

Softwood Lumber Imports from Canada:

An Issue Brief

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² This document was prepared at the request of Idaho State Representative Charles Cuddy (D-Orofino) and addresses points raised in a letter of April 5, 2001 from Hon. Roger Simmons, PC, Consul General of Canada, to Rep. Cuddy.

³ The author is grateful for review comments by Dr. Steve Shook, Assistant Professor, Department of Forest Products, and Dr. Charley McKetta, Associate Professor, Department of Forest Resources, University of Idaho, Moscow.

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Summary

For two decades, Canada and the United States have tried to resolve an issue raised by some U.S. manufacturers of softwood lumber – Canada has an unfair competitive advantage in U.S. markets. The issue resurfaced recently as the five-year old Softwood Lumber Agreement expired on March 31, 2001. Although there are different factions on each side of the border, in general Canada promotes “free trade” in softwood lumber. The U.S. position is that “fair trade” is a necessary condition for free trade, and promotes renegotiating some type of agreement in order to avoid imposing a countervailing duty on imports of Canadian softwood lumber.

The issue boils down to the question, does Canada unfairly subsidize lumber production? Although the Canadian position is that “subsidy allegations are unfounded,”¹ the United States International Trade Commission “*has consistently found material injury to the U.S. industry each time it has examined the issue.*”² On April 2, 2001 the Coalition for Fair Lumber Imports, an organization comprised of 255 U.S. firms representing 35% of U.S. softwood lumber production capacity, pressed the issue by filing suit to seek countervailing duties on Canadian softwood lumber imports. Following a period of fact-finding, a preliminary decision could come within a year. However, given the history of the issue and the current situation, anyone expecting settlement of this issue anytime soon is an optimist.³

Background

“In April 1996, the United States and Canada reached a 5-year agreement to impose a fee on imports above a specified level of Canadian softwood lumber shipped to the United States [from four provinces – British Columbia, Alberta, Ontario, and Quebec]. Despite hopes that this agreement would quiet a long-running dispute over increasing imports of softwood lumber from Canada, disagreements over the products covered and the price impacts of the agreement have persisted. The agreement [terminated] on March 31, 2001. Some interests would like to see the agreement renewed or modified, others would like to see it ended with alternative approaches to resolving the dispute, and still others would like to see no restrictions on imports of Canadian lumber. Legislation has been introduced in past Congresses both to restrict Canadian lumber imports and to end import restrictions. The 107th Congress may also consider legislation on this issue.”⁴

Canadian Response to Idaho Senate Joint Memorial 106

In March 2001, the Idaho legislature adopted Idaho Senate Joint Memorial 106. The memorial “respectfully requests that President Bush ... make the problem of subsidized Canadian lumber imports a top priority ...” (see **Appendix A**). In response, the Hon. Roger Simmons, PC, Consul General of Canada, wrote on April 5, 2001 to Idaho State Representative Charles Cuddy in an

¹ Letter from Hon. Roger Simmons, PC, Consul General of Canada, to Idaho State Representative Charles Cuddy, April 5, 2001 (see **Appendix B**).

² Gorte, Ross W., *Softwood Lumber Imports from Canada: History and Analysis of the Dispute*. RL30826, CRS Report for Congress, Congressional Research Service, Washington, DC, February 2, 2001, p. 24.

³ Steve Shook, review comments.

⁴ Gorte, *Softwood Lumber Imports from Canada*, p. 1.

effort to “correct allegations of ‘unfair trade’ by Canada” (see **Appendix B**). Mr. Simmons raises four major points, only one of which – the subsidy issue – is directly addressed in the Idaho memorial. Some of his other points are highly relevant to the issue, but only tangential to the Idaho memorial. All four major points are addressed herein.⁵

As Mr. Simmons put it, his information is “a friendly effort to ensure a full and fair exchange of views on this important bilateral issue.” This issue brief is offered in the same spirit. Additional information is provided on each of Mr. Simmons’ points.

The conclusion is that Mr. Simmons summarized available information in a manner that supports the argument that the allegations of U.S. lumber producers regarding “unfair trade” practices by Canada are unfounded. Although consideration of the additional information provided herein might lead one to different conclusions, judgments of fairness on this issue are determined by the institutions charged with the task, specifically the United States International Trade Commission and the International Trade Agency (see **Appendix C. Summary Overview of Canada-U.S. Lumber Trade Disputes**).

1. “Subsidy Allegations are Unfounded”

Mr. Simmons says,

“The memorial takes as its premise that the Canadian system of land tenure and provincial government forestry management result in unfair subsidies to our lumber industry. Timber pricing by provincial governments in Canada has been the subject of three countervailing duty investigations over the past twenty years. In two of those three investigations the U.S. Department of Commerce found that “[Canadian] stumpage fees did not confer a countervailable subsidy”; the third was never completed because both governments concluded that a negotiated solution was preferable to a lengthy, costly, and politicized countervailing duty process.”

Although Mr. Simmons may be technically correct in the legalistic sense, he glosses over findings by the U.S. International Trade Commission (ITC) that Canadian policies may have “materi-ally injured” U.S. producers (1982) and represented a subsidy of 15% in 1986 and 6.51% in 1992.⁶ His point is not that the subsidy doesn’t exist, but that it is not a “countervailable sub-sidy.” However, the history of the issue, provided herein, shows that negotiations forestalled the need for the U.S. to implement countervailing duties on imports of Canadian lumber.

In a document cited and recommended by Mr. Simmons, the Congressional Research Service (hereafter, the CRS Report) clearly identifies these findings of fact by the ITC, and how countervailing duties were avoided through political negotiations between the U.S. and Canada. Additional material provided by a Canadian environmental group to the United States Trade

⁵ Two additional subheadings in Mr. Simmons letter (see **Appendix B**) – “Canada Harvests Sustainably” and “Canada A Leader in Forest Protection” – are closely related to one of the four subheadings treated herein – “Canadian Forests Subject to Stringent Environmental Regulation.”

⁶ Approximately half of the 1992 subsidy of 6.51% came from Canadian stumpage pricing policies and half from Canadian restrictions on log exports. When applied to annual softwood lumber imports of \$10 billion Canadian dollars (\$6.5 billion U.S. dollars) per year, the 6.51% subsidy is an annual benefit to Canadian producers of more than \$650 million Canadian dollars (\$400 million U.S. dollars).

