

Canadian Standoff: New Twists but No Solutions in Lumber Trade Spat

U.S. quota proposal leaves Canadians cold

Feelings are running high on both sides of the border in the seemingly endless trade dispute between Canada and the United States Commerce Department, following a December U.S. proposal to eliminate import fees in favor of a quota system, which Canada turned down in January. After heated debate within Canada, incoming trade minister Jim Peterson told his U.S. counterparts that he was willing to keep talking, but that there was “no support in the provinces” for the U.S. quota plan as it stood.

New rulings on the case from World Trade Organization (WTO) and North American Free Trade Agreement (NAFTA) review panels offered no immediate relief, either from trade restrictions or from the market uncertainty caused by the dispute. WTO and NAFTA panels both ruled against

Canada on certain legal technicalities, but press headlines announcing a U.S. victory exaggerated the meaning of the rulings: In reality, both decisions left room for maneuver for both sides. If proven, the panels said, the U.S. allegation of unfair subsidies could justify penalty fees; but neither body endorsed the U.S. contention that low stumpage fees charged to Canadian firms for cutting trees in provincial government forests undercut fair market rates, provided an unfair advantage to Canadian firms, or posed a risk to the U.S. lumber industry (the specific claims at the heart of the U.S. case).

And the U.S. has already suffered a clear loss in the WTO court on the issue of the “Byrd Amendment,” a key factor in the dispute. The Byrd Amendment provides that countervailing and antidumping duties like

the ones collected on Canadian wood imports must be awarded to companies facing unfair competition from imports. In the case of Canadian softwood, that would mean handing over to U.S. lumber companies the \$1.6 billion already collected on incoming Canadian lumber shipments. But the WTO ruled in August that the law violates U.S. treaty obligations and set a deadline for repealing it, which passed without U.S. action. Canada, the European Union, and a number of Asian and South American nations have asked the WTO for authorization to retaliate with sanctions against U.S. trade. The U.S. deal would have side-stepped this issue by giving half of the money already collected back to the Canadian firms that paid it in, while getting Canadian agreement that the U.S. could hand the other half over to

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Megabuilder Takes Heat Over Gag Clause

If a builder wants to avoid bad publicity, one seemingly simple idea is to put language in the sales contract saying the buyers agree not to trash-talk the builder in public. But in Houston, Texas, that direct approach has backfired for big builder KB Home. Last month, columns in the *Houston Chronicle* took the company to task for telling homeowners to, as the headline put it, “Buy a House and Shut Up.” “Which would you rather have,” asked *Chronicle* columnist Rick Casey, “the

American dream of owning a home, or your right to free speech? KB Home offers you the choice.”

Casey drew attention to language buried deep in the purchase and sale agreement that prohibits homeowners from putting any sign on their property other than a “for sale” sign. The wording specifically prohibits signs disparaging KB Home, but that’s just the beginning: The section goes on to protect all home builders on the planet from the home buyer’s ire,

reading: “No Owner may use any public medium such as the ‘internet’ or any broadcast or print medium or advertising to similarly malign or disparage the building quality or practices of any homebuilder....”

A few days later, a follow-up from Casey said that KB Home had seen the error of its ways. Casey said company executive Larry Oglesby, in KB’s Austin, Texas, offices, had told him that in Texas at least, KB was “willing

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U.S. companies.

The mixed rulings make it a gamble for either country to continue the legal battle. Accordingly, both sides took steps in January to defuse the situation by backing down in key areas. Canada's British Columbia province announced that it was revamping the process it uses to set stumpage fees charged to sawmills for harvesting trees from publicly owned forest lands, the core issue that drew the U.S. penalties in the first place. B.C. currently sets fees with a complex system that takes a number of factors into account (including the protection of

building against what one columnist termed the U.S.'s "bully tactics." The U.S. offer exposed splits among Canada's provinces: British Columbia saw the deal as an acceptable way to get the argument over with, but other provinces thought the new quota system might freeze their logging industries out of a fair shot at the cross-border market.

Lumber companies also disagreed over the plan: Lignum Lumber president Jake Kerr called the proposal "a disaster for idealists but a victory for pragmatists," according to a CBC report, but Tembec CEO and Free

even Canadian producers to post better profits, he argued, and a quota system would actually be the best arrangement for Canadian mills — if they could work out how to divide the market among the provinces.

