In The LCIA
No. 7941

THE UNITED STATES OF AMERICA,

Claimant,

v.

CANADA,

Respondent.

UNITED STATES STATEMENT OF THE CASE ON REMEDY

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TABLE OF CONTENTS

PAGE

UNITED STATES STATEMENT OF THE CASE ON REMEDY

1. Pursuant to the Tribunal's Procedural Order No. 2, dated May 2, 2008, establishing the schedule of proceedings for the remedies phase of this arbitration, claimant, the United States, respectfully submits this statement of its case regarding remedy.[1]

INTRODUCTION

2. This case concerns Canada's breach of the 2006 Softwood Lumber Agreement ("SLA" or "Agreement"), an international agreement between the United States and Canada that resolved a longstanding trade dispute regarding Canadian exports of softwood lumber to the United States.[2] *See* SLA (CR-1); Amendments (CR-2). The Agreement, among other things, requires certain Canadian regions to restrict the volume of softwood lumber exports to the United States by specific amounts. As the Tribunal found in its March 3, 2008 award, the SLA obligates Canada to perform a monthly calculation to determine the proper volume restrictions for those regions as of January 1, 2007.[3] Award, p. 97, ¶ I.2. It is undisputed that Canada did not commence performance of an adjustment to this monthly calculation until July 1, 2007. Accordingly, Canada breached the SLA and is responsible for the consequences of that breach.

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[1] On October 15, 2007, the Tribunal ordered that proceedings in this arbitration be bifurcated. *See* Procedural Order No. 1. The Tribunal held a hearing on liability on December 12, 2007, and issued a liability award on March 3, 2008.

In accordance with Procedural Order No. 2, documents submitted with this Statement of the Case on Remedy will be referenced as "CR-__."

[2] A fuller explanation of this dispute's background appears in the United States' statement of the case, filed on November 30, 2007. We include in this statement of the case only those facts relevant to this phase of proceedings concerning remedy.

[3] The United States contended during the liability phase that Canada is required to apply this adjustment to regions choosing to be subject to only export measures. In its award, the Tribunal determined that the Agreement does not so require. Award, p. 97, ¶ I.1.

See Award, p. 97, ¶ I.3 ("[I]nsofar as . . . Canada breached the SLA by failing to make such calculation as of January 1, 2007, Canada is liable for the consequences of that breach.").

3. This statement of the case addresses the specific consequences of Canada's breach, first, by establishing the harm caused by the breach, and second, by proposing appropriate remedies to compensate the United States for the harm caused by the breach should Canada fail to cure the breach within the reasonable period of time established by the Tribunal.

4. Canada's breach distorted the volume limitations to which Canada agreed to adhere in the SLA. This, in turn, resulted in overshipments of over 180 million board feet of softwood lumber into the United States during the first six months of 2007. These overshipments harmed the United States because they thwarted the Agreement's limitations upon the volume of lumber that Canada would export to the United States — limitations that the Tribunal has found represent an economic effect of the SLA. The SLA requires Canada to remedy the breach.

5. Given current market conditions, certain remedies are more effective than others, but, at a minimum, any remedy should encourage Canada to limit its exports of lumber to the United States with the ultimate goal of placing the United States in the position it would have occupied absent the breach. With this in mind, the United States submits that the most efficient and appropriate remedy would be to assess additional export charges upon "breaching regions" (that chose to be subject to low export charges combined with volume restraints) in the amount that those regions would have paid had they chosen to be subject to higher export charges and no volume restraints. If the Tribunal determines that this proposal does not remedy the breach, the United States submits three alternative proposals to remedy the breach.

BACKGROUND

6. Pursuant to the Agreement, the United States retroactively revoked antidumping and countervailing duty orders covering softwood lumber from Canada, refunded all cash deposits for antidumping and countervailing duties upon those entries (approximately US$5 billion), and agreed not to impose other trade remedies. *See* SLA, art. III-IV. In exchange, Canada agreed, among other things, to impose a mixture of volume restraints (or quotas) and export charges upon its lumber exports into the United States. *See* SLA, art. VII. The Agreement refers to these as "Export Measures." *Id.*

7. These "Export Measures" can take two forms (Options A and B), depending upon a Canadian lumber-producing region's selection. The SLA does not require Option A regions to abide by a strict volume limit; rather, it imposes only a hierarchy of export charges that increase (in five percent increments, capped at 15 percent) as the United States price of lumber falls. SLA, art. VII, ¶ 2.[4]

8. Regions choosing Option B face a combination of export measures that include both export charges and volume restraints. The Option B regions' behavior is still tied to the United States price of lumber. Option B regions pay lower export charges than Option A regions *and* must restrict exports to a fixed regional quota volume. SLA, art. VII ¶¶ 2, 4. As the United States price falls, Option B regions pay higher export charges (capped at five percent) and incrementally more restrictive volume restrictions apply. SLA, art. VII.

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[4] The United States price, or "prevailing monthly price," is defined by the Agreement as "the most recent four-week average of the weekly framing lumber composite ('FLC') prices available 21 days before the beginning of the month to which the Prevailing Monthly Price shall be applied, as specified in Annex 7A." SLA, art. XXI, ¶ 43.

9. Canada's calculations of both export charges and regional quota volumes depend upon a correct calculation of expected United States consumption, or "EUSC." SLA, art. XXI, ¶¶ 21, 54. EUSC is an estimate derived from a one-year moving average of past monthly United States lumber consumption. SLA, Annex 7D, ¶¶ 12-13. Due to delayed data availability, the estimate relies upon United States lumber consumption from three months before the time Canada performs the calculation. SLA, Annex 7D, ¶¶ 12-13. This introduces a time lag into the calculation. The SLA requires Canada to adjust EUSC for Option B regions to account for changes in lumber market conditions that are not reflected in the EUSC calculation due to this time lag.[5] SLA, Annex 7D, ¶ 14.

10. Regional quota volumes are a product of EUSC. SLA, Annex 7B, ¶ 2. Therefore, as a practical matter, when United States consumption is growing rapidly, the regional quota volumes rise and Option B regions may export more lumber to the United States. When United States consumption declines, the regional quota volumes fall and Option B regions may export only limited amounts of lumber to the United States. Accordingly, in a declining market, the erroneous calculation of EUSC can result in excess shipments of lumber over and above the volume restrictions to which the parties agreed.

