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Comment

**Here's the path to a deal on softwood; So what if Canada is legally in the right? A softwood settlement requires negotiation. Here's what lawyer LAWRENCE HERMAN would like on the table**

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982 words

3 November 2005

The Globe and Mail

A23

English

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Condoleezza Rice comes to town. Breezes in and breezes out. Tells Canada to cool the rhetoric, stop singing the **softwood**-lumber blues and get back to the negotiating table. The PM says we can't, at least not until Canada gets some meaningful demonstration from the Americans to warrant renewed talks. This country is too upset, he says, not just because of **softwood** lumber but because the U.S. rejection of a final NAFTA panel ruling undermines the very essence of the free-trade **deal**. And that calls into question solemn U.S. treaty commitments in other areas. Besides, the PM asks, why should Canada negotiate away a NAFTA victory?

So it's a standoff. But the nagging question remains: Where do we go from here? That question has been around for months. It's critically important to know the answer because, even if the U.S. were to throw in the legal towel and accept the panel ruling as Canada demands (however unlikely), nothing would prevent the U.S. lumber coalition from starting a new case the next day.

The reality is that the legal route that Canada has employed, more or less successfully, only takes us so far. Even if the U.S. were to cave and accept the ruling, panel decisions apply only in individual cases. They can't stop new trade disputes being launched. The commercial stakes are so vast in the **softwood** case that it makes that scenario a virtual certainty.

That means that whatever happens under the litigation route, a long-term political settlement still has to be nailed down. That is not saying that Canada's legal strategy has been wrong. It hasn't. But the legal track alone can't bring long-term commercial stability to the North American lumber sector.

A negotiated settlement is the only way. That's the reality.

Then let's ponder what

such a **deal** would look like.

All the key players have known for months that it would have to contain four things: (1) a limit on Canadian market share and/or export volumes to the U.S.; (2) phased removal of those limits in return for reform of Canada's stumpage system (moving to something more akin to market pricing without mirroring U.S. inefficiencies); (3) return, in some manner or formula, of at least a large portion of the billions in duties that U.S. has already collected; and (4) a standstill or "peace" clause, preventing new cases being launched during the term of the agreement.

The devil, of course, is in the details, but those are the basic ingredients.

So how to we get there? There are endless suggestions floating around. Not wanting to be outdone, Gary Hufbauer, of the Institute of International Economics in Washington, D.C., and I recently proffered some of our own. Our ideas are directed to shifting the political paradigm.

First, the negotiations have to be removed from their current context and elevated to the highest political level. That means a commitment by President George W. Bush and Prime Minister Paul Martin to see this through to a

settlement, akin to the Reagan-Mulroney commitment to conclude the first free-trade **deal** in the 1980s. This kind of undertaking from the U.S. President would be a sufficient good faith gesture to allow Canada to return to the bargaining table.

Second, each side should appoint special high-level envoys, with sufficiently political and moral clout to knock heads and bloody the floor if need be. The idea is to shift the negotiating context, to elevate the dispute to a higher plane and remove it from endless discussions on technical issues and legal roadblocks. That will also shield the special envoys from the daily pressure of those vested interests that so far have frustrated efforts to reach a political compromise.

Third, there is the pot of some \$5-billion in duties collected on Canadian lumber sitting in the U.S. Treasury. In some respects, this is most contentious issue of all. Canada wants it back and has gone to court in the U.S. to try to get it. The difficulty here is that even if the U.S. abides by a WTO ruling and doesn't turn the money over to the U.S. **softwood** industry (which it could do under the so-called Byrd amendment, declared illegal by a separate WTO panel), it could still keep it in the Treasury. This will take more years of legal wrangling to resolve.

To help turn the corner, a possible solution would involve returning part of the duties to Canadian companies (the amount to be negotiated), using the rest to create a joint trust fund, dedicating the revenue to North American projects for the mutual benefit of the **softwood** industry on both sides of the border.

There is a long list of productive uses for the income — joint scientific research, forestry management and regeneration projects, silvaculture, pest control, environment, product innovation, and so on.

Clearly these proposals don't answer all the thorny issues. Much remains to be done within this broad framework. But these are offered as outside-the-box suggestions to resolve this increasingly acrimonious dispute and bring commercial stability to the North American lumber business. At the same time, such a negotiated settlement would accomplish a larger objective of restoring faith in NAFTA and demonstrating the ability of Canada and the U.S. to show the world that, however difficult it may be, they are each prepared to swallow hard for the sake of settling long-standing differences.

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Illustration

Document GLOB000020051103e1b300011

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