U.S. consumers have not missed this point, and in the United States, builders as well as lumber dealers are on record opposing both the Commerce Department's countervailing duties and the proposed quota system. Calling the U.S. proposal "essentially a hidden tax on American home buyers and consumers," NAHB president-elect Bobby Rayburn said, "This plan to subsidize domestic lumber producers by restricting legitimate competition in the marketplace runs contrary to the interests of consumers and the national economy." A Home Depot representative told a NAFTA panel in 2003 that instead of buying domestic lumber, Home Depot would pay the higher price for Canadian wood: U.S.-produced lumber would not meet the company's quality standards.

Rayburn backed up that point, saying, "Imports do not replace domestic production. We can't significantly increase lumber production or lumber mill employment in the U.S., because we don't have any more trees available." Rayburn urged the Canadian government to "pursue its legal challenges through to their conclusion."

"Restrictions on softwood lumber trade will benefit producers on both sides of the border, all at the expense of U.S. consumers"

vulnerable companies and the jobs they represent); only about a tenth of B.C.'s forest resource is sold at open auction, the process the U.S. says would establish fair market pricing. Now B.C. plans to expand auctions to cover 20% of the offered resource and to use auction prices as a guideline for setting the rest of its stumpage fees.

The U.S., for its part, announced that it has recalculated the penalties applied to Canadian lumber, as ordered by a NAFTA review panel, and would cut the duties in half.

But neither move will take effect immediately. In the meantime, the political and economic effects of the trade dispute show no sign of easing. While the dispute is not major news in the United States, it is making big waves in Canada, where resentment is

Trade Lumber Council chairman Frank Dottori told the *New York Times*, "The Canadian industry is getting mugged, and it is fighting over who will get mugged first, instead of fighting the mugger."

What about the consumer? Whoever mugs whom on the producer side, it's consumers who pay in the end, noted University of Victoria economics professor G. Cornelis Van Kooten in a 2002 paper. A quota, a U.S. import fee, or a Canadian government charge, said Van Kooten, has the same ultimate effect: "Restrictions on softwood lumber trade will benefit producers on both sides of the border, as well as Canadian consumers, all at the expense of U.S. consumers." Artificial scarcity that drives wood prices above their natural level allows

OFFCUTS

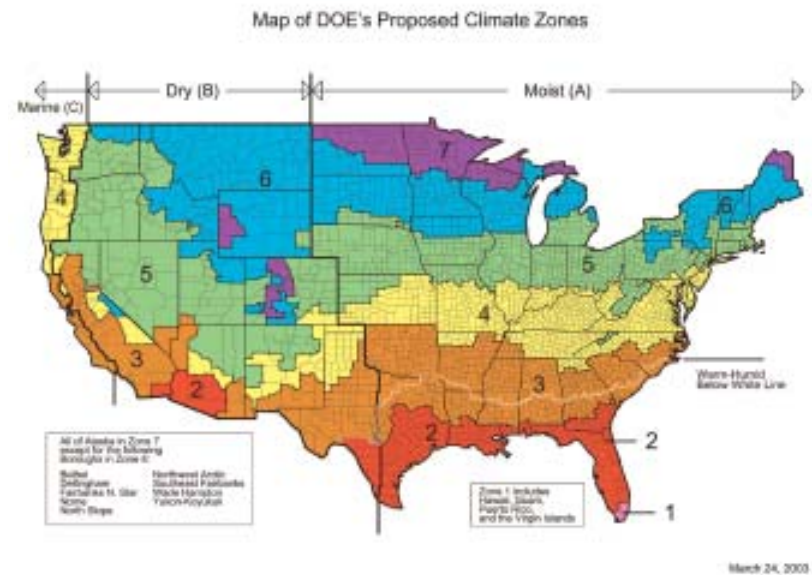
A ballot initiative to overturn Washington State's complex ergonomic workplace regulations has gathered enough signatures to be placed before voters this fall, reports the *Puget Sound Business Journal*. Washington adopted the most detailed and restrictive ergonomics rule in the nation in 2000. Builders and other employers question its scientific basis and say the cost of compliance is bad for the state's economy. State officials say the rules will prevent common injuries associated with lifting and other physically stressful work, and will more than repay their cost by reducing healthcare expenses.

Pulte Homes has bought 500 acres at the Civano sustainable development near Tucson, Ariz., and has plans to build 1,500 homes, local papers report. Civano has struggled to reconcile financial realities with an agenda of earth-friendly and unconventional building systems, site-generated renewable energy, health-conscious design and materials, and neighborhood-centered planning. After a year negotiating how to meet green standards with production building methods, Civano organizers and Pulte both say they see the deal as a positive sign for the future of sustainable building.

