

## London Arbitration Tribunal Rules against Canada in SLA Case

The U.S. Trade Representative's office issued a press release today to announce that the London Court of International Arbitration (LCIA) has rejected Canadian claims that an offer to pay the U.S. Government \$36.66 million USD cured Canada's breach of the Softwood Lumber Agreement (SLA). Canada subsequently initiated the arbitration proceedings to have the tribunal determine whether Canada's payment offer cured the breach.

In March of 2008, the LCIA tribunal determined that Canada had breached the SLA by failing to calculate quotas properly during the first six months of 2007, and required Canada to cure its breach or impose additional export charges on shipments of softwood lumber products to the United States. The LCIA issued the decision on a remedy for the breach on February 26, 2009, and ruled that Canada was required to cure the breach by March 28, 2009.

In its decision on how to remedy the SLA breach, the LCIA determined that Canada must collect an additional 10 percent ad valorem export charge on softwood lumber imports from the Eastern Canadian provinces of Ontario, Quebec, Manitoba, and Saskatchewan until \$68.26 million CDN has been collected. However, Canada did not impose these measures, and instead, on March 27, 2009, offered to tender payment of \$36.66 million USD to the U.S. Government. The U.S. rejected that offer because it considered that such an offer did not cure the breach identified by the tribunal, and began collecting the 10% import tax on imports of softwood lumber from the Eastern Canadian provinces. On April 2, 2009 Canada requested that the LCIA tribunal determine whether Canada had cured the breach with its payment offer.

In today's press release, the U.S. Trade Representative's office provides that the LCIA tribunal rejected Canada's argument that it cured its breach when it offered to make the payment to the U.S., and rejected the notion that any government-to-government payment could cure a breach of the SLA, because payment would have no impact on exports of softwood lumber products from Canada to the U.S. The press release further provides that Canada had also requested that the tribunal clarify whether, if Canada imposed export charges, it could allocate such charges by exporter or by Region based on prior shipments. The tribunal rejected this request and found that any export charges must be imposed on all shipments from all Option B Regions (Ontario, Quebec, Manitoba and Saskatchewan).

In response to the tribunal's decision, The Honourable Stockwell Day, Minister of International Trade, stated "the Government will comply with the Tribunal's decision, as we remain committed to the success of the Softwood Lumber Agreement. This agreement has brought stability and has returned nearly \$5 billion to the industry. This is a complex matter. We are reviewing the decision and consulting with the provinces to determine how best to move forward."

### What does this mean?

As a result of the LCIA decision, the United States may continue to impose 10% ad valorem customs duties on imports of softwood lumber products from Ontario, Quebec, Manitoba, and Saskatchewan. These duties are scheduled to remain in place until the U.S. has collected \$68.26 million CDN (\$54.8 million USD), the amount determined by the LCIA tribunal in its February 2009 decision.

The U.S. Trade Representative office's press release can be read in its entirety online at: <http://www.ustr.gov/about-us/press-office/press-releases/2009/september/tribunal-finds-canada-failed-cure-breach-softwo>

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