11. Although Canada agreed to adjust EUSC for Option B regions immediately upon the Agreement's entry into force, it did not start doing so until July 2007. In its liability award, the Tribunal determined that "insofar as . . . Canada breached the SLA by failing to make such

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[5] Specifically, when the most recent quarter's actual United States consumption is greater than EUSC by more than five percent (*i.e.*, when United States consumption is growing rapidly), Canada must increase the current quarter's EUSC. SLA, Annex 7D, ¶ 14. Similarly, when the most recent quarter's actual United States consumption is less than EUSC by more than five percent (*i.e.*, when United States consumption declines quickly), Canada must decrease the current quarter's EUSC. SLA, Annex 7D, ¶ 14.

calculation as of January 1, 2007, Canada is liable for the consequences of that breach." Award p. 97, ¶ I.3.

12. The Tribunal concluded that the adjustment to EUSC plays an important part in the subject matter of the SLA, namely the volume of exports of softwood lumber from Canada to the United States. Award ¶ 181. Although the Tribunal noted that the SLA contains no preamble or express purpose, it nevertheless identified the "economic effects" of the SLA as the object and purpose of the SLA. Award ¶ 190. Such economic effects include adjustments to the volume of lumber exports. Award ¶¶ 181-182.

SUMMARY OF THE ARGUMENT

13. Canada's breach, which resulted in the overshipment of over 180 million board feet of softwood lumber into the United States, has disrupted the system of export measures to which the parties agreed — a system that limits the volume of exports either through explicit volume restrictions or through export charges that encourage producers to restrict exports (or both). If the system is disrupted, the premise upon which the United States agreed to forego remedies under domestic law is undermined. That is, absent the SLA's volume restrictions (and export charges), the United States would have had no meaningful reason to enter into the Agreement. Canada should be held accountable for the consequences of this disruption.

14. When a Tribunal finds, as the Tribunal has here, that a party has breached an obligation under the SLA, the SLA directs the Tribunal to perform two tasks, simultaneously, in its award. First, the Tribunal is to identify a reasonable period of time for the breaching party to cure the breach. Second, the Tribunal is to determine the appropriate adjustments to the export measures to compensate for the breach if the breaching party fails to cure the breach within that reasonable period of time. Because we submit that Canada should receive the full amount of

time contemplated by the SLA – 30 days – to determine and implement a cure for its breach, the period of time for Canada to cure the breach should not be an issue. Therefore, this statement of the case principally addresses the appropriate compensatory adjustments to the export measures that will remedy Canada's breach should Canada fail to cure the breach within the reasonable time established by the Tribunal.

15. To that end, the United States attaches the expert report of Jonathan Neuberger. *See* CR-3. Dr. Neuberger, a recognized expert in economics, economic damages, econometrics, risk management, and corporate finance, explains that any compensatory adjustments must be commensurate with the breach, economically meaningful, and easily enforceable. Dr. Neuberger explores two categories of potential remedies: (1) *price-based remedies* that assess additional export charges; and (2) *volume-based remedies* that adjust the volume of lumber exported. As Dr. Neuberger explains, although both categories provide logical ways to redress the harm caused by Canada's breach, simply reducing the regional quota volume alone may have little or no effect upon the actual volume of lumber exported by Canada under current or reasonably anticipated future market conditions. Therefore, volume-based remedies that merely rely upon Canada's overshipment during the breach period may not, with any degree of certainty, remedy the breach. Accordingly, Dr. Neuberger concludes that price-based remedies, which are tied to the language and purpose of the SLA, would provide a more meaningful remedy under current circumstances.

16. Consistent with Dr. Neuberger's opinions, the United States proposes four remedies — two "price-based" remedies that monetize the effects of Canada's breach, and two "volume-based" remedies that would restrict meaningfully the volume of lumber exports to the United States. These choices recognize that, because current market conditions are not what

they were in early 2007, a remedy should encourage Canada to export less lumber as a means of restoring the United States to the position it would have occupied absent the breach. As Dr. Neuberger explains, because of the nature of current market conditions, price-based remedies, or remedies that impose additional export charges rather than volume restraints, will remedy the breach more effectively.

17. First, the most straightforward remedy recognizes that, by overshipping during the six-month breach period, Option B regions effectively received all the benefits of Option A (*i.e.*, no volume restraints) without bearing the costs of the higher Option A export charges. If those Option B regions had been treated as Option A regions during the breach period (that is, commensurate with their behavior during the breach period), then they would have been required to pay approximately CDN$63.9 million in additional export charges. Assessed upon an *ad valorem* basis until completely collected,[6] collection of this additional export charge owed would place the United States in the analogous position it would have occupied absent the breach. That is, if Option B regions must pay additional export charges upon future exports, these additional export charges presumably would impose a financial burden upon those regions to cause them to export less lumber. In turn, Option B regions would restrict exports to the United States in a way that replicates the meaningful restriction of exports to which they *should have* adhered in early 2007.

18. Alternatively, if the Tribunal determines that this proposal is not an appropriate remedy for the breach, Dr. Neuberger analyzes additional potential compensatory measures that

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[6] An "*ad valorem*" charge is one imposed upon the value of an entry when it enters the United States. *See* BLACK'S LAW DICTIONARY 33 (abr. 6th ed. 1991) (defining "*ad valorem* tax" as one "imposed on the value of property"). Export charges under the SLA are collected in this way.

would apply should Canada fail to cure the breach within the reasonable time period identified by the Tribunal. In the second remedy proposal, he describes a different price-based remedy grounded in the economic consequences of the breach. This remedy would be somewhat more complex to effectuate, but similarly would restore the United States to the analogous position it would have occupied absent the breach by encouraging Option B regions to restrict their volume of exports.

19. Finally, although Dr. Neuberger opines that price-based remedies are preferable to volume-based remedies, the United States proposes two volume-based remedies that, properly implemented, *might* effectively lower the current regional quota volumes to produce a palpable reduction in future Canadian exports to the United States.

ARGUMENT

I. The SLA Requires The Tribunal To Establish A Cure Period And To Determine Compensatory Measures

20. Paragraph 22 of Article XIV of the SLA directs the Tribunal to make two determinations once a breach is found. Specifically:

> If the tribunal finds that a Party has breached an obligation under the SLA 2006, the tribunal shall:
>
> (a) identify a reasonable period of time for that Party to cure the breach, which shall be the shortest reasonable period of time feasible and, in any event, not longer than 30 days from the date the tribunal issues the award; *and*
>
> (b) determine appropriate adjustments to the Export Measures to compensate for the breach if that Party fails to cure the breach within the reasonable period of time.

