Canada, Japanese importers at odds over TPP side deal

Deal on forest products leaves Japanese importers expecting more.

A log sort in British Columbia, bundling and sorting logs for a pulp mill.

Government of BC Photo

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A short political agreement between Canada and Japan on forest products has apparently caused confusion among stakeholders in the two countries over Canadian restrictions on wood exports from British Columbia.

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The agreement, tacked on to the massive Trans-Pacific Partnership deal as a small side letter, has been interpreted by some Japanese importers of Canadian tree trunk logs and media as a promise by Canada to relax restrictions on the export of unprocessed logs from the BC coast.
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The governments of Canada and BC have both promised that the TPP would not undermine a rule that bars the export of logs from BC unless they have been deemed surplus to the needs of local mills.

Yet the Japanese government has said the five-paragraph agreement will increase the price of logs harvested in Canada, and several sources close to the forest product industry and TPP negotiations confirmed that some in the Japanese forest products industry expect the agreement will change Canadian export restrictions.

“There’s clearly two different perspectives on this,” said Rod Bealing, executive director of BC’s Private Forest Landowners Association, a lobby group that opposes the export restrictions.

The side letter, which is not legally binding, says that Canada “shall issue permits upon request for the export of logs destined for Japan” as laid out in federal, provincial and territorial laws and regulations. It also says that “nothing in this letter shall have any other implications with respect to Canada’s existing practices and procedures relating to its existing measures concerning the export of logs of all species.”

**Letter said to promise status quo**

“It’s not the clearest letter I’ve ever read in my life,” said Mr. Bealing, adding his members have heard from Japanese clients who expect changes to the rules governing the export of logs from Canada.

Rick Jeffrey, who heads the Coast Forest Products Association, also believes that the letter reinforces the status quo.

By signing the letter, Canada’s federal government is committing to stay out of the way of a process that is being run by the province of BC, as it has always done, said Mr. Jeffrey, who represents both log exporters and Canadian mills.

“Functionally, it doesn’t mean anything,” he said, referring to the parts of the letter about export permits.

Mr. Jeffrey said his members were happy that the government maintained the status quo, but added that some stakeholders in Japan have a different view on what the letter means.

The Japanese government had pushed Canada to ease or eliminate some of the restrictions on the export of BC logs during the TPP negotiations, the Canadian Press reported in July.

The side letter essentially promises to Japan that Canada will continue allowing the export of logs that have passed the surplus test, said Riyaz Dattu, a trade lawyer with Osler in Toronto.

Carve-out provisions in the TPP exempt Canadian logs from some of the free trade requirements in the deal, making no such promises about whether the existing trade of logs will be allowed to continue in the future.

Dalton Albrecht, a trade lawyer with Couzin Taylor, agreed, and said the exclusion of logs from the TPP may have been designed to allow Canada to further restrict exports to the United States, should the Canada-US softwood lumber dispute reignite.

**Higher prices for Canadian logs?**

Japan’s Ministry of Agriculture, Forestry and Fisheries wrote in a summary of the TPP posted online that an “improvement” to Canada’s log export regulations would create higher prices for logs in Canada.

An Oct. 23 publication by the Japan Forest Products Journal said that Canada had “agreed to ease” restrictions on the export of logs that have been reserved for the domestic market first.

An Oct. 10 issue of another Japanese trade journal, titled “Daily Wood, Timber Newspaper,” said that Canada has agreed to relaxing log export restrictions, according to a translation provided by the Private Forest Landowners Association.

The Japanese Embassy in Ottawa declined to say whether the side letter commits Canada to change its restrictions on the export of logs from BC. In an emailed statement, Japanese diplomat Tomotaka Shiraishi repeated portions of the side letter, and wrote that “both countries will take appropriate actions” as a result of the letter.

The side letter also commits the two countries to establish a bilateral committee on forest products, which will begin meeting annually five years after the TPP has been implemented. The committee would review whether there is a need for Japan to take “safeguard” actions if imports of Canadian wood—potentially boosted by the phased elimination of Japanese tariffs on wood imports—harm its domestic forestry industry. The committee would also serve as a forum for the two countries to informally hash out disputes related to log exports. Formal disputes would still be settled through the WTO.

The side letter "does not eliminate or change log export controls in Canada or in B.C.," according to an emailed statement from Vivian Thomas, a spokesperson for the BC government.

"The side letter simply guarantees that Canada will issue export permits for logs destined for Japan that have successfully completed the processes and are deemed available for export," she wrote.

The federal government did not answer emailed questions about the agreement by deadline Tuesday, and declined to make an expert available to discuss the agreement.

Canada’s foreign ministry told Business in Vancouver in October that the TPP “fully protects Canada’s export log regime at both the federal and provincial level.”

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Canada-Japan side letter on forest products: The complete text

In connection with the signing on this date of the Trans-Pacific Partnership Agreement (the "Agreement"), I have the honour to confirm the following understanding reached by the Governments of Japan and Canada during the course of negotiations regarding trade in forest products.

Japan and Canada agree to the creation of, among others, a Bilateral Forestry Committee on Forest Products, which will undertake to review the necessity of safeguard mechanisms in the trade of forest products during the fifth year after the date of entry into force of the Agreement for Japan and Canada, and as a standing agenda item in each subsequent year thereafter. The Committee will also undertake to review the understandings between the Governments of Japan and Canada as described below. Either Japan or Canada may raise a matter relating to the understandings set out in this letter to the Committee, and the Committee shall seek to resolve that matter. Either Japan or Canada with whom the matter is raised shall accord sympathetic consideration to the position of the other side.

In the context of liberalized trade for forest products, upon implementation of the TPP, notwithstanding the exception for the export of logs of all species from the application of Articles 3 (National Treatment) and Article II (Import and Export Restrictions) in Chapter 2 (National Treatment and Market Access for Goods) of the Agreement, the Government of Canada shall issue permits upon request for the export of logs destined for Japan following the procedures set out in the Export and Import Permits Act and its applicable notices and regulations and provincial and territorial laws and regulations.

For greater certainty, Japan and Canada confirm that nothing in this letter shall have any other implications with respect to Canada’s existing practices and procedures relating to its existing measures concerning the export of logs of all species. In respect of the export of logs, Japan and Canada maintain their rights and obligations under the WTO Agreement, and any dispute regarding a matter relating to the export of logs shall be settled under the WTO.

I have the further honour to propose that this letter, equally valid in French and English, and your letter of confirmation in reply shall constitute an understanding between our two Governments on the application between Japan and Canada of rights and obligations contained in the Agreement, which shall enter into force on the date on which the Agreement enters into force.

—Source: Global Affairs Canada

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