

Canadian MANUFACTURING

Bombardier tagged with insane 219% tariff, and this is just the beginning

Alexander Panetta

September 27, 2017

Washington—There's no question: The shock-and-awe approach to trade disputes is playing out in the first year of the Trump administration, with the stunner of a 219-per-cent duty on Bombardier just the latest example of the new tariff-happy, America First climate in Washington.

Donald Trump's commerce secretary even bragged about it when announcing a first duty late Sept. 26. In a statement, Wilbur Ross touted a 48 per cent increase from last year in anti-dumping and countervailing cases initiated by the U.S. Department of Commerce.

That's on the heels of a study that found a 26 per cent spike in U.S. trade actions against G20 partners in the first half of this year from the same period in 2016, according to the Center for Economic Policy Research's Global Trade Alert.

Just ask Canadian softwood-lumber producers. They've been tasting that punitive medicine for months.

The latest decision rewarded Boeing with duties practically three times higher than the U.S. aerospace giant asked for, as it argued that Bombardier's subsidies from Canadian taxpayers gave it an unfair entry into the U.S. market.

Ross appeared to agree: "The U.S. values its relationships with Canada, but even our closest allies must play by the rules."

It's only the beginning.

As a matter of fact, trade experts consulted late Monday agreed on two things: There's time to fight back, and several battlefields to fight on. They urged the Canadian government to choose its battles wisely, and not needlessly escalate the dispute.

One trade-policy analyst at Washington's free-market Cato Institute criticized the U.S. department that handled the initial decision.

He said later arbiters won't likely be as pliant to Boeing.

The raison d'être of the Department of Commerce's enforcement unit is to protect U.S. companies, said Dan Ikenson—right down to advising petitioners on how best to design their complaint. It sides with American petitioners more than 90 per cent of the time and will certainly clobber Bombardier again with a new anti-dumping duty as early as next week, he said.

"The Commerce Department is a pit bull," Ikenson said.

"They see it as a sign of success (when they impose a duty)... They're political."

It's different in other forums, he said.

The case later heads back to the U.S. International Trade Commission, which must determine whether Boeing has actually suffered and, if not, could cancel the duties. The ITC sides with U.S. petitioners closer to 60 per cent of the time, Ikenson said.

And he's urging the Canadians to try their luck in a third venue: the U.S. domestic court system's Court of International Trade. He said that court is even friendlier to foreigners, siding with them in a majority of cases.

He said that's a smarter route than a fourth venue: NAFTA's Chapter 19 dispute process. He said U.S. policy-makers might find Chapter 19 easier to ignore, given that the current Trump administration hates it, wants to get rid of it in the new NAFTA, and might relish the opportunity to pick a fight challenging its authority.

"I'm convinced the courts will find mischief (from Boeing)," he said.

"I can't understand their claim of injury... They don't even make these damned planes (Bombardier makes)."

He compared Bombardier's complaint to a snow-plow salesman suing a bicycle-maker. He also noted the irony of Boeing suing anyone over government assistance—when it's the No. 1 recipient of government support through the U.S. Export-Import Bank, referred to jokingly in Washington as, "the Bank of Boeing."

"Boeing is very much at the trough," he said.

His final advice to Bombardier: spend money lobbying U.S. lawmakers, and raise awareness in Washington of the spillover consequences this fight might have on costs of planes, and plane tickets.

Any duties are still months away.

That's because the order of up to 125 Bombardier CS100s doesn't start heading to Delta before the spring. That makes this case different from softwood, where producers got whacked immediately on logs crossing the border.

Canada-U.S. trade lawyer Mark Warner says this buys time.

"Everybody's going to get worked up over this," said Warner, of MAAW Law in Toronto.

He says it would be a mistake for the Canadian government to make rash decisions in two specific areas: the purchase of Boeing Super-Hornets, and the Chapter 19 discussion in NAFTA negotiations.

He says Canada should make those other decisions on their merits. If it wants Boeing's military planes, and if it's prepared to negotiate changes to the Chapter 19 dispute-resolution system, he says it should stay the course, and not muck up already sensitive processes.

"Keep this out of NAFTA," he said.

"Have a conversation about Chapter 19 that's cold-blooded."

One area of surprise was the size of the preliminary duty. Boeing had asked for an 80 per cent countervailing duty—and got multiple times what it asked for.

"To come back and get 219 per cent, that's something" Warner said. "It's high."