SLA, art. XIV, ¶ 22 (emphasis added). That is, the Tribunal simultaneously is to identify a reasonable period of time for the breaching party to cure its breach and to determine the

appropriate adjustments to the export measures to compensate if the breaching party fails to cure the breach within the reasonable period of time established by the Tribunal.

21. Article XIV then explains that the "compensatory adjustments that the tribunal determines under paragraph 22(b)" shall consist of, if Canada has breached, the imposition of or increases in export charges, or the imposition of or reduction in export volumes. SLA, art. XIV, ¶ 23(a). If the United States has breached, the SLA explains that compensatory adjustments shall consist of "a decrease in the Export Charge and/or an increase in the export volumes permitted under a volume restraint that Canada is then applying." SLA, art. XIV, ¶ 23(b).

22. Article XIV further provides both Canada and the United States with the ability to challenge the execution of a party's compliance with paragraph 22, stating, "[i]f Canada considers that the United States has failed to cure a breach by the end of the reasonable period of time, Canada may make the compensatory adjustments that the tribunal has determined under paragraph 22(b)." SLA, art. XIV, ¶ 26.

23. Further, "[if] the United States considers that Canada has failed to cure a breach and has not made the the compensatory adjustments determined by the Tribunal under paragraph 22(b) by the end of the reasonable period of time, the United States may impose compensatory measures in the form of volume restraints and/or customs duties on imports of Softwood Lumber Products from Canada," as long as the volume restraints do "not exceed the adjustment to the volume restraints that the tribunal has determined" and as long as the customs duties do "not exceed the adjustment to the Export Charges that the tribunal has determined." SLA, art. XIV, ¶ 27.

24. Article XIV then provides that each party may commence a new arbitration to determine whether the compensatory adjustments to the export measures permitted in paragraph

27 exceed what the Tribunal determined in its award pursuant to paragraph 22. That is, in the case of a breach by the United States, if the United States considers that the compensatory measures applied by Canada "reduce Export Charges or allow for export volumes beyond those that the tribunal has determined under paragraph 22(b)," the United States may commence a new arbitration to address the matter. SLA, art. XIV, ¶ 29(a). In the case of a breach by Canada, if Canada considers that the compensatory measures applied by the United States exceed the levels determined by the Tribunal, Canada may commence a new arbitration. SLA, art. XIV, ¶ 29(b). If either party commences an arbitration under paragraph 29, the LCIA "shall appoint to the tribunal the arbitrators comprising the original tribunal, to the extent they are available." SLA, art. XIV, ¶ 30.

25. If such an arbitration is commenced, and if the Tribunal finds that the compensatory adjustments or measures are inconsistent with the award in the initial arbitration, the Tribunal "shall determine the extent to which the compensatory adjustments or measures should be modified or whether they should be terminated." SLA, art. XIV, ¶ 31.

26. Of course, here, during the remedy phase of this arbitration, the Tribunal performs only two tasks. Upon finding that Canada breached the SLA by failing to apply the EUSC adjustment starting in January 2007, pursuant to the ordinary meaning of paragraph 22 of Article XIV, the Tribunal is to make two determinations in its final award: (1) identify a reasonable period of time, not longer than 30 days, for Canada to cure its breach; and (2) determine appropriate adjustments to the export measures to compensate for the breach if Canada fails to cure the breach within the reasonable time period identified. In accordance with the ordinary meaning of the SLA, the Tribunal makes these two determinations simultaneously.

27. As the Tribunal found, customary international law, as reflected in Article 31 of the Vienna Convention on the Law of Treaties, should be used to interpret the SLA. *See* Award, ¶ 32; Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 ("Vienna Convention"). The Vienna Convention therefore applies to the interpretation of the SLA's provisions setting forth the requirements of a final award. These provisions are interpreted in accordance with their ordinary meaning, read in context, and in light of the SLA's object and purpose. Further, the Vienna Convention dictates that "any relevant rules of international law applicable in the relations between the parties" should be taken into account together with the context. Vienna Convention, art. 31(3)(c).

28. With respect to the first inquiry – determining a reasonable period of time for cure – the United States is willing to agree that Canada should be granted the maximum period allowable under the Agreement to cure its breach, which is 30 days. SLA, art. XIV, ¶ 22(a).

29. Because the United States recognizes that Canada should have the full amount of time permitted under the SLA to cure the breach, this statement of the case focuses primarily upon the second task presented to the Tribunal — determining the appropriate compensatory adjustments that should be imposed if Canada fails to cure the breach within this reasonable period of time. The compensatory adjustments are to consist of adjustments to the export measures "in an amount that remedies the breach." SLA, art. XIV, ¶ 23.

30. This unambiguous meaning notwithstanding, Canada contends that it already has cured the breach simply by applying the EUSC adjustment to Option B regions starting in July 2007. *See* Letter from G. Aguilar-Alvarez to P. McCarthy (Mar. 14, 2008) ("Canada's position remains that Canada has cured the breach identified by the Tribunal.") (CR-6). Presumably, Canada believes that its belated compliance with the Agreement renders moot the Agreement's

requirement that the Tribunal determine appropriate adjustments to the export measures to compensate the breach. The United States disagrees that Canada has cured the breach. The provisions of the SLA, read in context, demonstrate that the Tribunal simultaneously determines appropriate compensatory export measures when it identifies a reasonable cure period. Because the United States recommends that Canada be permitted the full amount of time permitted by the SLA to cure its breach, the only remaining dispute is what form the compensatory export measures should take to rectify the harm Canada caused during the six-month breach period, in the event Canada fails to cure the breach within the reasonable time period identified by the Tribunal.

31. In any event, Canada's interpretation of "cure" (suggested by its contention that it has already cured the breach) is contrary to the ordinary meaning of the word. When used in the context of a malady, "cure" means "to subdue or remove by remedial means; remedy; remove; heal."[7] Similarly, when used in the context of evil of any kind, "cure" means "to remedy, rectify, remove."[8] Here, the "malady" or "evil" is Canada's failure to apply an important adjustment to EUSC for six months — a failure that, as demonstrated below, resulted in a substantial overshipment of lumber to the United States for which Canada is responsible under the Agreement.[9] When Canada finally applied the adjustment monthly to EUSC beginning in

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[7] WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 646 (2d ed. 1958) (transitive verb definition 2.b).

