

United States Requests Consultations with Canada under the 2006 Softwood Lumber Agreement

March 30, 2007

WASHINGTON DC – United States Trade Representative Susan C. Schwab announced today that the United States has requested formal consultations with Canada under the 2006 Softwood Lumber Agreement (SLA) regarding compliance with several of its provisions. This action reflects the normal operation of the SLA's dispute resolution mechanism, which was adopted to provide a formal channel to resolve U.S. or Canadian concerns regarding softwood lumber trade without resorting to litigation. The consultation request covers several federal and provincial programs, as well as Canada's interpretation of the Agreement's provisions adjusting export levels, including the level triggering the Agreement's mechanism on import surges.

"The governments of Canada and the United States made a huge investment in the Softwood Lumber Agreement to resolve more than 20 years of litigation," said U.S. Trade Representative Susan Schwab, "and I know that both governments are committed to keeping the Agreement in place for its full term. In order to ensure that the Agreement functions as intended, it is important that both sides comply fully with SLA provisions.

"U.S. and Canadian officials have been engaged in discussions regarding the proper implementation of the Agreement's 'surge' mechanism, as well as various provincial and Federal assistance programs. Our decision to continue these ongoing consultations in a more formal mode, as contemplated by the SLA, is meant to highlight the importance of these issues to the United States. We are asking for consultations to resolve our differences and ensure that the SLA is implemented as intended."

One concern identified in the consultation request involves Canada's application of certain adjustments to export levels based on differences between expected and actual conditions in the U.S. market. Because the Agreement contemplates that these adjustments should already have been made, Canada should have collected additional export taxes on lumber exports from interior British Columbia to the United States in January. Further, lumber exports from Ontario in February should have been lower.

A second concern identified in the request is the assistance programs maintained by Quebec and Ontario and the Canadian federal government. These programs provide benefits, such as grants, loans, loan guarantees, and tax credits, to the Canadian forest products sector in excess of C\$2 billion and raise questions under the Agreement. The consultations will assist the United States in obtaining clarification from Canada concerning the operation of these programs.

The SLA entered into force on October 12, 2006. The Agreement contains several mechanisms for exchanging views and clarifying the terms of its operation and includes provisions intended to adapt it to evolving conditions in the North American lumber industry. Consultations are the first step in the SLA dispute settlement process and are designed to facilitate the exchange of views and resolve differences short of arbitration.

Background

Under the Softwood Lumber Agreement, Canada agreed to maintain export measures on Canadian exports of softwood lumber products to the United States. When lumber prices are above US\$355 per thousand board feet (MBF), Canadian lumber exports are unrestricted. If prices fall, each Canadian exporting region can choose to be subject to an export tax with a soft cap or a lower export tax with a hard cap, or “volume restraint”. The measures become more stringent as the market price of lumber declines. Regions with a soft cap such as British Columbia are subject to a “surge” mechanism. If a region’s exports of softwood lumber products to the United States exceed the soft cap, known as the “trigger volume,” by greater than 1% in a particular month, Canada must retroactively collect an additional export tax of 50 percent on all softwood lumber products from that region that entered the United States during the month in question. Current lumber prices are \$278 per thousand board feet (MBF).

To ensure that the caps react to changing market conditions, they are based in part on expected U.S. lumber consumption, which is calculated monthly based on data from a previous twelve month period. To account for precipitous declines in consumption, paragraph 14 of Annex 7D of the Agreement provides for an adjustment to expected U.S. consumption in a future quarter – and to export caps -- when the difference between actual and expected U.S. consumption in any quarter is greater than 5 percent.

Moreover, the United States and Canada have committed not to take action to circumvent or offset the commitments made in the Agreement. Quebec and Ontario and the Canadian federal government have put in place several programs that raise questions under the SLA’s anti-circumvention provisions. This includes several grant, loan, loan guarantee, and tax credit programs, “forest management” programs, programs that encourage the production of remanufactured lumber, and funding to promote forest sector innovation and investment and expand market opportunities for Canadian wood-product producers.

U.S. officials have expressed their concerns regarding these Canadian programs on several occasions over the last several months. Most recently, U.S. and Canadian officials discussed these issues at the February 22-23 meeting of the bilateral Softwood Lumber Committee, which also saw the establishment of several technical working groups and have begun work to resolve various data discrepancies relating to softwood lumber exports from Canada.

Under the Agreement, consultations are to be held within 20 days. If the matter is not resolved within 40 days of the request for consultations, either party may refer the matter to arbitration under the rules of the London Court of International Arbitration. If the matter is referred to arbitration, there is an approximately two-month process to select the arbitrators, and the arbitral tribunal will endeavor to issue its award within six months of its appointment.