interpretation of Article VI:3 of the GATT 1994. In its report, the Appellate Body stated that,

> The phrase "subsid[ies] bestowed ... indirectly", as used in Article VI:3, implies that financial contributions by the government to the production of inputs used in manufacturing products subject to an investigation are not, in principle, excluded from the amount of subsidies that may be offset through the imposition of countervailing duties on the processed product. Where the producer of the input is **not the same entity** as the producer of the processed product, it cannot be presumed, however, that the subsidy bestowed on the input passes through to the processed product. In such case, it is necessary to analyze to what extent subsidies on inputs may be included in the determination of the total amount of subsidies bestowed upon processed products. For it is only the subsidies determined to have been granted upon the processed products that may be offset by levying countervailing duties on those products.[18] (original emphasis in italic and added emphasis in bold)

The Appellate Body seemed to be of the view that if subsidies are bestowed on an entity different from the producer of the subject product, pass-through of subsidies cannot be presumed. In this respect, the Appellate Body did not emphasize that the transactions between the two entities shall be free of interference by any external factor. In addition, the Appellate Body found further supports from the definition of subsidy in Article 1 of the SCM Agreement as well as its interpretation of "benefit" in Canada – Aircraft.[19] In such analysis, the Appellate Body also focused on whether the cumulative condition in Article 1 of the SCM Agreement are met for the producer of the subject products and whether the producer of the subject product is an indirect recipient. All such legal analysis, in China's view, relies on the presumption that the two entities, producer of the input and producer of the subject product, are not the same entity.

22. The Appellate Body, in its analysis, did mention from time to time the term "arm's-length transactions". However, it did not put forward the implication of this term. Neither did it base its analysis on the presumption that the transactions at issue are free from influence by any external factors.

B. The Rulings of the Original Panel and the Appellate Body

23. Paragraph 167(e) of the Appellate Body Report is as follows,

> upholds the Panel's finding, in paragraph 7.99 of the Panel Report, that USDOC's failure to conduct a pass-through analysis in respect of arm's length sales of logs by

[16] First Written Submission of Canada, paras. 53 and 59.

[17] See the First Submission of the US, para. 34. The US argues that "[c]ontrary to Canada's arguments, nothing in the SCM Agreement, the GATT 1994, or the DSB's recommendations and rulings supports Canada's argument that an arm's-length analysis should be restricted to, in essence, a per se test based on affiliation alone".

[18] *US – Lumber CVDs Final*, WT/DS257/AB/R, Para. 140.

[19] *US – Lumber CVDs Final*, WT/DS257/AB/R, Paras. 142~143

> tenured harvesters/sawmills to unrelated sawmills is inconsistent with Articles 10 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994;

This ruling does mention the terms “arm’s length sales” and “unrelated” in parallel. However, referring to paragraph 7.99 of the original Panel Report would easily exclude any potential confusion

28. On the basis of the above, China is of the view that the five external factors identified by the USDOC could not exempt the US from conducting pass-through analysis with respect to sales of logs between unrelated harvesters/sawmills and sawmills.

IV. Conclusion

29. In conclusion, China is of the following views:

(i) Although the Review Determination may not be a measure taken to comply with the DSB recommendations and rulings at issue, it is closely linked to and may have an important effect on the existences of the purported "measure[] taken to comply" – the Section 129 determination; it is the mandate of this Panel to consider the Review Determination in these proceedings from the perspective of whether it invalidates the Section 129 Determination;

(ii) The five external factors identified and applied by the USDOC in the Section 129 Determination could not exempt the U.S. from conducting pass-through analysis as required by the rulings of the original panel and the Appellate Body with respect to sales of logs between unrelated harvesters/sawmills and sawmills.

ANNEX C-2

ORAL STATEMENT OF CHINA

21 April 2005

Introduction

1. Mr. Chairman, members of the Panel, it is our great honor to appear before you today to present the views of China as a third-party to these proceedings. As the Panel already has our written submission, we do not intend to restate all the comments contained in that document. Rather, we seek to offer the Panel a concise synopsis of the views of China in regards to the current dispute between Canada and the United States. In short, the issues we will focus on today pertain to (1) whether the administrative Review Determination of the US Department of Commerce is properly within the mandate of this Panel and (2) whether the five external factors identified by the US Department of Commerce exempt the US from conducting a pass through analysis as required by the original Panel and the Appellate Body in their rulings.

USDOC Administrative Review Determination

2. China is of the opinion that the mandate of an Article 21.5 panel is subject to two limitations. First, the mandate of a compliance panel shall be confined by the coverage of the measures referred to by the complaining party in its panel request. Second, as held by the Appellate Body in *Canada - Aircraft (Article 21.5 – Brazil*), "Article 21.5 proceedings are limited to those 'measures taken to comply with the recommendations and rulings of' the DSB."[1]

3. Applying the first limitation to this dispute, it seems indisputable that Canada specifically and explicitly refers to the DOC's Administrative Review Determination in its panel request and therefore, this measure passes the test of the first limitation. However, to reiterate what was said above, the mandate of this Panel shall be limited to those "measures taken to comply with the recommendations and rulings" of the DSB.

