

**NOTICE OF INTENT TO SUBMIT  
A CLAIM TO ARBITRATION  
UNDER SECTION B OF CHAPTER 11 OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT**

**CANFOR CORPORATION  
("Canfor")**

**Investor**

**v.**

**THE GOVERNMENT  
OF  
THE UNITED STATES OF AMERICA  
("United States")**

**Party**

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement ("NAFTA"), Canfor, delivers this Notice of Intent to Submit a Claim to Arbitration.

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I. Name and Address of Disputing Investor

CANFOR CORPORATION  
2900 - 1055 Dunsmuir Street  
Vancouver, BC  
CANADA V7X 1B5

II. Overview - NAFTA Chapter 11 Breaches

1. The Investor submits that the United States has breached amongst others the following articles under Section A of Chapter 11 of the NAFTA:

- Article 1102 - National Treatment;
- Article 1103 - Most-Favoured Nation Treatment;
- Article 1105 - Treatment in Accordance with International Law; and
- Article 1110 - Expropriation.

2. Canfor has incurred loss and damage by reason of, or arising out of, these breaches.

3. The relevant provisions of the NAFTA are:

*Article 1102: National Treatment*

1. *Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

2. *Each Party shall accord to investments of investors of another Party treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

3. *The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.*

4. *For greater certainty, no Party may:*

- (a) *impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or*
- (b) *require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.*

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**Article 1103: Most-Favoured Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favourable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

**Article 1105: Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

**Article 1110: Expropriation and Compensation**

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
  - (a) for a public purpose;
  - (b) on a non-discriminatory basis;
  - (c) in accordance with due process of law and Article 1105(1); and
  - (d) on payment of compensation in accordance with paragraphs 2 through 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.
4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.
5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no

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*less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.*

6. *On payment, compensation shall be freely transferable as provided in Article 1109.*

7. *This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).*

8. *For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.*

### III. Facts and Issues

#### A. Facts

##### (i) Canfor and its United States Investments

4. Canfor is a publicly traded corporation incorporated under the laws of British Columbia, Canada. Canfor USA Corporation ("Canfor USA"), an indirect wholly owned subsidiary of Canfor, is a juridical entity established under the laws of Idaho, United States of America.

5. Canfor employs approximately 5,760 people in its forest products and affiliate operations, producing lumber, pulp, specialty kraft paper, newsprint, plywood, hardboard and logs. Canfor operates thirteen sawmills in British Columbia and Alberta and is one of the largest softwood lumber producers in North America.

6. Canfor markets its softwood lumber throughout North America. Canfor lumber destined for the United States is purchased by Canfor Wood Products Marketing Limited ("Canfor Wood Products") an indirect wholly owned subsidiary of Canfor. Sales to the United States are then made by Canfor Wood Products. Canfor USA purchases lower grade softwood lumber from Canfor Wood Products which it then re-manufacturers into higher grade lumber for sale in the United States.

7. Canfor's operations in the United States include a re-manufacturing facility, as well as nine reload centres. The reload centres are used to hold an inventory of Canfor Wood Products softwood lumber for sales to United States customers. Canfor's United States

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investment includes these facilities as well as its Vendor Managed Inventory programs ("VMI") and its market share and access to the United States softwood lumber market.

(ii) The Measures

8. On April 2, 2001 two petitions were filed with the United States Department of Commerce and the United States International Trade Commission ("ITC") by the Coalition for Fair Lumber Imports ("Coalition") and others (the "Petitioners") alleging that the United States softwood lumber industry was materially injured or threatened with material injury through imports of subsidized and dumped softwood lumber from Canada, and seeking the imposition of countervailing duties and anti-dumping duties.

9. In May, 2001, the ITC determined that there was a reasonable indication that the United States softwood lumber industry would be threatened with material injury from import of Canadian softwood lumber.

10. On August 9, 2001, the Department of Commerce issued a preliminary countervailing duty ("CVD") determination and preliminary critical circumstances determination with respect to softwood lumber imports from Canada, which was published in the United States Federal Register on August 17, 2001. As a result, the Department of Commerce found a subsidy rate of 19.3% and consequently all softwood lumber imports into the United States from Canada made on or after May 19, 2001 must be accompanied by cash deposits or bonds in that amount.

11. On October 30, 2001, the Department of Commerce issued a preliminary anti-dumping ("AD") determination. As a result of its finding the Department of Commerce found a weighted average dumping margin of 12.98% for Canfor and consequently all softwood lumber imported into the United States by Canfor or its affiliates from or after the date of publication of the preliminary AD determination in the United States Federal Register must be accompanied by cash deposit or bonds in approximately that amount.

12. The CVD and AD regimes, and the Department of Commerce's Preliminary Determinations are measures that relate to Canfor and its United States investments (the "Measures"). In adopting, maintaining, and applying these Measures the United States has treated Canfor and its United States investments in a manner inconsistent with the provisions of Part A of NAFTA Chapter 11. This conduct has resulted in Canfor and its United States investments incurring extensive loss and damage for which Canfor should be compensated.

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(iii) NAFTA Chapter 11 Breaches

(a) *Treatment in Accordance with International Law*

13. The United States has failed to provide treatment in accordance with international law including fair and equitable treatment and full protection and security to the United States investments of Canfor. The Department of Commerce Preliminary CVD Determination, and the manner in which it was arrived at, (including with respect to its cross-border analysis and critical circumstances determinations), failed to meet the requisite international standard owed to Canfor and to its United States investments. Similarly, the approach taken by the Department of Commerce in its October 30, 2001 AD determination has also failed to meet the requisite international standard owed to Canfor and to its United States investments.