Representative in April 2000 is added to enhance understanding of the issue:

“Concerns about softwood lumber imports from Canada have been raised for decades. The current dispute has persisted for 20 years. In 1981, Congress⁷ asked the Department of Commerce to undertake a countervailing duty (CVD) investigation, which resulted in a finding of *de minimis* (insignificant) subsidies. In 1986, another investigation resulted in a preliminary finding of subsidies of 15% *ad valorem* (as a percent of sale value); the expected CVD was supplanted by a Memorandum of Understanding (MOU).”⁸

“Canada, concerned that they would lose the case,⁹ signed the MOU with the United States in late 1986. As part of the MOU, Canada agreed to self-impose a 15% export tax on softwood lumber exports to the United States from Alberta, British Columbia, Quebec and Ontario on the understanding that if those provinces increased their stumpage fees, those increased fees could replace all or part of the 15% export tax. By 1991, Canada gave notice that it intended to terminate the MOU in September 1991.”¹⁰

“Canada withdrew from the MOU in 1991, arguing that the provinces had responded to the earlier concerns.¹¹ In response the United States imposed a 15% import duty on Canadian softwood lumber. A subsequent investigation confirmed that Canada’s stumpage policies constituted an unfair subsidy.¹² The United States imposed a 6.51% *ad valorem* duty on imports in 1992.¹³ Canada appealed the import duty ruling under dispute resolution provisions of the U.S.-Canada Free Trade Agreement.¹⁴ Canada won the appeal and in mid-1994 the United States was forced to return all duties collected (estimated to be \$850 million Canadian dollars).¹⁵

“In late 1994, the United States threatened to amend its domestic trade legislation to address the softwood lumber issue and Canada agreed to enter into negotiations that resulted in the signing of the current Softwood Lumber Agreement (SLA).¹⁶ Under the SLA, Canada agreed to impose an export quota that saw the first 14,700 million board feet exported at no fee, a quota of 650 million per MBF at \$50 U.S. dollars per MBF and a higher quota of \$100 U.S. dollars per MBF on exports beyond 15.35 million MBF.”¹⁷

“In 1996, following changes in U.S. trade law, the United States and Canada reached the current 5-year softwood lumber agreement [described above] that imposes a fee on softwood lumber imports from four Canadian provinces in excess of the specified quota.”¹⁸

As a result of these events,

“U.S. lumber producers argue that the increasing Canadian share of the U.S. lumber market

⁷ The request was initiated by a group of lumber manufacturers (Steve Shook, review comments).

⁸ Gorte, *Softwood Lumber Imports from Canada*, p.27.

⁹ Canadian lumber manufacturers state that they settled because litigation costs were skyrocketing (Steve Shook, review comments).

¹⁰ Castle-Crown Wilderness Coalition (CCWC), “Alberta’s Subsidized Softwood Lumber Industry Threatens Environment and Canada-US Trade.” News release, April 24, 2000, Calgary, AB. Online: <http://www.cwc.ab.ca> (accessed April 19, 2001).

¹¹ Gorte, *Softwood Lumber Imports from Canada*, p.27

¹² CCWC, “Alberta’s Subsidized Softwood Lumber Industry.”

¹³ Gorte, *Softwood Lumber Imports from Canada*, p.27

¹⁴ This sentence paraphrases similar statements by the CWCC and Gorte.

¹⁵ CCWC, “Alberta’s Subsidized Softwood Lumber Industry.”

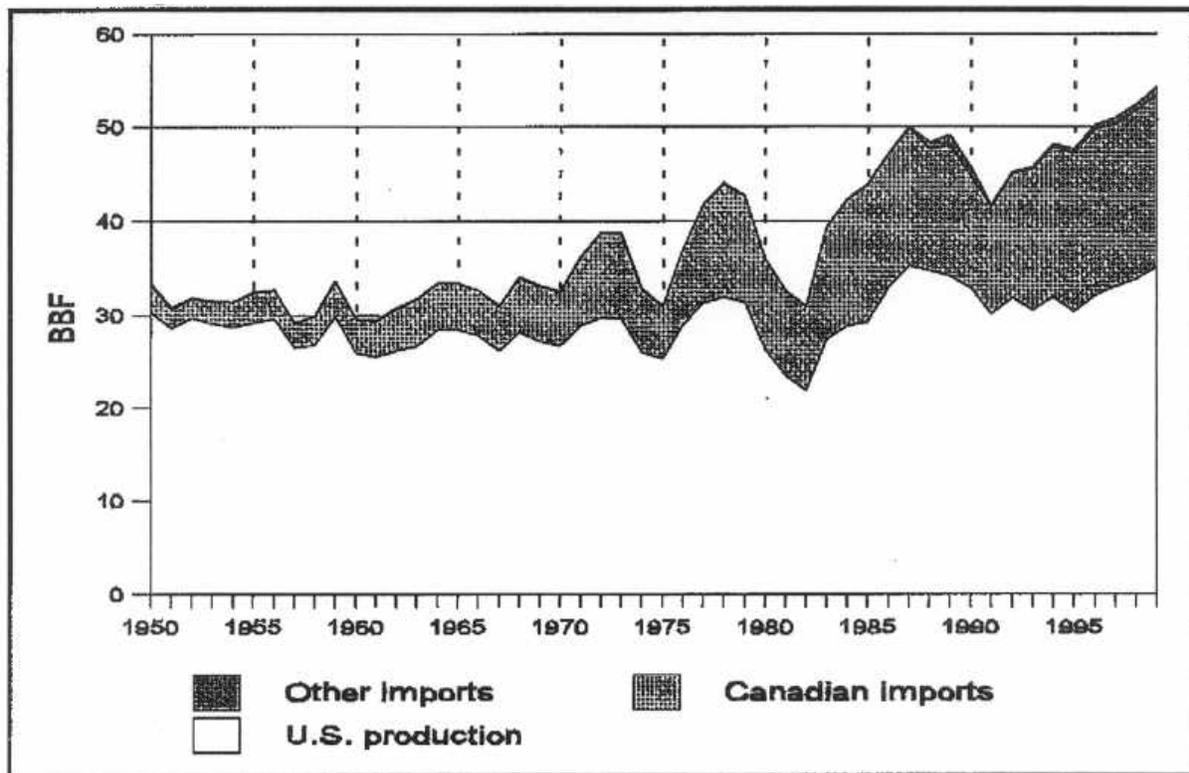
¹⁶ As they did in 1986, Canadian manufacturers agreed due to litigation costs (Steve Shook, review comments).

¹⁷ CCWC, “Alberta’s Subsidized Softwood Lumber Industry.”

