

Trade / Lumber

Canadian Lumber Trade Case is Trending Toward a Protectionist Policy Outcome

The Takeaway:

*The U.S. International Trade Commission (USITC) held a [hearing](#) yesterday in its antidumping (AD) and countervailing duty (CVD) investigation into imports of softwood lumber from Canada. Nearly all impacted companies came under pressure (including **RFP**, **CFP:CN**, **WFT:CN**, **PHM**, **TOL**, **LEN**, **DHI**, and **NVR**) when the Department of Commerce International Trade Administration (ITA) – the other agency responsible for AD / CVD investigations – [announced](#) on April 24 the preliminary CVD determination in this case. The Trump administration may nullify the entire AD / CVD case, considering it would rather resolve this issue directly with Canada as part of NAFTA renegotiations. Ultimately, due to the fact that the USITC is positioned to find in favor of domestic industry combined with the fact Senator Ron Wyden (D-OR) who plays an oversight role in NAFTA renegotiations supports Canadian lumber tariffs, we do not expect final resolution of this issue will bring any relief to the aforementioned companies. Conversely, petitioners including U.S. lumber company **WY** and the REIT **PCH** stand to benefit from increased protectionist U.S. lumber policies.*

Opposition to new tariffs

Yesterday's hearing before the USITC featured remarks in opposition to the tariffs either directly or indirectly from the Government of Canada and the National Association of Home Builders, representing interests of PulteGroup (**PHM**), Toll Brothers (**TOL**), Lennar (**LEN**), D.R. Horton (**DHI**), and NVR Inc. (**NVR**). Canadian companies Canfor Corp. (**CFP:CN**) and Resolute FP Canada (**RFP**) also presented. West Fraser Timber (**WFT:CN**) was not represented at the hearing.

A main argument of the opposition was the fact that the lumber industry has been continuously improving in production, capacity utilization, U.S. shipments, gross profit, operating income, and net income. This argument was supported by the increasing demand in U.S. housing starts and lumber since the great recession. Importantly, groups opposed to the institution of tough new tariffs argued that the U.S. lumber industry has been doing better than any point in the last 35 years; operating margins in 2015 were higher than in any previous year

Support for new tariffs

The hearing also gave U.S. lumber companies the opportunity to offer their support for the imposition of ADs / CVDs on softwood lumber imports, including lumber company Weyerhaeuser (**WY**) and the REIT Potlatch (**PCH**). Four Members of Congress also provided testimony in support of lumber tariffs including Senators Ron Wyden (D-OR), Jon Tester (D-MT), Roger Wicker (R-MS), and Steve Daines (R-MT).

Not surprisingly, supporters of the tariffs argued that due to dumping and government subsidization in Canada, the foreign industry enjoys such a competitive advantage that U.S. lumber is left unable to adequately compete. And even less surprisingly is the fact that the four Senators in attendance tied this competitive disadvantage to a real or potential loss of U.S. jobs.

Why the tariff supporters have a stronger argument

It is our view that, one way or another, a deal that's more favorable to U.S. lumber interests is likely to be the final result of current NAFTA negotiations and this AD / CVD investigation for a couple of reasons:

- › **Leveling the Playing Field Act of 2015 gave tariff supporters a stronger case.** During the summer of 2015, Congress passed a new law that essentially was intended to make it easier for the USITC to find evidence of material injury / the threat of material injury, among other things. Importantly, since this new law took effect in 2015, the USITC has no longer been allowed to determine a negative material injury finding merely because the industry under review is profitable or because the performance of that industry recently improved. We think this will be particularly meaningful in this lumber trade case because arguments made by tariff proponents that the industry is doing well should be irrelevant to USITC commissioners responsible for making the material injury decision. *For additional details on policy changes made by the Leveling the Playing Field Act, see our [August 8, 2015 report](#).*
- › **Senator Wyden has a ton of leverage, giving tariff supporters a powerful ally.** Of equal importance is the fact that Senator Wyden supports policies that protect U.S. lumber interests. Despite the fact that administration officials participate in the actual trade agreement negotiations, the Republican and Democratic leadership of the Senate Finance Committee have an oversight role that allows them to press for the inclusion of their policy priorities. As Ranking Member (most senior Democrat) of the Senate Finance Committee, Senator Wyden has regular communications with U.S. negotiators. We believe he will most certainly use that [influence](#) to push a more protectionist agreement around lumber.

What comes next

This AD / CVD investigation is unfolding alongside separate lumber trade negotiations between the U.S. and Canada that are occurring concurrently with NAFTA renegotiations.

In late August, Commerce Secretary Wilbur Ross [announced](#) that the ITA would delay until November 13 (from September 6) its final determinations in this AD / CVD investigation with the goal for the two countries to reach an agreement prior to that time (see official notice [HERE](#)). The USITC has not delayed its process, which currently [requires](#) they issue a final material injury determination by October 21. Typically, the final material injury determination comes after the ITA issues its final AD / CVD rate determinations. Because this is a unique circumstance that is not following regular protocol, it is unclear whether USITC will actually issue a material injury determination ahead of the ITA's findings. Clearly, the Administration hopes that direct negotiations with Canada will result in an agreement prior to this time, nullifying the AD / CVD investigation entirely.

In the end, it doesn't really matter which process resolves this dispute. It certainly appears to be trending more toward resolution via the NAFTA renegotiations, but we don't expect the U.S. will be particularly lenient in what it's willing to give here knowing that the AD / CVD investigation is likely to yield fairly steep tariffs (the preliminary AD + CVD findings saw tariffs reaching between 25% to 30% depending on the exporting company). That combined with the muscle that Sen. Wyden lends to tariff proponents means the final agreement will be fairly pro-U.S. lumber and negative for Canadian lumber companies and domestic homebuilders, in our view.

For copies of materials distributed at the September 12 USITC hearing, please contact your Height Representative.

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