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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. 6

[21 JANUARY 2010]

CONSIDERING:

- (A) That, on the fourth day of the hearing on the merits (23 July 2009), the Tribunal asked the Parties whether they agreed to waive the limitation contained in Article XIV(14) of the SLA concerning the appointment of an independent expert, in the event that the Tribunal would need assistance for the calculation of any compensatory adjustments that might be imposed;
- (B) That, on the following hearing day, the Claimant, acting on behalf of both Parties, advised the Tribunal that the Parties intended to respond to such request shortly after the hearing;
- (C) That, on 31 July 2009, the Claimant communicated to the Tribunal that the Parties had conferred and agreed that they would not waive Article XIV(14) of the SLA nor otherwise consent to the appointment of an independent expert;
- (D) That, during the hearing two of the experts on quantum (Professor Topel, presented by the Claimant, and Professor Kalt, presented by the Respondent) acknowledged that, depending on the conclusions reached by the Tribunal in its deliberations, the information provided in their expert reports may not allow the Tribunal to determine the amounts of compensatory adjustments without further expert assistance (Tr., 23 July 2009, 970: 16-25, 971:1, 1051:14-25, 1052:1, 1055:17-25, 1056:1-2);

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- (E) That, at the hearing and subsequently in its post-hearing brief, the Respondent proposed that Professors Kalt and Topel submit further expert evidence, possibly jointly, if that could assist the Tribunal in reaching a final determination (Tr., 23 July 2009, 1066:25, 1067:1-16; Respondent's Corrected Post-Hearing Brief, para. 10);
- (F) That, in its post-hearing brief, the Claimant opposed such proposal, essentially on the grounds that it "would leave a portion of the breach unremedied and would delay proceedings unnecessarily" (Claimant's Post-Hearing Reply Brief, para. 16);
- (G) That the Tribunal has conducted preliminary deliberations and concluded that further expert assistance is needed to allow it to pursue its deliberations and reach a final conclusion on the merits of the present dispute;
- (H) That, under Article 5.3 of the International Bar Association's Rules on the Taking of Evidence in International Commercial Arbitration, applicable to the present proceedings pursuant to Article XIV(14) of the SLA: "The Arbitral Tribunal in its discretion may order that any Party-Appointed Experts who have submitted Expert Reports on the same or related issues meet and confer on such issues. At such meeting, the Party-Appointed Experts shall attempt to reach agreement on those issues as to which they had differences of opinion in their Expert Reports, and they shall record in writing any such issues on which they reach agreement."
- (I) That the Tribunal's power to order the production of evidence also stems from Article 14.2 of the LCIA Arbitration Rules, applicable to the present proceedings pursuant to Article XIV(6).
- (J) That the scope of and procedure to gather such further expert evidence is set out in this order.

The Tribunal hereby decides as follows:

1. Expert assistance

- 1.1. The Tribunal invites Professor Topel, quantum expert presented by the Claimant, and Professor Kalt, quantum expert presented by the Respondent, to confer and present, if possible jointly, a report estimating the yearly benefits provided by each one of the following programs:
- a) Ontario's Forest Sector Prosperity Fund;
 - b) Ontario's Forest Sector Loan Guarantee Program;
 - c) Québec's Forest Industry Support Program (PSIF);

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- d) Québec's Capital Tax Credit;
 - e) Québec's Road Tax Credit (only the portion of the benefits provided by the increase from a 40% to a 90% tax credit).
- 1.2. In estimating such benefits, the experts shall make the following assumptions:
- a) The programs identified in paragraph 1.1 *supra* will continue until the date of expiration of the SLA pursuant to its Article XVIII;
 - b) Benefits that occur or accrue after the expiration of the SLA shall not be included in the estimate;
 - c) Benefits provided to pulp and paper mills shall not be included in the estimate;
 - d) The value of the benefits provided by government loans and loan guarantees shall be calculated in accordance with standard practice (i.e., difference in interest rates between public and commercial loans);
 - e) The value of the benefit conferred by a subsidy shall be the amount of the subsidy.
- 1.3. On the basis of the benefits estimated in accordance with paragraphs 1.1 and 1.2 *supra*, the experts shall calculate the reduction or offset of the Export Measures (as defined by the SLA) caused by such benefits, including the past effects of such benefits, and calculate the compensatory adjustments to be collected in order to neutralize such reductions or offsets. The calculation of the compensatory adjustments shall be made in a manner that clearly spells out the following items:
- a) The overall amount to be collected for Ontario;
 - b) The overall amount to be collected for Québec;
 - c) The overall amount to be collected for each one of the programs identified in paragraph 1.1 *supra* individually;
 - d) The amount to be collected yearly for each one of the programs identified in paragraph 1.1 *supra* individually, starting in 2010 and ending in 2014.

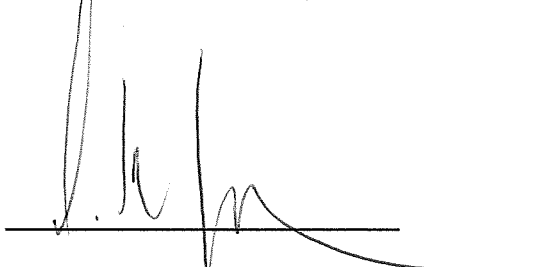
2. Procedure

- 2.1. On the basis of the mandate described in paragraph 1 *supra*, the experts shall present a joint report by no later than **18 March 2010**.
- 2.2. In the event that the experts cannot agree on one or several aspects of the assistance sought, each expert shall file a separate report explaining his position

on the aspects on which there is no agreement and his reasons. Such separate reports shall be filed on the date set in paragraph 2.1 *supra*.

- 2.3. If the experts require clarification on matters set out in the present Order or on other matters with respect to their mandate, they may submit questions to the Tribunal, preferably jointly and within 3 weeks of this order. The Tribunal will endeavour to provide such clarification as soon as possible thereafter.
- 2.4. The Parties may submit simultaneous comments on the report(s) of the experts by no later than **15 April 2010**.
- 2.5. If necessary, upon request from one of Party or on the Tribunal's motion, a hearing will be held to examine the experts on their additional report(s), preceded by a pre-hearing telephone conference for purposes of consultation on the organization of a possible hearing. The Parties are invited to comment, if possible jointly, on whether they wish to hold a hearing and on the venue by no later than **29 January 2010**. The Tribunal will then propose tentative dates for the event that a hearing is to be held.
- 2.6. The present Order may be amended upon request of one Party or on the Tribunal's motion if, in the opinion of the Tribunal, there are sufficient grounds for amendment.

For the Arbitral Tribunal,



Gabrielle Kaufmann-Kohler
Tribunal Chair