

**Before: NAFTA Article 1904 Dispute Resolution Panel**

**In The Matter Of:**

**Certain Softwood Lumber Products From  
Canada; Final Scope Ruling Regarding Entries  
Made Under HTSUS 4409.10.05**

Secretariat File No.  
USA-CDA-2006-1904-05

**Panel:** Lawrence J. Bogard, Panel Chair  
W. Jack Millar  
David J. Mullan  
Robert K. Paterson  
Sheldon L. Shepherd

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**MEMORANDUM OPINION AND ORDER**

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**June 25, 2008**

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## OPINION AND ORDER OF THE PANEL

This proceeding is yet another in the series arising from the United States Antidumping and Countervailing Duty Orders against Certain Softwood Lumber Products from Canada.<sup>1</sup> In this instance, Wynndel Box & Lumber Co., Ltd. (“Wynndel”) and Gorman Bros. Lumber, Ltd. (“Gorman”) challenge as unlawful Commerce’s March 3, 2006 determination that certain end-matched lumber products entering the United States under Harmonized Tariff Schedule of the United States (“HTSUS”) Subheading 4409.10.05 were within the scope of the Softwood Lumber Orders. The Complaints were brought pursuant to Article 1904.4 of the North American Free Trade Agreement (“NAFTA”),

The Panel now has before it a Motion to Dismiss the Complaints filed by the Investigating Authority, the U.S. Department of Commerce (“Commerce”). Commerce contends that this matter is moot because all issues arising in connection with the Softwood Lumber Orders were resolved in October 2006 when those Orders were revoked without the possibility of reinstatement pursuant to the Softwood Lumber Agreement of 2006 (“SLA 2006” or “Agreement”) between the governments of the United States and Canada. Wynndel and Gorman argue that this matter is not moot because the terms of the SLA 2006 subject their end-matched lumber products to Canadian export taxes, thereby bringing their claims within the “ongoing collateral consequences” exception to the mootness doctrine. They

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<sup>1</sup> *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada*, 67 Fed. Reg. 36067 (May 22, 2002); *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 Fed. Reg. 36070 (May 22, 2002) (hereinafter the “Softwood Lumber Orders”).

argue that, but for Commerce's allegedly unlawful scope determination, their products would not have been included within the scope of the SLA 2006.

For the reasons discussed below, this Panel concludes that the complaints of Wynndel and Gorman must be dismissed because the Panel lacks jurisdiction to hear them.

## **Background**

### **A. Chronology of Events**

Commerce issued the Softwood Lumber Orders in May 2002. In December 2005 the Petitioners in the investigations that resulted in the Softwood Lumber Orders requested a scope ruling as to whether end-matched lumber products classifiable under HTSUS Subheading 4409.10.05 were covered by the Orders.<sup>2</sup> In March 2006, over the objections of Wynndel and Gorman, Commerce determined that such end-matched lumber products were covered by the Softwood Lumber Orders.<sup>3</sup>

In April 2006, pursuant to NAFTA Article 1904.4, Wynndel timely requested panel review of Commerce's *Final Scope Ruling*. In May 2006, Gorman also entered a challenge to Commerce's *Final Scope Ruling*.

On September 12, 2006, prior to the appointment of a Chapter 19 Binational Panel in this proceeding, the United States Trade Representative and the Canadian Minister for

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<sup>2</sup> Final Scope Ruling Regarding Entries Made Under HTSUS 4409.10.05, Case Nos. A-122-838/C-122-839, Pub. Doc. 7184 (March 3, 2006) ("*Final Scope Ruling*"); Notice published in the Federal Register as *Final Scope Ruling Regarding Entries Made Under HTSUS 4409.10.05; Antidumping Duty Order: Certain Softwood Lumber Products from Canada*, 71 Fed. Reg. 26050 (May 3, 2006).

<sup>3</sup> *Id.*

International Trade signed the SLA 2006 on behalf of their respective governments. The SLA 2006 entered into force as amended on October 12, 2006. Of relevance to this proceeding, Articles III and IV of the SLA 2006 committed the United States to revoking the Softwood Lumber Orders and to refunding all antidumping and countervailing duties collected pursuant to them. Pursuant to Article III (1)(a) of the SLA 2006, the Softwood Lumber Orders were revoked on October 2, 2006, effective retroactively to May 22, 2002, the date upon which the Softwood Lumber Orders were originally issued.<sup>4</sup> Whatever antidumping and countervailing duties may have been collected with respect to Wynndel's and Gorman's products have been refunded.

