

26 April 1989

CANADA/JAPAN: TARIFF ON IMPORTS OF SPRUCE, PINE, FIR (SPF)  
DIMENSION LUMBER

*Report of the Panel adopted on 19 July 1989*  
*(L/6470 - 36S/167)*

TABLE OF CONTENTS

	<u>Page</u>
I. <u>Introduction</u>	2
II. <u>Factual Aspects</u>	3
A. - Definition of, and Information relating to, "Dimension Lumber", supplied by Canada	3
- Treatment of Dimension Lumber in Japan and JAS 600	4
B. - History of Japanese Tariff Evolution and Structure of	

## I. INTRODUCTION

1.1 On 8-9 October 1987 and 4-5 March 1988, Canada and Japan held consultations pursuant to Article XXIII:1 on Japan's tariff treatment of SPF dimension lumber imported from Canada. In a communication, circulated on 11 March 1988, Canada requested the GATT Council to establish a Panel under GATT Article XXIII:2 to examine the conformity with Article I:1 of the application of a tariff of 8 per cent on imports of spruce-pine-fir (SPF) dimension lumber by the Government of Japan. The Council, on 22 March 1988, agreed to establish a panel (C/M/218).

### 1.2 The Panel

II. FACTUAL ASPECTS

A.

applied before the lumber can be used generally in Japan for platform-frame construction. The JAS 600 grades are unique to dimension lumber in Japan and distinguish it from all other types of imported and domestic lumber.

2.8 The dimension lumber used in construction is almost exclusively 2 inches nominally in thickness (1.5 inches or 38mm actual) by five standard widths: 4, 6, 8, 10, 12 inches nominally (respectively 89, 140, 184, 235, 286mm actual). (The lumber is thus commonly referred to as a "2 by 4" (2 x 4) or a "2 by 6" etc.; in the Japanese regulations these correspond to the size codes of 204, 206, etc.) These North American standards were adopted without change in the JAS 600 lumber grading rules in Japan.

Treatment

2.14 Effective 1 April 1962, Japan's CCCN based tariff for processed coniferous wood under position 4413 was redefined on a species basis and divided into two sub-headings, one of which, "4413-3", devoted to specifically listed, and dimension-wise defined, coniferous woods, namely those of:

genus Pinus, genus Abies (other than California red fir, grand fir, noble fir and Pacific silver fir), genus Picea (other than Sitka spruce) and genus Larix, not more than 160mm in thickness.

Another sub-heading covered "other" woods, namely those of other coniferous species.

2.15 During the Kennedy Round (1964-67) and the Tokyo Round (1973-79) Japan did not grant tariff concessions on any of these tariff positions and Japan, consequently, had no obligation under Article II with regard to the absolute level of these tariffs. As a signatory of the Harmonized Commodity Description and Coding System (HS) Convention, Japan applied, as of 1 January 1988, a HS-based tariff schedule. The HS tariff heading of relevance in the context of the case brought by Canada was 4407, defined under the HS as "Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm." In accordance with the HS rules and prescriptions, heading 4407 was divided into seven six-digit sub-headings; one of the seven sub-headings, 4407.10, being specifically dedicated to coniferous woods.

2.16 Position 4407.10 in the Japanese Tariff comprised, in addition to the main sub-heading position, seven separate tariff lines (nineteen statistical codes) distinguishing tariff treatment by (i) degree of processing, as follows: (a) planed or sanded; (b) not planed or sanded; by (ii) lumber size, as follows: (a) more than 6mm, up to and including 160mm in thickness, and (b) thickness more than 160mm (considered to be mainly a raw material, for resplitting), and (iii) by genera and/or species.

2.17 "Dimension Lumber", as defined by Canada, in terms of (i) size, (ii) surface treatment (e.g. "planed") and (iii) genera and species (e.g. coniferous) would, generally, be subject to an unbound zero rate unless it fell into one of the tariff numbers and descriptions that follow:

HS 4407.10-110	Pine (Pinus), Spruce (Picea) <sup>1</sup> , or Fir (Abies) <sup>1</sup>
HS 4407.10-210	Larch (Larix)

Planed or sanded lumber of these genera were subject to the general rate of 10 per cent, reduced to a temporary rate of 8 per cent.

