



CANADA

TREATY SERIES **1996/16** RECUEIL DES TRAITÉS

COMMERCE

Softwood Lumber Agreement between the Government of CANADA
and the Government of the UNITED STATES OF AMERICA

Washington, May 29, 1996

In force May 29, 1996 with effect from
April 1, 1996

COMMERCE

Accord sur le bois d'oeuvre résineux entre le gouvernement du
CANADA et le gouvernement des ÉTATS-UNIS D'AMÉRIQUE

Washington, le 29 mai 1996

En vigueur le 29 mai 1996 avec effet à compter
du 1^{er} avril 1996

SOFTWOOD LUMBER AGREEMENT
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Government of Canada and the Government of the United States of America (hereinafter referred to as the Parties):

HAVE AGREED AS FOLLOWS:

ARTICLE I

ACTIONS BY THE UNITED STATES

1. This Agreement is intended to ensure that there is no material injury or threat thereof to an industry in the United States from imports of softwood lumber from Canada. Domestic producers accounting for more than 60 percent of the total U.S. production of softwood lumber, within the meaning of 19 U.S.C. 1671a(c)(4)(D) and 1673a(c)(4)(D), have submitted the letters attached at Annex 1 and the Department of Commerce will rely on the representations contained in those letters. Title VII of the *Tariff Act of 1930* sets out possible independent additional grounds on which the Department may dismiss a petition if the Department finds such grounds exist.
2. The United States shall not self-initiate an investigation under Title VII of the *Tariff Act of 1930*, as amended, or any successor law, with respect to imports of softwood lumber from Canada. If a petition is filed under Title VII of the *Tariff Act of 1930*, as amended, or any successor law, with respect to imports of softwood lumber from Canada, the Department of Commerce shall dismiss the petition.
3. The United States shall not take action under sections 201-204 of the *Trade Act of 1974*, as amended, or any successor law, with respect to imports of softwood lumber from Canada.
4. The United States shall not take action under section 204 of the *Agricultural Act of 1956*, as amended, or any successor law, with respect to imports of softwood lumber from Canada, except as required for the collection of permit numbers under Article IV(1)(l).
5. The United States shall not initiate an investigation or take action under sections 301-305 of the *Trade Act of 1974*, as amended, or any successor law, with respect to imports of softwood lumber from Canada.

ARTICLE II
CANADIAN EXPORT PERMIT

1. Canada shall place softwood lumber on the Export Control List under the *Export and Import Permits Act*, as amended, and require a federal export permit for each exportation to the United States of softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta and shall require any person to which such a permit is issued to keep records relating to its issuance for 60 months after the date of issuance of the permit.

2. Canada shall collect a fee on issuance of a permit for export to the United States of softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta for quantities above the established base in a given year. The fee shall be determined in accordance with the following schedule:

Exports (Yearly)	Fee
(a) 14.7 billion board feet (the established base) or less	Free
(b) More than 14.7 and less than or equal to 15.35 billion board feet (the lower fee base)	US\$50 per thousand board feet
(c) Amounts in excess of 15.35 billion board feet (the upper fee base)	US\$100 per thousand board feet

3. The fees described in paragraph 2 shall be adjusted for inflation on April 1 each year, beginning in 1997, based on the annual percentage change in the simple average of the annual value in:

- (a) the Consumer Price Index, All Urban Consumers, All items less food and energy, published by the U.S. Department of Labor, Bureau of Labor Statistics; and
- (b) the Consumer Price Index for Canada, All-Items, published by Statistics Canada, catalogue no. 62-010-XPB,

over the previous calendar year.

4. Prior to the beginning of each year, Canada shall allocate the established base and the lower fee base for that year among Canadian softwood lumber exporters, except that Canada shall make every effort to make the allocation for the first year of this Agreement by July 1, 1996, but in no event later than September 30, 1996.