This Panel was appointed on December 7, 2007, more than 14 months after the SLA 2006 was signed and the Softwood Lumber Orders were revoked.

**B. Terms of the SLA 2006**

Pursuant to Articles VI and VII of the SLA 2006, Canada agreed to impose certain export charges on products included within the scope of the SLA 2006.

The scope of the SLA 2006 is defined by Annex 1A of the Agreement, which largely mirrors the scope of the Softwood Lumber Orders as of the date the SLA 2006 took effect. Annex 1A expressly includes "end matched lumber products classifiable under HSTUS subheading 4409.10.05" within the scope of the Agreement.<sup>5</sup>

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<sup>4</sup> *Notice of Revocation of the Antidumping Duty Order against Certain Softwood Lumber Products from Canada*. 71 Fed. Reg. 61714, effective October 12, 2006 ("October 12, 2006 Revocation").

<sup>5</sup> Paragraph 1 of Annex 1A described the products included within the scope of the SLA 2006 as follows: *[Footnote continued.]*

Nothing in the language of the SLA 2006 or Annex 1A indicates that the scope for the SLA 2006 is to be governed by any determinations concerning the scope of the Softwood Lumber Orders. Rather, Article I of the SLA 2006 provides that products may only be added to or removed from the scope of the SLA 2006 by agreement between the United States and

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1. The products covered by the SLA 2006 are softwood lumber, flooring and siding (“Softwood Lumber Products”). Softwood Lumber Products include all products classified under subheadings 4407.1000, 4409.1010, 4409.1020, and 4409.1090, respectively, of the HTSUS, and any softwood lumber, flooring, and siding described below. These Softwood Lumber Products include:

- (a) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 millimeters;
- (b) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger jointed;
- (c) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;
- (d) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces whether or not planed, sanded, or finger-jointed; and
- (e) coniferous drilled and notched lumber and angle cut lumber.

Other merchandise that shall be included in the definition of Softwood Lumber Products are:

- (f) any product entering under HTSUS 4409.10.05 which is continually shaped along its end and/or side edges which otherwise conforms to the written definition of the scope; and
- (g) lumber products that USCBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the criteria listed in paragraph 4 below, as well as truss components, pallet components, and door and window frame parts, which may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Canada or, in the event that no such agreement is possible, through specific dispute resolution mechanisms. (“No products shall be added to, or removed from the scope of the SLA 2006 . . . without the Agreement of the Parties . . . . If there is a dispute as to whether a product is a Softwood Lumber Product, a party shall refer the matter to a Technical Working Group established under Article XIII(c). . . .”). The SLA 2006 makes no provision for private parties to dispute its scope.<sup>6</sup>

### Analysis

Commerce moves to dismiss Wynndel’s and Gorman’s Complaints on the grounds that the October 12, 2006 revocation of Softwood Lumber Orders and the subsequent refund of all antidumping and countervailing duty deposits collected pursuant to those Orders

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<sup>6</sup> Article I of the SLA 2006 states in pertinent part that:

2. No products shall be added to, or removed from, the scope of the SLA 2006 after April 27, 2006 without the agreement of the Parties, regardless of a decision, ruling, determination, or re-determination by a Party, the effect of which would be to:
  - (a) classify or reclassify a product within or outside a tariff item in Annex 1A; or
  - (b) determine or rule that a product is within or outside a product description in Annex 1A.
3. If there is a dispute as to whether a product is a Softwood Lumber Product, a Party shall refer the matter to a Technical Working Group established under Article XIII(C), by providing written notice of the referral to the other Party.
4. Within 60 days after a Party provides written notice under paragraph 3, the Technical Working Group shall review the matter and, where possible, provide a non-binding recommendation to the Parties regarding whether the product in question falls within or outside a tariff item or product description in Annex 1A.
5. If, following the 60-day period specified in paragraph 4, the Parties fail to resolve the matter, either party may initiate dispute settlement under Article XIV.
6. If the tribunal established under Article XIV issues an award clarifying whether a product falls within or outside a tariff item or product description in Annex 1A, the award shall govern whether the SLA 2006 applies to the product.

rendered Wynndel's and Gorman's claims moot.<sup>7</sup> Complainants respond that their claims are not moot because they continue to suffer adverse collateral consequences from Commerce's allegedly unlawful scope determination in the form of Canadian export taxes imposed pursuant to the SLA 2006.