2.18 Genera and species of planed or sanded lumber, 160 mm or less in thickness, covered by sub-positions HS 4407.10-310 (incense cedar, a position bound at "0" for this species, mainly used for pencil making) and 4407.10-320 of "other coniferous trees" would be duty free. Among the "other coniferous trees" category were: hemlock and other genus Tsuga, Douglas-fir and other genus Pseudotsuga, white cedar, yellow cedar, and other genus chamaecyparis, western red cedar, redwood and agathis and, out of the Picea genus; Sitka spruce, and, out of the genus Abies, California red fir, grand fir, noble fir, Pacific silver/Amabilis fir.

---

<sup>1</sup>with the exceptions noted in 2.18 below.

C. Data on Coniferous Forest Resource Distribution, Lumber Production in North America and Imports, presented by Japan

2.19 Japan explained that pine was distributed naturally throughout much of the Northern Hemisphere and was also artificially cultivated in a number of countries in the Southern Hemisphere. Fir was likewise widely distributed in the Northern Hemisphere, north of Central America and North Africa, which constituted the southern distribution boundary. The spruce genus existed most plentifully in East Asia, north of the Southern Himalayas, and was also distributed in Central Asia, Europe and North America. Other kinds of softwoods imported in large quantities into Japan were those of the genus Tsuga (such as hemlock), genus Pseudotsuga (such as Douglas fir), and genus Chamaecyparis (such as yellow cedar), which were distributed in both North America and East Asia.

2.20 Japan provided in this respect some geographic charts, showing that genera and species referred to in the Japanese Tariff are grown in the whole of the Northwestern part of the American Continent. However, two species, i.e. California Red fir and noble fir, appear to have their natural stand almost exclusively on the territory of the United States. Grand firs appear to have their natural stand mainly in the United States and some in Canada. On the other hand, Pacific silver fir and Sitka spruce appear to have their natural stand mainly in Canada. Hemlocks appears to have its natural stand both in Canada and in the United States. Japan also provided statistical trade data, it being understood that the trade figures shown on pages 10 and 11 relate to planed lumber generally and not specifically to dimension lumber.

Coniferous Species, Standing-Volume Inventory Data

Volume, in million cubic metres,  
and percentage share in total

Genera/Species	Canada <sup>1</sup> (1981)		United States <sup>2</sup> (1977)	
	Volume	% share	Volume	% share



Imports of Planed Lumber into Japan<sup>1</sup>  
(Main suppliers, in order of importance)  
-in cubic metres-

	<u>of SPF (+ larch)</u>			<u>Other coniferous</u>
1963	666		339	
1964	499		360	
1965	1	(UK)	640	(CAN, US, PTW, DEU)
1966	3	(UK, DEU)	155	(KRR, PTW, THA, US)
1967	156	(US, USSR)	1458	(CAN, IND, US, CHN)
1968	0	(US, ALA)	1398	(CAN, CHN, US, CGO)
1969	74	(US, CHN, DEU)	1783	(US, CAN, CHN)
1970	361	(HKG, CAN, US, DEU)	1024	(CAN, CHN, US)
1971	4	(DEU, UK)	5816	(US, CAN, CHN)
1972	0		14882	(US, CAN, PTW)
1973	767	(CAN, PTW, US, FIN)	79180	(US, CAN, PTW, KRR)
1974	1468	(CAN, KRR, PTW, US)	247648	(US, CAN, PTW, KRR)
1975	9072	(CAN, PTW, US, SWD)	335890	(US, CAN, PTW, PNG)
1976	17345	(CAN, SWD, KRR, PTW)	360484	(US, CAN, PNG, KRR)
1977	23003	(CAN, US, SWD, FIN)	374454	(US, CAN, PNG, KRR)
1978	35580	(CAN, US, NZL, SWD)	347325	(US, CAN, PNG, PTW)
1979	50446	(CAN, US, NZL, SAF)	707666	(US, CAN, PNG, NZL)
1980	76584	(CAN, US, NZL, SWD)	747451	(US, CAN, PNG, NZL)
1981	65282	(CAN, US, NZL, SWD)	611523	(US, CAN, PNG, KRR)
1982	84645	(CAN, US, NZL, DK)	874346	(US, CAN, PHL, PNG)
1983	164545	(CAN, US, CHL, DK)	938887	(US, CAN, KRR, IND)
1984	158815	(CAN, US, CHL, NZL)	939022	(US, CAN, KRR, IND)
1985	192677	(CAN, US, CHL, NZL)	1123737	(US, CAN, KRR, PHL)
1986	233512	(CAN, CHL, US, NZL)	1477030	(US, CAN, KRR, PHL)
1987	424116	(CAN, CHL, US, KRR)	2190456	(US, CAN, KRR, IND)