[8] THE OXFORD ENGLISH DICTIONARY: BEING A CORRECTED REISSUE WITH AN INTRODUCTION, SUPPLEMENT, AND BIBLIOGRAPHY OF A NEW ENGLISH DICTIONARY ON HISTORICAL PRINCIPLES 1263 (reprinted 1978) (1933) (verb definition II.5); *see* WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 646 (2d ed. 1958) (transitive verb definition 4.a: "to remove or rectify (anything objectionable or abnormal)").

[9] Pursuant to customary rules of treaty interpretation reflected in the Vienna Convention, any relevant rules of international law applicable in the relations between the parties shall be

July 2007, it made no effort to correct the improper calculations made during the prior six months or to address any harm caused by those improper calculations. Accordingly, Canada's calculation of EUSC beginning in July 2007, even if proper, could not – without more – remedy, rectify, or remove Canada's improper calculation of monthly EUSC from January to June 2007.

32. Canada apparently interprets the SLA to provide no remedy for a purely historical breach, such as the breach identified by the Tribunal in this case. Nothing in the SLA provides that the consequences of past breaches should not be remedied. Indeed, such a provision would permit the parties to breach the SLA with impunity as long as the breaching behavior ceases just before an adverse award decision.

33. Finally, Canada's contention that it has cured its breach fails to acknowledge that the Tribunal understood that Canada has begun to apply the EUSC adjustment, but is nonetheless responsible for the consequences of the breach. We interpret the Tribunal's statement to assume additional consequences of the breach beyond mere compliance going forward.[10]

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taken into account in interpreting the text of the Agreement. In the case of the SLA, those relevant rules include norms of public international law on remedy for breaches. The law of state responsibility, including the secondary rule of international law set out in Article 31 of the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001), is also habitually referred to by courts and tribunals when assessing remedies for treaty breaches. Responsibility of States for Internationally Wrongful Acts, U.N. GAOR, International Law Commission, 53d Sess., pt. I, ch. 1, arts. 4-11, 16, U.N. Doc. A/CN.4/L.602/Rev.1 (2001).

Article 31 of the Articles on State Responsibility provides that "the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act." *Id.* "[R]eparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed." *Case Concerning the Factory at Chorzów* (Germ. v. Pol.), 1928 P.C.I.J. 47 (ser. A) No. 17 (Sept. 28).

[10] In fact, Canada had begun applying the EUSC adjustment to Option B regions before the United States filed its request for arbitration in August 2007.

II. The Compensatory Adjustments To The Export Measures Should Provide A Meaningful Remedy For Canada's Breach

34. As described above, the Tribunal is to make two determinations in its award, only the second of which – appropriate compensatory adjustments to remedy the breach – is at issue here (because the United States submits that Canada should have 30 days to cure the breach). The SLA requires that the adjustments to the export measures remedy the breach, stating "[s]uch adjustments shall be in an amount that remedies the breach," SLA, art. XIV, ¶ 23, and "[s]uch adjustments may be applied from the end of the reasonable period of time until the Party Complained Against cures the breach." SLA, art. XIV, ¶ 24.

35. The United States respectfully requests that the Tribunal determine that one of the following four remedies constitutes "appropriate adjustments to the Export Measures" to compensate for Canada's breach pursuant to Article XIV, ¶ 22(b). Each proposal provides a potential remedy for the breach and consists solely of increases in the export charges and/or reductions in the export volumes. SLA, art. XIV, ¶ 23(a). Each is tied to Canada's breach and its consequences, and each gives full meaning to the Tribunal's direction that Canada be "liable for the consequences of [its] breach." *See* Award, p. 97, ¶ I.2. For the reasons explained below, the United States submits that price-based remedies that impose additional export charges are the most appropriate remedies.

36. Specifically, the United States requests the Tribunal to determine compensatory export measures in the form of additional export charges assessed upon an *ad valorem* basis. As Dr. Neuberger explains, by reaping the benefits of Option B (lower export charges) but escaping

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Indeed, if Canada is correct that its application of the EUSC adjustment starting in July 2007 (before arbitration began) obviated the need to remedy the historical effects of that breach, then it should have argued to the Tribunal that a liability determination was unnecessary.

the burdens of Option B (quota restrictions), Option B regions effectively acted as Option A regions for a six-month period in 2007 and should be treated as such. CR-3, ¶ 48. Accordingly, the most effective and easily administered remedy involves simply calculating the export charges that those regions would have paid under Option A and assessing that amount upon future exports from Option B regions until the full amount is recovered. This approach is consistent with the ordinary meaning of the SLA, which makes clear that appropriate adjustments to export measures are adjustments to export charges and/or volume restraints. *See* SLA, art. XIV, ¶ 22(b) (describing compensation as "appropriate adjustments to the Export Measures"); ¶ 23(a) (describing, among other things, "an increase in the Export Charge"). That is, this preferred approach provides an easily quantifiable regime for monetizing Canada's breach. The United States also proposes three alternative remedies in the event that the Tribunal declines to adopt this preferred approach.

A. The Breach Resulted In An Overshipment That Harmed The United States

37. As discussed above and as demonstrated in Dr. Neuberger's attached expert report, Canada's breach – its failure to adjust EUSC in calculating Option B regional quota volumes for six consecutive months in 2007 – caused over 180 million board feet of lumber to be shipped into the United States that otherwise would not have entered the United States market.

38. As Dr. Neuberger concludes, "Canada's breach of the SLA that is at issue in this case involves the incorrect computation of [regional quota volumes] . . . ," and this computational error "relates to Canada's failure to adjust estimates of expected U.S. softwood lumber consumption . . . ." CR-3, ¶ 27. In quantifying the magnitude of this breach, Dr. Neuberger compared the miscalculated regional quota volumes with the regional quota volumes

as they should have been calculated (with the correct adjustment to EUSC). CR-3, ¶ 28.[11] Dr. Neuberger concludes that "computation of [regional quota volumes] during this period based on unadjusted EUSC resulted in incorrect [regional quota volumes]." CR-3, ¶ 31, Ex. 2.

