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**CARL GRENIER**

## Once again, Canadian lumber's fate hangs in a perverse balance

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The Softwood Lumber Agreement negotiated by prime minister Stephen Harper's new government in 2006 expired on Oct. 12, 2015, ending nine years of managed trade with the United States. Canadian exporters of softwood lumber now have free access to the U.S. market after more than a decade of poor conditions: Canadian market share tumbled to 28 per cent from 34 per cent and tens of thousands of jobs were lost, including about 20,000 in Quebec alone. Many companies simply disappeared, including the largest producer in Ontario.

Producers in British Columbia and Alberta fared somewhat better. These firms have always been better capitalized, with access to incomparable forest resources – they were able to diversify their markets, notably with China. Moreover, B.C.'s three largest producers have purchased as many as 39 mills in the United States, where a significant share of their total production capacity now resides.

It would be a big mistake to conclude that the end of the 2006 agreement came about because of a sudden change of heart on the part of the U.S. competitors who started this trade dispute more than 30 years ago. One can just imagine them finally seeing the light of their own tribunals, North American free-trade agreement and World Trade Organization panels, all of which concluded repeatedly that Canadian softwood lumber was not subsidized, was not dumped and, most of all, did not cause injury or even threaten to injure them.

No, the restrictions in place since 2006 were lifted because the U.S coalition refused to prolong the agreement without modifications. Numerous (though not all) Canadian exporters proposed an extension, although sometimes with modifications. For instance, Quebec producers operating under a new forestry regime, largely inspired by U.S. practices, wanted recognition of this new framework in the context of a renewed agreement – but to no avail.

Behind the U.S. coalition's refusal to extend the 2006 agreement was the conclusion that it was "outdated." The coalition wanted either a new and more restrictive agreement, or it would "assert its rights under U.S. trade laws to offset the unfair advantages provided to Canadian industry."

Even when they fail, these investigations have proven to be a very effective tool for financially bludgeoning the Canadian industry into submitting to managed trade deals. The 2006 deal was the third in a series (1986, 1996, 2006), each more restrictive and more expensive than the one before. The latter two agreements occurred under NAFTA, whose trade dispute provisions in Chapter 19 were designed specifically to settle such disputes expeditiously (315 days). Regrettably, the U.S. side has used every time-wasting manoeuvre imaginable, distorting the very nature of the agreed rules.

The most recent episode played out between 2001 and 2006. In 2005, president George W. Bush refused to implement NAFTA's final decision, which favoured Canada. Ottawa then broke off the negotiations that had been running on a parallel track. Prime minister Paul Martin vigorously denounced the American side's perversion of the rules, but his government's offer of loan guarantees to an industry literally suffocating under the financial pressure (more than \$5-billion [U.S.] in deposits to U.S. Customs) was too little, too late.

In January, 2006, a Conservative minority government was elected, having campaigned on a platform with an explicit commitment to hold the U.S. administration to its NAFTA obligations, including reimbursement of the wrongfully held \$5-billion. Canadian industry reasonably expected strong support from the new government to enforce the law, which should have meant a swift and favourable end to the dispute.

Many will remember what happened next. Mr. Harper's very first decision related to international relations was to announce the reopening of negotiations with the stated objective of improving relations with the United States. A lumber deal was quickly announced in April, without direct involvement of industry or provinces, and implemented on Oct. 12 after a vote in the House of Commons, passed only because of support from the Bloc Québécois. Almost all the Liberals voted against it, notably because it imposed a special tax on the industry of \$1-billion to be remitted to the U.S. and the coalition. Canada had never before paid a ransom for peace, let alone after it had won the legal war.

Mr. Harper's new government embraced this one-sided deal without reservation. Yet the deal did nothing to advance other important bilateral issues with the United States dear to Canada: passports, the "thickening" of the border after 9/11, the proposed Windsor-Detroit bridge and so on.