4. In this regard, given the facts of this dispute, China tends to agree with the US that the Review Determination may not be properly categorized as a "measure taken to comply". However, while China does not consider the Review Determination to be a "measure taken to comply," it also does not believe that a decisive answer has yet been reached in regards to whether the Review Determination is properly before this Panel. The

Australia in response to the DSB's ruling . . . in view of both its timing and its nature".[2] The panel determined that the "loan cannot be excluded from our consideration without severely limiting our ability of judge, on the basis of the United State's request, whether Australia has taken measures to comply with the DSB's ruling".[3] Consequently, believing there to be no presence of a compelling reason to act otherwise, the panel declined "to conclude that a measure specifically identified in the request for establishment . . ."[4] was not in the panel's terms of reference.

6. Consequently, in China's view, because Canada has submitted that a "measure taken to comply" has been invalidated by a subsequent measure, this Panel should at least be allowed to assess the relationship between the Section 129 Determination and the Review Determination. To exclude such an assessment would put this Panel at the risk of failing to make a comprehensive and well-founded judgment as to the "existence" of a measure taken to comply with the relevant DSB recommendations and rulings.

7. Looking at the particular facts of this dispute, the Review Determination was announced ten days after the Section 129 determination took effect which resulted in the establishment of a new rate for the cash deposit for Canadian goods and replaced the rate in the Section 129 determination. Such facts warrant further consideration on whether these changes rendered the non-existence of the Section 129 determination.

8. For all the reasons above, China believes that while the Review Determination itself may not be classified as a "measure taken to comply," it is inabilityco

length sales"; rather the only condition referenced is that the parties be unrelated. If the Appellate Body had intended to impose an extra condition, as the US actually did, it should have said so and partially reversed the original Panel's rulings. Therefore, China believes that the phrase "arm's length transactions" in the ruling of the Appellate Body should be construed to bear the same meaning as that of "unrelated".

13. Finally, China would like to present its own views on the five external factors identified by the US DOC. China believes that it is not necessary to satisfy this test of five external factors in order to require a pass-through analysis. China submits that an instance requiring a pass-through analysis is one where the direct recipient of the subsidies at issue is not the same entity as the producer of the countervailed subject product. Such an instance does not require the transactions to be free of influence by any external factors.

14. In addition, China believes that the five external factors may themselves be responsible for resulting in the pass-through of subsidies. However, to skip a pass-through analysis would presume that the subsidies are passed through in its entirety. Such an approach would most likely exaggerate the actual benefit indirectly bestowed on the subject product producers. China believes, by using an appropriate pass-through analysis, the effects of the five external factors can be fully accounted for without incorrectly calculating the actual amount of benefit on the subject product producers.

Conclusion

15. Mr. Chairman, that concludes the third-party statement of China. Thank you very much for the attention.

ANNEX C-3

THIRD PARTY SUBMISSION BY THE EUROPEAN COMMUNITIES

17 March 2005

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I. INTRODUCTION

1. The European Communities (EC) welcomes this opportunity to present its views in this DSU Article 21.5 proceeding. Canada claims that the United States has failed to implement the recommendations and rulings of the DSB in *United States –Lumber CVD Final*. The Appellate Body found that the countervailing duty imposed on softwood lumber was not based on a pass-through-analysis ensuring that the numerator is not artificially inflated through non-subsidised arm's length sales.[1]

2. The United States informed the DSB on 17

- The measure to be reviewed by this DSU Article 21.5 Panel is the continued application of a countervailing duty on the basis of the administrative review (superseding both the original determination and the Section 129 review).

6. This submission concludes that the Panel s

> WTO and the maintenance of a proper balance between the rights and obligations of Members.

12. Moreover, Article 3.7 of the DSU clarifies that Article 21.5 proceedings form part of the adjudication of an initial dispute by determining whether the defendant has withdrawn the measure or otherwise complied. Article 3.7 of the DSU reads:

> In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures.