**A. Jurisdiction of This Panel**

The jurisdiction of this Panel is described in NAFTA Art. 1904.3<sup>8</sup> which, when read in conjunction with NAFTA Annex 1911, instructs that this Panel's jurisdiction parallels that of the United States Court of International Trade ("CIT") as conferred by 28 U.S.C. § 1581(c). *See also* 19 U.S.C. 1516a(g). 28 U.S.C. § 1581(c) confers on the CIT (and therefore this Panel) jurisdiction over actions commenced pursuant to 19 U.S.C. § 1516a.<sup>9</sup>

19 U.S.C. §1516a (a)(2)(B) gives the Panel the authority to review only specified determinations made by Commerce. Of direct relevance to this proceeding, 19 U.S.C. § 1516a(a)(2)(B)(vi) confers on the CIT (and thus this Panel) jurisdiction to review Commerce's scope determinations, as follows:

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<sup>7</sup> Commerce also frames its argument in terms of jurisdiction, specifically that a court (and thus a Binational Panel) may only review determinations made pursuant to existing antidumping or countervailing duty orders. Consequently, Commerce asserts that the revocation of the Softwood Lumber Orders divested this Panel of jurisdiction to review determinations made pursuant to the – now revoked – Softwood Lumber Orders.

<sup>8</sup> NAFTA Art. 1904.3 states that:

The panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

<sup>9</sup> 19 U.S.C. § 1581(c) states, "The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930 {19 U.S.C. § 1516a}."

The determinations which may be contested under subparagraph (A) are as follows:

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(vi) A determination . . . as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

Absent a reviewable determination described in 19 U.S.C. § 1516a(a)(2)(B), a NAFTA Chapter 19 Binational Panel lacks jurisdiction to hear a claim brought before it.

The Complainants seek this Panel’s review of Commerce’s March 2006 *Final Scope Ruling* on end matched lumber. That scope ruling was an administrative determination issued to clarify the Softwood Lumber Orders. Those Orders, however, were undisputably revoked in October 2006, effective retroactively to the date on which they were issued. The Softwood Lumber Orders no longer exist. Consequently, the *Final Scope Ruling* is not a “determination . . . as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing . . . antidumping or countervailing duty order.” Because our jurisdiction is limited by 19 U.S.C. § 1516a(a)(2)(B)(vi) to scope determinations made pursuant to existing orders, we lack jurisdiction to hear the Wynndel and Gorman Complaints. We therefore dismiss the Complaints.

To the extent that Wynndel and Gorman are actually challenging the scope of the SLA 2006, section 1516a and the express terms of the SLA 2006 preclude any review by this Panel. Executive agreements such as the SLA 2006 are not among the matters over which this Panel has jurisdiction, as enumerated in 19 U.S.C. § 1516a (a)(2)(b). Article I,

paragraphs 2-6, of the SLA 2006 expressly disclaim the authority of any tribunal to amend the scope of the SLA 2006. *See supra* note 5.<sup>10</sup>

The Panel is unpersuaded by Gorman's argument that administrative determinations interpreting antidumping or countervailing duty orders survive revocation of the orders they interpret. Gorman states that "The CAFC . . . has cited determinations as valid administrative practice even after their corresponding orders had been revoked." Gorman Br. in Response to Panel Order of March 14, 2008 at 2, *citing PPG Industries Inc. v. United States*, 978 F.2d 1232, 1242 (Fed. Cir. 1992). In so doing, Gorman incorrectly equates an administrative practice with an administrative determination made in the context of an antidumping or countervailing duty order.

