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PROFESSIONAL CORPORATION

Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

Timber! Resolute Forest Products Files NAFTA Chapter 11 Notice of Intent Against Government of Canada

By Cyndee Todgham Cherniak on January 3rd, 2016

Posted in NAFTA Chapter 11



On December 30, 2015, Resolute Forest Products (“Resolute”) (TSX: RFP) issued a press release stating that it has filed a Notice of Arbitration under Chapter 11 of the North American Free Trade Agreement (“NAFTA”). The NAFTA Chapter 11 claim relates to measures taken by the former provincial NDP Government in Nova Scotia and the former Conservative Government of Canada in support of the Port Hawkesbury paper mill. Under Chapter 11 of NAFTA, an investor can only make a claim against the government of Canada (not a provincial government).

Resolute contends the offending measures discriminated in favor of a rival mill in Port Hawkesbury and resulted, among other damages, in the closing of Resolute’s Laurentide mill (in Shawinigan, Quebec) in October 2014, depriving Resolute of its investment in that mill, and the value of other investments, in violation of the Company’s rights under NAFTA as a U.S. investor in Canada.

Resolute is seeking damages for direct losses of approximately \$70 million, consequential damages, and additional costs and relief deemed just and appropriate by an arbitral tribunal. If successful, the damages would be paid by the Canadian taxpayer (the Government of Canada).

The Notice of Arbitration has not yet been posted on the DFATD web-site. It is yet to be shown whether the alleged U.S. person involved in this case is an “investor” of the United States able to bring such a NAFTA claim. Other claims against Canada have been dismissed when there was not an “investor of another party” – since the claim is against Canada, the person suffering damages cannot be a Canadian. It will be interesting to review the exact nature of the alleged NAFTA breaches. Whether provincial government support of a rival mill is covered by NAFTA Chapter 11 is a new issue.

Tags: Chapter 11, NAFTA, notice of arbitration, notice of intent

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