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**Arbitration proceedings pursuant to the Softwood Lumber Agreement between  
Canada and the United States of America, entered into on 12 September 2006 (the  
SLA) and the LCIA Arbitration Rules (the LCIA Rules)**

**LCIA Arbitration 81010**

In the matter between:

**THE UNITED STATES OF AMERICA**

**AND**

**CANADA**

**PROCEDURAL ORDER NO. 2**

**25 JUNE 2008**

**CONSIDERING:**

- (A) That in the light of Article XVI of the SLA and pursuant to Article XIV(15) and (18) of the SLA, the Tribunal shall establish procedures for the designation and protection of confidential information;
- (B) That Procedural Order No. 1 of 18 April 2008 takes into account, in its § 14, the need for confidentiality;
- (C) That on 21 April 2008, the United States filed a request for production of documents under § 3.1(a) of Procedural Order No. 1.
- (D) That Canada did not file a request for the production of documents.
- (E) That both Parties expressly recognize that during the course of these proceedings either Party may produce or use documents or information that should be maintained as confidential;
- (F) Claimant's letters of 21 and 22 May as well as of 4, 10 and 12 June 2008;
- (G) Respondent's letters of 21 and 22 May as well as of 4, 6, 11 and 12 June 2008;

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- (H) The comments made by the Parties during the telephone conference held on 26 May 2008 regarding the issues of confidentiality and document disclosure;
  - (I) The comments made by the Parties on 19, 20 and 23 June 2008 regarding the draft of this Procedural Order as revised by the Tribunal.

**The Tribunal hereby decides as follows:**

**1. Definitions**

For purposes of this Procedural Order, the following definitions shall apply:

Authorized Persons means persons who have signed a Confidentiality Undertaking in the form set out in Appendix 1.

Confidential Document means a document that includes Confidential Information and is marked as "Confidential" as described in § 2 of this Procedural Order.

Confidential Information means information provided to a Party in this arbitration that is not publicly available and is designated by the submitting Party as "Confidential", or information or statements that would reveal such information.

Confidential Version means a version of a submission, witness statement, expert report, other filing, or Award issued by the Tribunal, that contains Confidential Information, appends Confidential Documents, or that contains statements that would reveal Confidential Information.

Non-Confidential Version means a version of a submission, witness statement, expert report, other filing, or Award issued by the Tribunal, from which Confidential Information has been redacted and Confidential Documents have been removed.

Confidentiality Undertaking means an agreement in the form set out in Appendix 1 to abide by the terms of the present Procedural Order.

Support Staff means paralegals, law clerks, secretaries, or other support staff employed by the Authorized Person's firm or government agency, and operating within the confines of such firm or government agency.

**2. Marking of Confidential Documents**

- 2.1 The Parties shall mark as "Confidential" any document containing Confidential Information, whether the document is produced under §§ 3.1(b) and (e) of Procedural Order No. 1, or affirmatively relied upon in the submissions referred to in §§ 3.1(g), (f), (h) or (i) of Procedural Order No. 1. The "Confidential" label shall be affixed at the top of each page.

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2.2 Nothing in the present Procedural Order shall prohibit either Party from challenging the other Party's determination that a document is a Confidential Document and requesting removal of the "Confidential" legend or designation. Any such challenge shall be limited to an assertion that the document at issue has been made public.

**3. Access to Confidential Documents**

3.1 Only Authorized Persons may have access to Confidential Information or Confidential Documents received under the present Procedural Order. This includes access to Confidential Information or Confidential Documents that are introduced or discussed, orally or in writing, during any part of the arbitral proceedings. Notwithstanding the foregoing, either Party may provide Confidential Information or Confidential Documents to litigation support providers for the purpose of duplication and preparation of submissions. The Parties represent that any such litigation support providers are subject to confidentiality agreements or undertakings that afford the same levels of protection as does this Undertaking and that they (1) will not retain copies of Confidential Documents or Confidential Information after completing their support functions and (2) will return any and all originals and copies of Confidential Documents or Confidential Information that were provided to them for their support functions.

