

# “Import”-ant News

## Court Gives Split-Ruling on Softwood Lumber Dispute

A London Court for International Arbitration has ruled that Canada has violated U.S.-Canada Softwood Lumber Agreement (SLA) commitments relating to export quota volumes. However, the court made separate rulings relating to export tax levels applicable to British Columbia and Alberta shipments. The tribunal will decide on an appropriate remedy in the next few months to cure Canada's breach of the agreement.

“We appreciate the tribunal's professionalism and diligence in adhering to the expedited timetable established by the SLA for this arbitration, but we respectfully disagree with the key result,” says Office of the U.S. Trade spokeswoman Gretchen Hamel. “The SLA brought about an end to more than 20 years of litigation, and it was crafted as a balanced set of rights and obligations for both the United States and Canada. The viability of the SLA is dependent on maintaining that balance. The tribunal's decision regarding the calculation of the trigger volumes for the

Western Canadian provinces is not consistent with the balance we negotiated under the SLA. While we remain committed to the long-term goal of market-based trade in lumber, we will be consulting with our stakeholders on options going forward.”

In a statement, the Coalition for Fair Lumber Imports chairman Steve Swanson said it (the Coalition) is pleased that the tribunal came to the only correct determination in this case relating to quota volumes. “The negotiated required tax and quota limits on shipments are essential to remedy the effects of Canada's unfair trade practices on U.S. lumber manufacturers, workers and communities,” Swanson said. “The Coalition disagrees with findings that let Canada off the hook regarding past collections of ‘surge mechanism’ export taxes. Canada expressly agreed to all the terms of the agreement and should live up to those terms. That said, the tribunal's decision regarding the surge mechanism should be helpful to U.S. producers when markets recover.”

Canadian representatives have a different take on the ruling.

David Emerson, Canada's Minister of International Trade, made the following statement:

“We are pleased that the tribunal agreed with our interpretation that the adjustment factor is not applicable to British Columbia and Alberta. However, we are disappointed that the tribunal did not agree with our position that adjustments were to commence as of July 1, 2007.”

“While Canada believes that it has fully complied with the Agreement, we respect the tribunal's ruling. We appreciate that the issues in this arbitration involve a complex technical matter,” Emerson says. “The tribunal heard from both parties on the interpretation of the adjustment factor. Today's decision provides clarity with respect to the implementation of the SLA in the future.”

Emerson adds, “This is the first stage of arbitration. The next stage will determine any remedy that may be applicable. We will continue to defend Canadian interests throughout this process.”



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## SLA Background

The SLA entered into force on October 12, 2006, and is expected to remain in force for seven years, with the possibility of extension for an additional two years. The SLA provides for binding arbitration to resolve disputes between the United States and Canada regarding interpretation and implementation of the Agreement. Under the SLA, arbitration is conducted under the rules of the LCIA, and there is no appeal from the decision of the tribunal.

On January 18, the United States requested through the Department of Justice a second arbitration on a separate issue. Under the SLA, the United States and Canada committed to not take action to circumvent the commitments made in the Agreement. The SLA states that providing certain grants or other benefits to Canadian softwood lumber producers circumvents the Agreement. Quebec and Ontario have put in place several assistance programs that provide grants or other benefits to softwood lumber producers that violate the SLA's anticircumvention provisions. These include a number of grant, loan, loan guarantee and tax credit programs, as well as so-called "forest management" programs and programs that promote wood production. Pursuant to the SLA, the tribunal in that arbitration shall endeavor to issue a decision within 180 days of its composition.

## Mislabeled Scaffolding Planks Imported from China

Non-certified Chinese laminated veneer lumber (LVL) used as scaffolding planks recently failed tests conducted on it by the APA-The Engineered Wood Association (APA). The APA put several samples of the product through mechanical evaluations and the samples failed to meet the design property embossed on them. The results are summarized in APA's Product Advisory, "Imported Chinese LVL Scaffold Plank," available online at [apawood.org](http://apawood.org).

"This does raise concern for life safety issues," says Dr. Borjen Yeh, director of technical services for APA. Even though the sample size was limited, the performance of the


tested planks was substantially below the value proclaimed by the manufacturer, and therefore, end users are advised to be wary of all non-certified product.

Earlier this year APA evaluated LVL scaffold planks imported into the United States from China to compare the adhesive and mechanical properties relative to similar products manufactured in the United States and Canada. The planks were labeled 2.2E, which means they should have a modulus of elasticity (MOE) of 2.2 million pounds per square inch (psi). (MOE is a measure of stiffness under load.) The 30 test specimens averaged 1.8 million psi, which is about 20 percent below the proclaimed value. Based on the strength test results, the allowable bending strength is 2,100 psi, which is nearly 30 percent less than domestic LVL planks of comparable (2.2E) grade.

In two adhesive durability tests, the imported LVL planks did not meet U.S. Voluntary Product Standard PS 1 for glue bond durability. The delamination results indicated that the panels probably were manufactured with water-resistant adhesives, but that the glue bond quality was inconsistent.

In addition to their poor strength and durability performance, the tested samples did not bear the mark of an independent certification agency. According to the OSHA scaffold plank regulations and the American National Standards Institute (ANSI) A10.8 Standard for scaffolding safety, "all laminated scaffold[ing] shall bear the seal of an independent nationally recognized agency certifying compliance with the design criteria referenced in the standard."

The LVL scaffold tests come on the heels of last year's imported concrete forming panel tests. APA tested the strength, adhesive durability and formaldehyde emissivity of Chinese overlaid concrete forming panels and found that they did not meet the standards set forth in PS 1. The Product Advisory, "Imported Chinese LVL Scaffold Plank" (Form No. SP-1139), as well as a summary of concrete forming panel tests may be found on APA's website.

✓ [www.apawood.org](http://www.apawood.org) 



Non-certified laminated veneer lumber recently imported from China was tested by the APA-The Engineered Wood Association and failed the mechanical evaluation and design property tests.