5. Subject to paragraph 9, until Canada makes the first allocation referred to in paragraph 4, Canada shall collect the fee under subparagraph 2(b) during a calendar quarter from each exporter who exports softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta to the United States following the date on which exports from Canada in that quarter equal or exceed 28.75 percent of the established base (excluding any additional quantities of exports allowed under Article III -Trigger Price). For quantities in excess of 650,000,000 board feet that are subject to a fee under this paragraph, Canada shall collect the fee set out in subparagraph 2(c), in lieu of the fee set out in subparagraph 2(b).

6. Subject to paragraph 9, upon allocation by Canada of the established base and the lower fee base among Canadian softwood lumber exporters, Canada shall collect the applicable fee under subparagraph 2(b) or (c), as determined in accordance with paragraph 7, during a calendar quarter from each exporter of softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta whose exports to the United States in that quarter exceed 28.75 percent of its yearly allocation of the established base (excluding any additional quantities of exports allowed under Article III -Trigger Price). The fee shall apply with respect to the quantity of the exporter's exports of softwood lumber to the United States during the calendar quarter that exceeds 28.75 percent of the exporter's yearly allocation of the established base (fee quantity).

7. The exports on which a fee is payable under paragraph 6 shall be deemed to be exports within the lower fee base set out in subparagraph 2(b), except that if the sum of:

- (a) the exporter's fee quantity for the then calendar quarter, and
- (b) the exporter's fee quantities in previous calendar quarters of the same year

exceeds the exporter's lower fee base allocation, such exports, to the extent of the excess, shall be deemed to be exports within the upper fee base set out in subparagraph 2(c).

8. Canada may remit, following collection:

- (a) at the end of a calendar quarter, fees collected under paragraph 6, to the extent that such fees were collected on exports of softwood lumber to the United States not in excess of 28.75 percent of the established base;
- (b) at the end of the year, one-half the amount of the fees collected under paragraph 2, if exports of softwood lumber to the United States did not exceed 28.75 percent of the established base in any calendar quarter of that year, to the extent that such fees were collected on exports not in excess of the established base;
- (c) at the end of the year, one-third the amount of the fees collected under paragraph 2, if exports of softwood lumber to the United States exceeded 28.75 percent of the established base in any calendar quarter of that year, to the extent that such fees were collected on exports not in excess of the established base.

The quantity of exports for which fees have been remitted under subparagraph (a) shall be counted against an exporter's allocation of the established base, up to the point that the exporter has used up its allocation of the established base, in which case all further quantities shall be counted against the exporter's lower fee base allocation.

9. Canada shall not be required to collect a fee under paragraph 5 or 6 at any time from an exporter:

- (a) whose production of softwood lumber was less than 10 million board feet in the previous calendar year, or
- (b) whose production of softwood lumber during the preceding calendar quarter was substantially disrupted (*i.e.*, reduced by at least 25 percent by comparison to the same quarter of the previous year) due to a worker

strike, or a mill fire, forest fire or other *force majeure*, provided that Canada provides notice and documentation to the United States within 60 days following the event.

10. The fees collected under this article shall be calculated based on the prevailing conversion rate of the Bank of Canada as published in the Bank of Canada Daily Memorandum of Exchange Rates.
11. Nothing in this Agreement shall prevent the transferability of allocations referred to in paragraph 4 between exporters of softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta.

ARTICLE III

TRIGGER PRICE

1. For each calendar quarter that the average price per thousand board feet as published in Random Lengths for Spruce-Pine-Fir, Eastern, Kiln Dried, 2x4 random length, Standard & Better, Great Lakes delivered, equals or exceeds:
 - (a) US \$405, in any calendar quarter during the period April 1, 1996 through March 31, 1998, or
 - (b) US \$410, in any subsequent calendar quarter,

Canada may export to the United States, without a fee, 92 million additional board feet of softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta. The average U.S. price during a quarter shall be the simple average of the weekly price, as published in Random Lengths, for the weeks that end within the three months that comprise the quarter.

2. The 92 million board feet that results from the application of paragraph 1 to a particular quarter may be exported during the four quarters following that quarter.