Administrative practices survive the revocation of orders in which they are applied because such practices may be followed in reviewable administrative determinations made pursuant to other orders. Administrative determinations, on the other hand, do not survive revocation of the orders they interpret because they manifest the application of an administrative practice only in the circumstances of the revoked order.

An administrative determination is the application of an administrative practice to a specific set of facts or circumstances. An administrative practice is not reviewable by the

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<sup>10</sup> Indeed, were a cognizable ground available upon which this Panel might seek to exercise jurisdiction over a challenge to the SLA 2006, it is unclear whether such a challenge would present a justiciable issue. The Supreme Court has indicated that certain executive actions taken in the course of conducting foreign policy are outside the province of the judiciary. The SLA 2006 may well be one such issue. *See Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918) (stating that "[t]he conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislature 'the political' Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."). *See also Medellin v. Texas*, 128 S. Ct. 1346, 1360 (2008).

federal courts (or a NAFTA Panel) in isolation; it is reviewable only in the context of an administrative determination. Neither 19 U.S.C. § 1516a, nor any case cited to this Panel, provide us with the authority to review an administrative practice independently of an existing determination.

We note that the Federal Court of Appeals for the D.C. Circuit has similarly concluded that an administrative determination did not survive revocation of the Softwood Lumber Orders, and declined to hear a complaint challenging the NAFTA Binational Panel review process as unconstitutional. In *Coalition for Fair Lumber Imports v. United States*, 471 F.3d 1329 (D.C. Cir. 2006) the Court stated, “[a]fter the SLA . . . there is no determination left on which to hang our hat. By permanently revoking the AD/CVD orders, the SLA renders the underlying [] determination void.”

Gorman urges that the D.C. Circuit’s *Coalition for Fair Lumber Imports* decision is inapposite because the D.C. Circuit’s section 1516a jurisdiction is limited to reviews of the constitutionality of the NAFTA Panel system. *See Gorman Br. in Response to Panel Order of March 14, 2008 at 3.* We disagree, as the statute limits the jurisdiction of both the D.C. Circuit and this Panel to reviewing administrative “determinations.”<sup>11</sup> While it does not

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<sup>11</sup> The D.C. Circuit’s jurisdiction rests in 19 U.S.C. § 1516a(g)(4), which grants its authority to hear challenges “regarding a determination,” as follows:

An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act . . . implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action.

A “determination” in this context is defined by § 1516(a)(g)(1) by express reference to § 1516a(a), the same source [*Footnote continued.*]

govern this Panel, the conclusion of the D.C. Circuit Court of Appeals that no reviewable “determination” survived the SLA 2006 is informative guidance.

The D.C. Circuit, moreover, is not the only tribunal to have concluded that the determinations made pursuant to the Softwood Lumber Orders are no longer capable of review following revocation. Both the United States Court of Appeals for the Federal Circuit (“CAFC”) and another NAFTA Panel have reached the same conclusion. In *Canadian Lumber Trade Alliance v. United States*, 517 F.3d 1319, 1338-39 (Fed. Cir. 2008), the CAFC held that the claims of the Canadian Lumber Trade Alliance (seeking to block the application of the Continued Dumping and Subsidy Offset Act to the Softwood Lumber Orders) were moot because the Softwood Lumber Orders had been retroactively revoked without the possibility of reinstatement pursuant to the SLA 2006.

Similarly, another NAFTA Binational Panel has held that in light of the revocation of the Softwood Lumber Orders, the final dumping and countervailing duty determinations no longer represented determinations that the Panel had the authority to affect. That Panel observed that:

{T}he revocation of the antidumping duty order against Certain Softwood Lumber Products from Canada terminates the present controversy. Any further proceedings before this Panel which result in the complete or partial revocation of the antidumping order will not be effective, as the order will already have been revoked. . . . The antidumping duty order having been revoked, there is no longer any determination or legal circumstance which this Panel’s future determinations might affect.

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for this Panel’s jurisdiction. Thus, the D.C. Circuit was interpreting the same language in *Coalition for Fair Lumber Imports* that we interpret here.