An explosion in home teardowns in Chicago-area suburbs is prompting towns to impose a special fee on teardown permits, with proceeds going to fund affordable home construction, reports the *Chicago Tribune*. Departing Illinois governor Rod Blagojevich signed a measure authorizing such "teardown taxes" last year, and Arlington Heights is now considering a permit fee of \$7,500 per scrape. In 2003, 80 homes averaging \$270,000 in value were razed to make way for new homes that typically cost \$750,000 or more. In Highland Park, a recently adopted teardown tax is funding a six-townhouse project with units offered at prices from \$135,000 to \$200,000.

DOE Aims for Simpler Energy Code

The *International Energy Conservation Code*, successor to the *Model Energy Code*, comes up for revision every three years. Change proposals in the current cycle face final action by the International Code Council's voting members in May 2004. Instead of more provisions and tighter requirements, however, the building officials with voting privileges will be considering a Department of Energy (DOE) rewrite that is intended to be "result-neutral." In fact, early drafts of the measure eased requirements for buildings in some locations.



In papers posted at www.energycodes.gov, DOE experts explain their thinking. They argue that a strict energy code accomplishes little if it's too complicated to understand or enforce. The current document, they contend, complicates the design process and even creates "perverse incentives" for design changes that increase a building's energy consumption. Their recommendation: Drastically simplify the code's prescriptive and performance alternatives, emphasizing ease of use and practicality instead of strict requirements, and eliminating trade-offs that are beneficial in theory but counterproductive in practice.

DOE's proposal revises climate zones and reduces their number, placing many states entirely in a single zone. It also eliminates window-area restrictions and window-to-wall ratio calculations. Trade-offs of one building element against another are implemented by letting builders demonstrate numerically that a building would perform better with an alternative design than it would if built to the prescriptive requirements.

In the early public comment phase and during ICC hearings in Nashville last September, some insulation levels and window U-values were tweaked upward from the DOE proposed levels. But the essence of DOE's proposal survived the public process, and the modified version that will face a vote in May is still far simpler than the code most builders currently live with. The deadline for final public comment is in April.

Innovation: Air Placement of Gravel

What weighs a ton and a half on the truck, a ton and a half in the trench, and nothing in between? A yard of gravel and sand moving through the hose of Richard Dunlop's and Robert Griffin's invention. Dunlop, a concrete contractor with three decades of experience, and Griffin, a process engineer from the oil industry, teamed up to develop a machine that could revolutionize the placement of backfill — and relegate dump trucks to the stone age.

The pair spent six years and scrapped four prototypes before perfecting a reliable and affordable model. But the results are worth it, say Dunlop and Griffin: Their company, Air Pumped Sand & Gravel (www.airpumpindustries.com), can now place 60 tons of gravel a day with one gravel pump mounted on a two-axle truck,

one skid-steer bucket loader, and two men (one to load stone into the machine and one to work the hose). The site contractor's employee carries the hose and blows the fill into place, while Griffin minds the truck.

Griffin says the blowing machine is self-regulating: "There's a hopper, a compressor with a pressure tank, and a big rotating wheel that mixes the stone into the airstream, with controls the driver can set. And we bring a Bobcat to load the hopper. Once all the settings are right and the stone is flowing, the driver becomes the Bobcat operator for the rest of the day."

Unlike the hydraulic pulsing action of a concrete pump, Air Pumped's machine lifts the rock with a continuous stream of flowing air. Like the proverbial truckload of canaries, the stone amazingly adds no weight to the hose — a worker can pull a 150-foot hose full of flying rock around the site with one hand.

In the hill country near Los Angeles, just backfilling behind high retaining walls could keep the company's two machines busy. But they also have lots of work placing slab sub-bases for new school buildings while scaffolding still surrounds the fresh walls, and on remodels where access is limited.

"Our hose fits through a 4-inch hole," says Griffin. "We went in once through an air-conditioning duct to place a gravel base for a new slab on grade inside an existing hospital. Cutting open the wall and bringing in gravel with bucket loaders would have taken eight weeks. We did the job in one day."



AIR PUMPED SAND & GRAVEL

Intended to revolutionize backfill placement the way concrete pumping equipment transformed hillside concrete delivery, Richard Dunlop's and Robert Griffin's compressed-air equipment can place 15 or more yards of gravel an hour to any spot within reach of a 200-foot hose.

