



May 5, 2008

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To/ Destinataire	Ms. Susan Dudley Administrator, OIRA 725 17th Street NW Washington D.C. 20503	Tel	
		Fax	202-395-6102
From/ De	Kevin Thompson Counsellor (Trade Policy) Embassy of Canada 501 Pennsylvania Avenue, NW Washington D.C. 20001	Tel	202-448-6548
		Fax	202-682-7795

**INCOMING CORRESPONDENCE FROM CANADA**

No of pages including this page / Nombre de pages y compris la présente: 5

**MESSAGE:**

Dear Ms. Dudley,

Please find attached comments regarding the proposed Interim Final Rule for the Canadian Softwood Lumber Import Licensing System.

Thank you.

**Kevin Thompson**

Counsellor (Trade Policy)/ Economic and Trade Policy Section



Government of Canada  
Embassy of Canada

Gouvernement du Canada  
Ambassade du Canada

May 5, 2008

**SENT BY FAX (202-395-6102) AND MAIL**

Ms. Susan E. Dudley  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Executive Office of the President  
725 17th Street, NW  
Washington, DC 20503

**RE: Canadian Softwood Lumber Import Licensing System  
Interim Final Rule  
RIN: 0625-AA76**

Dear Ms. Dudley,

The Government of Canada would like to submit the attached written comments to the Office of Information and Regulatory Affairs (OIRA) concerning the proposed Interim Final Rule for Canadian Softwood Lumber Licensing System, sent to OIRA by the Department of Commerce on February 20, 2008.

We would like to thank you in advance for your consideration of these comments.

Yours truly,

Susan Harper  
Minister (Economic)

enclosure (1)

cc. David Rostker, Policy Analyst, Office of Information and Regulatory Policy  
John Melle, Deputy Assistant USTR for North America, USTR  
Stephen Claeys, Deputy Assistant Secretary, DOC

**RE: Department of Commerce Proposed Interim Final Rule  
RIN: 0625-AA76  
Canadian Softwood Lumber Import Licensing System**

The Government of Canada submits the following written comments on the proposed Interim Final Rule by the U.S. Department of Commerce (DOC) concerning a Canadian Softwood Lumber Import Licensing System, submitted to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, for review on February 20, 2008. These written comments are intended to complement the concerns expressed by Canada during a meeting with representatives of OIRA and other U.S. government agencies on March 13, 2008.

A licensing system for Canadian softwood lumber imports directly affects Canadian interests and has the potential to conflict with and/or duplicate systems already in place in both Canada and the United States to track softwood lumber shipments. For these reasons, the Government of Canada has been seeking further information on the proposed import licensing system, and the process by which it would be implemented, from the Office of the U.S. Trade Representative (USTR) and DOC. Although Canada has received some additional information from these agencies, it seeks further clarification. Furthermore, Canada believes that the likely extensive impact of any licensing system on the softwood lumber trade, including on small and medium-sized enterprises in Canada and the United States, is economically significant.

Notwithstanding the significance of the proposed licensing system, DOC has provided no reason for short-circuiting the usual notice and comment rulemaking process. Affected companies, workers and consumers have not been provided any meaningful opportunity to participate in the regulatory process. Without such input, DOC cannot have adequately assessed the proposed licensing systems' costs or benefits. The interim rule is not required by U.S. law nor has DOC identified a compelling public need that is addressed by the proposed licensing system. Canada urges OIRA to send the draft interim rule back to DOC with instructions to engage in full notice and comment rulemaking prior to adopting any softwood lumber import licensing system.

What follows is further detail on the Canada-United States softwood lumber trade and information on the likely impact of any system.

**Canada-United States Softwood Lumber Trade**

Canada is the largest supplier of softwood lumber products to the United States accounting historically for roughly one-third of overall US consumption of lumber. Canada currently exports between US\$ 4 and 5 billion of softwood lumber products to the United States each year, mostly framing lumber for houses. Border officials process some 300,000 softwood lumber transactions per year. Softwood lumber products are exported from all Canadian provinces, and one territory, entering the United States right across the country. From what we understand, U.S. importers of record of softwood lumber products include large

corporations, as well as numerous small and medium sized enterprises. Similarly, U.S. customers for Canadian lumber products range from Home Depot, to small home builders.