ARTICLE IV

INFORMATION COLLECTION AND COOPERATION

Collection of Information

1. Canada shall require exporters to the United States of softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta, in connection with the issuance of a permit under the *Export and Import Permits Act*, as amended, or any successor law, and the United States shall require importers of such softwood lumber in connection with the customs entry of the softwood lumber into the United States under section 484 of the *Tariff Act of 1930*, as amended, or any successor law, to furnish to it the:
 - (a) name of manufacturer/mill;
 - (b) name of exporter;
 - (c) province of first manufacture;

- (d) 10 digit U.S. H.S. Commodity Code and product description;
- (e) quantity in board feet, cubic metres or square metres;
- (f) value (US\$);
- (g) U.S. port of entry;
- (h) U.S. Customs entry number;
- (i) U.S. entry date;
- (j) name of importer (Canada to begin collection after July 1, 1996);
- (k) mode of transportation (Canada to begin collection after July 1, 1996);
- (l) export permit number (United States to begin collection as soon as practicable after the entry into force of this Agreement); and
- (m) indication of whether the importation for which the permit has been issued pertains to quantities described in subparagraph (a), (b) or (c) of Article II(2), or Article III (United States only - collection to begin as soon as practicable after the entry into force of this Agreement),

of the softwood lumber subject to the exportation or importation.

Cooperation

2. Unless the Parties otherwise agree, representatives of the Parties shall exchange, on a monthly basis, aggregated data collected pursuant to paragraph 1, for the purpose of reconciling quarterly their data covering the preceding calendar quarter and the year to date.
3. Canada shall provide to the United States, on a monthly basis, data on the total fees collected and remitted pursuant to Article II covering the preceding calendar month and the year to date, broken down by lower fee base and upper fee base.
4. If the Parties cannot reconcile their aggregated data, they shall exchange information regarding exports by specific exporters, importers or manufacturers, and if necessary, regarding specific exports and imports in order to achieve reconciliation.
5. The Parties shall cooperate for purposes of detection and prevention of false designations of province of first manufacture and quantities exported. Where the U.S. Customs Service has reason to believe that an exporter has failed to obtain a permit as required or has made a false designation of province of first manufacture or quantities exported, it may request the Export and Import Controls Bureau of the Department of Foreign Affairs and International Trade (Bureau) to visit the premises of the exporter to review the records referred to in Article II (1) and the premises of the manufacturer of goods at issue, in order to ensure compliance with the *Export and Import Permits Act*, as amended, or any successor law. The Bureau will conduct the visit following consultations between the Parties to define the nature of the problem and to agree on the information required. Canada shall share information relating to any such visit with the U.S. Customs Service.
6. Nothing in this Agreement shall be construed to prevent a Party from imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to the implementation of this article.

7. The aggregated data collected under subparagraphs 1(c) through (g), and the aggregated data pertaining to fees collected and remitted pursuant to Article II, need not be treated as confidential under Article VI.

ARTICLE V

DISPUTE RESOLUTION

Consultations

1. Either Party may request in writing consultations with the other Party regarding any matter referred to in subparagraph 16(a) or (b) or that the Party considers may constitute a breach of this Agreement. Consultations shall commence within 20 days of the date following delivery of the request.
2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations. To this end, the Parties shall:
 - (a) provide sufficient information to enable a full examination of the issue;
 - (b) treat any confidential information exchanged in the course of consultations in accordance with the provisions of Article VI,

and may mutually agree to have the matter resolved through the assistance of an appropriate neutral third party.

Referral to Arbitration

3. If, within 35 days following the delivery of a request for consultations, the Parties fail to resolve a matter that the requesting Party considers to constitute a breach of this Agreement, other than the taking of an action by the United States inconsistent with Article I, the requesting Party may initiate arbitral proceedings by delivering written notice of arbitration to the other Party. The notice shall specify the nature of the alleged breach. Arbitral proceedings may not be initiated or proceed with respect to any matter that has been referred to an auditor under paragraph 16, except where such matter has been referred to an arbitral panel under paragraph 17.

