
FREQUENTLY ASKED QUESTIONS

Ministry of Forests, Lands, Natural Resource Operations and
Rural Development

December 28, 2017

Softwood lumber dispute

Negotiation

Why weren't you able to reach a new agreement with the U.S. before litigation was launched?

- 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 have seen in the past, an agreement can be reached at anytime.
- 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 investigated 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

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How do those programs provide subsidies?

- They do not.

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 1980's in having its government impose tariffs on Canadian lumber, even after Canada has demonstrated in international appeals that the tariffs were unfounded.

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 preliminarily 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 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 for the subsidy investigation.
- 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 (CVD) 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%

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- On June 26, the U.S. Department of Commerce announced preliminary antidumping (AD) duties as follows:
 - Canfor: 7.27%
 - Resolute: 4.59%
 - Tolko: 7.53%
 - West Fraser: 6.76%
 - “all others”: 6.87%
- On Nov. 2, 2017, the U.S. Department of Commerce issued its Final Determination of CVD and AD rates as follows:
 - Canfor: 13.24% (CVD) 8.89% (ADD)
 - Irving: 3.34% (CVD) 6.58% (ADD)
 - Resolute: 14.70% (CVD) 3.20% (ADD)
 - Tolko: 14.85% (CVD) 7.22% (ADD)
 - West Fraser: 18.19% (CVD) 5.57% (ADD)
 - All Others: 14.25% (CVD) 6.58% (ADD)
- In the preliminary determinations, the U.S. Department of Commerce made a positive “critical circumstances” determination for all companies except for Canfor, West Fraser and Tolko in both the countervailing duty and the antidumping investigations. This decision was changed in its final determinations.
- In its final determination, the U.S. Department of Commerce made a negative “critical circumstances” determination with regards to the countervailing duty investigation, which means no retroactive countervailing duties are required. In the antidumping investigation, the U.S. Department of Commerce made a positive ruling on critical circumstances for all companies except for Canfor.
- On December 7, 2017, the U.S. International Trade Commission (ITC) ruled that softwood lumber imports from Canada have materially injured the U.S. domestic industry. As a result, the U.S. Department of Commerce will issue countervailing and antidumping duty orders, and instruct the U.S. Customs to collect the duties. All duties paid to date remain held in trust by the U.S. pending the First Administrative Review and conclusion of all appeals.
- The U.S. ITC made a negative finding with regard to critical circumstances in the antidumping investigation. This means no retroactive duties are required.
- The U.S. ITC’s final determination was published December 28, 2017. Countervailing duty and antidumping orders from the U.S. Department of Commerce will follow shortly in December 2017 or January 2018.

When were companies required to pay cash deposits?

- Companies paid countervailing duties from April 28 to August 25, 2017, at the preliminary rates determined in the U.S. Department of Commerce’s preliminary determination.
- Companies have not been required to pay duties since August 26, 2017. Payment of countervailing duties will resume at the final duty rates following the publication of the U.S. ITC’s final injury determination on December 28, 2017.

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- Since June 30, 2017, Canadian companies have been paying antidumping duties based on the preliminary rates determined in the U.S. Department of Commerce's preliminary determination.
- Following the publication in the Federal Register of the U.S. Department of Commerce's final antidumping determination, November 8, 2017, companies started paying the antidumping duties based on the final rates.
- The final AD duties will continue to be payable through December 27, 2017. The final determination from the U.S. International Trade Commission was published December 28, at which time the antidumping duties resumed at the final rates.
- Cash deposits will be held in trust by the U.S. until all appeals of U.S. decisions are finalized.

What does the U.S. International Trade Commission examine in order to determine if there is material injury?

- The basic requirement for injury determinations is that there be an objective examination, based on positive evidence of the volume and price effects of dumped or subsidized imports and the consequent impact of those imports on the domestic industry.
- In making its determination, the ITC examines whether the petition identifies, with supporting documentation, the types of injury that the domestic industry has experienced, including, but not limited to:
 - declining domestic prices
 - reduced levels of production
 - reduced levels of capacity utilization
 - declining net sales and market share
 - sales lost to imports
 - declining profitability
 - reduced levels of employment
 - bankruptcy

What is a company-specific investigation?

- In a company-specific approach investigation, the largest exporters are chosen by the U.S. as mandatory respondents.
- Exporters that are not initially selected for investigation but wish to participate and are accepted by the U.S. are voluntary respondents.
- Each of the mandatory and voluntary respondent companies receives a company-specific duty rate, based on company information gathered from a questionnaire. All other Canadian lumber exporters receive the weighted average of the rates assessed on the individually examined companies (the "all others" rate).

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.

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Why have some Atlantic Provinces been excluded from the case?

- In the final determination announced Nov. 2, the U.S. Department of Commerce also determined that certain softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island (the Atlantic Provinces) from logs harvested in these three provinces are excluded from the countervailing and antidumping duty investigations.
- The U.S. Petitioners and the U.S. Department of Commerce claim that the private-land stumpage rates paid in the Atlantic Provinces represent fair market value and are therefore not subsidized.
- New Brunswick has not been excluded from the litigation.