14. The Preliminary CVD and Preliminary AD Determinations were reached in an arbitrary, capricious and unfair manner that violated the international standard of treatment, including the standard of fair and equitable treatment, owed to Canfor's United States investments.

15. The United States' breaches of Article 1105 of NAFTA arising out of the Preliminary CVD Determination include but are not limited to:

- (a) the arbitrary and capricious use of a cross-border analysis previously rejected by it, to determine the existence of a "benefit";
- (b) the arbitrary and capricious manner in which the Department of Commerce reached its critical circumstances determination including
  - its finding of "massive imports" including the way in which it dealt with seasonality adjustments and its consideration of the impact of the Softwood Lumber Agreement, and
  - its reliance on a single export subsidy from the Province of Quebec (that had benefited only three companies and that amounted to only 0.0029 percent of total sales to the United States) to identify a subsidy that was inconsistent with the WTO Subsidies Agreement,
- (c) the failure to provide adequate substantive and procedural protections to Canfor and its United States investments under the CVD process, particularly having regard to the consequences of the critical circumstances determination, prior to the imposition of such an extraordinary remedy.

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16. The United States has further failed to treat Canfor and its United States investments in accordance with international law by targeting the British Columbia and Canadian softwood lumber industry and Canfor with discriminatory, unfair and inequitable treatment, by implementing legislation and by giving directions to the Department of Commerce in order to specifically reverse the Binational Panel's interpretation of the United States countervailing duty laws in Lumber III.<sup>1</sup> Relying in part upon these amendments and directions, the Department of Commerce has issued the recent preliminary CVD determination and thereby caused significant harm to Canfor and its United States investments.

17. The United States' breaches of NAFTA Article 1105 arising out of the preliminary AD determination include but are not limited to the use of the principle of "zeroing" which unfairly inflates the size of Canfor's dumping margin.

18. The United States' actions are inconsistent with the overriding objectives of the NAFTA, and Article 1105. Canfor and its United States investments have suffered loss and damage as a result of these actions for which the United States is liable to compensate Canfor.

*(b) National Treatment*

19. The United States has failed to accord Canfor and its United States investments the required standard of treatment under Article 1102 of NAFTA by not extending to Canfor and its United States investments the best treatment available in the United States to United States investors and their investments involved in the sale, distribution and manufacture of softwood lumber in the United States.

20. The best treatment available in the United States to United States investors and their investments involved in the sale, distribution and manufacture of softwood lumber is provided to the United States competitors of Canfor operating in the United States who are not subject to the AD and CVD duties.

21. Unlike their effect upon its United States competitors, the Measures and their application to Canfor and its United States investments have interfered with the expansion, operation, conduct and management of Canfor and its United States investments. Canfor and its United States investments have suffered loss and damage as a result of the United States actions, for which Canfor seeks compensation.

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<sup>1</sup> In the Matter of Certain Softwood Lumber Products from Canada, 92-1904-01, Decision of the Panel, May 6, 1993; Decision of Panel on Remand, December 17, 1993.

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(c) *Most-Favoured Nation Treatment*

22. The United States has failed to accord Canfor and its United States investments the required standard of treatment under Article 1103 of NAFTA by not extending to Canfor and its United States investments the best treatment available in the United States to foreign investors and their investments involved in the sale, distribution and manufacture of softwood lumber in the United States.

23. The best treatment available in the United States to foreign investors and their investments involved in the sale, distribution and manufacture of softwood lumber is provided to Canfor's United States competitors from countries other than Canada who are not subject to the AD and CVD duties, and who are not subject to arbitrary and discriminatory targeting of their softwood lumber imports into the United States.

24. Unlike their effect upon Canfor's United States competitors from countries other than Canada, the Measures, and their application to Canfor and its United States investments, have interfered with the expansion, operation, conduct and management of Canfor and its United States investments. Canfor and its United States investments have suffered loss and damage as a result of the United States actions, for which Canfor seeks compensation.

(d) *Expropriation*

25. The effect of the Measures, and their application to Canfor and its United States investments, has been to substantially deprive Canfor of the benefits of its United States investments, by amongst other things substantially depriving Canfor and its United States investments of their ability to sell their products in the United States softwood lumber market, thereby amounting to an expropriation without compensation, contrary to NAFTA Article 1110.

26. Canfor and its United States investments have incurred loss and damage as a result of the Measures and their application, for which Canfor seeks compensation.

**B. Issues**

27. Has the United States breached, amongst others, Articles 1102, 1103, 1105 and 1110 of NAFTA Chapter 11 and has Canfor incurred loss or damage by reason of or arising out of that breach.

28. If so, what is the compensation to be paid to Canfor by reason of or arising out of those breaches?

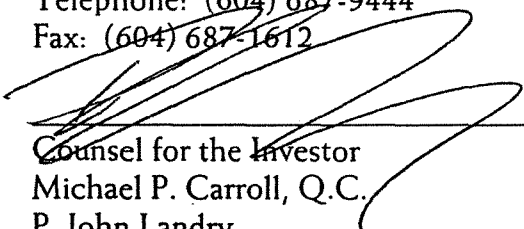
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IV. Relief Sought and Damages Claimed

29. Canfor Corporation claims damages of not less than \$250 million United States dollars and its costs.

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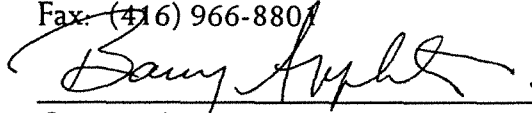


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