The title of this paper is shamelessly inspired by the first special issue of *The American Review of Canadian Studies* on the state of Canada-United States relationships, published more than 12 years ago.¹ A recent spat over the softwood lumber, stalled multilateral trade negotiations and a tightened trade-security nexus at the border give the impression of a turbulent commercial relationship between the two North American neighbors. On all three accounts a flurry of events have taken place since the publication of the last special issue of ARCS on Canada-U.S. in 2005.² This article briefly highlights some of the latest developments on these matters. It also suggests that the Canada-U.S. commercial relationship is currently at a standstill, however a “perfect storm” may loom on the horizon. This threatening perfect storm comes from three different, but related fronts: episodic bilateral trade conflicts, multilateral trade negotiations and border security issues. Like any long-term meteorological reports, predicting the future state of trade relationship between complex nation-states is a tricky business. Domestic politics will be a determining factor. Just three years ago, the trend pointed towards a North American ice age, considering that President Bush and Prime Minister Chrétien did not seem to see eye to eye. A transitory Paul Martin leadership and the first Conservative of twenty-first century announce a regional warming. How long will it last?

In Canada, as well as in the United States, electoral politics have kept the attention of their citizens. The mid-term elections in the United States turned the tide and brought back a Democratic majority in both legislatures. Potential candidates are bracing for the 2008 presidential clash. With two consecutive minority governments at the helms and the recent election of a new Liberal leader, the political scene in Canada is in a state of flux. This raises several questions for the trade rapport between the two neighbors. Will Canada be able to sustain a credible and stable trade policy? Where will the United States
fall in a long list of trade priorities for the Canadians? Is the softwood lumber quarrel the exception or the rule in regards to the legal resolution of trade disagreements? In the United States, is the Trade Promotion Authority (TPA) on its last breath? What will the 2007 Farm Bill effect be on a multitude of Canada-U.S. agricultural dossiers? Will the Democratic control of the House and Senate mark a sharp protectionist turn? Which potential trade differences are looming on the horizon?

At the multilateral level, trade negotiations are on life support. After early optimism in the aftermath of September 11 2001, the Doha Round opened deep wounds among major industrial countries. The slow process of multilateral trade liberalization also exposed a profound gash between the North and the South on agricultural issues. More importantly for this paper, several countries pointed fingers at Canada for the trade inhibiting impacts of its supply-side management programs. A morose trade climate in Geneva led leaders around the planet to look at regional opportunities to enhance commercial opportunities. When multilateral trade negotiations faced similar difficulties in the late 1970s and early 1980s, it provided the impetus for the negotiation of the Canada-United States Free Trade Agreement. Could we see a similar pattern develop by the end of the first decade of the twenty-first century? Is deeper North-American integration a possibility? Did the softwood lumber dispute cause such frictions between the two countries that it is now unthinkable that such endeavor be undertaken? Are there any domestic forces favorable to such an undertaking? Could a new “mad cow” crisis or a similar sanitary issue put the idea to sleep? Would it be more profitable for both countries to turn their attention towards emerging economies such as China and India? Could Canada’s supply-side management programs become the next target of American pressures?

The trade-security nexus is now so tightly wound that due diligence forces all trade experts to take a crash course on border security issues. One does not go without the other. The most important challenge facing both countries nowadays is the planning of border security procedures that respect, if not enhance, the free flow of goods and people across the border. Could another terrorist attack on North American lock down the border
and slow down, if not stop, billions of dollars of daily trade across the frontier, despite all measures in place to avoid such eventuality?

The current tranquility should not lure us into believing that all is well on the trade front. It is always calmer before the storm. We should however keep in mind that perfect storms are extremely rare events. A conjecture where the Canada-U.S. trade relationships were to deteriorate on all three fronts is highly improbable. Another scenario is just as probable. On all accounts, Canadians and Americans could realize that they have many more common objectives than divergences. A trade conflict of epic proportion, similar to the recent softwood lumber dispute, is not in sight. In the next section, I demonstrate that in terms of trade conflict resolution, softwood lumber is an important exception, not the norm. The current state of multilateral negotiations leads us to believe that if there is any movement, it will be marginal. The alternative is a regional initiative, but there is little interest in Washington and no political will in Ottawa to support deeper North American economic integration. On border security, coordination continues to be high on the political agenda of both governments, but integrated policies, for instance in the form of a security perimeter, are not in the cards for the near future. The real question is ‘can enough coordination take place and enough trust be built to sustain the blow of another terrorist attack in North America?’ The true challenge is to secure the border without compromising the free flow of goods and people between the two countries.

