

## RENEWAL OF THE U.S. – CANADA SOFTWOOD LUMBER AGREEMENT

**OBJECTIVE:** Renewal of a Softwood Lumber Agreement (SLA) between the United States and Canada to allow for the continued stable product supply of framing lumber for retailers, home builders and consumers.

**BACKGROUND:** The most recent Softwood Lumber Agreement (Lumber IV) between the U.S. and Canada – which placed an export tax on Canadian softwood lumber imported into the U.S. – expired on October 12, 2015. There was a one-year cooling off period where neither country was allowed to take administrative actions or engage in litigation regarding the dispute. The modern softwood lumber dispute between the two countries began in 1982 with the current dispute (Lumber V) starting once the last agreement expired in 2015.

Tensions have escalated in the last few years with the U.S. placing both countervailing duties (CVD) and antidumping duties (AD) on Canadian softwood lumber imports. Canada has responded by appealing the decision to a North American Free Trade Agreement (NAFTA) dispute resolution panel, and formally requesting World Trade Organization (WTO) consultations with the U.S.

At the center of the dispute is the claim from U.S. lumber producers that the Canadian lumber industry is *unfairly subsidized*, as federal and provincial governments administer 94 percent of timberlands in Canada. The prices charged to harvest the timber (stumpage fee) are set administratively, as opposed to the practice in the U.S. where prices are set mostly through the competitive market. The Canadian government and lumber industry disputes this assertion based on a number of factors, including that Canadian timber is provided to a wide range of industries, and the lack of specificity make it ineligible to be considered a subsidy under U.S. law.

Over the nine years of the 2006 agreement, Canadian share of the U.S. market averaged 28 percent annually. U.S. market share during that period averaged 71 percent annually. There is relatively little softwood lumber imported into the U.S. comes from countries other than Canada.

**COMMERCE DEPARTMENT INVESTIGATION AND DUTIES:** On November 25, 2016, the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITON), an ad hoc association of American softwood lumber producers, petitioned the U.S. Department of Commerce and the U.S. International Trade Commission (ITC) to restore what it considers to be the conditions of fair trade in softwood lumber between the U.S. and Canada. Overall, the COALITON represents nearly 70 percent of softwood lumber produced in the U.S. In its petition, the COALITON requested the imposition of duties to offset the harm caused by Canadian softwood lumber production subsidies.

On November 2, 2017, the Department of Commerce finalized AD and CVD on Canadian softwood lumber. The U.S. International Trade Commission (ITC) on December 7, 2017, upheld the Commerce Department's decision concerning duties.

Most Canadian firms are paying a combined AD/CVD rate of 20.83 percent. For the five companies (Canfor, J.D. Irving, Resolute, Tolko, and West Fraser) directly involved in the investigation, the rates vary between 9 percent and 23 percent. Duties do not apply to softwood lumber harvested in the Atlantic Provinces of Newfoundland and Labrador, Nova Scotia, and Prince Edwards Island.

**CEDAR SHAKES AND SHINGLES AFFECTED:** In March 2018, the U.S. Custom and Border Protection (CBP) ruled that imported cedar shakes and shingles from Canada were subject to both sets of duties. That decision was made despite almost all cedar shakes and shingles used in the U.S. being made in Canada. It marks the first time since 1991 that Canadian shakes and shingles have been subject to duties. A coalition of Canadian shakes and shingles manufacturers appealed the decision to the U.S. International Trade Administration; however, the duties were upheld.

**NAFTA AND WTO PANELS:** The Canadian government has responded on several fronts in the ongoing softwood lumber dispute. First, it requested the establishment of a NAFTA dispute resolution panels to review the final CVD and AD rates. Second, it has moved forward in bringing a WTO case by requesting consultations with the U.S.

A NAFTA dispute resolution panel—allowed under NAFTA Chapter 19— is brought to assess whether a country’s investigating authorities are following its own laws. Under NAFTA Chapter 19, a party can seek a binational review panel to assess whether a party’s investigating authority’s decision is consistent with its trade remedy laws.

A challenge at the WTO is brought to determine whether a trade action is compatible with the country’s agreements, in this case the Antidumping Agreement and the Agreement on Subsidies and Countervailing measures. Canada maintains that the Commerce Department impermissibly used certain methodologies in calculating the dumping duties, and also used the practice of zeroing, which the WTO has ruled impermissible. It also requested consultation on CVD duties, which it claims the U.S. improperly described its timber programs as subsidies.

On November 28, 2018, a binational NAFTA panel was formed to review the ITC’s decision that the U.S. industry was injured by lumber exports from Canada. The panel is comprised of three Canadian trade experts and two American trade experts.

On April 9, 2019, a WTO panel issued a ruling which agreed with Canada that the so-called "Differential Pricing Methodology” used by the U.S. in investigating alleged dumping was inconsistent with international anti-dumping rules. However, the panel sided with the U.S. on the other disputed issues in the case including the U.S. practice of “zeroing” to determine anti-dumping duties on softwood lumber. Zeroing calculates duties based on whether the foreign domestic price of a product exceeds its U.S. import price after it is adjusted for transportation and handling costs. On June 4, 2019, Canada announced they were appealing the WTO panel’s ruling.

**CURRENT STATUS:** Litigation remains the most likely outcome for resolving the dispute. Experts believe the protracted legal battle will ultimately be resolved utilizing third-party arbitration. The last time a trade case was brought by the U.S. lumber industry, it took several years to resolve and there were duties placed on Canadian imports until a new agreement was reached.

**NLBMDA POSITION:** NLBMDA supports reaching an agreement on the longstanding U.S. – Canada softwood lumber dispute that brings stability and predictability to the pricing and availability of softwood lumber without the imposition of duties.

**REQUEST:** NLBMDA is working with congressional champions on a response to the dispute, and requests your support later this year regarding any congressional response to the trade dispute.

For more information contact Kevin McKenney, Director of Government Affairs, at [kevin@dealer.org](mailto:kevin@dealer.org) or 202.367.2480.