¹⁸ Gorte, *Softwood Lumber Imports from Canada*, p. 27.

has injured them by constraining their potential to expand domestic softwood lumber production. Figure 1 clearly demonstrates that most of the growth in U.S. softwood lumber consumption has been provided by increased imports from Canada. Canadian imports have risen from less than 3 BBF in the early 1950s to more than 18 BBF in 1998 and 1999, including a 50% increase since 1990. [However, and more to the point the ITC will be addressing, Canadian imports have been nearly constant in the past five years (Steve Shook, review comments).] U.S. lumber production for the domestic market (*i.e.*, excluding U.S. lumber exports) was more than 30 BBF in 1950 and again in the late 1970s, but fell below 22 BBF in 1982. U.S. production for domestic use rose to more than 35 BBF in 1987, but has fluctuated between 30 BBF and 35 BBF ever since. The U.S. producers assert that Canadian subsidies have allowed Canadian producers to expand lumber exports to the U.S. market at the expense of U.S. producers especially since the mid-1970s.”¹⁹

Figure 1. U.S. Softwood Lumber Consumption in Billion Board Feet (BBF), with U.S. Production and Canadian Imports, 1950-1999.²⁰



Note: “Other imports” provide a small fraction (*i.e.*, less than 5%) of U.S. softwood lumber consumption, barely visible from 1989 on as a smaller, darker sliver on top of “Canadian imports.” Between 1995 and 1999 “Other imports” more than doubled, from 389 million to 912 million board feet, reaching to almost 5% of the U.S. market. Major exporting countries are, in order of magnitude, Brazil, Chile, New Zealand, Austria, and Mexico.²¹ In 2000, imports from Europe reached record levels, and imports from New Zealand, Chile, and Brazil were at all-time highs (Steve Shook, review comments).

¹⁹ Gorte, *Softwood Lumber Imports from Canada*, p. 20.

²⁰ Gorte, *Softwood Lumber Imports from Canada*, p. 20.

²¹ Fukuda, Jun, *A Study of the Effects of the Canada-US Softwood Lumber Agreement*. Working Paper 80, Center for International Trade in Forest Products, Univ. of Washington, Seattle, Feb., 2001.

2. “Different Systems, Different Costs”

Mr. Simmons says,

“It is assumed that a U.S.-style system (where land is largely privately owned and timber is largely put up for public auction) would result in much higher stumpage fees. This premise was rejected by Mark Suwyn, CEO of Louisiana-Pacific Corporation, a Portland, Oregon-based company operating on both sides of the border.”²²

Taking this a sentence at a time, the first question is, does the U.S. system result in higher stumpage fees? According to the CRS Report, it more than likely does because market prices can be expected to be higher than administratively set prices. However, like everything else associated with this issue, the answer is inconclusive:

“In most of the [Canadian] provinces, stumpage fees are determined administratively, and range from a fixed, province-wide fee to fees established separately for each tenure agreement. These fees are adjusted periodically to reflect changes in the market prices of lumber and other wood products.

“Administrative stumpage fees are unlikely to match market-determined prices, because the fees are determined by agency personnel, not by markets. ... [S]ome observers assert that the provinces have intentionally set the fees substantially below market prices, to assure the competitiveness of their producers. Whether provincial stumpage fees approximate market values or are substantially below market values can only be determined by examining provincial fees and U.S. prices for comparable timber, but such comparisons are difficult ...²³

“[E]vidence from U.S. Forest Service timber sales suggests that competitive bidding for timber results in a market price higher than the value using the appraisal system. ... Thus, ***much of the timber from lands in the United States is probably sold at fair market values. This is not likely the case in Canada,*** where leases (rather than competitive bids) are used to allocate timber. ... [T]he U.S. ITC and ITA have found significant differences in stumpage fees in various examinations dating back to 1982. However, other analyses have shown little or no difference between U.S. and Canadian fees.²⁴

“Several factors can explain such apparent contradictions. First, U.S. timber and Canadian timber are measured differently. ... Second, except for the occasional forest plantation, forests are not uniform monocultures – forests may contain several species of trees, each of which varies in diameter, height, and quality. ... Other factors also affect stumpage fees. For example, the management responsibilities on the timber purchasers differ. ... Another factor relates to changes in the exchange rate. A study in 1986 indicated that the relative strength of the U.S. dollar (vis-a-vis the Canadian dollar) in the mid- to late-1970s was an important factor in the growth of the Canadian market share during that period. ... How these changes have continued to affect U.S.-Canada lumber trade has not been adequately examined.²⁵ ... Analyses of the differences are difficult and generally problematic.²⁶

Because of problems with its administrative stumpage price system, the British Columbia Ministry of Forests began on March 1, 2001 to introduce a series of changes to the coastal

²² Boise Cascade has very recently stated a similar opinion (Steve Shook, review comments).

²³ Gorte, *Softwood Lumber Imports from Canada*, p. 14, emphasis added.

²⁴ Gorte, *Softwood Lumber Imports from Canada*, p. 15, emphasis added.

²⁵ Gorte, *Softwood Lumber Imports from Canada*, pp. 16-17.

²⁶ Gorte, *Softwood Lumber Imports from Canada*, p. 27.

stumpage system that are “market-based” rather than “comparative value-based.” According to Forests Minister Gordon Wilson, the objective is to “help make sure that British Columbians are receiving fair value for our timber.”²⁷

For the second part of Mr. Simmons’ point, and with all due respect to Mr. Suwyn, whose company owns land and operates mills in Idaho, Louisiana-Pacific is but one among many firms in the U.S. lumber industry. Some 255 firms representing 35% of U.S. lumber production capacity belong to the Coalition for Fair Lumber Imports and have much different views, including a belief that Canadians intentionally set low fees to ensure competitiveness, as alleged in the above quotation from the CRS Report. Perhaps more to the point, though, is the stance of Weyerhaeuser Corporation, the world’s largest producer of softwood lumber. Weyerhaeuser purchased MacMillan-Bloedel, Canada’s largest publicly traded forest products firm, in November 1999. CEO Steve Rogel said this about the company’s position on the Softwood Lumber Agreement:

“We at Weyerhaeuser share the same goal [as MacMillan-Bloedel] of free trade in forest products. But our strategy for getting there will be a bit different. It has to be. We have significant lumber production and employees on both sides of the border. However, let me be clear that we want to restore free trade in Canadian lumber products. In the five Canadian provinces where we operate, we’re working to define a unified Canadian strategy. Unfortunately, so far, the Canadian industry remains divided. Unless this situation changes, Canadian governments will be unable to advance a cohesive position. Yet, they must do so if they’re to successfully negotiate with their U.S. counterparts. Weyerhaeuser has considerable presence and influence on both sides of the border. We plan to use our position constructively to work harder than ever with governments, with other lumber companies, and with our industry colleagues on both sides of the border to develop a balanced, long-term resolution. For example, we believe it’s imperative to correct a situation arising from the 1996 Softwood Lumber Agreement that leaves the B.C. Coastal region with a limited quota and limited access to the U.S. market. We strongly believe that any outcome of this debate must not penalize the B.C. Coast or any other region in North America.”²⁸

In January 2000, Weyerhaeuser was not calling for an end to the lumber agreement, but for a renegotiation. Subsequent position statements by the firm were not discovered during this research.

