
FREQUENTLY ASKED QUESTIONS

Sept. 7, 2017

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

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'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.

Why Did Secretary Ross postpone the final determination?

- On August 28, 2017, the U.S. Secretary of Commerce announced that the final decisions in the countervailing (CVD) and anti-dumping (AD) cases are postponed until no later than November 13, 2017, to allow more time to seek a negotiated settlement to the softwood lumber trade dispute.
- While November 13 is the last day the Department of Commerce can make the final decision, it could be released anytime in advance of November 13.

Litigation

Who launched the litigation?

- The U.S. lumber industry filed its petition with the U.S. government on November 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 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 December 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 January 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 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 Jan. 28 (90 days prior to the notice being published in the U.S. Federal Register, which happened April 28).
- On June 26, the U.S. Department of Commerce announced preliminary anti-dumping duties as follows:
 - Canfor: 7.27%
 - Resolute: 4.59%
 - Tolko: 7.53%
 - West Fraser: 6.76%
 - “all others”: 6.87%
- Given the earlier finding of “critical circumstances”, the “all others” group of companies will need to pay anti-dumping duties on shipments made since about April 1, 2017 (90 days prior to the notice being published in the U.S. Federal Register, on June 30). Canfor, Resolute, Tolko and West Fraser only need to pay the duty on shipments going forward.
- On August 28, 2017, the U.S. Secretary of Commerce announced that the final decisions in the countervailing (CVD) and anti-dumping (AD) cases are postponed until no later than November 13, 2017, to allow more time to seek a negotiated settlement to the softwood lumber trade dispute.

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.

Why have some Atlantic Provinces been preliminarily excluded from the case?

- In the preliminary anti-dumping decision announced on June 26, Commerce also announced that products being produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island (the Atlantic Provinces) from logs harvested in these three provinces should be excluded.

- The U.S. Petitioners and the U.S. Department of Commerce preliminarily claim that the private land stumpage rates paid in the Atlantic Provinces represent fair market value and are therefore not subsidized. This determination will not be finalized until the Final Determination is issued.
- 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 final orders, 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.

When will companies be required to pay cash deposits?

- Companies started paying cash deposits on shipments since April 28, as a result of the U.S. Department of Commerce’s preliminary determination on countervailing.
- As of August 28, no cash deposits for countervailing duties will be required until the International Trade Commission issues their final determination.
- As a result of the June 26 preliminary anti-dumping determination, Canadian companies need to pay an additional, additive anti-dumping duty for a maximum of six months until the final order is issued in late 2017 according to the current timeline.
- After the final orders are published in the U.S. Federal Register, cash deposits will be collected based on the final duty rates on all shipments to the U.S. going forward.
- 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 publication of the preliminary determinations of both the subsidy and dumping cases.
- 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, the North American Free Trade Agreement and 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 any one 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 impact will the current discussions around NAFTA have on the ability to reach a softwood lumber agreement?

- We agree with External Affairs Minister Freeland that the ongoing NAFTA negotiations do not impact the negotiations for a lumber agreement. These two sets of negotiations will 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.
- Unless there is agreement among parties and a new agreement is implemented, the NAFTA Chapter 19’s 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 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.

What is a “particular market situation”?

- In the anti-dumping 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 preliminary anti-dumping rates announced June 26 do not include any adjustments related to a particular market situation, but rather indicate only that Commerce may examine the issue. The B.C. respondent companies in the anti-dumping case have already filed detailed information explaining why a particular market situation does not in fact exist.

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 Register on December 22, 2016. It was also re-iterated in the preliminary countervailing determination on April 24, 2017 and in the preliminary anti-dumping determination on June 23, 2017

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.
- There is no deadline for the U.S. Department of Commerce to make a decision regarding the various product exemption requests made by an array of companies, industry associations and governments. The list of products published by U.S. Department of Commerce at time of the agency’s final 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.

Quick Stats

	2006	2016
Timber harvested (million cubic metres)	80.3	66.1
B.C. softwood lumber production (million cubic metres)	35.5	32
U.S. Housing Market Starts (million)	1.8	1.18
B.C. lumber exports (CDN\$ billion) to:		
- U.S.	\$4.30	\$4.60
- China	\$0.08	\$1.02
- Other	\$1.46	\$1.33
B.C.'s market share of U.S. (%)	19.52%	17.51%
Canada's market share of U.S. (%)	33.2%	30.42%
B.C.'s share of Canadian exports of softwood lumber to U.S. (%)	59%	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.
- 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>).
- 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 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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