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?

- 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 or lumber on the open market.
- 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.
- Following publication of the countervailing duty order, 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 countervailing duty rate for the requesting company. This process is for countervailing duty case only. There is no equivalent process for the antidumping proceedings.

What are the avenues of appeal?

- Appeals have been made under the World Trade Organization, and the North American Free Trade Agreement.
- On Nov. 14, 2017, Canada filed a notice of intent to appeal under Chapter 19 with the NAFTA secretariat regarding the countervailing duty investigation.
- On Nov. 28, 2017, Canada filed a consultation request for the CVD and AD cases with the World Trade Organization.
- On Dec. 5, 2017, Canada filed a notice of intent to appeal under Chapter 19 with the NAFTA Secretariat regarding the antidumping duty investigation.

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 any one particular issue.
- World Trade Organization panels assess whether U.S. laws are consistent with international World Trade Organization trade rules.

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- Under the North American Free Trade Agreement, a five-person panel is appointed. Each side chooses two panellists, and a coin toss is used to determine which side can choose the fifth panellist. 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 panellists. Each side may reject suggested panellists, but if there is no agreement after 20 days, the World Trade Organization will choose the panellists. 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 impact will the current discussions around NAFTA have on the ability to reach a softwood lumber agreement?

- The B.C. government agrees with the federal government that the ongoing NAFTA negotiations do not impact the negotiations for a lumber agreement. These two sets of negotiations occur in parallel.

How will the renegotiation of NAFTA affect the appeal process for the final determinations?

- The current renegotiation of NAFTA does not affect the appeal process for the softwood lumber case.
- Until there is agreement among parties and a new agreement is implemented, the Chapter 19 dispute resolution process remains in place.

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 antidumping duty?

- An antidumping 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.

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What is a “particular market situation”?

- In the antidumping case, the petitioner has alleged that certain government actions have allegedly artificially increased demand for lumber by-products (such as chips and sawdust), which has resulted in distorted market conditions.
- The petitioner alleges that a “particular market situation” therefore exists, which if confirmed by the U.S. Department of Commerce would allow the department, under U.S. law to disregard the revenues lumber companies earn when they sell chips, sawdust and other by-products. Such an adjustment would increase lumber companies’ costs of production and thus the alleged dumping duty.
- The B.C. respondent companies in the antidumping case filed detailed information explaining why a particular market situation does not in fact exist. In the Final Determination, the U.S. Department of Commerce did not find a particular market situation in the antidumping duty investigation.

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.
- In its final countervailing and antidumping determinations issued on Nov. 2, 2017, the U.S. Department of Commerce also made a final ruling on the scope of products covered in the investigations.

How are cash deposit rates applied to sales invoices?

- U.S. customs valuation rules are complex, and exporters who are also U.S. importers are advised to consult with licensed customs brokers.
- B.C. has no indication that the U.S. Department of Commerce is instructing U.S. Customs and Border Protection to accept valuation of remanufactured lumber on a first-mill basis.

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.
- The U.S. Department of Commerce has deferred most of the product exemption requests to the petitioners, and has not made any significant exemptions in its final determinations.

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 five 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.

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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.

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 \$1.44
- B.C.'s market share of U.S. (%): 19.5%
- 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): 66.2
- 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: \$1.05
 - Other \$1.32
- B.C.'s market share of U.S. (%): 17.6%
- Canada's market share of U.S. (%): 31.8%
- B.C.'s share of Canadian exports of softwood lumber to U.S. (%): 55%

Workers and Communities

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 in light of the duties, some mills may take slightly longer maintenance shutdowns during the summer.
- Government is committed to having the necessary supports to mitigate impacts from the mountain pine beetle infestation, softwood lumber duties and wildfires to assist workers and forestry-dependent communities.

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- A cross-government team is also working with Interior communities through focused outreach sessions to help communities determine their best future.
- As well, on June 1, the federal government announced \$867 million to assist workers and communities across Canada that may be affected by the softwood lumber tariffs (<http://www.nrcan.gc.ca/19601>). The announced funding was based on recommendations from the Federal-Provincial Task Force on Softwood Lumber made up of provincial ministers responsible for forestry and chaired by the federal Minister of Natural Resources.

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

- Government is committed to re-invigorating the forest sector by expanding markets for B.C. wood products at home and abroad.

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

- B.C.'s Community Transition Team (within the Ministry of Forests, Lands, Natural Resource Operations and Rural Development) provides support and services for rural resource-based communities experiencing the impacts of significant job loss.
- A transition response is quickly mobilized and a worker transition team is established in the community, co-ordinating with other services provided by the local government and community agencies. Other elements of a community transition response include assisting the community with economic development and diversification efforts, and working with local and regional agencies to assess and mitigate community and social impacts.
- Typical provincial services and supports available to impacted workers and communities include:
 - worker information sessions for accessing resources and supports (WorkBC, Service Canada and Industry Training Authority)
 - job fairs
 - skills training and career counselling
 - support for families
 - community open house
 - economic diversification strategies

Contact:

Media Relations
Ministry of Forests, Lands, Natural Resource
Operations and Rural Development
250 356-5261