3.2 Only the following persons may sign a Confidentiality Undertaking:

- (a) the members of the Arbitral Tribunal;
- (b) the Administrative Secretary of the Arbitral Tribunal;
- (c) Party counsel, as designated in the Request for Arbitration and Response to Request for Arbitration, and all supervisory and associate counsel and Support Staff;
- (d) counsel for the Government of Quebec;
- (e) counsel for the Government of Ontario;
- (f) witnesses who require access to Confidential Information or Confidential Documents for purposes of their testimony and who have been previously designated by the Parties and approved by the Tribunal, as well as Support Staff of those witnesses. In designating any such witness, the respective Party shall disclose any links the designee may have with any person or association who would gain a competitive advantage through knowledge of the Confidential Information or Confidential Documents. Any such witness or Support Staff member must, in any case, not be involved in the competitive decision-making of any person or association who would gain a competitive advantage through knowledge of the Confidential Information or Confidential Documents for a period of two years following conclusion of the arbitration. Involvement in "competitive

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decision-making" includes past, present, or likely future activities or associations that involve advice on production, sales, operations, or investments made in light of the Confidential Information or Confidential Documents received;

- (g) officials of the Governments of the United States or Canada, who are directly involved in the handling of the present arbitration proceedings and who have been previously designated by the respective Government to this effect and approved by the Tribunal;
  - (h) court reporters, interpreters, translators, and other hearing support staff.
- 3.3 Subject to exceptional circumstances, any designation of witnesses under section 3.2(f) shall be filed by the designating Party no later than seven days into the time period provided in Procedural Order No. 1 for the filing of the written submission to which the witness statement will be appended. The other Party shall have seven days to comment on any proposed designation prior to a decision by the Arbitral Tribunal.
- 3.4 Subject to exceptional circumstances, any designation of Government officials under section 3.2(g) shall be filed by the designating Party on or before 9 July 2008 by providing a list of the designated individuals and their affiliation. The other Party shall have until 16 July to comment on any proposed designation prior to a decision by the Arbitral Tribunal.
- 3.5 All Support Staff must sign and date the Confidentiality Undertaking and all Authorized Persons to whom such Support Staff report shall agree to be responsible for compliance by Support Staff with the Confidentiality Undertaking and the terms of the present Procedural Order;
- 3.6 The following categories of persons shall not be entitled to sign a Confidentiality Undertaking and therefore shall not have access to Confidential Information and Confidential Documents:
- (a) experts not designated as witnesses;
  - (b) counsel to softwood lumber industry representatives.

The Tribunal may however authorize the signing of a Confidentiality Undertaking by one or more of these categories of persons if: (i) the requesting Party establishes, in a manner that, in the opinion of the Tribunal, is considered appropriate pursuant to Article XIV(15) of the SLA, that there are compelling reasons for granting such access to these persons; (ii) they are designated by one Party; and (iii) their links with the softwood lumber industry are fully disclosed.

If a request is filed under this subsection, the non-requesting Party shall have seven days to comment prior to a decision by the Arbitral Tribunal.

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#### **4. Written Submissions**

- 4.1 Where a submission referred to in §§ 3.1(f), (g), (h) or (i) of Procedural Order No. 1 contains Confidential Information or appends Confidential Documents, the relevant Party shall file:
- (a) a Confidential Version of the submission on the date the submission is due; and
  - (b) a Non-Confidential Version of the submission, not later than one week thereafter;
- 4.2 In filing the Confidential Version pursuant to § 4.1(a) of the present Section, the relevant Party shall:
- (a) label the cover page "Confidential";
  - (b) label the top of each page that contains Confidential Information with the word "Confidential" and enclose Confidential Information in brackets; and
  - (c) mark Confidential Documents submitted as exhibits in accordance with § 2 of the present Procedural Order.
- 4.3 In filing the Non-Confidential Version pursuant to § 4.1(b) of the present Section, the relevant Party shall:
- (a) label the cover page "Non-Confidential";
  - (b) label the top of each page from which Confidential Information has been deleted with the words "Non-Confidential", and mark the location from which the Confidential Information was deleted; and
  - (c) replace Confidential Documents submitted as exhibits with a one page placeholder with the notation "Exhibit\_\_excluded as Confidential".

#### **5. Final Hearing**

Where Confidential Information or Confidential Documents are used or discussed at the Final Hearing, the following rules shall apply:

- (a) the Tribunal shall restrict access to the Final Hearing to Authorized Persons and originators of the Confidential Information or Confidential Documents only; and
- (b) transcripts of those portions of the hearing in which Confidential Information or Confidential Documents are used or discussed shall not be made public.