Country Name abbreviations::

DEU = FR Germany; ALA = Australia; CAN = Canada; CHN = China; CGO = Congo;  
FIN = Finland; HKG = Hong Kong; KRR = Korea, Rep. ; PTW = Taiwan;  
SWD = Sweden; NZL = New Zealand; DK = Denmark; CHL = Chile; IND = India;  
IDN = Indonesia; PNG = Papua New Guinea; PHL = Philippines; SAF = South Africa

<sup>1</sup>Data presented by Japan.

Source: Japan Ministry of Finance.



Japan's Imports of Planed Softwood Lumber from Canada  
by Duty-Category<sup>1</sup>

Year	Subject to duty	Duty-free	Total	Percentage share of dutiabale imports
in cubic meters				
1965	-	329	29	0
1966	-	-	-	-
1967	-	1.090	1.090	0
1968	-	1.178	1.178	0
1969	-	346	346	0
1970	52	523	575	9
1971	-	125	125	0
1972	-	1.127	1.127	0
1973	560	29.673	30.233	2
1974	1.336	37.604	38.940	3
1975	8.889	45.930	54.819	16
1976	16.981	88.528	105.509	16
1977	21.892	128.305	150.197	15
1978	33.231	147.527	180.758	18
1979	45.066	318.355	363.421	12
1980	71.130	337.904	409.034	17
1981	55.034	257.159	312.193	18
1982	76.177	327.696	403.873	19
1983	146.326	360.066	506.392	29
1984	150.720	413.509	564.229	27
1985	181.157	462.921	644.078	28
1986	187.966	482.305	670.271	28
1987	348.438	793.624	1.142.062	31

<sup>1</sup>Data presented by Japan.

Source: Japan Ministry of Finance

2.21 On the basis of indications provided by Japan, the Panel was able to establish an analytical tabulation of the Japanese Tariff, showing separately types of lumber, including dimension lumber, submitted, on import, respectively, to a duty of 10 per cent (temporary 8 per cent) and types of lumber imported free-of-duty.

Analytical Tabulation of Japanese Tariff

<u>Genera</u>	<u>Species</u>
<u>Duty of 8% (temporary)</u> [10% general]	
Pinus/Pine	
Abies/Fir - 4 species excepted	
Picea/Spruce - 1 specie excepted	
Larix/Larch	
<u>Duty free (general)</u>	
Chamaecyparis/Cedar	
Tsuga/Hemlock	
Pseudotsuga/Douglas Fir	
"Other Coniferous"	
	<u>Ex Genus Abies:</u> *California Red Fir * Grand Fir ** Pacific Silver Fir
	<u>Ex Genus Picea:</u> ** Sitka Spruce

Note: The species marked \* have their natural stand exclusively, or mainly, on the territory of the United States of America. The species marked \*\* have their natural stand mainly on the territory of Canada. All other genera and species mentioned are grown on the whole western part of the North American Continent, including Canada, and also in other areas of the World.

