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## FREQUENTLY ASKED QUESTIONS

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Ministry of Forests, Lands and Natural Resource  
Operations

### **FAQ: Softwood lumber dispute**

#### **Negotiation**

##### **Why weren't you able to reach a new agreement with the U.S.?**

- B.C. worked closely with the federal government which is responsible for representing Canadian interests in trade negotiations. While the federal government engaged extensively with their U.S. counterparts, there is not yet enough common ground to support an agreement.
- At the end of the standstill period (one year after the expiry of the 2006 Softwood Lumber Agreement), the U.S. lumber industry was legally entitled to bring forward its petition despite ongoing efforts to resolve the dispute. Nonetheless, B.C. will continue to press for a new managed trade agreement, since managed trade is preferable to costly and lengthy litigation.

##### **When's the next opportunity an agreement can be reached?**

- As we've seen in the past, an agreement can be reached at any time.
- We will continue to support Canada in discussions with the U.S., while defending B.C.'s interests in litigation.

#### **Litigation**

##### **Who launched the litigation?**

- The U.S. lumber industry filed its petition with the U.S. government on Nov. 25, 2016. It is an allegation only and does not represent the U.S. government's findings.
- The U.S. Department of Commerce and the U.S. International Trade Commission are responsible for conducting the investigation.

##### **What do they investigate?**

- The U.S. Department of Commerce is investigating the following programs that are specific to British Columbia to determine whether forest companies are being subsidized by the B.C. government:
  - BC stumpage pricing policy
  - BC Log Export Policy
  - BC Hydro PowerSmart
  - BC Hydro Electricity Purchasing Agreements
  - Motor Fuel Tax Refund For Off-Highway Purposes

## **How do those programs provide subsidies?**

- They don't.

## **Why does the American lumber industry believe that these programs constitute a subsidy?**

- The softwood lumber dispute has been a trade irritant between the two countries for decades.
- One underlying issue is the difference in land ownership between the two countries. In the U.S., about 90% of forest land is owned and managed by private entities, whereas in Canada about 90% is managed by provincial governments on behalf of the public.
- The U.S. mistakenly points to the Canadian model of public ownership as necessarily leading to governments providing timber at discounted prices to lumber companies.
- B.C. has always priced timber based on market principles, and since 2006 has used an auction-based pricing system that demonstrably leads to market prices being charged for public timber.
- Another underlying issue leading to the continuation of this dispute is that the U.S. lumber industry has been successful since the mid 1980s in having its government impose tariffs on Canadian lumber, even after Canada has demonstrated in international appeals that the tariffs were unfounded.
- The countervailing and anti-dumping trade litigation rules are set up to provide protection to U.S. industry.

## **What has happened since the petition was filed?**

- On Dec. 15, 2016, the U.S. Department of Commerce announced it would proceed with the case using a company-specific approach by choosing the largest exporters as mandatory respondents in the investigation.
- On Jan. 6, 2017, the U.S. International Trade Commission ruled that Canadian softwood lumber exports had injured the U.S. industry. This finding was necessary for the U.S. Department of Commerce to continue its investigation.
- The U.S. Department of Commerce has identified four companies as mandatory respondents for the subsidy and dumping investigations, three of them are B.C.-based companies.
- Subsequent to the selection of the four mandatory respondents, J.D. Irving, a New Brunswick-based forest company was accepted by the U.S. Department of Commerce as a voluntary respondent.
- Questionnaires were sent to the mandatory and voluntary respondents, federal and provincial governments to gather information. Responses were filed in March 2017.
- On April 24, 2017, the U.S. Department of Commerce issued a preliminary determination of countervailing duty rates as follows:
  - Canfor: 20.26%
  - J.D. Irving: 3.02%
  - Tolko: 19.50%
  - West Fraser: 24.12%
  - Resolute: 12.82%
  - "all others": 19.88%
- On April 24, the U.S. Department of Commerce made a preliminary finding of "critical circumstances" (significant increase in Canadian lumber exports) for J.D. Irving and the

“all others” group of companies, but not to Canfor, Resolute, Tolko and West Fraser. This means that Irving and all other companies will need to pay countervailing duties on their shipments made since about Jan. 31, 2017. (90 days prior to the notice being published in the U.S. federal register, expected around May 1).

### **What is a company-specific investigation?**

- In a company-specific approach investigation, the largest exporters are chosen by the U.S. as mandatory respondents.
- Based on company information gathered from a questionnaire, a duty rate is calculated for each company.
- If the U.S. finds that Canadian lumber is subsidized and/or dumped, a preliminary countervailing (subsidy) duty rate and/or anti-dumping rate will be set.
- Each of the mandatory respondent company will get a company-specific duty rate, and all other Canadian lumber exporters will get the weighted average of the rates assessed on the five companies (the “all others” rate).

### **What was the rationale for the U.S. Department of Commerce’s finding?**

- Federal government and provincial government staff and legal counsel are carefully reviewing the rationale issued by the U.S. Department of Commerce on April 25, 2017.