In the latest installment of the American Journal of Canadian Studies, Kate O’Neill warned that the U.S. reaction to bovine spongiform encephalopathy (BSE), or mad cow disease, could “set a dangerous precedent, especially in terms of future trade integration within the Americas”. 3 Thankfully, no new serious incidents have occurred since she wrote those lines, but these demonstrate how sensitive American officials can be to border security issues. Canadians are not immune to similar feelings as well. Commercial interchanges between the two countries are dynamic processes, which demand continuous trust building and preparation for pitfalls that lay ahead.
With the resolution of the softwood lumber dispute, no current trade issues attract media attention on both sides of the border. This interlude gives us the breathing room to reminisce about the past and look ahead to emerging topics of friction or deeper integration in the near future. This represents the central tasks of this paper. If we want to foresee what the future of the Canada-U.S. trade relations has in store for, we must keep an eye on the near past. For each theme – bilateral trade conflicts, multilateral trade conflicts, and the trade-security nexus – this paper discusses recent developments, it survey the current state of affairs and it uses this knowledge to provide some educated estimates about future tendencies.4

1. Looking through the blizzard: A distorted view of the current state of Canada-United States trade relationship?

On September 12, 2006, Canada and the United States signed an agreement to end the latest high-profile dispute over softwood lumber.5 This signified the conclusion of an epic trade battle that started on April 23, 2001 when the United States Department of Commerce (DOC) initiated its countervailing duty investigation of Canadian softwood lumber.6 After the DOC determined that Canadian practices caused injuries to American lumber industries and imposed tariffs on imported lumber from Canada, Canadian officials responded with several trade challenges at both the WTO and NAFTA stages. This section of the paper traces the chronology of events and provides some data that demonstrate that the softwood dispute is an “abnormal” case, which poorly reflects the overall state of Canada-United-States trade relationships.

a) The softwood lumber dispute: A chronology of events.

Before turning to the chronology of events that led to the Softwood Lumber Agreement, some explanation of key concepts and litigation processes are in order. A countervailable subsidy under American law exists when a monetary contribution by a foreign government to a specific industry, or a group of industries, confers to that industry some benefits. The United States Department of Commerce (DOC) has determined that
Canadian provincial stumpage programs, under which the provinces confer rights to harvest from Crown forests, provide such countervailable benefits. Dumping consists of selling an imported good at below its fair market value. American lobby groups have accused Canadian lumber producers of selling their products on the American market at less than the cost of production or at prices lower than in Canada. In order to impose countervailing or antidumping duties the United States International Trade Commission (ITC) must determine that subsidization or dumping has caused injury, or posed an imminent threat of injury, to American industries.

After countervailing and antidumping are imposed on foreign producers, involved parties (industries, provincial and federal governments) can request the creation of a NAFTA bi-national panel to investigate the validity of the DOC and ITC determinations of duties and (threat of) injury, respectively. The panel consists of five independent experts. Its role is to review the evidence and determine whether the actions of the country imposing the import taxes conflict with its own domestic trade law. Normally, NAFTA decisions are binding and they must be implemented within 60 days. However, either side can appeal the panel’s decision through an extraordinary challenge. Under this mechanism, a three-member judicial panel reviews the decision and determines if one of the following situations may have caused injury to one of the parties involved in the dispute: one of the panel members is guilty of misconduct; the special group did not respect a fundamental procedural rule; or the panel exceeded its competence, authority or jurisdiction.

It is a common mistake to think that a NAFTA panel decision contradicts a similar decision rendered by the WTO’s Dispute Settlement Body (DSB). Most of the time, there are no contradictions, because they have different objectives. At its core, the purpose of the WTO dispute resolution mechanism is to help the two parties reach an agreement. In the event that parties do not reach an agreement, an ad hoc three-member panel of trade experts considers the evidence and releases a report, which is subject to an appeal process. In contradiction with the NAFTA procedures, the panel does not validate the compliance of the restrictive measure with domestic law, but rather compliance with the
WTO antidumping and countervailing duties agreements. In other words, the DSB is the conduit that a contracting party can use to challenge the international validity of another contracting party’s national law. The WTO’s dispute resolution mechanism does not enforce punitive measures, but if the offending country fails to bring its policies into line with the panel ruling, the other country in the dispute can apply to the WTO for permission to impose limited trade sanctions against the offending country. In the softwood lumber dispute, Canada has followed both paths, NAFTA and WTO, to challenge the American decision to impose countervailing and antidumping duties on Canadian exports of softwood lumber.