2.22 Canada provided the following statistical data regarding recent imports of dimension lumber into Japan.

JAPAN'S IMPORTS OF DIMENSION LUMBER (MILLION BOARD FEET)

<u>1987</u>	<u>From Canada</u>	<u>From United States</u>
SPF, dutiable	200	negligible
Hem-Fir, duty free		
- Kiln Dried	44	100
- Green	32	negligible

Source cited: British Columbia Council of Forest

dimension lumber produced in B.C., while the production in the western USA tended to be concentrated in the "other" species' groups. Canadian exports to Japan of dimension lumber of SPF species accounted for 73 per cent of total dimension lumber exports to that country. United States' exports of dimension lumber to Japan were virtually all (kiln-dried) Hem-Fir, with minimal exports of SPF. Shipments of dimension lumber to Japan from other contracting parties were negligible. Canadian exports of SPF dimension lumber were in direct competition with United States exports.

3.5 Impairment to Canadian interests through tariff discrimination in Japan resulted both from lost market share (due to the price sensitivity of the market) and the additional duties attached to SPF lumber imports. The Canadian industry had estimated that, in the period 1974 to 1987 inclusive, lost sales, due to lost market share, amounted to some \$90 million (Canadian), while the duty paid over the same period was approximately \$26 million. The industry estimated that, if Japan were to continue to apply a discriminatory tariff to SPF dimension lumber, Canadian industry would suffer a further \$335 million shortfall from lost sales, and would pay an additional \$55 million in duties over the next five years.

3.6 Canada considered that, in law and in practice, dimension lumber of any species was treated in



3.13 Japan explained that, "dimension lumber" was not a universal, clearly defined product and, as of now,

3.17 In Canada's opinion, the fact that dimension lumber was a fully manufactured

(sugi) and cypresses (hinoki) had largely been depleted as sources of building materials in the wake of postwar economic recovery<sup>168.24 745.68 Tm/F8 11 T7epleted</sup>



3.26 Within the genera Abies and Picea, certain independent species were exempt from duty: namely,

- (i) in the Abies group: California red fir (Abies

3.28 Canada stated that it was not asking Japan to reclassify its Tariff, or to introduce into its tariff classification end-use criteria, but Canada could not accept that the Japanese Tariff might not be modified so as to accommodate "dimension lumber", if that were taken to be the solution. Japanese tariff classification practice

3.33 Canada explained that it could not accept that specific tariff classifications set out by the importing country should determine whether products were like or not. Acceptance of that position would imply a system whereby products which were not covered by the same tariff line could not be considered "like products". Applying the same logic, such an interpretation would also imply that goods covered by a single tariff line would be presumed to be like goods. The fact that goods were covered by a single tariff line most likely implied not more than that there was some sort of relationship amongst them. It would be no more logical to assume that goods covered under the same tariff line were "like products" than that goods under different tariff lines were not. This could be amply demonstrated, but it was also obvious from the case at hand, for example by reference to Japan's recent tariff reclassification of larch dimension lumber. Canada also could not accept assertions to the effect that separate classification for dimension lumber might threaten the stability of the tariff classification system, or that discussions regarding sub-divided items could impair the functioning of the entire tariff negotiation system in use based on tariff numbers. The greater danger, by far, to the trading system, in Canada's view, would be the acceptance of the Japanese argument that the tariff classification system should determine the "likeness" of products. This would provide countries with a means to avoid their Article I obligation with respect to like products, while leaving the affected exporting countries with no recourse.

3.34 Japan clarified in this connection that its stand was not that products classified in different tariff positions could not be "like" within the meaning of GATT. Obviously, different tariff classifications could be compared with a view to determining whether, or not, the products affected were like products within the meaning of GATT. Japan's position was that planed lumber, including dimension lumber, from SPF species, was not like planed lumber from other softwood species, in terms of product origin and -characteristics. In other words, it was not Japan's position that inclusion in different tariff classifications was a sufficient condition for "unlikeness", but that "likeness" under Article I:1 should be examined on the basis of tariff classifications. What was unacceptable to Japan was the "sub-classification" of Japan's Tariff, attempted by Canada, and the comparison for likeness of some of the products in different Japanese tariff classifications, chosen by the complainant.

