

## 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 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 18 months 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.

**CANADA'S RESPONSE TO DUTIES:** The Canadian government has responded on several fronts in the ongoing softwood lumber dispute. On November 14, 2017, it requested the establishment of a NAFTA dispute resolution panel to review the final CVD rates. Subsequently, on December 5, Canada also requested the establishment of a NAFTA dispute resolution panel to review to final AD rates. On April 9, WTO established dispute resolution panels on both the CVD and AD rates.

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. The U.S. has proposed eliminating Chapter 19 as part of NAFTA renegotiations, a position Canada opposes.

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.

**SOFTWOOD LUMBER PRICE INCREASES:** Domestic softwood lumber prices have increased 35 percent since the investigation started in November 2016 according to the Producer Price Index published by the Bureau of Labor Statistics. The Random Lengths Framing Lumber Composite price has increased 22 percent in the past year, and the Random Lengths Structural Panel composite price has increased 12 percent in the past year. The prices have come down after setting record highs in June.

**CONGRESSIONAL RESPONSE:** [171 House lawmakers sent a letter](#) to Commerce Secretary Wilbur Ross and Ambassador Robert Lighthizer, the U.S. Trade Representative, asking that the U.S. return to the negotiating table and reach a long-term agreement with Canada. Sens. Jim Inhofe (R-OK) and Jack Reed (D-RI) are now circulating a similar letter in the Senate that closes on **Friday, August 17**.

**CURRENT STATUS:** Officials from the U.S. and Canada continue to publicly express support for a new SLA. However, Canada has transitioned to a path of litigation. Experts believe a protracted legal battle is likely and will ultimately be resolved utilizing third-party arbitration. The last time a trade case was brought by the U.S. lumber industry in the dispute, 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:** Ask Senators to sign on to the letter from Sens. Inhofe and Reed to U.S. trade officials that closes on Friday, August 17. In addition, thank lawmakers who signed the House letter to U.S. trade officials in June.

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