3. “Canadian Forests Subject to Stringent Environmental Regulation”

Environmental regulations are a non-issue to the Department of Commerce and the International Trade Commission.²⁹ Nevertheless, Mr. Simmons included the issue in his arguments.

The ITC is concerned solely with subsidies to Canadian producers. The laxity of Canadian environmental regulations are a Canadian issue and not a trade issue. The Coalition for Fair Lumber Imports has hardly touched upon environmental practices in Canada in any of their

²⁷ Government of British Columbia, “Wilson announces changes to stumpage regulations.” News release 2001:040, March 16, 2001. Online: <http://142.36.183.50/4DClient.acgi?nritem?4590> (accessed 23 April, 2001)

²⁸ Rogel, Steve, “Weyerhaeuser: The Future is Growing in Canada.” Remarks by Weyerhaeuser’s Chairman, CEO, and President to B.C. Loggers, January 13, 2000. Online: <http://www.weyerhaeuser.com> (accessed April 19, 2001).

²⁹ Steve Shook, review comments.

briefs submitted to Commerce or the ITC, and when they have, it is almost as an afterthought.³⁰

Conservation organizations in both Canada and the U.S., however, are trying to expand the trade issue from the economic dimension to include adequate concern for wildlife and wilderness preservation:

“United States conservation organizations have recently charged that the United States Government had failed to properly follow the provisions of the National Environmental Policy Act³¹ when it originally entered into the Softwood Lumber Agreement. These arguments focus primarily on the potential impacts of the Agreement on transboundary wildlife species in Canada (i.e. in the Castle Wilderness in southwestern Alberta adjacent to Waterton Lakes-Glacier International Peace Park). The effect of that case has been to broaden the softwood lumber debate from a purely economic and international trade issue to also include environmental issues.”³²

Economic considerations can be associated with environmental regulation because of the cost of compliance. Whether Canada’s requirements on provincial forests are more stringent, and therefore pose more costs to Canadian producers than U.S. producers face, is debatable. Data do not exist to make broadly meaningful comparisons. The CRS Report says:

“Differing environmental policies have also been raised as a cause of differing cost structures; some allege that weaker Canadian environmental protection further subsidizes the Canadian lumber industry. Many environmental groups in the United States and Canada argue that subsidized Canadian stumpage prices lead to overcutting, and that 90% of the harvest is extensive clearcuts of irreplaceable old-growth timber. They also assert that Canada’s laws do not provide nearly as much protection as U.S. environmental laws, especially the Endangered Species Act. U.S. lumber producers have asserted that complying with U.S. environmental laws significantly increases their cost of production.”³³

“One study found that U.S. federal policies for federal lands in Washington and Oregon were more protective than BC provincial policies. This implies greater costs imposed on U.S. lumber producers by environmental laws than are imposed on their Canadian competitors. However, there has not been a definitive study comparing U.S. federal, state, and local policies for federal, state, and local private lands in the United States with Canadian federal, provincial, and local policies for federal, provincial, local, and private lands in Canada. Because of differences in resource demands and threats, less restrictive Canadian environmental protection might not necessarily lead to greater environmental damage from logging. *Whether Canadian forests are in better condition than, or more degraded than, U.S. forests is not clear from existing data.*”³⁴

Some Canadian conservation groups do not think environmental regulations are stringent enough. For example, the Castle-Crown Wilderness Coalition (CCWC) filed a submission with the United States Trade Representative (USTR) in April 2000:

“The CCWC submission to the USTR documents that the Government of Alberta’s current softwood lumber practices are providing direct economic and indirect environmental subsidies to Alberta’s softwood lumber industry. These subsidies, combined with poor

³⁰ Steve Shook, review comments.

³¹ National Environmental Policy Act of 1969 (or “NEPA”) (P.L. 91-190, sec. 2, 83 Stat. 852; 42 U.S.C. 4321, 4331 to 4335, 4341 to 4347).

³² CCWC, “Alberta’s Subsidized Softwood Lumber Industry.”

³³ Gorte, *Softwood Lumber Imports from Canada*, p. 26.

³⁴ Gorte, *Softwood Lumber Imports from Canada*, p. 26, emphasis added.

environmental regulations in Alberta, have resulted in widespread environmental degradation of forested landscapes in that province. They have also allowed Alberta's softwood lumber industry to dramatically increase its production and exports of softwood lumber products into the United States softwood lumber markets over the past ten years. The CCWC submission reviewed various aspects of Alberta's softwood lumber practices and concluded that Alberta's public timber is not being sold at fair market value established through a competitive bidding system but that prices are administratively set by the Government at well below market value. The submission also documents that Alberta's annual revenues from the sale of public timber is chronically less than annual public expenditures to manage Alberta's forest for timber production. In a comparison of Alberta's administratively set timber price with what identical timber sold for under the competitive system used by the U.S. Forest Service, the submission showed that Alberta softwood lumber producers paid only 12 to 26 percent of what US softwood lumber producers in Montana and Idaho paid for identical timber species. This discrepancy in timber pricing translates into an annual subsidy to Alberta's softwood lumber industry of approximately \$465 million U.S. dollars." [CCWC]

4. "U.S. Consumers Pay the Price"

Mr. Simmons says,

"Restrictions on lumber trade have a negative impact on U.S. consumers and lumber-dependent industries. ... The U.S. National Association of Homebuilders estimates that trade restrictions currently [i.e., until April 1, 2001] imposed on Canadian lumber add approximately \$1,000 to the cost of building a typical home and amount to a 'thinly disguised tax on home buyers.' This extra cost prices perhaps 300,000 U.S. home buyers out of the market."