39. Option B regions "generally complied with the incorrect [regional quota volumes] during this [breach] period." CR-3, ¶ 31. Accordingly, Dr. Neuberger assumed that, if Canada had not breached the SLA and if Canada had calculated regional quota volumes correctly using the proper EUSC adjustment, the Option B regions presumably would have shipped within the correct regional quota volume limitations. Applying the adjusted EUSC calculation to the regional quota volume, however, Canada violated its regional quota volumes during the first six

[11] The SLA permits regions to "borrow" quota volumes from prior or future months to avoid violating the volume restraints. SLA, Annex 7B, ¶4. This ability to "carry forward" or "carry back" is limited, however, and results in even lower quota volumes for the months from which the quota was borrowed. Pursuant to a side letter implementing the parties' data exchange obligations, Canada agreed to notify the United States when it used the carry forward, carry back provision. *See* Letter from the Minister of International Trade of Canada to the United States Trade Representative Regarding the Implementation of the Export Measures and the Exchange of Information Under the 2006 Softwood Lumber Agreement (Sep. 12, 2006) (CR-4). Canada has never done so.

Although Ontario exceeded even its incorrectly calculated regional quota volumes in March 2007, Canada did not inform the United States that Ontario intended to carry forward to avoid violating the SLA. Accordingly, it is reasonable to conclude that Canada chose not to use the provision. Based upon that conclusion, Dr. Neuberger has assumed for purposes of his analysis that Canada would not have implemented this provision at any time during the breach period.

months of 2007 by 182.43 million board feet.[12] CR-3, ¶ 32. Accordingly, Canada's breach resulted in an overshipment of softwood lumber from Option B regions.[13]

40. Canada's breach not only disrupted the SLA's operation by changing the supply and price of lumber in the United States, Canada's lumber companies realized profits from the overshipment that they would not otherwise have gained, to the detriment of the United States lumber industry. CR-3, ¶ 25, n.13.

B. The SLA Requires Compensatory Adjustments To Remedy The Breach

41. Pursuant to the SLA, appropriate compensatory adjustments to remedy the breach are to be in the form of either an increase in export charges or a reduction in export volumes. The adjustments:

> shall consist of:
> . . . in the case of a breach by Canada, an increase in the Export Charge and/or a reduction in the export volumes permitted under a

[12] To calculate the amount of overshipment, it is necessary to perform the adjusted calculations as they should have been made. Had Canada performed the EUSC calculation correctly at the required time, it would have used the most current data as it became available; however, it is not possible to reconstruct that calculation. Many of the data sources continually update their reported figures and restrict access to the original data that would have been available to Canada at the time it should have been performing the correct EUSC adjustment.

To avoid unnecessary briefing regarding the proper quota volumes (which, in any event, should be uncontroversial), on March 12, 2008, the United States requested Canada to provide it with Canada's calculation of the overshipment in the hopes of stipulating to the correct amount. Letter from P. McCarthy to G. Aguilar-Alvarez (Mar. 12, 2006) (CR-5). Canada declined to provide its calculations. *See* CR-6. Therefore, the United States requested that Dr. Neuberger perform an independent calculation using only the data publicly available at the time of his analysis. To the extent that small differences may exist between Dr. Neuberger's calculations and Canada's calculations, such differences should be negligible.

[13] Each Option B region, with the exception of Saskatchewan, exceeded its correct regional quota volume during the January through June 2007 breach period. CR-3, ¶ 32. Specifically, for the six-month period, Manitoba exported 2.18 MMBF above its corrected regional quota volumes; Ontario exported more than 107.87 MMBF above its regional quota volume, and Quebec shipped over 72.38 MMBF more than its regional quota volume. CR-3, ¶ 32.

> volume restraint that Canada is then applying, or, if no Export Charge and/or volume restraint is being applied, the imposition of such Export Charge and/or volume restraint as appropriate.

SLA, art. XIV, ¶ 23(a). These compensatory measures "shall be in an amount that remedies the breach." SLA, art. XIV, ¶ 23.

42. The Tribunal concluded that the SLA established a "new regime," an "important part" of which "was the adjustment according to paragraph 14, because it had considerable relevance as to the subject-matter of the SLA, *i.e.*, the volume of exports of Softwood Lumber Products from Canada to the United States." Award ¶ 181. The Tribunal characterized the volume of exports of lumber as an "economic effect" of the SLA. Award ¶ 182. And, notwithstanding the absence of a preamble or express clarification in the SLA of the SLA's object and purpose, the Tribunal nevertheless determined that "the economic effects of the SLA could be considered as its object and purpose." Award ¶ 190.

43. Thus, the ordinary meaning of the SLA, read in its context and in light of its object and purpose, demonstrates that appropriate compensatory adjustments will comprise either increased export charges, more restrictive quota volumes, or both. Appropriate compensatory adjustments should also be tied to the economic effect of the SLA, namely, the parties' agreement to limit the exports of softwood lumber from Option B regions to a specific volume. Because the consequence of the breach was a series of overshipments that undermined the intended economic effect of the volume restraints, any remedy consisting of changes to the export measures – whether volume-based remedies or price-based remedies – should be sufficient to affect volume. That is, any compensatory measures that would apply in the event Canada fails to cure its breach within a reasonable period of time should affect volume.

44. Accordingly, as the text of the SLA clarifies, any compensatory adjustments should "remedy the breach," SLA, art. XIV, ¶ 23, and place the United States in the position it would have occupied absent Canada's breach. Application of this basic principle of international law to the SLA should acknowledge the nature of the parties' bargain. The SLA replaced the United States' system of assessing antidumping and countervailing duties upon Canadian softwood lumber with an alternate regime in which no money passes between Canadian producers and the United States. Rather, the parties agreed to a scheme to control the volume of softwood lumber exports to the United States through a system of export charges (which encourage producers to limit exports), and volume restrictions (which require producers to limit exports). Canada's failure to apply these export measures resulted in over-exportation, which in turn affected the price of lumber and disrupted the specific balance of trade to which the parties agreed.

45. To restore the SLA's economic effect to what it would have been absent the breach, any compensatory adjustments determined by the Tribunal should, either by restricting volume or by assessing export charges, encourage Canada to limit exports of lumber, with the ultimate goal of reversing, in the current market, the effect of the breach upon market conditions during the breach period. CR-3, ¶¶ 16, 34. In other words, to the extent that Canada's breach affected the volume or price of softwood lumber in the United States, any remedial adjustments should place the United States as close to possible in the position it would occupy today had the breach not occurred in 2007.