Consequently, the Panel notes, the resolution of challenges to the Orders “can have no force since there is no underlying antidumping duty order outstanding.” *In the Matter of Certain Softwood Lumber Products From Canada: Final Affirmative Less Than Fair Value Sales Determination*, Decision of the Panel, Panel No. USA-CDA-2002-1904-02, at 4-5 (Jan. 5, 2007) (quoting *Am. Chain Ass’n v. United States*, 746 F. Supp. 116, 119 (Ct. Int’l Trade 1990)).

**B. Remedial Authority -- Mootness**

Had the Panel concluded that we have jurisdiction in this matter, we nevertheless would have dismissed the Complaints as moot because we cannot provide Complainants with the relief that they seek. Article III of the U.S. Constitution<sup>12</sup> limits U.S. courts to the review of live cases and controversies. *Preiser v. Newkirk* 422 U.S. 395, 401 (1975). As explained, *supra*, this Panel sits in the stead of a federal court, and, as such, we are limited to the review of live cases or controversies involving disputes as to which it is in the Panel’s power to affect a remedy.

This Panel’s remedial authority is limited to the remand of determinations specified in 19 U.S.C. §1516a (a)(2)(B), where such determinations are not supported by substantial evidence or are not otherwise in accordance with law. Among the reviewable determinations

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<sup>12</sup> Article III, section 2 of the U.S. Constitution states, “Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; -- to all cases affecting ambassadors, other public ministers and consuls; -- to all case of admiralty and maritime jurisdiction; -- to controversies to which the United States shall be a party; -- to controversies between two or more states; -- between a state and citizens of another state; -- between citizens of different states; -- between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.”

described in section 1516a(a)(2)(B) are scope determinations made pursuant to existing antidumping or countervailing duty orders. While this Panel may at one time have had the authority to remand the *Final Scope Ruling*, the revocation of the Softwood Lumber Orders nullified that authority and rendered the Complainants' claims moot. The sole remedy we are authorized to provide is the remand of an administrative determination, and given that we are not presented with a determination to remand, there is nothing for us to review. We are unable to afford the Complainants any relief.

The injuries for which Complainants seek redress are not caused by the Softwood Lumber Orders, but rather by the Government of Canada in its implementation of the SLA 2006. Patently, this Panel is not authorized by 19 U.S.C. § 1516a to review any aspect of the SLA 2006. The Complainants' briefs and statements at oral argument make it clear that the remedy they seek is a declaration that the *Final Scope Ruling* is unlawful. They would hope to use such a declaration to convince the Canadian Government to pursue an amendment to the scope of the SLA 2006. Complainants thus ask the Panel to provide an additional arrow in their quiver of political arguments for modifying the SLA 2006. It is outside our power to so arm them.

**C. Remedial Authority – Collateral Consequences**

In certain circumstances dismissal of a moot case may be avoided on the grounds that the challenged action, while no longer directly remediable, has continuing collateral consequences for the complainant. *See NEC Corporation v. Untied States*, 151 F. 3d 1361, 1369 (Fed. Cir. 1998). This case is not one of those circumstances. There is no cognizable

scenario under which a favorable determination from this Panel will provide the Complainants with any relief.

Complainants contend that the scope of the SLA 2006 is dependent on the legality of the scope of the Softwood Lumber Orders.<sup>13</sup> The text of the SLA 2006, however, directly contradicts this contention. The SLA 2006's scope is expressly defined by Annex 1A of that agreement. That the products listed closely parallel the scope of the Softwood Lumber Orders does not surprise given that the SLA 2006 was negotiated by the U.S. and Canadian Governments to put an end to the ongoing softwood lumber dispute. The close parallel in the scope of the SLA 2006 and the Softwood Lumber Orders, however, does not support a legal conclusion that the former is governed by the latter.

As noted above, Article 1 of the SLA 2006 provides for specific mechanisms for challenges to its scope. In this context, Article 1 states "No products shall be added to, or removed from, the scope of the SLA 2006 . . . without the agreement of the Parties, regardless of a decision, ruling, determination, or re-determination by a Party, the effect of which would be to: . . . determine or rule that a product is within or outside a product description in Annex 1A." Thus, even if this Panel were to remand the *Final Scope Ruling* as unlawful and Commerce were to conclude on remand that Complainants' end-matched lumber products were outside the scope of the Softwood Lumber Orders, that re-determination could not change the scope of the SLA 2006.