At issue, however, is the magnitude and effect of the impact. Mr. Simmons accepts uncritically the NAHB argument, which is based on two reports. First is the *Nailing the Homeowner* report³⁵ by the Cato Institute, a Washington, DC think tank whose mission is "to broaden the parameters of public policy debate to allow consideration of more options that are consistent with the traditional American principles of limited government, individual liberty, and peace."³⁶ Second is a study by Professor Zhang at Auburn University:

"This paper investigates welfare impacts of the 1996 U.S.-Canada Softwood Lumber Trade Agreement (SLA), which set up a tariff regulated quota system to restrict softwood lumber export from Canada to the U.S. An aggregate price model was used to estimate the price impact of the SLA, and the implied quantity and welfare effects were examined. The results show that, while the anticipated change in lumber price is modest at about \$53 in 1997 U.S. dollars or 14 percent on average for the first four years under the SLA, the gains to U.S. producers of softwood lumber are large and the losses to U.S. consumers are much larger. In addition, Canadian producers have benefitted from the SLA, and the Canadian government has collected a small amount of additional tax revenue. As the overall efficiency costs of the SLA are relatively small, the SLA can be seen as an effective means of welfare transfer from U.S. consumers to the U.S. and Canadian producers. These results should provide

³⁵ Lindsay, Brink, Mark A. Groombridge, and Prakash Loungani, *Nailing the Homeowner: The Economic Impact of Trade Protection of the Softwood Lumber Industry*, Cato Institute, Washington, DC, 2000.

³⁶ "About the Cato Institute." Online: <http://www.cato.org> (accessed April 19, 2001).

information for ongoing trade policy debate.”³⁷

The CRS Report recommended by Mr. Simmons has this to say about his argument posed above: “U.S. lumber prices are, according to economic theory, probably higher with the restrictions on Canadian imports than they would be without the restrictions. Price differentials for a single aspect, however, are exceedingly difficult to determine. One estimate of the price increase from the 1996 agreement, by a group [the Cato Institute] that opposes trade restrictions, nearly equaled the fee rates, although the fee applies only to imports in excess of the quota. This estimated price increase, which U.S. lumber producers argue is grossly overstated, would have raised the price of 1999 median new home by less than 1%, and would have raised monthly mortgage payments on such a house by less than a rise in mortgage interest rates of C^{th} of 1%.”³⁸

“Imports of Canadian lumber have undoubtedly kept softwood lumber prices lower than prices would have been with no imports. However, in general and over the long term, changes in lumber supply have a modest impact on lumber prices. Demand for lumber is a secondary demand, derived substantially from the demand for new or remodeled houses and other buildings. Wood products are a relatively minor component of construction costs; at \$323 per MBF (the Random Lengths average framing lumber composite price for 2000), framing lumber in an average (2,000-square foot) new home would cost less than \$6,000 – 3.5% of the 1999 median price of a new home. In contrast, more than 80% of softwood lumber is used in construction – residential construction (40%), non-residential construction (15%), and repair and remodeling (28%). Hence, softwood lumber is highly price inelastic, with modest changes in construction demand causing relatively large changes in lumber prices but modest changes in lumber supply causing relatively small changes in lumber prices. This was documented in one analysis that found ‘lumber demand fundamentals’ and ‘market overreactions’ to expected supply problems as the principal factors in all six identified lumber price spikes between 1978 and 1993.”³⁹

“An analysis of price data shows that the SLA has increased the price of softwood lumber products in the U.S. relative to Canada. A comparison of the price trends of identical softwood lumber products in two closely located markets (Toronto and Boston) ... show that since the SLA was implemented, the price for softwood lumber in Boston has been nearly 15% higher than the identical product sold in Toronto. ... Despite the relative price increases in the U.S., softwood lumber consumption in the U.S. has substantially increased throughout the period due to strong economic growth.”⁴⁰

“In summary, it is not clear whether framing lumber price levels indicate injury to either the U.S. lumber industry or to U.S. lumber users. Price levels have not risen to levels that appear to significantly constrain homebuilding or other construction, but neither are they so persistently low as to by themselves indicate significant injury to U.S. producers; *the ITC, however has consistently found material injury to the U.S. industry each time it has examined the issue.*”⁴¹

³⁷ Zhang, Daowei, “Welfare Impacts of the 1996 U.S.-Canada Softwood Lumber Trade Agreement.” Internal Working Paper Series No. 117, Forest Policy Center, Auburn Univ., Auburn, AL, Nov. 2000

³⁸ Gorte, *Softwood Lumber Imports from Canada*, p. 28.

³⁹ Gorte, *Softwood Lumber Imports from Canada*, p. 24.

⁴⁰ Fukuda, *A Study of the Effects of the Canada-US Softwood Lumber Agreement* (from Fact Sheet #42, <http://www.cintrafor.org> [accessed April 19, 2001]).

⁴¹ Gorte, *Softwood Lumber Imports from Canada*, p. 24, emphasis added.

Future Outlook

There were four leading options that might have been implemented at the expiration of the Softwood Lumber Agreement (SLA) on March 31, 2001. These options were:

[1] an extension of the current agreement, [2] imposition of a countervailing duty by the US, [3] “fair trade” with major changes in the stumpage pricing system employed in Canada, or [4] “free trade” and the elimination of the SLA. Recent events in both Canada (with regards to the 1998 lowering of stumpage prices in British Columbia⁴² and the U.S. (with regards to the position of the Coalition on Fair Lumber Imports [CFLI]) suggest that the implementation of options 3 and 4 are unlikely. Given the current political situation in both countries, with presidential elections occurring in early November 2000 in the U.S. and national elections occurring in late November in Canada, it seemed possible that the two governments might have decided to extend the SLA for a short period of time. However, the CFLI insisted that it will seek some type of countervailing action if Canada fails to address the stumpage price issue appropriately following the expiration of the SLA. Given the inequities that some Canadian lumber manufacturers perceived with the recently expired SLA, it is likely that at least some producers in Canada would have preferred to see the SLA expire and be replaced with a countervailing duty, since this would impose no limit on the volume of softwood lumber that they could export to the U.S.⁴³ Considering the restrained domestic timber supply and the uncertain future availability of Canadian softwood lumber, it is important for the U.S. to build a cooperative relationship with Canada in order to provide secure softwood lumber supply.⁴⁴

The SLA expired on March 31, 2001. On April 2, 2001 the Coalition for Fair Lumber Imports filed suit for countervailing duties of 80% on imports of Canadian softwood lumber. The issue is in the hands of the International Trade Commission at this writing. The ITC can be expected to focus its attention on four things:

- developments in the U.S. softwood lumber market in the past 5 years (i.e., what effects has the SLA had?),
- substitutability of individual species and groups of species,
- imports of softwood lumber from countries other than Canada, and
- subsidy of Canadian stumpage.⁴⁵

Conclusion

Mr. Simmons says,

“Canada has actively sought to engage the U.S. in an open dialogue on softwood lumber in order to avoid a costly and acrimonious trade dispute and instead work together to build a strong North American forest products industry. I hope we can start with accurate and fair descriptions of forest practices on both sides of the border.”