46. As demonstrated below, the best, most direct way to restore the United States to the position it would have occupied absent the breach is to assess additional export measures upon Option B regions to encourage those regions to export less lumber to the United States. As

Dr. Neuberger explains, given current market conditions, an *ad valorem* assessment of additional export charges will be the most effective remedy to encourage Canada to reduce the volume of exports to the United States. CR-3, ¶ 52. Such a remedy falls squarely within the appropriate adjustments to the export measures contemplated in Article XIV. That is, Article XIV requires that compensatory adjustments take the form of export measures and articulates no preference for any particular kind of export measure.

47. Additionally, price-based remedies that impose additional export charges upon Option B regions fulfill the purpose of the SLA. As the Tribunal found, the SLA's purpose and economic effects include the limitations placed upon the volume of lumber entering the United States from Canada. Canada's breach disrupted the SLA's restrictions and led to the exports of more lumber than the parties agreed. As Dr. Neuberger explains and as discussed further below, market conditions now are substantially different from those present in early 2007 (the breach period) because Option B regions are now exporting far less than the current quota limitations. Accordingly, simply recouping the volume that was overshipped by lowering the quota will not result in fewer Canadian exports of softwood lumber to the United States and could, therefore, constitute no remedy at all. CR-3, ¶¶ 40-41. Appropriate compensatory measures, then, should encourage Canada to restrict volume "in an amount that remedies the breach." SLA, art. XIV, ¶ 23.

1. *Remedy Proposal I* — Option B Regions Should Be Treated As Option A Regions For The Breach Period

48. The best and simplest way to encourage Canada to restrict volume is to recognize that, in overshipping by over 180 million board feet, Option B regions received all the benefits of Option B – namely the lower export charges – but assumed none of Option B's volume-

restricting burdens. That is, by not subjecting themselves to the proper regional quota volumes, Option B regions effectively operated as Option A regions — regions that are not subject to a quota volume. Therefore, as Dr. Neuberger explains, it is reasonable to impose, as an added export charge, what these regions would have paid had they been treated as Option A regions. CR-3, ¶¶ 48-50. Because the United States price of lumber was below US$315 during the breach period, Option A regions were assessed a 15 percent export charge, while Option B regions were assessed only a five percent export charge combined with a volume restraint. CR-3, ¶ 49. In turn, because Option B regions failed to adjust EUSC correctly, they did not impose the required volume restraint upon their shipments and, therefore, as Dr. Neuberger states, effectively "enjoyed a 10 percent lower tariff rate during the January - June 2007 period, and effectively circumvented the correctly calculated quotas they should have faced under the SLA." *Id.*

49. To calculate what Option B regions would have paid had they been treated as Option A regions, Dr. Neuberger multiplies the volume of exports from each Option B region in each month during the breach period by the United States price in that month. CR-3, ¶¶ 50-52, Table 1. These monthly amounts, added together, equal approximately CDN$638.8 million, 10 percent of which is CDN$63.9 million. *Id.* Accordingly, as Dr. Neuberger concludes, "a compensatory charge equal to CDN$63.9 million levied against Option B producers would effectively undo the benefits they enjoyed during the six months of the SLA violation," and would restore the SLA's economic effect to its intended state. CR-3, ¶ 50.

50. As a practical matter, collection of an additional charge should not be applied as a one-time assessment upon all exporters within breaching regions because such an assessment is, as Dr. Neuberger explains, "unlikely to have the desired effect on each of the breaching region's

incentives to export to the U.S." CR-3, ¶ 51. Where, under current market conditions, many volume-based remedies would have little or no meaningful effect, a price-based remedy monetizes the breach and, as a result, creates an incentive for Option B regions to limit the volume of lumber they ship. This incentive would be minimized if Canada were permitted to collect the additional export charge in one, immediate lump sum. Accordingly, to provide producers and exporters an incentive to reduce volume, the CDN$63.9 million export charge should be assessed upon an *ad valorem* basis over time to shipments from each of the Option B regions. CR-3, ¶¶ 37, 52. This would involve a 10 percent export charge on all shipments from Option B regions until the entire CDN$63.9 million is recovered.

51. Dr. Neuberger further provides different combinations of possible assessment methods to account for the regions' varying responsibility for the overshipments. CR-3, ¶¶ 53-54. For example, Saskatchewan never exceeded its correctly calculated regional quota volume during the breach period. CR-3, ¶ 53. Accordingly, the Tribunal may find it reasonable to exclude Saskatchewan from the calculation, thereby reducing the overall charge to CDN$62.5 million. *Id.*, Table 2a. Similarly, because Manitoba exceeded its regional quota volume in only four of the six breaching months, the Tribunal may deem it appropriate to eliminate those nonbreaching months from the calculation, thereby further reducing the overall charge to CDN$61.7 million. CR-3, ¶54. As Dr. Neuberger explains, focusing the remedy upon those regions that overshipped regional quotas may be the most accurate way to calculate and apportion the export charges. CR-3, ¶¶ 38, 54 n.22.[14] Regardless of which permutation is

[14] Canada, as the party to the Agreement, is the entity responsible for performing the correct calculations under the Agreement. Canada, and not any particular region, is responsible for remedying the breach. That said, Dr. Neuberger explains that it may make logical sense to entertain region-specific mechanisms for assessing and collecting additional export charges.

applied, any compensatory adjustment to the export measures should account for the time value of money by including interest between the dates of the breach and the dates on which the compensatory payments are made. If the date on which compensatory payments were made were today, May 29, 2008, an additional CDN$4.36 million in interest would be added to the total amount. CR-3, ¶ 56, Table 2c.

52. Treating the breaching regions as Option A regions makes practical sense when viewed in the context of the Agreement as a whole. The SLA treated those regions choosing Option B as Option A regions during the first three months of the Agreement to permit Canada to "complete[] the arrangements necessary for the administration of Option B ('transition period')." SLA, art. VI n.5. After this "transition period," regions wishing to be treated as Option B regions could be retroactively treated as such *only* if they stayed within the regional quota volume during the transition period. *Id.* In other words, the SLA itself assumes that Option B regions that exceed quota volumes effectively act like Option A regions and should bear the associated burdens of higher export charges.

