

**Canada and U.S. Sign Lumber Agreement--  
Anticipated Permit Procedures Under New Agreement  
May Present Risks**

### **Canada, U.S. Sign Deal**

Representatives of the Governments of Canada and the United States signed the Canada-United States Softwood Lumber Agreement of 2006 on Tuesday, September 12. The anticipated implementation date for the deal is October 1, 2006.

### **Changes to Export Permit Requirements**

A significant revision to export permit procedures is among several important changes to requirements for softwood lumber products from Canada arising out of the new deal. We are advised that Canada's Department of Foreign Affairs and International Trade (DFAIT) will require an exporter to obtain an export permit in advance of shipment. We believe that any procedures resulting from these requirements may operate to compromise the integrity of data that is collected with respect to lumber exports from Canada.

The recent Softwood Lumber Agreement specifies that Canada will require an export permit for each entry of softwood lumber products exported to the United States. The Agreement also provides that the U.S. will once again require the applicable export permit number to be listed on the associated CBP entry summary, as was the case under the U.S.-Canada Softwood Lumber Agreement of 1996 (the "SLA of 1996"). The SLA of 1996 expired in 2001, and in 2002, the Government of Canada reduced its permit requirements, requiring weekly export permits for each mill of origin, instead of individual permits for each shipment of softwood lumber.

Procedures under both the individual permit system used prior to 2002 and the weekly permit system that continues today allowed a valuable piece of information to be included in the export permit application data: the U.S. Customs entry number. For years NGJ, in connection with its Canadian business partners, has utilized this tool by making arrangements for permit applications to be filed after the CBP entry number was known, and also at a time when the contents of the shipment were finalized. This process will not be possible if exporters are required to apply for a permit in advance of shipment.

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The system allowing the CBP entry number to be included in the permit application data provides substantial benefits. NGJ clients have experienced a higher than average accuracy rate with respect to their export permit data. The system has allowed NGJ to provide its clients with accurate and timely U.S. import information that ties the Canadian export permit number to the CBP entry number. NGJ clients have been able to receive export permit verification reports, audit their export data and confirm that accurate information has been supplied to DFAIT. In common scenarios where last-minute alterations to shipments are required, the permit application data has accurately reflected the final content of the shipment, which frequently differs from the expected content of the shipment.

The quality of information supplied to DFAIT by NGJ clients was confirmed in 2004 by a large-scale DFAIT audit of softwood lumber export permit information for exports in 2003. Overall, NGJ clients reviewed in this audit experienced an extremely low error rate. We were advised through various channels that a significant number of exporters who did not use a system that provided the CBP entry number in the permit application data experienced substantially higher error rates than the overall error rate attributable to NGJ clients.

Procedures under a requirement that exporters must obtain an export permit in advance of shipment would place a high burden on exporters to supply accurate information well in advance of shipping their goods. Specifically, exporters would be required to provide in advance, and would be responsible for the accuracy of, the following information in their export permit application:

- (a) Exporter's Business Number;
- (b) Name of exporter;
- (c) Region of Origin;
- (d) Customs Tariff (Canada) classification and product description;
- (e) Quantity in board feet, cubic meters, or square meters in nominal terms;
- (f) Export price;
- (g) U.S. port of entry;
- (h) Anticipated U.S. entry date;
- (i) Name of importer or consignee;
- (j) Mode of transportation;
- (k) Export permit number;
- (l) Canadian date of shipment; and
- (m) Maritime Lumber Bureau Certificate of Origin number, if applicable.

Experience tells us that exporters will face considerable challenges in ensuring the export permit data they submit is consistent with the resulting U.S. CBP entry information if exporters are required to provide this information before the shipment is ready to depart for the United States.

We are advised that the reasoning behind the expected requirement that permit applications be submitted in advance of shipment is that "Option B" referenced in Article VII of the Agreement provides for the possibility of an "absolute" quota. If the absolute quota applies and is filled, affected softwood lumber shipments may not be exported to the United States until the quota re-opens. The absolute quota scenario would differ from the quota that applied under the SLA of 1996. Under the 1996 Agreement, if an exporter exceeded its quota during a given period, the exporter had the option of compensating for the over-quota volume by paying a specified amount. Such an option would not be available under "Option B" of the new Agreement if the applicable quota filled. We are advised that the early time frame for submitting permit

applications is intended to allow the Government of Canada to enforce a prohibition on affected shipments should an absolute quota under “Option B” fill during a given period.

We are nevertheless concerned that the proposed requirement that an exporter obtain an export permit in advance of shipment will compromise the integrity of export data collected by the Government of Canada. Procedures that complied with such a requirement would not allow the CBP entry number to be tied to the permit application.

Without the CBP entry number included in the permit application, there will be increased opportunity for export permit numbers to be mistakenly applied to entry summaries for other shipments. Exporters will have fewer options for confirming the accuracy of the information supplied in their export permit applications for purposes of ensuring uniformity with information supplied to CBP on entry summaries.

The proposed system will also significantly increase exporters’ workloads where corrections to permit information is required after the application has been submitted. In the common scenario in which a shipment is altered by either adding or removing lumber immediately before the shipment leaves for the United States, the anticipated permit application requirement will significantly complicate the process.

There are several other potential problems with the proposed requirement that exporters obtain a permit in advance of shipping. Lumber shipments with goods covered by more than one permit applicant will require more than one permit. Matching the different permit numbers to the entry will be a more complex process if the CBP entry number is not included in the permit application data.

We ask exporters to consider these issues internally, and consider discussing the matter within your associations, and finally to consider discussing the matter further with DFAIT. It is our hope that increased awareness and dialogue on these issues will lead to the examination of possible options that will protect the integrity of data submitted in export permit applications and at the same time allow the Government of Canada to honor its obligation under the new Agreement.