This issue brief is offered in the same spirit. The reader will undoubtedly have noticed the

⁴² More than half of the softwood lumber imports in the U.S. come from British Columbia.

⁴³ For a possible example, see the quotation from Weyerhaeuser CEO Steve Rogel in section 2 above.

⁴⁴ Fukuda, *A Study of the Effects of the Canada-US Softwood Lumber Agreement*.

⁴⁵ Steve Shook, review comments.

frequent use of the word “fair” throughout this paper. The fairness of policies that govern international trade between what may well be the world’s largest trading partners – the United States and Canada – is at issue, and the guidelines for determining what is and is not fair are less than clear.

The CRS Report concludes,

“Injury to the U.S. lumber industry remains a major and complex issue. The Canadian share of the U.S. softwood lumber market grew substantially over the past 50 years, from less than 7% in 1952 to more than 35% in 1996 [essentially where it is today]. During this period, U.S. lumber production for domestic consumption grew slowly – from nearly 30 billion board feet (BBF) in the early 1950s to 35 BBF in 1999 – while imports of Canadian lumber rose substantially – from less than 3 BBF in the early 1950s to more than 18 BBF in 1999. Under the 1996 agreement, imports have continued to grow, although market share has been relatively stable. Lumber imports from Canada may have limited opportunities to expand domestic lumber production, but whether this long-term pattern is sufficient to constitute injury or whether the limited growth in domestic production is due to other factors is not clear from the existing data.”⁴⁶

“Other factors might also be important in the dispute over lumber imports from Canada. One analyst has suggested that the persistence of the dispute is due, at least in part, to the conflict between the increasingly liberal, no-barriers U.S. trade policy and the increasingly easy process for obtaining industry protection under U.S. trade law. In addition, environmental laws and policies probably differ, and the impact of those laws and policies for lumber production costs complicate any cross-border analyses.”⁴⁷

The facts of the matter at hand, as determined by the International Trade Commission, are that the administrative pricing of Canadian stumpage, as well restrictions on log exports, provided a subsidy to Canadian producers of 15% in 1986 and 6.51% in 1992. Mr. Simmons, of course, is aware of these facts, and bases his argument on the fact that, as he put it, “[Canadian] stumpage fees did not confer a countervailable subsidy.” This seems to be a legally correct statement, but fails to recognize the underlying findings of fact by the International Trade Commission regarding subsidies to Canadian producers, and that countervailing duties to compensate U.S. producers for injuries were avoided through negotiations.

⁴⁶ Gorte, *Softwood Lumber Imports from Canada*, p. 28.

⁴⁷ Gorte, *Softwood Lumber Imports from Canada*, p. 28.

Appendix A. Idaho Senate Joint Memorial 106

||||
Fifty-sixth Legislature

LEGISLATURE OF THE STATE OF IDAHO

||||
First Regular Session - 2001

IN THE SENATE
SENATE JOINT MEMORIAL NO. 106
BY STATE AFFAIRS COMMITTEE

1 A JOINT MEMORIAL

2 TO THE PRESIDENT OF THE UNITED STATES, SENATE AND HOUSE OF REPRESENTATIVES OF
3 THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGA-
4 TION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

5 We, your Memorialists, the Senate and the House of Representatives of the
6 State of Idaho assembled in the First Regular Session of the Fifty-sixth Idaho
7 Legislature, do hereby respectfully represent that:

8 WHEREAS, the Softwood Lumber Agreement entered into by the United States
9 and Canada in 1996 will expire in March 2001; and

10 WHEREAS, this agreement was crafted because the provinces of Canada, which
11 own most Canadian timber, sell at prices that can be set below market value;
12 and

13 WHEREAS, these practices have fueled shipments to the United States to the
14 point that subsidized Canadian imports are at record levels and now control
15 over one-third of the U.S. softwood lumber market; and

16 WHEREAS, subsidized Canadian lumber imports have gained sales volume from
17 United States lumber companies, depressed timber values in the United States,
18 jeopardized thousands of jobs in this country, driven down the taxable value
19 of forest land and further undermined the stability of already endangered tim-
20 ber communities.

21 NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session
22 of the Fifty-sixth Idaho Legislature, the Senate and the House of Representa-
23 tives concurring therein, that we respectfully request that President Bush
24 direct the Office of the U.S. Trade Representative and the Secretary of Com-
25 merce to make the problem of subsidized Canadian lumber imports a top prior-
26 ity, to take every possible action to end Canadian lumber subsidy practices
27 through open and competitive sales of timber and logs in Canada for fair mar-
28 ket value, or if Canada will not agree to end the subsidies immediately, the
29 subsidies must be offset pending reform; and if Canada will not reach an
30 agreement, to enforce vigorously, promptly and fully the trade laws against
31 subsidized and dumped imports and explore all options to stop unfairly traded
32 imports, to limit injury to the United States timber industry pending further
33 action.

34 BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is
35 thereby authorized and directed to forward a copy of this Memorial to President
36 George W. Bush, to the President of the Senate and the Speaker of the House of
37 Representatives of Congress, and the congressional delegation representing the
38 State of Idaho in the Congress of the United States.

**Appendix B. Letter from Hon. Roger Simmons, PC, Consul General of Canada,
to Idaho State Representative Charles Cuddy, April 5, 2001**

Canadian Consulate General
412 Plaza 600, Sixth & Stewart
Seattle, WA 98101-1286

April 5, 2001

Rep. Charles Cuddy
Idaho State Legislature
State Capitol Building
P.O. Box 83720
Boise, ID 83720-0038

Dear Representative Cuddy:

I'm writing you today regarding Senate Joint Memorial 106, recently adopted by the Idaho Legislature. SJM 106 relates to trade in softwood lumber between Canada and the United States, Canadian forest practices and the Canada U.S. Softwood Lumber Agreement. SJM 106 contains a good deal of inaccurate information and I hope you will accept this letter as a friendly effort to ensure a full and fair exchange of views on this important bilateral issue and to correct allegations of "unfair trade" by Canada.

Subsidy Allegations are Unfounded

The memorial takes as its premise that the Canadian system of land tenure and provincial government forestry management result in unfair subsidies to our lumber industry. Timber pricing by provincial governments in Canada has been the subject of three U.S. countervailing duty investigations over the past twenty years. In two of the three investigations, the U.S. Department of Commerce found that Canadian "[Canadian] stumpage fees did not confer a counteravailable subsidy" the third was never completed because both governments concluded that a negotiated solution was preferable to a lengthy, costly, and politicized countervailing duty process.

