

V. Findings and Conclusions

95. For the reasons set forth in this Report, the Appellate Body upholds the Panel's finding, in paragraphs 4.41, 4.50, and 5.1 of the Panel Report, that the First Assessment Review falls within the scope of the present Article 21.5 proceedings, insofar as the pass-through analysis is concerned.

96. Having so held, and in the absence of a request by the United States that we review the Panel's examination of the substance of the pass-through analysis in the First Assessment Review¹⁵⁰, the Appellate Body finds that the Panel acted within the scope of its authority in reaching the following legal conclusions:

- (a) in paragraph 5.2 of the Panel Report, that the United States failed, in the treatment of pass-through in the First Assessment Review, to implement properly the recommendations and rulings of the DSB by not conducting a pass-through analysis with respect to sales, found not to be at arm's length, of logs by tenured timber harvesters, whether or not they also produce lumber, to unrelated timber producers, whether or not they hold a stumpage contract;
- (b) in paragraph 5.2 of the Panel Report, that, in the First Assessment Review, the United States included in its subsidy numerator transactions for which it had not demonstrated that the benefit of subsidized log inputs had passed through to the processed product;
- (c) in paragraph 5.4 of the Panel Report, that, with respect to the First Assessment Review, the United States remains in violation of Articles 10 and 32.1 of the *SCM Agreement* and Article VI:3 of the GATT 1994; and
- (d) in paragraph 5.5 of the Panel Report, that, with respect to the First Assessment Review, the United States has nullified or impaired benefits accruing to Canada under the *SCM Agreement* and the GATT 1994.

¹⁵⁰*Supra*, para. 94.

97. The Panel recommended, in paragraph 5.5 of the Panel Report, that the United States bring its measures, found to be inconsistent with the *SCM Agreement* and the GATT 1994, into conformity with its obligations under those Agreements. Having found that the Panel acted within the scope of its jurisdiction in making such findings of inconsistency, it is not for us to make any additional recommendation, under Article 19.1 of the DSU.

Signed in the original in Geneva this 17th day of November 2005 by:

Merit E. Janow
Presiding Member

Luiz Olavo Baptista
Member

Giorgio Sacerdoti
Member