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TRADE LAW MEMORANDUM

LATEST SOFTWOOD LUMBER DEVELOPMENTS

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The longest, largest and most acrimonious trade dispute in the history of Canadian-American relations may slowly be moving toward resolution.

Reports indicate that we are in reach of a deal that would see U.S. duties replaced by a border tax -- keeping the money in Canada, instead of having it go to the U.S. treasury as anti-dumping and countervailing duties.

The lack of final agreement is over the numbers, a combination of the amount of the border tax and the level of imported Canadian lumber that would be allowed into the U.S. tax free or subject to a lower tax rate.

The basic concept is called a tariff-rate quota or TRQ and this is where the discussion is focused in the next few days. Both sides seem to accept the notion of a volume based deal.

The U.S. side wants a 15 percent tax at the outset on all lumber, escalating when Canada takes a certain percentage of the U.S. market. Canada wants duty-free imports until a given level of volume is reached.

The fact that the discussion is over the numbers -- not forgetting that the numbers could be deal-breaking -- is a good sign. We may see a deal cobbled together.

There are a couple of other points worth noting. The first is the significance of the Canadian challenges of the U.S. duties in the WTO and under the NAFTA. While some in the U.S. industry dismissed these as mere frills, Canada's legal warfare may have given Canada some traction -- there was little at the outset -- in the negotiations.

The second point relates to the contents of the June 18th Policy Bulletin of the Commerce Department, which is also an important part of the overall package.

That document contains a set of conditions that the Canadian provinces would have to meet to have the U.S. duties -- or the eventual border tax -- removed. It says that the provinces must move to a free and open competitive pricing system and do away with administered stumpage pricing, the objective being to establish common competitive conditions for all North American producers.

Commerce Department Bulletin requires any provinces that reform their stumpage systems to submit themselves to a "changed circumstances review" under U.S. law, with the right of the U.S. industry to review and challenge any replacement measures as inadequate.

If the reforms pass muster, the border tax on that province's lumber will then be eliminated.

Now, it may be that one or more Canadian provinces will change their stumpage systems to be more market responsive. B.C. has already said it was doing so. But the likelihood of any province fully satisfying the strict demands of a U.S. changed circumstance review seems remote.

As a result, what we will likely see is the border tax becoming a permanent feature of North American lumber trade and Canadian producers exporting lumber within that system and paying the tax.

And even if some provinces change their stumpage programs and apply to have the tax removed, it will be the U.S. Commerce Department, pressured by the U.S. industry, that will be the final arbiter of the acceptability of those changes. Provincial forestry management measures will then be under the constant monitoring and surveillance of U.S. authorities.

That will be the price for duty-free trade. It may put people back to work in the mills. But it has broader implications worth thinking about.

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