Different Systems, Different Costs

It is assumed that a U.S.-style system (where land is largely privately owned and timber is largely put up for public auction would result in much higher stumpage fees. This premise was rejected in September 2000 by Mark Suwyn, CEO of Louisiana-Pacific Corporation, a Portland, Oregon-based lumber company operating on both sides of the border. Mr. Suwyn said, "The U.S. wants somehow for the (Canadian) provinces to go to a free bidding process where everyone can bid on every sale ... this is one of those things you should not wish for if you are a U.S. producer because if you get your wish you may be very unhappy as stumpage rates might go down rather than up."

A February 2001 report for the U.S. Congress on softwood lumber imports from Canada is also worth reviewing. It provides a comparison of both Canadian and U.S. stumpage systems, and the author concludes: "Evidence to demonstrate this possible disparity between U.S. and Canadian stumpage fees, is widespread, but inconclusive." The report noted other factors affecting Canadian stumpage fees. "For example, the management responsibilities imposed on the timber purchases differ. In Canada, licensees are generally responsible for reforestation and for some forest protection." (See Congressional Research Service Report for Congress, "Softwood Lumber Imports from Canada: History and Analysis of the Dispute", February 2, 2001).

Canadian Forests Subject to Stringent Environmental Regulation

The vast majority of Canadian forests (94%) are publicly owned and subject to extensive regulations requiring reforestation, protection of water bodies, and preservation of biodiversity. The use of these forests is also subject to environmental assessments and intense public scrutiny. While the U.S. maintains some similar requirements for its public lands, private forest lands are much less carefully regulated in most U.S. jurisdictions and account for 90% of the annual U.S. harvest.

Canada Harvests Sustainably

Canadian policies do not encourage over-harvesting. Canadian harvests are limited by annual allowable cuts, which are based on the sustainable growth rate of the forest. The facts are that:

- Only 0.4% of Canada's commercial forests are harvested each year, well below sustainable harvest levels;
- Canada grows twice as much timber as it harvests each year;
- Canada limits harvest levels to the forest growth rates, so that the forests are not depleted;
- Canada, with more commercial forest lands, cuts less than half of what is harvested in the U.S. each year.

Canada A Leader in Forest Protection

According to a recent study from Auburn University in Alabama, "contrary to U.S. lumber company complaints ... the province of British Columbia is a leader in environmental forestry protection rules, in comparison to the vast majority of U.S. softwood lumber producing states ... Canadian lumber producing provinces rank at the top of a list of provinces and lumber producing states protecting their lands from commercial development. States in the U.S. south fall at the bottom of this ranking." (Auburn University report, "Sustainable Forestry Issues: Exploring the Clearcutting Issue, Protected Area Policy, Streamside Riparian Rules and International Initiatives", 2001).

U.S. Consumers Pay the Price

The United States is not self-sufficient in lumber, and future supply is not expected to match increases in U.S. demand. Restrictions on lumber trade have a negative impact on U.S. consumers and lumber-dependent industries. According to the U.S. Bureau of Labor Statistics, employment in lumber-producing industries (such as logging and sawmills) was roughly 217,000 jobs in 1999. By comparison, lumber-dependent industries (such as millworkers, wholesalers, and builders) account for more than 4 million U.S. jobs.

The U.S. National Association of Homebuilders estimates that trade restrictions currently imposed on Canadian lumber add approximately \$1,000 to the cost of building a typical home and amount to a "thinly disguised tax on home buyers." This extra cost prices perhaps 300,000 U.S. home buyers out of the market. The system currently in place benefits a just handful softwood lumber producers at the expense of hundreds of thousands of North American consumers.

Lumber imports from Canada are not the cause of mill closures. Indeed, a large percentage of the recent closures have occurred in British Columbia. Closures on both sides of the border are the result of a changing industry and the cyclical nature of lumber production driven largely by market demand.

For U.S. producers who claim that Canada engages in unfair trade, there are trade rules and dispute settlement provisions available to test the allegation as it has been tested in the past. But the interests of workers, communities and businesses on both sides of the border will not be well-served by inaccurate depictions of this essential trade relationship.

Canada has actively sought to engage the U.S. in an open dialogue on softwood lumber in order to avoid a costly and acrimonious trade dispute and instead work together to build a strong North American forest products industry. I hope we can start with accurate and fair descriptions of forest practices on both sides of the border.

Please feel free to contact me if you would to discuss this further or if you need more information.

Yours sincerely,

/s/

Hon. Roger Simmons, PC
Consul General of Canada

Appendix C. Summary Overview of Canada-U.S. Lumber Disputes

<http://www.growingtogether.ca/news/trade.htm>

Growing Together

Canada-U.S. Lumber Trade Disputes

Updated: April 2, 2001

Countervailing Duty Investigations

Past trade disputes between the U.S. and Canada have taken the form of countervailing duty cases.

Under U.S. trade law, a countervailing duty case is an investigation of an alleged subsidy that provides an importer with an advantage in the U.S. market. With lumber, the U.S. contends that provincial stumpage and, more recently, B.C.'s log export restrictions, provide a subsidy to lumber producers. Other provincial programs may also be alleged to provide subsidies.

To impose a countervailing duty or tariff, the U.S. must establish two things:

- ! Subsidy - imported goods are subsidized.
- ! Injury - the subsidized goods are injuring the U.S. industry.

Two factors determine whether goods are subsidized:

- ! Specificity - programs are available only to a specific industry.
- ! Preferentiality - goods are provided at a preferential rate.

The U.S. Department of Commerce investigates subsidy, while the quasi-judicial International Trade Commission investigates injury. Each agency makes a preliminary and then a final determination.

Following a Department of Commerce preliminary determination of subsidy, bonds are required on shipments to the U.S. If the Department of Commerce finds that "critical circumstances" apply, this duty can be made retroactive for 90 days. After the Department of Commerce and International Trade Commission final determinations, a countervailing duty order is issued and cash deposits are required on shipments.

Since 1988, Canada has been able to appeal a countervailing duty to an arbitration panel established under the Free Trade Agreement (now NAFTA). However, a NAFTA panel can only determine whether the finding was made in accordance with U.S. law. An appeal can also be made to a WTO panel, which can determine whether U.S. law is consistent with the WTO.

Anti-Dumping Investigations

Under U.S. trade law, an anti-dumping case is an investigation on whether an importer is selling goods in the U.S. at prices lower than in the home market or is selling goods at prices below cost.