### **Is there expected to be a difference between the preliminary and final duty rate?**

- It is possible. In the last lumber litigation (Lumber IV), the combined countervailing and anti-dumping duty rates shifted from 32% to 27%.

### **Why is there a difference between the rates for Tolko, Canfor and West Fraser?**

- While the three companies are all based in B.C., they all have operations in other parts of Canada, which has affected the preliminary duty that was assessed for each company.

### **Why did Irving volunteer as a respondent?**

- This was Irving’s own decision.

### **What opportunities exist for companies, other than the mandatory respondents, to put company-specific facts on the record with the U.S. Department of Commerce?**

- In its April 25 company exclusions memorandum, the U.S. Department of Commerce claimed that they do not have the legal authority to conduct a company exclusion process in a company-specific case.
- Canada and B.C. submitted several letters to the U.S. Department of Commerce to request a company exclusions process for companies that do not hold tenure and purchase logs on the open market.
- Following publication of the final countervailing duty order in 2018, companies will have 30 days within which to request the U.S. Department of Commerce conduct an Expedited Review, which will establish a company specific rate for the requesting company.

### **What are the next steps in the litigation process?**

- The preliminary determination for dumping will be issued June 23, 2017.

- The U.S. will issue the final countervailing duty and anti-dumping orders in January 2018, at which point Canada can appeal the decision.

### **When will companies be required to pay cash deposits?**

- In its April 24 preliminary determination, the U.S. Department of Commerce imposed preliminary countervailing duties of nearly 20%.
- Canadian companies will be required to pay cash deposits on their lumber exports to the U.S. for four months upon publication of this decision (estimated to occur May 1, 2017). After the four-month period, no cash deposits for countervailing duties will be required until the final determination order is issued in January 2018.
- If, in its June 2017 preliminary determination, the U.S. Department of Commerce finds that Canadian companies are dumping exports into the U.S., Canadian companies will need to pay an additional, additive anti-dumping duty for six months. After the six-month period, no cash deposits will be required for the anti-dumping duties until the final order is issued in January 2018.
- The U.S. Department of Commerce made a preliminary finding of “critical circumstances” (significant increase in Canadian lumber exports), requiring the duties to be imposed (to all companies except Canfor, Resolute, Tolko and West Fraser) retroactively on shipments made up to 90 days prior to the preliminary determinations of both the subsidy and dumping cases.
- If the final duty rates are lower than the preliminary duty rates, the difference will be refunded.
- Cash deposits will be held in trust by the U.S. until all Canadian appeals of U.S. decisions are finalized.

### **What are the avenues of appeal?**

- Appeals can be made under the World Trade Organization, and either the North American Free Trade Agreement or the U.S. Court of International Trade.

### **What are the differences between the appeal processes?**

- The North American Free Trade Agreement panels and U.S. Court of International Trade proceedings assess whether the U.S. followed its own laws in the case. Only one of these venues may be chosen for a particular issue.
- World Trade Organization panels assess whether U.S. laws are consistent with international World Trade Organization trade rules.
- Under the North American Free Trade Agreement, a five-person panel is appointed. Each side chooses two panelists, and a coin toss is used to determine which side can choose the fifth panelist. The panel decision can only be appealed in certain extraordinary circumstances through an “Extraordinary Challenge”. While Canada would push for quick decisions, these legal processes tend to be lengthy.
- Under the World Trade Organization, panels are normally three persons. The World Trade Organization dispute settlement office proposes panelists. Each side may reject suggested panelists, but if there is no agreement after 20 days, the World Trade Organization will choose the panelists. Panel rulings may also be appealed. While Canada would push for quick decisions, these legal processes tend to be lengthy.
- The United States Court of International Trade has nationwide jurisdiction over civil

actions arising out of the customs and international trade laws of the United States. The judicial power of the United States Court of International Trade in any particular case is exercised by a single judge to whom the case is assigned by the chief judge. The court has its own rules prescribing the practices and procedures before the court. These rules are patterned after the Federal Rules of Civil Procedure. Similarly, with certain limited exceptions, the Federal Rules of Evidence govern the trial of cases before the court.

### **What is a countervailing duty?**

- A countervailing duty is a duty assessed by the U.S. government on Canadian exports of lumber to the United States. The U.S. argues that the duty is required to offset unfair subsidies that Canadian and provincial governments allegedly provide to lumber companies.

### **What is an anti-dumping duty?**

- An anti-dumping duty is a duty assessed by the U.S. government on Canadian exports of lumber to the United States. The U.S. argues that the duty is required to offset unfair selling practices by Canadian lumber companies that are allegedly selling lumber into the U.S. at a price below their costs or sales value in Canada.

### **Will the duties also apply to value-added producers?**

- Any duties would apply to all products found to be “in scope”. In the past this has included all dimensional lumber products of all coniferous (softwood) species. It includes flooring, siding, finger-jointed lumber, cedar products and others.
- A description of the scope of products currently covered can be found in the text of the US Department of Commerce’s Notice of Initiation published in the U.S. Federal Registry on Dec. 22, 2016, and re-iterated in the preliminary countervailing determination on April 24, 2017.