Appointment of Arbitral Panel

4. Arbitral panels shall be composed of three panelists who may be selected from any of the following:
 - (a) the WTO indicative list of governmental and non-governmental panelists;
 - (b) the roster established under Article 1124(4) of the NAFTA; and
 - (c) the roster established under Article 2009(1) of the NAFTA.
5. The Parties shall endeavour to agree on the panel chair within 15 days following the date of delivery of the notice of arbitration. If the Parties fail to agree on the selection of a chair by that date, the Parties shall decide by lot which of them shall select the chair. That Party shall select the chair within five days thereafter from among those roster members who are not citizens of that Party.

6. Within 10 days after the panel chair is selected, each Party shall select a panelist from among those roster members who are citizens of the other Party. If a Party fails to select a panelist within the time periods specified, the panelist shall be selected by lot from among the roster members who are citizens of the other Party.
7. Panelists shall be independent of, and not be affiliated with or take instructions from, a Party, including a state or provincial government. Panelists shall be selected strictly on the basis of objectivity, reliability, sound judgment and to the extent possible, expertise appropriate to the substance of the matter in dispute. Panelists shall comply with the *Code of Conduct for Dispute Settlement Procedures under Chapters 19 and 20 of the North American Free Trade Agreement* ("Code of Conduct"), and in particular shall be free of any conflict of interest or appearance of such a conflict.
8. If a Party believes that a panelist is in violation of the *Code of Conduct*, the Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this article. If a member of the arbitral panel withdraws from the panel prior to completing his or her duties, a replacement panelist shall be appointed in the same manner as the panelist who has withdrawn from the panel.
9. The remuneration of panelists, their travel and lodging expenses and all general expenses of the panel shall be borne equally by the Parties. Panelists shall be remunerated and their expenses paid in accordance with the rates established by the NAFTA Commission for panelists appointed to dispute settlement panels under the NAFTA. Each panelist shall keep a record and render a final account of his or her time and expenses, and the panel shall keep a record and render a final account of all general expenses.

Submissions

10. Within 15 days following the appointment of the third panelist, the complaining Party shall deliver to the panel and to the responding Party a written submission outlining its position and all documents relied on in support of its claim, which may include information supplied to the Party by industry representatives.
11. Within 20 days following the receipt of the submission, the responding Party shall deliver to the panel and to the complaining Party a written counter-submission outlining its position and all documents relied on, which may include information supplied to the Party by industry representatives.
12. The arbitral panel shall conduct the arbitration in the manner it considers appropriate, including establishing procedures to ensure the protection of confidential information and relating to matters such as the participation of experts and whether oral hearings should be held.

Decision

13. No later than 30 days after it receives the counter-submission, the arbitral panel shall issue a written decision, together with its findings and reasons therefor, with regard to whether the matter complained of constitutes a breach of this Agreement. The decision shall contain no recommendation or instruction to the Parties. A decision of the arbitral panel shall be by majority vote and based on the votes of all members of the panel.

14. Where the arbitral panel finds that the responding Party has breached this Agreement, the arbitral panel shall provide in its decision a reasonable period of time for that Party to cure its breach. The period established shall be the shortest reasonable time period feasible. If the Parties have not agreed by the expiry of that period that the breach has been cured, the complaining Party may request the panel to decide whether the breach has been cured by delivering the request in writing to the panel chair and, concurrently, to the responding Party. The panel shall issue its decision within 15 days after the request is delivered. Paragraph 12 shall apply to proceedings initiated under this paragraph.

Referral to Auditor

15. At the request of either Party, the Parties shall appoint an independent accounting firm ("auditor") to examine data furnished by the Parties regarding exports from Canada to the United States of softwood lumber pursuant to a request under paragraph 16. The Parties shall ensure that the auditor is free from any conflict of interest, or appearance of conflict of interest, and shall require the auditor to protect any confidential information furnished to the auditor by the Parties. The costs of the auditor shall be borne equally by the Parties.