3.35 As Japan understood the situation, Canada admitted that SPF planed lumber generally, and planed lumber of other coniferous species generally, were not like products. Yet, Canada was attempting to build a case by establishing within existing sub-positions of the Japanese Tariff sub-groups of goods with a degree of similarity (the so-called "dimension lumber"), so as to find allegedly "like products" that receive different tariff treatment, thereby forcing Japan into a concession that had not been negotiated. There was no precedent in GATT proceedings for such compulsory sub-classification. If a complainant in a GATT proceeding could engage in the type of sub-classification attempted by Canada, many nations' tariff schedules would be found to be rife with Article I violations. For example, various forms and shapes of silver, copper and aluminium would, it might be assumed, be considered as not being "like" products within the meaning of Article I:1. Consequently, contracting parties would be fully justified in applying different tariff rates to these products. If, however, tariff schedules could be sub-classified through GATT proceedings, a complainant might assert that silver-, copper- and aluminium wire, all of which conduct electricity (although with different levels of conductivity), must be treated the same for tariff purposes. Other examples could be imagined; for instance, while plywood and waferboard were not "like products", and Canada maintained different duty-rates on these products, a complainant might assert that plywood and waferboard used in the limited context of subflooring were "like" products. The fact that Canada applies a different tariff rate to oak flooring and other wood flooring might also be considered a GATT violation.

3.36 Canada explained that it was not attempting to create the "like product" obligation in Article I:1; it already existed. That obligation clearly referred to products, and more recent panel rulings had given less weight to tariff classification and greater consideration to other criteria. Support of the claim that the placement of a product in a tariff line should predominate over the actual characteristics of the product would create a

examined by panels in relation to the "like product" concept in Article I, and in Article III,

tariff of 8 per cent applied to the genus Pinus, but only to certain species of the genera Abies and Picea; other species of these groups were exempt and entered duty-free. In Canada's view, it would be misleading to search further for differences in physical origin by references to "genera", since genera distinctions were not as clear-cut as might be assumed. Species from the genus Abies were found in both the SPF and the Hem-Fir groups (the latter duty-free), despite being very closely related biologically. Canada felt that the distinctions in Japan's Tariff were based more on geography than on biology.

3.41 As regards physical properties, Canada observed that Japan had contended that differences in strength between t

had determined that the minor differences in physical characteristics were not sufficient reason to allow for different tariff treatment. Canada considered that the physical differences between SPF dimension lumber and other species of dimension lumber were akin to the differences between types of coffee, or between vodka and shochu, which had been found by the respective Panels to be insignificant in determining likeness.

3.45 Japan recognized that criteria concerning physical origin and physical properties were of importance

3.49 Canada, referring notably to the Coffee Panel and the Alcoholic Beverages Panel, stated that the end-use criterion would be influential in the determination of likeness. It was not required that the products be dedicated to a single end-use, but they had to have a similar relationship to the defined end-uses, hence the references in the Alcoholic Beverages Panel to end-uses that were "substantially identical" and "virtually identical". The intended end-use of dimension lumber was the construction of a 2X4 type building, in fact, the end-uses of all species of dimension lumber in construction were not "substantially/virtually identical", they were exactly the same. There was, admittedly, a minor, subsidiary end-use for dimension lumber in Japan, for export packaging. Japan contented that Hem-fir was the preferred dimension lumber for such packaging uses, but this was due solely to market-and price considerations (SPF being normally higher priced, and the 8 per cent duty on SPF was no help