13. This particular nature of the DSU Article 21.5 proceeding was explicitly recognised by the Panel in *Australia – Salmon (21.5)* which even considered a measure taken during the Article 21.5 proceeding on the basis of the following consideration:

> To do otherwise would, in our view, go against the principle of prompt settlement of disputes and could hamper implementation of both DSB recommendations in the original dispute and our findings in this case.[10]

14. Although the Appellate Body has not yet been faced with the precise point at issue here, it has already confirmed the above principle in *Canada – Aircraft 21.5*:

> In our view, the phrase "measures taken to comply" refers to measures which have been, or which should be, adopted by a Member to bring about compliance with the recommendations and rulings of the DSB. In principle, a measure which has been "taken to comply with the recommendations and rulings" of the DSB will *not* be the same measure as the measure which was the subject of the original dispute, so that, in principle, there would be two separate and distinct measures34: the original measure which *gave rise* to the recommendations and rulings of the DSB, and the "measures taken to comply" which are – or should be – adopted to *implement* those recommendations and rulings.[11]

15. Moreover, the Appellate Body clarified in the accompanying footnote 34:

> We recognize that, where it is alleged that there exist *no* "measures taken to comply", a panel may find that there is *no* new measure.

16. The Panel in *EC – Bed linen*, on which the United States relies, based itself explicitly on the *Australia – Salmon 21.5* case law and only discarded later review measures adopted by the EC as they were:

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[10] Panel Report, *Australia – Salmon (21.5)*, para. 7.21.
[11] Appellate Body Report, *Canada – Aircraft 21.5*, para. 36 (footnote omitted).

> not so clearly connected to the panel and Appellate Body reports concerned, both in time and in respect of the subject-matter, that any impartial observer would consider them to be measures "taken to comply".[12]

17. It is important to note that the two measures in *EC – Bed linen* were not dismissed from the scope of that 21.5 proceeding because they were "review measures". They were dismissed because they did not relate to the original dispute between the EC and India.

18. The EC submits that the case-by-case test applied by the Panel in *EC – Bed linen* should be further interpreted in line with the above considerations. In particular, it is the EC's submission that the scope of the 21.5 proceeding is determined by all aspects of the measure giving rise to the initial dispute. The purpose of the 21.5 proceeding is to determine whether or not the defendant has complied by either withdrawing that measure or bringing it otherwise in full compliance with the covered agreements. Whether a measure is taken to comply must then be decided on a case-to-case basis having regard to the original dispute (as defined by the terms of reference of the Panel) and the particular obligations of the covered agreement at issue.

19. As already confirmed by the DSU Article 21.5 Panel in *EC – Bed linen*, it is for the Panel alone to determine which measures it reviews when determining whether or not there is compliance.[13] Moreover, the appropriate date for assessing the compliance of a Member with the recommendations of the DSB is the date of establishment of the Article 21.5 panel.[14]

III. IS THE ADMINISTRATIVE REVIEW WITHIN THE SCOPE OF THIS PROCEEDING?

20. Canada claims that the United States failed to comply with the rulings and recommendations of the DSB (pass-through analysis) because none of the measures taken by the United States carries out such pass-through analysis.

21. The United States defends itself legally by arguing that the administrative review is a separate measure from the (i) original determination and (ii) Section 129 determination and, hence, not before the Panel.

22. The US view is based on the assumption that the measures to be attacked in countervailing duty cases are the determinations made by the investigating authorities. This is false. As is clarified in Article 10 of the *SCM Agreement*, the measure of concern is the "imposition of a countervailing duty", defined as a "special duty levied" for the purpose of offsetting a subsidy. The WTO Member imposing the countervailing duty is under the obligation to demonstrate through an investigation and is unembce

of both the subsidy and injury within the meaning of Article 21 of the *SCM Agreement*.

another administrative review would have overtaken the results of any Section 129 determination. A new panel would have to be started against this review, creating a "Groundhog Day" situation.

IV. CONCLUSION

30. For the above reasons, the EC considers that the Panel has full jurisdiction over the administrative review measure in this case and that the US preliminary objection should therefore be dismissed.

ANNEX C-4

ORAL STATEMENT
BY THE EUROPEAN COMMUNITIES

21 April 2005

"existence" of a measure taken to comply read in the light of the broader purpose of DSU Article 21.5 to secure a prompt solution of a dispute between WTO Members.[3] Canada also explicitly agreed with the EC's basic proposition that the jurisdiction of DSU Article 21.5 Panels must, therefore, be determined in a way that prevents implementation measures from becoming "moving targets".

5. There are different legal concepts on how to do this. Canada and China put much emphasis on the fact that the administrative review while not being the "measure taken to comply" undid the Section 129 determination and, therefore, falls (as a successor measure)-34 -1.153 l5 129se(ter)7.56(se of5(ww.02 0

> have been passed through, at least in part, from producers of logs to producers of softwood lumber (and remanufactured lumber) which are the products subject to the investigation.[8]

11. The US and Canada disagree on whether the approach taken by the US investigating authorities suffices to establish the correct amount of subsidisation.

12. The EC as a third party is not in a position to comment in detail on this fact-intensive issue e-.

19. The investigating authority must then provide an adequate and reasoned explanation why, on the basis of the information received, the amount of pass-through calculated in the individual case is appropriate and that its assessment of the f