2. *Remedy Proposal II* — A Price-Based Remedy Should Account For The Economic Harm Caused By Canada's Failure To Observe The Export Measures

53. As demonstrated, the United States submits that any adjustment to export measures should treat Option B regions as Option A regions. However, if the Tribunal declines to treat Option B regions as Option A regions during the breach period, the United States respectfully requests that the Tribunal consider an alternative compensatory adjustment to the export measures. As Dr. Neuberger explains, this adjustment to the export measures hinges upon the economic effect that Option B overshipments had on the price of lumber. CR-3, ¶¶ 57-58. As he explains, "economic theory teaches that export measures like those contained in the

SLA (i.e., tariffs and quotas) drive a wedge between domestic prices of traded goods in the exporting and importing countries." CR-3, ¶ 57. As a result, the excess supply of lumber in the United States logically reduced prices in the United States below what prices would have been had Canada performed the correct EUSC calculation and properly restricted the volume of lumber entering the United States. *Id.*

54. Dr. Neuberger demonstrates the effect of the overshipment upon the price of lumber in the United States through an economic simulation that replicates the supply and demand of softwood lumber in the United States and estimates how changes in the price of lumber respond to lumber demand. CR-3, ¶ 58. The simulation demonstrates that Canada's breach and resulting overshipment reduced United States lumber prices by 0.7 percent during the six-month breach period. CR-3, ¶ 59. This reduction in price resulted in United States lumber prices that were US$1.94 per thousand board feet less than what they would have been absent the breach. *Id*. The simulation also demonstrates that the reduction in lumber prices resulting from the breach also influenced lumber consumption and shipments. That is, United States producers feeling the effect of the lowered prices reduced their own shipments, while United States consumers increased their consumption. In turn, exporters from countries other than Canada reduced their shipments in response to the lower United States price. CR-3, ¶ 60, Table 3.

55. Using the model simulation, Dr. Neuberger concludes that an additional export charge of US$39.65 per thousand board feet would compensate for the lower price that resulted from Canada's breach. CR-3, ¶¶ 61-63. This assessment would raise the United States price of lumber by US$1.94, "thereby counteracting the impact of Canada's SLA violation." CR-3, ¶ 61. This additional export charge could be imposed over a six-month period of time in the future.

CR-3, ¶ 62. However, depending upon the market conditions during that six-month compensation period, the effect of the additional charge could be negligible and, therefore, have no remedial effect. In other words, as Dr. Neuberger explains, lumber consumption in 2009 (or some other future compensation period) will likely be different from lumber consumption during the breach period. *Id.* If lumber consumption is *lower* than it was during the breach period, an increase in export charges (and the resulting increase in United States price), will affect fewer shipments than were exported during the breach period. *Id.* Accordingly, depending upon the market conditions during the breach period, a simple assessment over a future period may not have the same impact on Canadian exporters that the "over-exportation" did in 2007. *See id.*

56. Of course, it may be that no remedy can fully restore the United States to the position it would have occupied absent the breach. However, if assessment of the additional export charge is imposed upon the same *volume* of Canadian exports that were exported during the breach period, rather than simply upon a six-month time period, the adjustment will better approximate the market conditions absent the breach. Dr. Neuberger concludes that if the additional US$39.65 charge were imposed upon the total *exports* by Option B regions during the breach period (2,187.76 million board feet), Option B regions would ultimately pay a total of US$86.7 million, plus interest (assuming the date of compensation is today) in the amount of US$5.9 million, totaling US$92.6 million. CR-3, ¶¶ 63-66.[15] Of course, the charge would be collected in Canadian dollars, totaling CDN$91.5million, inclusive of interest (assuming the date of compensation is today).

[15] As Dr. Neuberger notes, in the same way that the additional export charge contemplated in remedy proposal I could be crafted to consider only those regions that overshipped, the additional export charge imposed in remedy proposal II could also reflect only those regions that overshipped and only those months of overshipment. *See* CR-3, ¶ 63, n.22.

57. This alternative remedy, while more complex than the simple and easily-administered remedy of treating Option B regions as Option A regions, is nevertheless similarly tied to the object and purpose of the SLA. As the Tribunal found, the economic effect of the SLA is its object and purpose. Award ¶ 190. This economic effect includes the parties' agreement to volume restrictions under certain price circumstances. Assessing an additional export charge upon Canadian exports will encourage Option B regions to restrict the volume of exports. This will (to the extent possible), place the United States in the position it would have occupied absent the breach. A series of export charges grounded in the economic effect of the breach thus comports with the object and purpose of the SLA. Moreover, as Dr. Neuberger notes, this alternative price-based remedy is directly tied to the economic effects of the breach in a way remedy proposal I is not. CR-3, ¶ 57-8.

3. *Remedy Proposals III And IV* — Volume-Based Remedies May Remedy The Breach

58. Canada's breach resulted in an overshipment of over 180 million board feet between January and June 2007. As Dr. Neuberger explains, a remedy that reduces future Canadian softwood lumber exports to the United States by the amount of the overshipment may appear superficially appealing. CR-3, ¶¶ 41, 46. That is, if Canada overshipped 182 million board feet, then it seems at first glance that the current regional quota volumes should be reduced by the same amount. However, that approach, while attractive in its simplicity, would fail to remedy Canada's breach. Accordingly, the United States below proposes volume-based remedies that would actually affect the volume of lumber currently being exported.

59. As discussed earlier, reparation, as it is understood in international law, must so far as possible eliminate the consequences of the illegal act. *See Case Concerning the Factory at Chorzów* (Germ. v. Pol.), 1928 P.C.I.J. 47 (ser. A) No. 17 (Sept. 28).

60. Here, the United States should be placed in the position it would have occupied absent the breach. Simply reducing the quota volumes by the amount of the overshipment does not account for the specific consequences of Canada's overshipment *at the time of the breach*. That is, at the time of Canada's breach, the regional quota volumes were effectively constraining Canada's exports to the United States, meaning that, although Canada was abiding by its erroneous understanding of the SLA's requirements, its shipments were still at or just below the quota restrictions. By mid-2007, Canada's shipments had decreased significantly and are currently in no danger of reaching regional quota volumes. CR-3, ¶ 41. Therefore, simply deducting the 182 million board feet overshipment from the current regional quota volumes over six months is likely to have little, if any, effect upon the current volume of lumber traded between Canada and the United States and will not, as Dr. Neuberger concludes, provide any "compensatory relief for past SLA violations." *Id.* In other words, this otherwise simple remedy is not commensurate with the breach, nor would it place the United States in the position it would have occupied absent the breach.