E. Interpretation of MFN Principle in Article I:1; "Country and Product Discrimination"

3.54 In reply to a question raised by the Panel on the interpretation of Article I:1, Canada stated, at the first Panel hearing, that: "In Article I.1, the first obligation, that no discrimination shall be made between contracting parties, and the second obligation, that no discrimination shall be made between "like products", are both stipulated. Although the Japanese tariff did not



and substantial quantities of lumber that would be duty-free. There was no intention, whatsoever, by Japan to discriminate. The species of lumber that were subject to duty when imported into Japan were produced in many countries, not just Canada. The United States, New Zealand, Chile, Norway, Sweden, the Federal Republic of Germany, Korea Rep. and the USSR, among others, exported lumber to Japan that was subject to the 8 per cent duty. While it was true that the proportion of planed softwood lumber imports subject to duties was higher for Canada than for the United States, the proportion of planed lumber imports from Canada that was dutiable was lower than that for many other supplying countries and, for several years, following the establishment of the tariff-rate differential, Canada had been the largest supplier of duty-free planed lumber.

3.58 Japan stated that its imports of planed softwood lumber from Canada had grown from 150 thousand cubic metres in 1977 to 1.14 million cubic metres in 1987. Imports from Canada of these same woods subject to duty over this 10 year period grew from 21.9 thousand cubic metres to 348.4 thousand cubic metres, while the woods admitted duty-free grew from 128.3 - to 793.6 thousand cubic metres. Data furnished to the Panel by Canada, indicated, in Japan's view, that Canadian SPF dimension lumber had not only not been deprived of its market by US Hem-Fir dimension lumber, but Canadian kiln-dried SPF dimension lumber had seen its market share increase, in a growing overall dimension lumber m

4.2 The EEC recalled that the term "like product", or "like products", was used in a number of provisions of the General Agreement. The GATT drafting history confirmed that the term "like product" had different meaning in different contexts of the Draft Charter. Subsequent GATT practice indicated, as confirmed in the 1987 Alcoholic Beverages Panel report, that neither the General Agreement, nor the settlement of previous cases, gave any definition of such concept. The CONTRACTING PARTIES had, indeed, never developed a general definition of the term "like products". Past decisions on this question had been made on a case-by-case basis, after examining a number of relevant factors.

4.3 In the view of the Community, the term "like product" in Article I:1 had to be interpreted in the light of the objective of this fundamental provision of the General Agreement, i.e. to guarantee most-favoured-nation treatment. The objective was to avoid discrimination among other contracting parties, but not to avoid protective measures or a difference of treatment between imported and domestic products. It was, therefore, necessary to avoid an interpretation which would make the distinction between Article I and other provisions, such as Articles II, III and XI, unclear.

4.4 The importance of an interpretation of the notion of "like products" in Article I:1 which followed essentially the

discriminatory effect on Canadian exports of SPF dimension lumber vis-à-vis shipments of other dimension lumber from other sources.

B. New Zealand

4.9

before such outlays would take place. The discriminatory tariff was thus a substantial inhibiting factor to the marketing of Canadian and New Zealand timbers. The penalty tariff imposed on SPF and radiata dimensional lumber effectively gave

4407.10-110 1. "Of Pinus spp., Abies spp. (other than California red fir, grand fir, noble fir and pacific silver fir)

5.10 Tariff differentiation being basically a legitimate means of trade policy, a contracting party which claims to be prejudiced by such practice bears the burden of establishing that such tariff arrangement has been diverted from its normal purpose so as to become a means of discrimination in international trade. Such complaints have to be examined in considering simultaneously the internal protection interest involved in a given tariff specification, as well as its actual or potential influence on the pattern of imports from different extraneous sources. The Canadian complaint and the defence of Japan will have to be viewed in the light of these requirements.

5.11 "Dimension lumber" as understood by Canada is defined by its presentation in a standard form of measurements, quality-grading and

VI. CONCLUSIONS

6.1 In the light of the considerations set out in Section V above, the Panel could not establish that the tariff treatment of Canadian dimension lumber applied by Japan under its tariff number 4407.10-110 was inconsistent with Article I:1 of the General Agreement.