### **How do I calculate the duty applicable to my shipments into the U.S.?**

- The ministry urges any B.C. exporters that are U.S. importers to work with their U.S. customs brokers to ensure compliance with the U.S. Customs Border Protection valuation guidelines for their imports.

### **What efforts are being made to exempt non-lumber softwood products?**

- Canada and British Columbia have made submissions to the U.S. Department of Commerce requesting the exemption of all lumber products made from western red cedar and all high-value softwood lumber products historically priced and sold well above commodity prices.
- There is no deadline for the U.S. Department of Commerce to make a decision regarding these product exemption requests. The list of products published by U.S. Department of Commerce at time of the agency’s preliminary determination will clarify the outcome of these product exemption requests.

### **What is the longest period of time that Canada and the U.S. have gone without an agreement?**

- The previous subsidy/dumping case ran for over 5 years, from April 2001 (after the expiry of the 1996 Softwood Lumber Agreement), to the signing of the 2006 Softwood Lumber Agreement in October 2006.

**Why are you interested in negotiating a managed softwood lumber trade agreement with the U.S.? Why not just give up on the U.S. as a market and increase exports overseas?**

- The U.S. is our largest and closest trading partner. In 2016, B.C. shipped about \$4.6 billion in softwood lumber products to the U.S. In the meantime, we continue to grow other markets, most notably Asia, for softwood lumber.
- In late November/early December 2016, Minister Thomson led his fifth Forestry Trade Mission to China and Japan to expand overseas markets.

**Quick Stats**

**2006**

- Timber harvested (million cubic metres): 80.3
- B.C. softwood lumber production (million cubic metres): 35.5
- U.S. Housing Market Starts (million): 1.8
- B.C. lumber exports (CDN\$ billion) to:
  - U.S.: \$4.30
  - China: \$0.08
  - Other \$1.46
- B.C.'s market share of U.S. (%): 19.52%
- Canada's market share of U.S. (%): 33.2%
- B.C.'s share of Canadian exports of softwood lumber to U.S. (%): 59%

**2016**

- Timber harvested (million cubic metres): 66.1
- B.C. softwood lumber production (million cubic metres): 32
- U.S. Housing Market Starts (million): 1.18
- B.C. lumber exports (CDN\$ billion) to:
  - U.S.: \$4.60
  - China: \$1.02
  - Other \$1.33
- B.C.'s market share of U.S. (%): 17.51%
- Canada's market share of U.S. (%): 30.42%
- B.C.'s share of Canadian exports of softwood lumber to U.S. (%): 55%

**Workers and Communities**

**What is the Federal-Provincial Taskforce?**

- The Federal-Provincial Task Force on Softwood Lumber was set up in February 2017 to ensure that the federal and provincial governments are coordinated and ready to respond to the needs of workers and communities affected by U.S. trade action.
- It is chaired by the federal Minister of Natural Resources.

**Will the assessment of duties lead to more mills closing and/or mills closing sooner?**

- We expect there will be mill closures or curtailments over the next five years as companies rationalize their operations due to the decline in timber supply as a result of the mountain pine beetle infestation. It is possible that, depending on amount of duties levied, some mills may close or curtail production sooner than originally anticipated.
- Since 2001, this government has invested in programs to mitigate the environmental and economic impacts of the mountain pine beetle infestation. This includes the \$100 million BC Rural Dividend to help rural communities diversify their economies. Funding of \$25 million per year is available in four categories:
  - community capacity building,
  - workforce development,
  - community and economic development, and
  - business sector development.
- A cross-government team is also working with Interior communities through focused outreach sessions to help communities determine their best future.
- Also see Government Support for Forestry-Dependent Communities: <https://news.gov.bc.ca/13884>

### **Will softwood lumber duties mean the end of B.C.'s forest sector?**

- Government's 2016 Forest Sector Competitiveness Agenda outlines the provincial government's approach to address the challenges and take advantages of opportunities in B.C.'s forest sector.
- The agenda includes 49 strategic actions to support three inter-related goals of healthy, resilient forests, a globally competitive and diverse forest sector, supporting communities and First Nations.
- These actions include:
- Expanding markets for B.C.'s forest products in Asia, most notably through annual trade missions.
- Restoring our forests, through programs such as Forests for Tomorrow and investments in the Forest Enhancement Society of B.C., and strategic inventory.

### **What does happen when a mill closes and a town loses its major employer?**

- B.C.'s Community Transition Team provides support for resource-based communities experiencing the impacts of significant job loss.
- Supports and services are quickly mobilized in worker transition, economic diversification planning and social services, and are coordinated with other services provided by the local government and community agencies.
- Typical provincial services and supports available to impacted workers and communities include:
  - job fairs
  - skills training and career counselling
  - support for families
  - community open house
  - economic diversification strategies

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