This is the first time the U.S. lumber industry coalition has filed a petition for an anti-dumping investigation.

An anti-dumping case also involves the Department of Commerce and the International Trade Commission. It follows similar steps to a countervailing duty case, but generally the timetable is longer.

With lumber, the Department of Commerce may investigate a sample of companies in extreme detail. If the Department of Commerce determines a dumping margin exists for companies in that sample, the agency will impose duties on those companies and a weighted average duty on all non-investigated companies.

Roles and Responsibilities

Countervailing Duty Cases

The federal government has overall responsibility for international trade, and it co-ordinates the national defense.

Provincial governments have the lead in addressing the allegations of subsidy that relate to provincial programs.

Industry has the lead in rebutting claims of injury.

Anti-Dumping Cases

Industry has the lead on an anti-dumping case as individual companies are investigated.

The federal government is not a direct participant in an anti-dumping case but has overall responsibility for international trade and monitors the investigation to ensure it is in accordance with the WTO.

History of Countervailing Duty Cases

Since 1982 Canada and the U.S. have been involved in three lumber countervailing duty cases (widely called Lumber I, II and III). The Softwood Lumber Agreement avoided a fourth. B.C., which historically accounted for over 60 per cent of Canadian exports to the U.S., has always been the prime target of these disputes.

Lumber I

In October 1982, the Department of Commerce investigated the stumpage programs of B.C., Alberta, Ontario and Quebec.

In May 1983, the Department of Commerce ended its investigation, finding that stumpage programs were not countervailable because stumpage was generally available and not limited to a specific industry (i.e., the specificity test was not met).

Lumber II

The Department of Commerce started another investigation in May 1986.

Two things changed between the end of Lumber I and the onset of Lumber II:

- ! The Department of Commerce began to more aggressively apply U.S. trade law, especially in natural resource countervailing duty cases.
- ! More important, the Coalition for Fair Lumber Imports - the U.S. lumber industry coalition - became a large, well-funded and politically well-connected lobby group. The coalition also retained Dewey Ballantine, an aggressive Washington, D.C., legal firm.

Contrary to its 1983 determination, the Department of Commerce found that stumpage programs did meet the specificity test, and levied a 15 per cent tariff in its October 1986 preliminary determination. The preferential benchmark used by the Department of Commerce was “cost to government.” The Department of Commerce determined that stumpage revenues received by provincial governments were exceeded by applicable government costs.

A final determination was never reached. The case ended when Canada and the U. S. agreed, in December 1986, to a memorandum of understanding (MOU) under which Canada imposed a 15 per cent export charge on lumber exports to the U.S.

The MOU had the advantages of:

- ! Keeping the money in Canada - the export charge was collected by Canada and remitted to the provinces.
- ! Providing certainty on the rate - a countervailing duty is essentially an interim rate; the Department of Commerce determines the rate annually and retroactively applies the newly determined rate.

The MOU let provinces replace the export charge through increased stumpage or other policy changes. B.C. implemented replacement measures in October 1987 - increasing stumpage and transferring the responsibility for silviculture to industry.

Lumber III

In B.C., the MOU was increasingly seen as an infringement of provincial sovereignty. The Department of Commerce monitored the B.C. replacement measures regularly and challenged every small adjustment.

Pressure grew within Canada, especially in B.C., to get rid of the MOU. Canada’s attempts to have the U.S. agree to termination were rebuffed; eventually, in October 1991, Canada unilaterally terminated the MOU.

Almost immediately, the Department of Commerce started an investigation and imposed temporary bonding requirements. It was the first time the department had initiated a countervailing duty case on its own.

In May 1992, the Department of Commerce issued a final determination, which set a countervailing duty rate of 6.51 per cent. The rate was comprised of two elements:

A weighted average rate of 2.91 per cent for stumpage programs in B.C., Alberta, Ontario and Quebec. The finding of subsidy in B.C. was based on the difference between stumpage rates under the small business program and rates for major licensees (a change in methodology from Lumber II).

A rate of 3.6 per cent for B.C.'s log export restrictions (based on that by restricting log exports, the domestic log supply is increased and the domestic log price decreased).

Canada appealed the Department of Commerce's subsidy finding and the International Trade Commission's injury finding to binational panels under the Free Trade Agreement. After a number of redeterminations by the two agencies and further appeals by Canada, the Department of Commerce finally reversed its finding - consistent with the panel decision.

The U.S. then challenged the panel's decision to an extraordinary challenge committee, also established under the Free Trade Agreement. The committee affirmed the panel's decision, and the Department of Commerce revoked the countervailing duty order in August 1994.

Consultations and the Softwood Lumber Agreement

In December 1994, Canada and the U.S. agreed to implement a consultative process on lumber trade as an alternative to another trade dispute.

Canada agreed to the consultative process, in part because the U.S. agreed to refund a significant part of the duties collected in Lumber III (about \$500 million), and the U.S. Lumber Coalition agreed to drop a constitutional challenge against the Free Trade Agreement arbitration panel process.

Both the U.S. and Canadian governments were keen to keep lumber out of another legal case. The countervailing duty cases had become increasingly acrimonious and were souring Canada-U.S. trade relations.

Also, in its implementation of the WTO Uruguay Round agreement, the U.S. had amended its trade law to ensure that Canada could not succeed on the same basis as in Lumber III.

The consultations led to the negotiation of the five-year Softwood Lumber Agreement in April 1996.

The agreement limited U.S. lumber exports from B.C., Alberta, Ontario and Quebec to 14.7 billion board feet (fee-free base) annually, with escalating fees payable on shipments over that volume. The U.S. agreed not to initiate a trade case for the duration of the agreement.

However, the Softwood Lumber Agreement did not bring the expected five years of trade peace. The U.S. challenged B.C.'s 1998 stumpage reduction under the dispute settlement provisions of the agreement. U.S. Customs, on at least three occasions, reclassified products from tariff codes outside the softwood lumber agreement into codes covered by the agreement. Canada and the U.S. agreed to negotiated settlements in the stumpage and rougher headed lumber cases. On March 29, 2001, the arbitral panel ruled that the United States breached the softwood lumber agreement when it chose to reclassify drilled studs and notched lumber.

The Softwood Lumber Agreement, and the quota system within it, also seriously hampered B.C. industry - especially coastal companies that were unable to access the U.S. market following the collapse of the Japanese market in 1997-1998.

Under the timetable for a normal countervailing duty investigation, the Department of Commerce preliminary determination would be made about June 26, the department's final determination about Sept. 9, a final International Trade Commission determination about Oct. 24 and a countervailing duty order on Oct. 31.