Trade disputes over softwood lumber between the two countries have been going on intermittently since the early 1980s. In April 2, 2001, the U.S. Coalition for Fair Lumber Imports (CFLI) filed its fourth countervailing and anti-dumping duty petitions with the United States government since 1982. The countervailing duty petition alleged a subsidy rate of 39.9%. The CFLI named provincial stumpage practices, federal and provincial log export restraints and five federal and 22 provincial programs, as the sources of the alleged subsidies. The anti-dumping petition alleged margins of 22.53% to 72.91%. In April 23, 2001, the DOC initiated its countervailing and anti-dumping investigations. In April 2002, the DOC reached a final determination that the countervailing and antidumping duties had to be lowered to 18.79% and 8.43% respectively. In May 2 of the same year, the ITC voted 4 to 0 that the United States softwood lumber industry was "threatened" with material injury by reason of imports of softwood lumber from Canada that were found by the DOC to be subsidized and sold in the United States at less than fair value. The “threat of injury” determination means that, while the US industry had not been injured to date by imports of Canadian lumber, countervailing and antidumping duties would remain in effect. The ITC made its reasons public in a report on May 16, 2002. Canada responded quickly to the charges and it initiated seven NAFTA and WTO legal challenges. While the legal track carried on for several years, officials on both sides of the border held talks to find a political solution to the problem. Following both the legal and political tracks, Canada’s objectives were the abrogation of countervailing and antidumping duties, a reimbursement of all deposits, and a long-term solution to the
conflict. To achieve a political lasting solution, Canadian negotiators were ready to consider an export tax on softwood lumber products. Ultimately, it took a firm commitment at the highest levels of government to reach a political compromise.\textsuperscript{12}

The design of the agreement is to buy peace between the two countries for the next seven to nine years.\textsuperscript{13} The agreement revokes all the U.S. countervailing and antidumping duty orders and it preserves a stable and predictable share of the American softwood lumber market for Canadian producers. Approximately US$1 billion of the collected duties over a 5 year period remain South of the border. CFLI members will receive half of that amount. The other half will support a series of initiatives to support the North American softwood lumber industry.\textsuperscript{14} In addition, the agreement includes the return of over US$4.5 billion in duties collected by the United States since 2002. Canadian lumber exporters will pay an export charge when the price of lumber is at or below US$355 per thousand board feet (MBF), according to one of the two following options: 1) an export charge with varying with price; or 2) an export charge plus volume restraint, where both the rate and volume restraint vary with price (See Table 1).\textsuperscript{15} This arrangement represents a more suitable system for Canadian producers than the five-year Memorandum of Understanding implemented in 1996. This memorandum, which ended the Lumber III dispute, set a quota on Canadian softwood lumber at approximately 30 percent.

Table 1: Export Taxes on Canadian Softwood Lumber Exports

<table>
<thead>
<tr>
<th>Price per thousand board feet</th>
<th>Option A – Export Charge (%)\textsuperscript{16}</th>
<th>Option B – Export Charge plus Volume Restraint\textsuperscript{17}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over US$355</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>US$336-355</td>
<td>5</td>
<td>2.5% + regional share of 34% of U.S. Consumption</td>
</tr>
<tr>
<td>US$316-335</td>
<td>10</td>
<td>3% + regional share of 32% of U.S. Consumption</td>
</tr>
<tr>
<td>US$315 or under</td>
<td>15</td>
<td>5% + regional share of 30% of U.S. Consumption</td>
</tr>
</tbody>
</table>
It goes beyond the purpose of this paper to take the reader through the lengthy and complex process that led to this drastic reduction of duties imposed on Canadian softwood lumber, and ultimately, to a political agreement to end the conflict. Rulings against the United States have been based on technical issues or the need for more information. They were not clear Canadian victories that would have given them the right to export softwood lumber to the United States free of duties. Rather, this section of the paper considers the reaction the September 2006 agreement garnered on both sides of the border. No one would contest the fact that the CFLI is a well-organized lobby group that pushed its agenda as far as contesting the legitimacy of the NAFTA conflict resolution process. However, the softwood lumber conflict did not provoke much reaction from the American public. The ripple effect of the conflict shook Canada a Mariusque ad Mare. With multiple players involved, Canadians had great difficulty presenting a united front during the political negotiations that accompanied legal challenges. Americans negotiators were able to use a “conquer and divide” strategy to make offers suitable to some provinces, but not others. For instance, the Government of British Colombia was eager to reach a settlement because of the devastation to its forested land caused by the mountain pine beetle. Finally, Canadian lumber industries and Premiers from British Columbia and Québec, whose provinces produce over 70 percent of the softwood lumber exported to the United States, reluctantly supported the agreement. They condemned the fact that over US$1 billion collected in duties will remain in the American coffers, with US$500 million targeted to support the U.S. lumber industries, but they prioritized a stable access to the American market for the next seven to nine years. Opposition parties in Canada replied that the Harper government gave in to the American negotiators in order to gain a closer overall relationship with the Republican administration. Canadian trade unions also expressed severe reservations, arguing that the agreement would lead to dramatic employment reductions in the sector. More fundamentally, according to critics, the softwood lumber “case” could represent a severe indictment of the NAFTA conflict resolution process. Since signing the NAFTA agreement in 1993, the American administrations have never ratified any other agreements that transfer some of its authority to an independent international panel to
resolve bilateral trade conflicts. Many in Canada share the views of then Prime Minister Paul Martin when he mentioned at the Economic Club of New York on October 6, 2005 “It’s clear that the U.S. approach to softwood brings into question the integrity of NAFTA in general and the efficacy of the dispute resolution mechanism in particular.” This raises two important questions. Could the softwood lumber saga be an attempt by the American administration to sabotage the NAFTA Dispute Settlement Body? Does Chapter 19 of NAFTA work against the Canadian interests? We can only speculate on the first question, but we can empirically evaluate the decisions of Chapter 19 DSB to answer the second question. The next section of this paper turns to the second question.