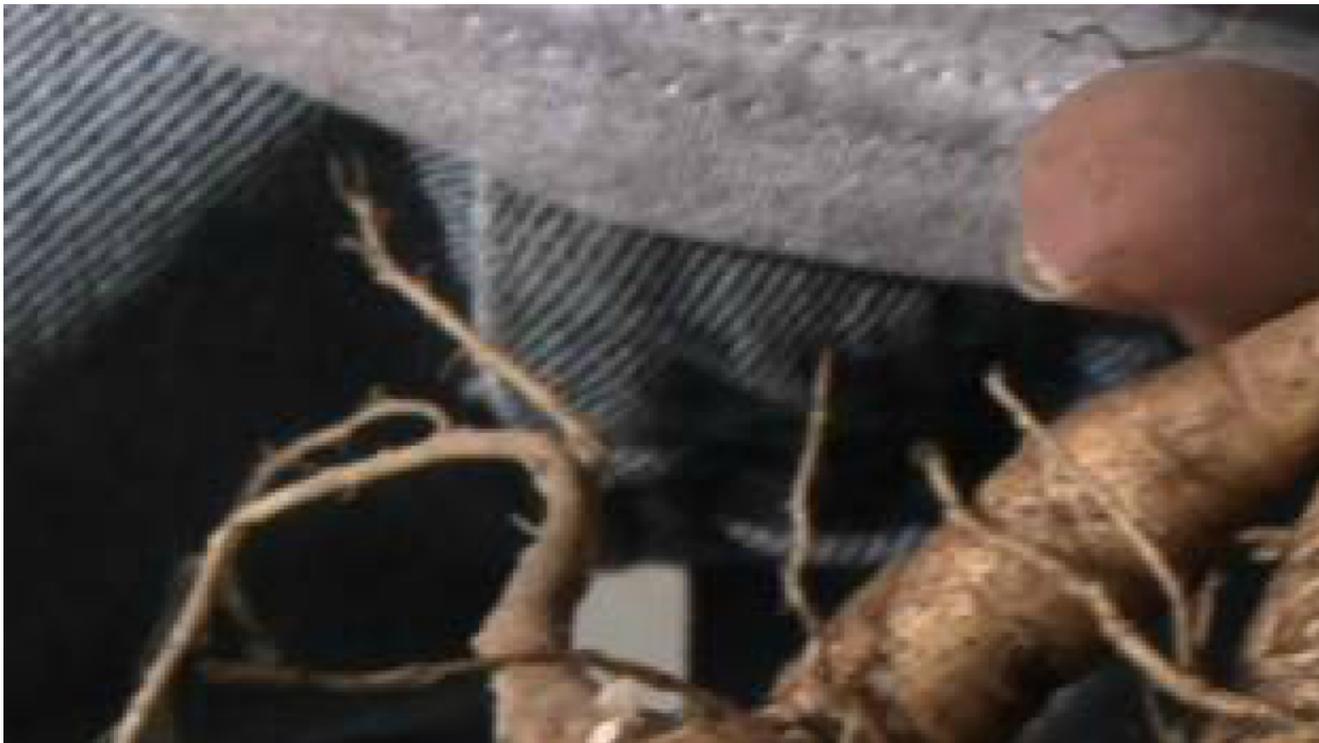
So here we are in 2016, with free trade and a strengthening market increasing U.S. demand for Canadian softwood lumber. We have a brand new Liberal government, under Prime Minister Justin Trudeau, that was supposed to be entirely different from Mr. Harper's government. Yet without the benefit of a thorough stock-taking, and without taking into account the enormously negative effects of the 2006 deal on the lumber industry in Ontario and Quebec – but apparently under intense political pressure from British Columbia, whose industry is largely protected from trade restrictions – Mr. Trudeau is said to be ready to

act quickly, even before leaving for the state dinner that awaits him at the White House on March 10.

There are rumours circulating that the new Prime Minister, without waiting for a new U.S. investigation – and in a stupefying repetition of his predecessor's lamentable decisions – is initiating the negotiation of a new deal to permanently restrict access to the U.S. market for Canadian exporters of softwood lumber. On Tuesday those rumours were confirmed: Kirsten Hillman, the assistant deputy minister of trade agreements and negotiations at Global Affairs Canada, said in testimony before the House of Commons International Trade Committee that Canada was indeed “working hard to get a new Softwood Lumber Agreement.”

Someone [[https://en.wikipedia.org/wiki/The\\_Eighteenth\\_Brumaire\\_of\\_Louis\\_Napoleon](https://en.wikipedia.org/wiki/The_Eighteenth_Brumaire_of_Louis_Napoleon)] once wrote that history repeats itself, first as tragedy, then as farce. Mr. Trudeau is in a good position to disprove that old saw, but in the meantime, a large portion of the Canadian industry's fate appears to hang in the balance once more.

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