61. Actually reducing a particular region's exports (as opposed to reducing quota volumes) by the amount that region overshipped during the breach period would be more appropriate, but it would be difficult to accomplish and may fail to remedy the breach with any certainty. CR-3, ¶¶ 42-43. For example, Ontario exceeded its correctly calculated regional quota volumes for each month of the six-month breach period. CR-3, ¶ 44. As Dr. Neuberger notes, "conceptually, one could simply reduce exports from Ontario by amounts equal to those

overages during a corresponding future six-month period." *Id.* However, there is no way to reduce actual exports by a set amount unless the export levels are known in advance. To implement such a remedy, the Tribunal would have to devise a forecasted prediction of what Ontario *might* export during the six-month compensation period and deduct its overshipment from that predicted number. *Id.* Dr. Neuberger explains that this type of forecasting would be speculative and, if exporters were asked to estimate their shipments, subject to manipulation as well. CR-3, ¶ 39.

a. *Remedy Proposal III*

62. It is possible, however, to craft an appropriate volume-based remedy that redresses the effects of the breach *at the time of the breach*. To account for the current market in which the volume of Canadian exports of lumber is well below regional quota volumes, thereby making those volume restrictions non-constraining, Dr. Neuberger describes a potential solution that would first create a benchmark for reducing regional quota volumes by approximating the current level of Canadian exports. CR-3, ¶ 42. The amount that Canada overshipped during the breach period would then be subtracted from this benchmark to determine a new regional quota volume for the compensation period. *Id.* In other words, instead of applying the current, unrestrictive quota volumes, current or future quota volumes would be decreased to the actual level of Canadian shipments. This new, lower quota volume would become the benchmark from which the overshipment is deducted. This approach more closely approximates the market conditions under which the breach occurred, in which there existed effectively constraining

quotas, and is, therefore, likely to remove a level of volume from the market commensurate with the breach.[16]

b. *Remedy Proposal IV*

63. Finally, if the Tribunal determines that none of the proposed remedies discussed above provides appropriate adjustments to the export measures, the United States submits that a final remedy could meaningfully restrict volume from Option B regions, and, at the very least, be directly linked to the breach found in the Tribunal's liability award. Canada's breach consisted of a failure to adjust EUSC. As described above, market conditions currently are not what they were in early 2007, and the unique provisions of the SLA do not allow the Tribunal merely to order Canada to compensate the United States through direct payment. Instead, a remedy should encourage Canada to export less lumber in order to restore the United States to the position it would have been in absent the breach. Although ideally this exercise would result in a remedy that takes into account these unique features and effects of the SLA, the United States proposes a fourth remedy that would consider only Canada's failure to adjust EUSC and nothing more.

64. This final option would impose an additional downward adjustment to EUSC beyond any adjustment that Canada would make in a quarter in which quotas are in effect. For example, if in the fourth quarter of 2008, EUSC has been adjusted downward by 800 million board feet (to account for a greater-than five percent difference between actual and expected

[16] As a matter of implementation, Dr. Neuberger suggests that, to calculate the adjusted regional quota volume, the most recent three or six-month period prior to each remedy month be used to calculate, for each Option B region, the average difference between regional quota volumes and actual exports to the United States, as a percentage of the regional quota volume. "Then, during each month of the remedy period, and for each region, that calculated percentage would be 'taken off the top'" of the regional quota volume to create the benchmark. CR-3, ¶ 39.

United States consumption), under this proposed remedy, EUSC would be *further* adjusted downward by the amount that Canada failed to adjust EUSC during the breach period. This second adjustment represents the adjustment that *should have been* made during the first quarter of 2007. This proposal could remedy Canada's breach by encouraging an effectively constraining volume restraint. Although it is uncertain whether this remedy would have an actual constraining effect, the remedy is nevertheless directly linked to the breach found by the Tribunal. *See* CR-3, ¶ 43, n.19. For this reason, the United States offers this last approach as a feasible potential remedy.

CONCLUSION

65. The SLA does not specify precisely the nature of the "appropriate adjustments" to the export measures to compensate for the breach if Canada fails to cure the breach within the reasonable time period. However, the SLA does require that any adjustments consist of export charges and/or volume restraints. To that end, the United States has proposed a variety of remedies that satisfy the SLA's requirements. Although each proposal likely would remedy the breach, the United States submits that an assessment of the Option A export charge upon Option B regions would provide the most appropriate remedy because it would recognize the reality that those regions assumed none of the burdens the Option B volume restraint scheme. Dr. Neuberger agrees that this proposal is the most efficient and logical remedy for Canada's breach.

AWARD SOUGHT

The United States respectfully requests an award determining that:

(1) Pursuant to the SLA, art. XIV, ¶ 22(a), the reasonable period of time for Canada to cure the breach shall be 30 days from the date of the award on remedy; and

(2) Pursuant to the SLA, art. XIV, ¶ 22(b), the appropriate adjustments to the export measures to compensate for the breach if Canada fails to cure the breach within the reasonable period of time shall be as follows:

(a) An additional export charge in the amount of CDN$63.9 million plus interest, shall be collected on exports of softwood lumber products from Option B regions. This additional export charge shall be collected as an assessment equal to ten percent of the export price, which shall be over and above any export charge that may be in place by virtue of the normal operation of the SLA, and shall be collected on exports of softwood lumber products from Option B regions on an *ad valorem* basis until CDN$63.9, plus interest, is collected; or, in the alternative

(b) An additional export charge of US$39.65 per thousand board feet plus interest, shall be imposed upon 2,187.76 million board feet of softwood lumber products exported to the United States from Option B regions; or, in the alternative

(c) Canada shall lower the regional quota volume for each Option B region during each month of a six-month remedy period, in two stages. First, the regional quota volumes for each month/region of the remedy period shall be adjusted downward by the average amount by which the correctly calculated regional quota volume exceeded actual exports in the directly preceding three or six-month period.

Second, regional quota volumes for each month/region of the six-month remedy period would be further reduced by the amount of the corresponding overage for that month/region during the six-month breach period; or, in the alternative

(d) Canada shall adjust the EUSC for each Option B region during each month of a six-month remedy period where Export Measures apply, in two stages. First, the EUSC for each region/month during the remedy period shall be correctly adjusted according to paragraph 14 of Annex 7D of the SLA. Second, EUSC for each region/month during the remedy period would be further adjusted downward by the amount of the miscalculation of EUSC during the breach period.

Respectfully submitted,

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