16. At any time after a Party requests consultations under paragraph 1, a Party may request in writing that the auditor provide an opinion:

- (a) regarding whether Canada has failed to comply with its obligation to collect fees with respect to exports of softwood lumber first manufactured in the province of Ontario, Quebec, British Columbia or Alberta, as provided under Article II; or
- (b) where both Parties agree, regarding whether a Party has failed to comply with the Agreement in some other respect.

The requesting Party shall concurrently provide a copy of the request to the other Party.

17. Within 10 days after delivery of the request, each Party shall furnish to the auditor any data that the Party considers relevant, which may include information supplied to the Party by industry representatives, and shall provide to the auditor any further information or assistance that it may require. Within 20 days after receiving the request, the auditor shall render an opinion to the Parties on the matter. If, in considering the data, and having made every effort to resolve the issue, the auditor determines that there are questions of interpretation of this Agreement that are essential for its decision and that it considers it is not competent to resolve, it shall so advise the Parties. In any such case, the auditor shall make such findings as are practicable regarding the matter. A Party may refer any such question of interpretation to an arbitral panel pursuant to this article, and in its decision the panel shall apply the findings of the auditor to the extent that the panel considers them applicable.

18. In the event the Parties agree pursuant to consultations that Canada has failed to collect fees as provided under Article II, or the auditor determines that Canada has failed to collect such fees or that a Party has failed to comply with the Agreement in some other respect, the Party not in compliance shall:

- (a) with respect to a matter referred to in subparagraph 16(a), collect the foregone fees within 65 days following the start of consultations;
- (b) with respect to a matter referred to in subparagraph 16(b), take action to remedy the non-compliance within 65 days following the start of consultations or such other period of time as the Parties may agree; or

- (c) with respect to matters referred to in subparagraphs 16(a) and (b), take such other action as the Parties may agree within such period of time as the Parties may agree.

19. Beginning as soon as practicable after the date on which the collection or action is initiated under paragraph 18, the auditor shall monitor such collection or action, as the case may be. Within 25 days after the deadline for returning to compliance, the auditor shall provide an opinion to the Parties on whether the Party not in compliance is in compliance with paragraph 18.

Action Following Breach or Auditor Determination

20. If,

- (a) an arbitral panel finds that Canada has breached this Agreement, and the panel decides under paragraph 14, or the Parties agree by the expiry of the time period for cure of the breach, that the breach has not been cured; or
- (b) the auditor determines, under paragraph 19, that Canada has not complied with paragraph 18,

the United States may suspend its obligations under Articles I and IV. The United States shall endeavour to avoid any suspension that is manifestly excessive.

21. If,

- (a) an arbitral panel finds that the United States has breached this Agreement, and the panel decides under paragraph 14, or the Parties agree by the expiry of the time period for cure of the breach, that the breach has not been cured;
- (b) the auditor determines, under paragraph 19, that the United States has not complied with paragraph 18; or
- (c) the United States takes action inconsistent with Article I, other than pursuant to paragraph 20,

Canada may suspend its obligations under Articles II and IV. Canada shall endeavour to avoid any suspension that is manifestly excessive.

Other Procedures

22. The Parties may agree to modify the procedures set out in this article for the purpose of expediting, enhancing or facilitating the resolution of controversies, including with respect to a particular proceeding or matter.

ARTICLE VI

CONFIDENTIALITY

1. Each Party shall treat as confidential, in accordance with its law, business proprietary information, and any information designated as confidential by the Party providing it, that is not otherwise available, provided under this Agreement or during the consultative process or negotiation of this Agreement.
2. Information referred to in paragraph 1:
 - (a) may be used by and disclosed to government officials solely in connection with the implementation or operation of this Agreement, except as compelled under law;
 - (b) shall not, without the permission of the Party or person providing it, be used or disclosed in any trade action or investigation of the type referred to in Article I; and
 - (c) shall be returned by the Party who has received it to the Party or person who provided it on termination of this Agreement.