### **Canada-United States Softwood Lumber Data Collection and Exchanges**

In accordance with the Canada-United States Softwood Lumber Agreement, both the Canadian and U.S. governments track softwood lumber shipments from Canada to the United States. They also share information with each other: U.S. Customs and Border Protection (USCBP) shares monthly with Canadian officials details on each U.S. entry of Canadian softwood lumber products recorded during the previous month. The information collected and shared includes: identification of manufacturer and importer of record; Canadian region from which the product originates; applicable tariff code for the product; value and volume for the shipment; port of entry; date of entry. Furthermore, a reconciliation process occurs quarterly with both Canadian officials at Department of Foreign Affairs and International Trade and USCBP with respect to the volume and value of shipments.

Given the above, Canada, questions the need for additional monitoring measures. From the limited information we have received so far from U.S. authorities, it seems that the proposed monitoring system would collect the same information that Canadian authorities and USCBP already collect, share and reconcile. Imposing an additional monitoring requirement will have a direct administrative impact on softwood lumber importers of record, including a number of small and medium sized enterprises.

### **Opportunity for Comment**

Canada understands that OIRA's mandate under Executive Order 12866 is to review proposed agency regulations to ensure that proposed regulations are consistent with, among other things, applicable U.S. law. The Administrative Procedures Act (APA), 5 U.S.C § 533, requires (1) publication of a notice of proposed rulemaking, (2) opportunity for public participation in the rulemaking by submission of written comments, and (3) publication of a final rule and accompanying statement of basis and purpose not less than 30 days before the rule's effective date. Although the APA, 5 U.S.C. § 553(a)(1), exempts regulations involving a foreign affairs function of the United States from the usual notice and delayed effective date requirements for rulemaking, Canada would note that by DOC's submission of the proposed interim rule for OIRA review, DOC appears to have concluded that this exemption is not applicable to the proposed regulation. Furthermore, Executive Order 12866, Sec. 6(a) also requires DOC to provide the public with meaningful participation in the regulatory process.

Before implementing other import licensing systems, U.S. agencies have regularly provided for full notice and comment. For example, while DOC was developing the Mexican Cement Import Licensing System, it provided the public with an opportunity for full public comment in advance of the implementation of the regime. *See Mexican Cement Import Licensing System*, 72 Fed. Reg. 10,006 (March 6, 2007). DOC concluded that the Mexican Cement Import Licensing System was economically significant. The cement trade between the United States

and Mexico is smaller and involves far fewer transactions than the United States-Canada softwood lumber trade. In its review of the Mexican Cement Import Licensing System under the Regulatory Flexibility Act, the DOC estimated that 12,150 import licenses would be issued each year, as compared to the approximately 300,000 lumber transactions every year.

An opportunity for public comment after the implementation of an interim final rule is not an adequate substitute for full notice and an opportunity to comment on a draft rule as required by the APA. As explained above, Canada currently exports between US\$ 4 billion and US\$ 5 billion of softwood lumber products to the United States each year that implicate approximately 300,000 softwood lumber border transactions per year. Given the magnitude of trade between our countries, providing for full notice and comment enables a full assessment of all the issues that may arise if a lumber licensing system is implemented

Contrary to Executive Order 12866, Sec. 1(a), the proposed import licensing system is not required by law, nor is it made necessary by a compelling public need. Indeed, mechanisms are already in place in the United States and Canada for data collection, and this proposed licensing system will be duplicative and impose an unnecessary administrative burden. Because DOC has not provide meaningful public participation in the rulemaking process, it cannot have adequately assessed all costs and benefits as required by Executive Order 12866. Consistent with its mandate under Executive Order 12866, OIRA should not approve the proposed licensing system.

### **Conclusion**

We request that OIRA return the proposed interim rule to the Department of Commerce with instructions to engage in full notice and comment rulemaking prior to the implementation of any softwood lumber import licensing system. The Government of Canada and any other affected stakeholder will welcome the opportunity provide commentary regarding the proposed system and to put their opinions on the record.

We would be pleased to provide further details on our concerns, if required.