International trade brief: The impact of softwood lumber tariffs on Canadian companies

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In our last international trade brief, we talked about U.S. President Donald Trump’s “Buy American, Hire American” Executive Order. This week’s international trade brief covers the following topics: the Trump administration’s investigation of the Effect of steel imports on national security using a rarely invoked process, and the impact of the new softwood lumber tariffs on Canadian companies. See below for our Trade Case Alert pertaining to Boeing filing a trade remedies petition against Bombardier.

The United States Department of Commerce announced on April 24, 2017 that it will impose preliminary countervailing duties on allegedly subsidised softwood lumber imports from Canada, with rates of up to 24.12%. Duties will be applied based on the determination of the relative amount of subsidy allegedly provided by provincial governments, with the highest duties levied on companies from Western Canada: Canfor will be subject to duties of 20.26%; Resolute at 12.82%; Tolko at 19.50%; and West Fraser at 24.12%. All other Canadian imports will be subject to duties of 19.88% with the exception of J.D. Irving, an Atlantic Canadian company that harvests timber from largely private forests in the Maritimes, at 3.02%.

This is now the fifth subsidy dispute between Canada and the United States concerning softwood lumber. Canada has successfully fought previous battles through appeals to panels established under the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO). Nevertheless, the Canadian federal and provincial governments, along with the Canadian lumber industry, have settled prior disputes by agreeing to a voluntary export restraint agreement, through quotas administered by the Canadian government or export taxes, to ensure predictable and managed access into the U.S. market.

The last such export restraint agreement was the 2006 Softwood Lumber Agreement (the Agreement) which expired in October 2015. Tensions with respect to Canadian softwood lumber have grown since
the expiration of the Agreement, with the U.S. lumber industry claiming that the Agreement did not sufficiently address changes in provincial government practices that have arisen since 2006. The U.S. lumber industry has argued for decades that because most Canadian timber is harvested on Crown land, provincial governments are able to manage and set prices for timber harvests in ways that result in cheaper lumber harvests.

The preliminary determination by the U.S. Department of Commerce will be made final by September 7, 2017. The Department of Commerce also found that “critical circumstances exist,” justifying the imposition of retroactive duties for Canadian imports shipped over the 90 days prior to the preliminary determination by all companies except for the four largest importers. As such, only the smaller companies will be subject to these retroactive duties. In addition to the subsidy investigation, the Department of Commerce is also expected to make a preliminary determination of dumping on June 23, 2017. The U.S. International Trade Commission (the Commission) is in the meantime conducting a parallel investigation into whether the U.S. industry has suffered injury as result of Canadian exports of softwood lumber into the United States. The Commission is expected to make its final injury determination in January 2018.

As the softwood lumber dispute alleges subsidies provided by several provincial governments and a large number of jobs are at risk in rural areas, several of the provinces affected have taken an active coordinating role and appointed special officials to lead the file on this softwood lumber dispute. Roughly 250 forestry mills in B.C. will be affected by this tariff. Similarly, the forestry industry in Québec accounts for 60,000 jobs and 180 businesses, and softwood lumber exports to the U.S. are extremely important to the health of the industry. Québec’s Economy Minister Dominique Anglade called the tax “unjustifiable” and “completely unreasonable,” and British Columbia’s premier Christy Clark released a statement saying that the B.C. government will combat the “unfounded” claims made by the American lumber production lobby.

If previous softwood lumber cases are any indication, this trade dispute will stay in the headlines for months, while the U.S. process takes its course, quite possibly followed by NAFTA and WTO challenges.

**TRADE CASE ALERT: BOEING FILES TRADE REMEDIES PETITION AGAINST BOMBARDIER**

Boeing has filed a petition with the Department of Commerce seeking antidumping and countervailing duties against Canada’s Bombardier Inc. In the petition, Boeing alleges that the CSeries Bombardier program has been heavily subsidized by the federal and provincial governments in Canada and that Bombardier is embarking on an “aggressive campaign” to dump its CSeries aircraft in the United States. More details on this petition will be discussed in next week’s trade brief.

[1] Janyce McGregor, CBC News “U.S. imposes preliminary duties up to 24% on 'subsidized' Canadian
If previous softwood lumber cases are any indication, this trade dispute will stay in the headlines for 2017.

As the softwood lumber dispute alleges subsidies provided by several provincial governments and a large number of companies, the United States Department of Commerce is also expected to make a preliminary determination of dumping on June 23, 2017. The Department of Commerce also found that "critical circumstances exist," justifying the imposition of retroactive duties for Canadian imports shipped over the 90 days prior to the preliminary determination by all companies except for the four largest importers. As such, only the smaller number of jobs are at risk in rural areas, several of the provinces affected have taken an active complementary role and appointed special officials to lead the file on this softwood lumber dispute. Roughly 250 forestry mills in B.C. will be affected by this tariff. Similarly, the forestry industry in Quebec accounts for a significant number of jobs and the health of the industry. Quebec's Economy Minister Dominique Anglade called the tax "unjustifiable," saying that the B.C. government will combat the "unfounded" claims made by the American lumber industry, completely unreasonable," adding that the B.C. government will continue to work with its provincial and federal partners to protect the industry.

For more information, please visit osler.com or contact the following individual(s):

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References:
and British Columbia's premier Christy Clark released a statement.

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