

CANADA-U.S. SOFTWOOD LUMBER TRADE DISPUTE

Suggested Elements of a Resolution Agreement

A British Columbia Proposal
December 2002

I INTRODUCTION

The Province of British Columbia continues to seek a durable solution of the softwood lumber trade dispute. To this end, British Columbia is proposing that Canada and the United States enter into an agreement that would provide a framework for actions leading to a long-term resolution.

British Columbia envisages that the agreement would have three main purposes:

1. The agreement should provide for participating provinces to make policy changes that would lead to a durable solution of the dispute. In this regard, the agreement could be constructed to build on the current initiative by the Department of Commerce to prepare and distribute a *Policy Bulletin* on softwood lumber.
2. The agreement should provide for the stabilization of the North American softwood lumber market until such time as the policy changes contemplated by the agreement have been made. Interim measures should be established that more effectively address the short-term interests of both Canadian and U.S. producers than do the current duties.
3. The agreement should provide mechanisms to prevent future disputes and build a more integrated North American lumber market.

British Columbia proposes that the agreement provide for the participation of individual provincial governments at their discretion. For participating provinces, the agreement:

- defines a process for policy change;
- establishes a new interim measure to replace existing anti-dumping and countervailing duties;
- defines how the existing trade litigation will be addressed; and
- creates a commitment for Canada and the United States to establish a binational softwood lumber council.

II ELEMENTS OF AN AGREEMENT

British Columbia supports the need for market-based policy reform to provide for a long-term resolution of the dispute. Accordingly, British Columbia is proposing that the parties agree on the following process:

1 Policy Change Process

- 1.1 The U.S. will commit to timely completion and publication of the Department of Commerce *Policy Bulletin*.
- 1.2 Upon request by participating provinces, accompanied by specific policy change proposals, the U.S. will conduct consultations in good faith with those provinces with respect to the conformance of those proposed policy changes with the principles and criteria set out in the *Policy Bulletin*. Following those consultations, the parties may negotiate a termination agreement.
- 1.3 Alternatively, if requested by a participating province, the Department of Commerce will carry out a Changed Circumstances review of the countervailing duty order. This review will be initiated within 15 days following notification by a participating province of the specific policy changes that have been implemented and will be conducted on an expedited basis. Participating provinces will not request a Changed Circumstance review until after the earlier of: (a) 30 days following the publication of the *Policy Bulletin*; or (b) March 31, 2003.
- 1.4 The results of the Changed Circumstance review will be made effective and the order revoked as to that participating province effective as of the dates of implementation of the policy changes in that province.

2. The Interim Measure

In the interests of achieving a durable, policy-based resolution of the underlying dispute, British Columbia supports an Interim Measure that would replace the current AD and CVD duties.

- 2.1 Effective [date], the Interim Measure defined in paragraph 2.3 will, subject to paragraphs 2.4 and 2.5, be applied to all exports of covered products produced from logs originating in participating provinces. The covered products are “softwood lumber products” as defined by the Department of Commerce in the Final Determination with the exceptions noted by the Department (i.e. trusses, I-joists, box spring frames, etc.)

- 2.2 For the purposes of paragraph 2.3, the lumber reference price is based on the Framing Lumber Composite index published by Random Lengths. The lumber reference price will be set at the beginning of each month and will be calculated as the simple average of the weekly composite price for the four weeks ending at the beginning of the preceding month.
- 2.3 The Interim Measure shall consist of an ad valorem export tax levied by Canada on a first mill basis to all shipments of covered products at the following rates:
- 17.5% when the lumber reference price is less than or equal to US\$290 per mfbm;
 - 12.5% when the lumber reference price is greater than US\$290 per mfbm but less than or equal to US\$320 per mfbm;
 - 7.5% when the lumber reference price is greater than US\$320 per mfbm but less than or equal to US\$350 per mfbm;
 - 2.5% when the lumber reference price is greater than US\$350 per mfbm but less than or equal to US\$380 per mfbm and
 - 0% when the lumber reference price is greater than US\$380 per mfbm
- 2.4 The maximum taxable value of any product is US\$500 per mfbm.
- 2.5 Western red cedar and eastern white pine products are exempt from the export tax.
- 2.6 Notwithstanding paragraph 2.1, the following exceptions and qualifications apply:
- Companies excluded in the exclusion process are exempted from the tax;
 - Independent remanufacturers are exempted from the tax;
 - Companies that have been allocated company-specific CVD rates by the Department of Commerce pursuant to the expedited review or administrative review processes will pay an export tax at rates proportional to the rates specified in paragraph 2.3 with the factor of proportionality being the ratio of the company-specific CVD rate to the national CVD rate.
- 2.7 The Interim Measure will remain in effect until the CVD order is terminated or revoked pursuant to paragraph 4.4.
- 2.8 Export tax payments are not refundable. The proceeds from the tax may not be disbursed to producers of covered softwood lumber products.
- 2.9 If the Department of Commerce initiates a new anti-dumping action against softwood lumber in the future, the impact of the Interim Measure on softwood lumber prices and production costs in Canada shall be taken into account in calculating dumping margins.

3. The Bilateral Softwood Lumber Council

- 3.1 Canada and the United States will establish a bilateral Softwood Lumber Council with a mandate to supervise the implementation of this agreement; provide a mechanism for resolving disputes; provide a forum for consultation and cooperation between the parties on sustainable forest management and market development; and such other matters as the parties may agree.

4. Disposition of Current AD and CVD Cases

Termination of Anti-dumping Case

- 4.1 The anti-dumping duty order applicable to softwood lumber exports from participating provinces will be revoked effective upon the agreement.

Continuation of Countervailing Duty Case

- 4.2 The countervailing duty order applicable to U.S. softwood lumber exports from participating provinces will remain in place but the rate will be reduced to a 0% level effective upon the agreement going into place.
- 4.3 The countervailing duty order will remain in place, at the lower rate indicated in paragraph 4.2, until terminated or revoked pursuant to paragraph 4.4.

Termination of Countervailing Duty Case

- 4.4 The countervailing duty order will remain in place until revoked pursuant to: (a) a termination agreement; or (b) changed circumstance review after implementation of policy reforms in accordance with paragraphs 1.3 and 1.4; or (c) ongoing litigation. Participating provinces have the right to pursue CVD litigation before the WTO and NAFTA until such time as they expressly waive that right pursuant to a termination agreement or the order is revoked pursuant to a changed circumstance review.

Settlement of Outstanding Liabilities and Return of Cash Deposits

- 4.5 Final liability for CVD and AD duties for the period from May 22, 2002 up to the commencement of the agreement shall be set at zero and all cash deposits made in respect of these duty assessments shall be promptly returned upon the agreement coming into effect.