

SOFTWOOD LUMBER – REDUX

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It haunts us still. Softwood lumber is back, the defining Canada-US trade dispute of the ages.

The preliminary duties announced Tuesday are designed to impact billions of dollars of Canadian exports. Even ahead of final duties to be announced in June, these will decimate Canadian exports and affect the livelihood of thousands of Canadians.

Over the coming months, softwood lumber will dominate the front pages of our newspapers (though relegated to the back pages in US media).

As if there wasn't already enough tension in the bilateral relationship, softwood lumber adds even more stress, with Trump's demand for NAFTA re-negotiations (which he describes as the most "disastrous" trade agreement ever signed by the US) and his recent slamming of Canada's dairy regulations under the system of supply management.

This is the fifth trade dispute launched by American industry since the 1980s ("Softwood V"). To understand the options for Canada, we need to deconstruct the dispute a bit.

To begin with, all such trade cases – whether by the US Commerce Department or Canada's own Border Services Agency – are not actually instigated by governments. Dumping and subsidy complaints are launched by the private sector. If a petition (or as we call it in Canada, a complaint) is filed by a domestic industry and is properly documented, the responsible government agency then investigates.

That is what we have here, a situation where US lumber producers, not the American government, started all this. We would have had the same issues and almost certainly the same preliminary duties under Barak Obama or Hillary Clinton.

What makes this case different is that these preliminary duties fit squarely into Trump's misguided and offensive narrative about Canada being an unfair trading partner, whether it be softwood lumber, dairy products or energy.

Even if there was the political will for Washington to intercede and try to broker a settlement (which there isn't here), because these kinds of trade disputes are driven by the private sector, it becomes politically and legally tricky for governments intervene.

Trade remedies, as the name indicates, are allowed under the WTO Agreement and the NAFTA and by law are designed to assist the domestic industry, ultimately through a process of adjudication.

The unfortunate timing of Softwood V is that it muddies the waters in the impending NAFTA re-negotiations, adding an unfortunate layer of complication to the already fraught bilateral agenda. Clearly the better approach for Canada would be to pursue possible settlement outside of NAFTA talks but we'll have to wait to see how that unfolds.

In the meantime, the US investigation and adjudication process will continue. One of Canada's advantages, if there is one, is that the US must follow internationally-agreed rules. There is every opportunity for Canada and for the Canadian industry to challenge US rulings along the way, whether before WTO or NAFTA panels or in the US courts.

The problem is that those challenges are long and complicated and the Canadian industry's legal costs have to be born by the companies themselves. In the meantime, duties on Canadian exports are in effect and Canada's market in the US progressively erodes.

And that is exactly what the US industry wants. This is a commercial battle and trade remedies are the American producer's strategic instrument of choice.

Assuming Canada ships something like \$6 billion worth of lumber to the US annually, a mere 1% market gain by US producers is worth \$60 million. But as the case proceeds and Canadian

exporters are tied up in endless Commerce Department audits, with duties being subject to cash deposits, US producers are sure to regain more than 1% of their market.

Whether Canadian exports are actually subsidized under WTO or NAFTA rules is really a secondary issue. Because each percentage point of market is worth millions of dollars, adding up to billions as lumber prices rise under with Canadian exports out of the market, it gives US producers every incentive to keep the case going, win or lose.

Moreover, there are no adverse WTO or NAFTA panel rulings in Canada's favour as yet that can assist in proving negotiating leverage. Because each of these cases start from a bare slate, rulings in Canada's favour in the previous cases have no influence on what the Commerce Department or the US International Trade Commission do in this instance.

At the end of the day, this leaves little incentive for the US industry to come to the table.

For now, the options for Canada are to continue to aggressively fight the case with every legal weapon available, as Premier Clark said this week. At some point, assuming Canada wins some of these challenges, there may be enough leverage to get a renewed softwood agreement.

In the long term, given the stark realities south of the border, market diversification is the best and maybe the only long-term solution for Canada.

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