ARTICLE VII

GENERAL PROVISIONS

1. This Agreement is without prejudice to the position of either Party as to whether the programs and practices of either Party in respect of forest management constitute countervailable subsidies under domestic or international law.
2. Neither Party shall take action to circumvent or offset the commitments set out in this Agreement, including action having the effect of reducing or offsetting the export fees provided for in Article II (2) or undermining the commitments set out in Article I.
3. Canada shall provide to the United States notice of any new, or amendment to a, federal or Ontario, Quebec, British Columbia or Alberta law, regulation or order-in-council governing stumpage charges or forest management systems related to softwood lumber, within 45 days after such law, regulation or order-in-council or amendment thereto, is adopted, or as soon thereafter as practicable. Each Party shall endeavour to respond to requests from the other Party for other information that is relevant to the operation of this Agreement.
4. Canada shall, based on sufficient information that it obtains, certify to the United States each quarter that it has no basis to believe that:
 - (a) the timber pricing and forest management systems of the provinces of Ontario, Quebec, British Columbia and Alberta have been modified other than as notified under paragraph 3; and
 - (b) these provinces are collecting revenues at levels lower than called for under those systems.

The sufficiency of the information that Canada obtains shall not be subject to dispute resolution under Article V, nor shall requests under paragraph 3 be used for the purpose of obtaining the information on which Canada renders its certifications.

5. In October of each year, Canada shall provide the United States with yearly province-by-province aggregations of the volume of Crown softwood timber harvested and revenues collected for that timber in the provinces of Ontario, Quebec, British Columbia and Alberta.

6. Annexes 1 and 2 are incorporated as an integral part of this Agreement.

ARTICLE VIII

AMENDMENT

The Parties may amend this Agreement by mutual agreement in writing.

ARTICLE IX

DEFINITIONS

For purposes of this Agreement and the Annexes:

aggregated data means data compiled in a manner that is not associated with, and could not be used to identify, operations of a particular person;

board feet means a unit of measurement equal to 12" x 12" x 1". One thousand board feet = 2.36 cubic metres of lumber. One thousand board feet = 92.91 square metres of lumber. For the purposes of this Agreement all conversions of board feet to cubic metres or to square metres, as the case may be, shall be made on a nominal measurement basis and shall not be rounded up to the nearest cubic metre or square metre;

day means a calendar day;

person includes a natural person, sole proprietorship, partnership, corporation and association;

province of first manufacture means the province where the mill, at which the softwood lumber product was first manufactured into such a product, is situated, whether or not that product was further processed (for example, planing or kiln drying) or was transformed from one softwood lumber product into another such product (for example, a remanufactured product) in another province;

softwood lumber means articles classified under:

- (1) tariff item 4407.10.00 of the Harmonized Tariff Schedule of the United States (1996) (United States International Trade Commission Pub. 2937, 19 U.S.C. 1202 (1988)); (for purposes of description only, coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm);
- (2) tariff items 4409.10.10, 4409.10.20 and 4409.10.90 of the Harmonized Tariff Schedule of the United States (1996) (United States International Trade Commission Pub. 2937, 19 U.S.C. 1202 (1988)); (for purposes of description only, coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of

its edges or faces (other than wood mouldings and wood dowel rods), whether or not planed, sanded or finger-jointed); and

year means a twelve month period beginning April 1 and ending the following March 31.

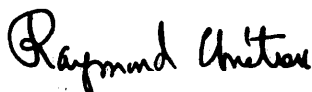
ARTICLE X

ENTRY INTO FORCE

This Agreement shall enter into force on the date of signature, with effect from April 1, 1996, and shall remain in force for a period of five years after the effective date. It may be extended for a further period on written agreement of the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorised for this purpose by their respective governments, have signed this Agreement.

DONE in duplicate at Washington, this 29th day of May 1996, in the English and French languages, each text being equally authentic.



Raymond Chrétien
**FOR THE GOVERNMENT
OF CANADA**



Ira S. Shapiro
**FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA**

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