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<sup>13</sup> See *Gorman Opposition to Commerce's Motion to Dismiss*, Doc. 40, at 2 (stating that "were the Panel to reverse Commerce's unlawful scope determination, there would be no authority for the two governments to apply the injurious SLA restrictions"); *Wynndel Opposition to Commerce's Motion to Dismiss*, Doc. 38, at 3 (stating "Wynndel's end-matched products were, and remain to this day, subjected to the strictures of the SLA 2006, including the export taxes provided for therein, as a direct consequence of Commerce's *Scope Ruling*.")

A ruling by this Panel would not relieve Complainants of the collateral consequence they assert exists as a result of Commerce's *Final Scope Ruling*, specifically the imposition of Canadian export taxes. As there is no legal nexus through which our decision might affect the scope of the SLA 2006, such a decision would be merely advisory and unquestionably prohibited. See *United Public Workers of America v. Mitchell*, 330 U.S. 75, 89 (1947) (stating that "federal courts, established pursuant to Article III of the Constitution, do not render advisory opinions."); *Lieutenant Colonel Stearns v. Brigadier General Wood*, 236 U.S. 75, 75 (1915) (determining that "the province of courts is to decide real controversies and not to discuss abstract propositions").

Complainants assert that this Panel should apply the collateral consequences exception to mootness in this case, pursuant to *Hylsa, S.A. de C.V. v. United States*, 469 F. Supp. 2d 1341 (Ct. Int'l Trade 2007). But *Hylsa* is distinguishable on two grounds. First, unlike the Softwood Lumber Orders, the antidumping duty order at issue in *Hylsa* had not been revoked without the possibility of reinstatement. Consequently, the *Hylsa* court was not capable of providing the relief that *Hylsa* sought, namely the remand of a determination made pursuant to an existing order. Second, the court found that *Hylsa*'s challenge had direct legal consequences for future administrative reviews, specifically the potential for revocation of the Orders following three consecutive reviews with *de minimis* dumping margins. As explained above, a determination by this Panel regarding the lawfulness of the *Final Scope*

*Rulings* cannot have any future legal affect on the scope of the SLA 2006 or any other proceeding.<sup>14</sup>

The Complainants cite *Ad Hoc Shrimp Trade Action Committee v. United States*, 515 F.3d 1372 (Fed. Cir. 2008) as support for the proposition that the Panel must issue a decision on the lawfulness of the *Final Scope Ruling* even if our decision cannot directly affect the scope of the SLA 2006. The Federal Circuit in *Ad Hoc Shrimp* did say that “[a] federal court cannot avoid ruling on the legality of a government action when review of the action is otherwise properly before the court simply because there is no guarantee that fixing the error will change the ultimate result.” *Id.* at 1382-83 (emphasis supplied). Complainants’ reliance on *Ad Hoc Shrimp* is unavailing because, as we concluded, *supra*, the *Final Scope Ruling* is not properly before the Panel.

### **Conclusion**

Upon consideration of the Investigating Authority’s Motion to Dismiss, the responses of the Complainants thereto, and upon all other papers and proceedings before this Panel, we hereby grant the Investigating Authority’s Motion. The Complaints are dismissed.

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<sup>14</sup> Similarly, the Court of Appeals decision in *Gerdau Ameristeel Corp. v. United States*, 519 F.3d 1336 (Fed. Cir. 2008), does not require us to conclude Complainants’ claims are not moot. As in *Hylsa*, the plaintiff’s claims in *Gerdau* were related to an existing antidumping order and a remand from the CIT had the potential to directly affect other administrative proceedings.

It is so ORDERED.

Signed in the original by:

Lawrence J. Bogard 06/24/2008

Lawrence J. Bogard, Panel Chair Date

Sheldon L. Shepherd 06/24/2008

The Honorable Sheldon L. Shepherd, Panelist Date

W. Jack Millar 06/24/2008

W. Jack Millar, Panelist Date

David Mullan 06/24/2008

Professor David Mullan, Panelist Date

Robert K. Paterson 06/24/2008

Professor Robert K. Paterson, Panelist Date