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**6. Award**

If the Tribunal's Award discloses Confidential Information, the Tribunal shall issue two versions of the Award:

- (a) A private, Confidential Version of the Award; and
- (b) A public, Non-Confidential Version of the Award, with Confidential Information redacted.

**7. Public Record**

Only the Non-Confidential Version of submissions, Witness Statements, Expert Reports, hearing transcripts, or the Award shall be made available to the public in accordance with Article XIV(16) of the SLA

**8. Non-Waiver**

Filing or service of Confidential Information or Confidential Documents, as set forth in the present Procedural Order, does not constitute a waiver of the designation of the document or information as confidential.

For the Arbitral Tribunal,



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Gabrielle Kaufmann-Kohler  
Tribunal Chair

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**Appendix 1:  
Confidentiality Undertaking**

**General Obligations of Authorized Persons**

1. By signing this Confidentiality Undertaking, the Authorized Person agrees to take all reasonable steps:
  - i) To comply with all provisions of § 14 of Procedural Order No. 1 and Procedural Order No. 2;
  - ii) Not to divulge Confidential Information, Confidential Documents or any Confidential Version received under this Confidentiality Undertaking to anyone other than Authorized Persons;
  - iii) To use Confidential Information, Confidential Documents or any Confidential Version received under this Confidentiality Undertaking solely for the purposes of the proceedings of this arbitration;
  - iv) Not to consult with anyone who is not an Authorized Person concerning Confidential Information, Confidential Documents or any Confidential Version received under this Confidentiality Undertaking;
  - v) To make true and accurate representations in signing this Confidentiality Undertaking and promptly to notify the Tribunal and the Parties of any changes that occur after the signing of this Confidentiality Undertaking and that affect the representations made herein;
  - vi) To report promptly, in writing to the Tribunal and the Parties, any possible breach of this Confidentiality Undertaking; and
  - vii) To acknowledge that breach of this Confidentiality Undertaking may subject the Authorized Person to the consequences set forth in § 5 of this Confidential Undertaking.

**Transmittal and Storage Obligations**

2. Confidential Information or Confidential Documents may not be transmitted by e-mail or stored on electronic media accessible by any persons other than Authorized Persons or a network accessible by any persons other than Authorized Persons. Copies of Confidential Information or Confidential Documents shall not be made, unless absolutely necessary. In no event shall the total number of copies exceed the applicable Authorized Persons.
3. An Authorized Person shall transmit Confidential Information, Confidential Documents and any Confidential Version as follows:



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- i) Without prejudice to § 2 above of this Confidentiality Undertaking, if by electronic mail, only to Authorized Persons and using a system of encryption ensuring that only Authorized Persons will have access to the Confidential Information, Confidential Documents or any Confidential Version thus transmitted;
  - ii) If by fax, with a cover sheet identifying the fax as containing Confidential Information or Confidential Documents, and in such a manner that ensures that only Authorized Persons will have access to the fax; and
  - iii) If by courier, within two envelopes or two boxes, the inner one sealed and marked "Confidential: To be opened only by [name of Authorized Person recipient]", and the outer one sealed and not marked as containing Confidential material.
4. An Authorized Person shall store Confidential Information, Confidential Documents and any Confidential Version in a secure location and manner, accessible only by that individual or other Authorized Persons consistent with Article XVI of the SLA.

#### **Inappropriate Disclosure of Confidential Information or Documents**

5. To the extent permitted by the SLA and the LCIA Arbitration Rules, any Authorized Person who has breached this Confidentiality Undertaking, upon order of the Tribunal may be subject to denial of access to Confidential Information, disqualification from or limitation of further participation in the proceedings under Procedural Order No. 1 or such other sanctions as the Tribunal deems appropriate.

#### **Return or Destruction of Confidential Information, Confidential Documents and Confidential Versions**

6. Within 30 days of a final award issued by the Tribunal, all Authorized Persons shall destroy or return to Canada all Confidential Information and Confidential Documents received from Canada under this Confidentiality Undertaking. This obligation to destroy or return to Canada shall also apply to any Confidential Version. The Tribunal will determine the practicalities of this obligation in its final award.

#### **Declaration**

I declare that I have read, understand, and will abide by all provisions of this Confidentiality Undertaking, as well as of § 14 of the Procedural Order No. 1 and of Procedural Order No. 2.

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Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_  
(month) (year) (city, State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Organization)