OFFCUTS

The National Home Builders Association may take its International Builders Show to Chicago in 2007 and 2008, rather than return to Atlanta, according to the *Atlanta Business Chronicle*. The prospect has alarmed Atlanta officials, and the Georgia World Congress Center says it is considering legal action against NAHB if the association does not fulfill its agreement with the center.

A case pitting free speech against economic interests has reached the Colorado Supreme Court, says the *Denver Post*. Lawyers for developer W.O. Brisben Companies say that Eric Krystkowiak caused them \$16 million in losses by speaking to the planning commission of Colorado Springs in opposition to an apartment complex the company wanted to build near Krystkowiak's home. They say he was bound by an agreement that they forged with the Colorado Springs Neighborhood Association not to oppose the project. In throwing out the Brisben lawsuit on First Amendment grounds, lower court justice Gregory Hobbs noted that the Colorado Springs City Council, not Krystkowiak, had stopped the project, a choice he said was within the council's discretion.

Supporters of a city impact fee that would pay for a sewer system extension shut down a committee meeting of the Indianapolis City Council on December 2, according to the *Indianapolis Star*. The committee, anticipating a change from Republican to Democratic control in January, started the meeting by voting to table the measure. Owners of outlying homes with no sewer service erupted when the committee said it would not listen to their views.

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to redo the language on any community going forward and remove it.”

...and the Law won. In any case, KB's contract has already failed a legal test in Texas because it conflicts with the U.S. Constitution's First Amendment protections for freedom of religion, speech, and the press. In the 2003 case of *Brammer vs. KB Home Lone Star*, Texas Court of Appeals Chief Justice W. Kenneth Law cut rowdy homeowners Andrew and Yolanda Brammer plenty of slack, shooting down as “an unconstitutional prior restraint” a lower court order that the pair not use “television, public meetings, internet, and/or any broadcast or print medium to complain, disparage, or defame Plaintiff's construction quality or business practices.” Acknowledging that the Brammers had signed a contract with the same words, the court said that it's not clear whether Texas law allows anyone to bargain away free speech rights at all — but if so, enforcing any such deal, by U.S. Supreme Court precedent, “requires clear and convincing evidence that the waiver is knowing, voluntary, and intelligent.” Law was not ready to believe that in buying their home, the Brammers knowingly gave up a basic civil right.

Those rights don't extend to cover-



ing egregious abuses — for instance, Justice Law upheld the part of the order creating a “buffer zone” between protesters and company offices, based on testimony that Andrew Brammer had followed customers around KB property shouting insults through a bullhorn and had intimidated a sales agent by blocking her car and pointing the bullhorn into the window. But even the buffer zone was strictly limited in Law's decision, and the Brammers were allowed to continue public protests.

Defending the company's reputation against protest or bad press is more than a theoretical problem for KB Home, which has been a target of several websites dedicated to homeowner horror stories. Mainstream press coverage has also been unkind:

Business Week's April article “Shoddy Construction in the Building Boom?” started and ended with anecdotes about KB-built houses that suffered structural failure. The *Wall Street Journal* focused an August 2003 story on the company's effort to squelch protest from homeowners in a KB development built on a former military bombing range. But whether it's national coverage by *Business Week* or a neighborhood leaflet campaign evidently doesn't matter to the courts. First Amendment rights apply to everyone, and as the law now stands, homeowners upset about issues ranging from drywall cracking to unexploded ordinance are still free to say whatever they please on the Internet — contract or no contract.

OFFCUTS

Georgia congressman Johnny Isakson is pushing a measure to provide tax credits to landowners who protect their property from development with conservation easements, reports the *Atlanta Journal-Constitution*. By allowing landowners to recover value from environmentally sensitive parts of a property, tax incentives for conservation can make low-impact development of other parts of the property feasible, while preserving

green space and wildlife habitat. Private-sector set-asides in Georgia surpassed publicly conserved land acreage for the first time in 2003, capping a 20-year trend, says the *Journal-Constitution*.

Arizona's Pima County can legally require builders to make new homes wheelchair accessible, the Arizona Court of Appeals has ruled. Advocates for the disabled hope that will pave the

way for a Phoenix city “visitation ordinance” requiring wide entry doors and other wheelchair accommodations in new homes, whether the buyer is wheelchair-bound or not. Builders object to the cost and paperwork of one more regulation, reports the *Arizona Business Gazette*, but advocates say accessible design is worth the cost because it will allow people to stay in homes as they age, or in case of illness or injury.