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TRIBUNAL ORDERS CANADA TO CURE BREACH OF THE SOFTWOOD LUMBER AGREEMENT

WASHINGTON, D.C. – Acting U.S. Trade Representative Peter Allgeier announced today that an LCIA tribunal (formerly the London Court of International Arbitration) has issued its decision on a remedy in the softwood lumber arbitration in which Canada was found to have breached the 2006 Softwood Lumber Agreement between the United States and Canada (SLA) by failing to calculate quotas properly during the first six months of 2007.

“We are pleased with the tribunal’s decision,” said Acting U.S. Trade Representative Peter Allgeier. “It confirms the view of the United States that the SLA is an enforceable agreement. This dispute settlement proceeding is now at an end. We look forward to Canada working quickly to cure the breach, consistent with the decision of the tribunal.”

Ambassador Allgeier continued, “I am grateful to the many officials of the United States government, in particular the attorneys and staff of the Department of Justice, for their tireless work on this dispute, which was key to securing this positive result.”

In the decision released today, the tribunal agreed with the United States that Canada must provide a compensatory remedy for violating the terms of the SLA. The tribunal determined that Canada must cure the breach within 30 days. The tribunal further determined that, as an appropriate adjustment to compensate for the breach, Canada must collect an additional 10 percent ad valorem export charge on softwood lumber shipments from Eastern Canadian provinces until CDN \$68.26 million (US \$54.8 million at current exchange rates) has been collected.

Under the provisions of the SLA, while Canada has some flexibility in determining an appropriate means of curing the breach, Canada must implement the compensatory adjustments determined by the tribunal unless Canada cures the breach some other way. If Canada does not take action in accordance with the tribunal’s decision or otherwise cure the breach within 30 days, the United States is authorized by the SLA to impose the additional charges itself.

Background

Under the SLA, Canada agreed to impose export measures on Canadian exports of softwood lumber products to the United States. When the prevailing monthly price of lumber, determined

per the Agreement, is above US\$355 per thousand board feet (MBF), Canadian lumber exports are unrestricted. When prices are at or below US\$355 per MBF, each Canadian exporting region has chosen to be subject to either an export tax with a soft volume cap or a lower export tax with a hard volume cap. The measures become more stringent as the market price of lumber declines. This month, the prevailing monthly price of lumber is US\$207 per MBF. Therefore, the Western Canadian provinces (referred to in the SLA as Option A Regions (including British Columbia and Alberta)) are subject to the maximum export charge of 15 percent and the Eastern provinces (referred to in the SLA as Option B Regions (including Ontario, Quebec, Manitoba, and Saskatchewan) face the most stringent volume restraints provided under the Agreement in addition to an export charge of 5 percent (the maximum possible for those provinces).

The SLA includes an adjustment mechanism to ensure that the export volume caps are calculated appropriately under rapidly changing market conditions. The tribunal decided in March 2008 that Canada breached the SLA by failing to make downward adjustments for the Eastern provinces during the first half of 2007. Canada's failure to make the downward adjustments resulted in greater levels of shipments from Canada than were allowed under the Agreement, which exacerbated already difficult market conditions. In the decision issued today, the tribunal agreed with the United States that, because Canada failed to make the required downward adjustments in the first half of 2007, Canada must provide a compensatory remedy in order to cure the breach. The tribunal rejected Canada's argument that it cured the breach simply by virtue of making the adjustment beginning in July 2007. The tribunal ordered Canada to cure its breach within 30 days, the maximum period permitted under the SLA. Canada has some flexibility in determining an appropriate means of curing the breach. If Canada fails to cure the breach in 30 days, Canada must make compensatory adjustments to the export measures, as determined by the tribunal. Specifically, Canada must collect an additional 10 percent ad valorem export charge on softwood lumber shipments from Eastern Canadian provinces until CDN \$68.26 million (US \$54.8 million at current exchange rates) has been collected. If Canada fails to cure the breach and does not adjust the export measures, the United States is authorized to impose duties in an amount not to exceed the additional export charges that the tribunal has specified as compensation for the breach.

The SLA entered into force on October 12, 2006, and is expected to remain in force for seven years, with the possibility of extension for an additional two years. The SLA provides for binding arbitration to resolve disputes between the United States and Canada regarding interpretation and implementation of the Agreement. Under the SLA, arbitration is conducted under the rules of the LCIA, and there is no appeal from the decision of the tribunal.

On January 18, 2008, the United States requested through the Department of Justice a second arbitration on a separate issue. Under the SLA, the United States and Canada committed not to take action to circumvent the commitments made in the Agreement. The SLA expressly states that providing certain grants or other benefits to Canadian softwood lumber producers circumvents the Agreement. Quebec and Ontario have put in place several assistance programs that provide grants or other benefits to softwood lumber producers that violate the SLA's anti-circumvention provisions. These include a number of grant, loan, loan guarantee, and tax credit programs, as well as so-called "forest management" programs and programs that promote wood production. A decision is expected in the second arbitration later in 2009.

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