In the aftermath of the softwood lumber dispute, many in Canada evoke the sentiment that Chapter 19 is not worth the paper on which it is written. Many Canadian listeners react on open lines radio with opinions such as “the Americans are not playing fair”, “the softwood lumber duties are instances of American harassment,” “the dispute resolution process works to the advantage of Americans,” and “American don’t respect the judicial process, so why bother with?” These are only some of the frustrations expressed by Canadian citizens over the last five years of the conflict. The recent agreement did not manage to quell the resentment. Despite the publicity and resentment surrounding this issue, over 95 percent of bilateral trade between Canada and the United-States is problem-free. Therefore, are those fair criticisms of Americans trade officials and Chapter 19? As I said above, it would be a difficult task to demonstrate that American officials are using the softwood lumber dispute to undermine NAFTA’s Chapter 19. Even if we were to conduct interviews, few American officials would be candid enough to admit, if it were the case, that they would be more than happy get rid of Chapter 19. Furthermore, if we consider that NAFTA is a “dead” agreement, meaning that there is no provision to amend it, killing Chapter 19 would be tantamount to killing the entire agreement. It is, on the other hand, possible to test the empirical value of Chapter 19. Does it necessarily work against the Canadian interests?
Canadians should keep in mind that it is at the insistence of Canadian negotiators that bi-national independent panels are now in place to resolve recurring North American trade dispute. Without this section, we can cast a serious doubt on the signature of the 1989 Canada-U.S. Free Trade Agreement: “Canada broke off negotiations in 1987 over this issue and last minute senior ministerial intervention was necessary to persuade the United States to include the FTA chapter entitled Binational Dispute Settlement in Antidumping and Countervailing Duty Cases.”

Likewise, they insisted that Chapter 19 be included in the trilateral 1994 NAFTA. Canadian negotiators thought that the dispute settlement procedures under the FTA and NAFTA would lead to more rigorous review process of domestic agencies decisions, since the panels would be composed of trade law experts familiar with the intricacies of antidumping and countervailing law and practices. Despite the implementation of Chapter 19, Canadian officials and firms could still make an appeal to US review Courts, but Canadian parties have rarely used these mechanisms. This shows a certain level of satisfaction with the bi-national review process.

In 1987, John Conybeare published a book that evaluates the possible outcomes of international trade wars. In trade wars, states are primarily interested in economic objectives directly related to the traded goods sector of the economy; the means used are restrictions of the flow of goods and services. This definition of trade wars corresponds largely to the utilization of countervailing and antidumping duties. Conybeare’s theoretical model attempts to predict the outcome of trade wars according to each country’s ‘size.’ In his model, ‘size’ refers to import price elasticity is respective countries. ‘Large’ countries remain largely unaffected by trade interruption or restrictions with another country. On the other hand, trade interruption or restrictions have an important negative impact on ‘small’ countries. Using game theory, Conybeare, as well as Gates and Humes, predict three possible outcomes when a trade conflict erupts between two countries. Two ‘large’ countries will not resolve their dispute and a trade war is within the realm of possibilities. Two “small” countries are facing high economic stakes and they will find a way to resolve their disagreement. In cases of asymmetric trade, that is when a ‘small’ country enters into a trade conflict with a ‘large’ country, we should expect exploitation of the former by the latter.
If we apply this theoretical framework to Canada-United States commercial relations, what should our expectations be? In 2005, 83.85 percent of all Canadian exportations went to the United States (up from 74.88 percent in 1990) and 56.5 percent of all its importations came from the United States (down from 64.5 percent in 1990). Also in 2005, 23.38 percent of all American exportations went to Canada (up from 21.11 percent in 1990) and 18.45 percent of all its importations came from Canada (down from 18.45 percent in 1990). These numbers demonstrate highly asymmetrical trade relationships between the two countries. In addition, softwood lumber is one of Canada’s most important export sectors. Lumber exports to the United States were valued at C$8.5 billion in 2005, representing over 2 percent of Canada’s total exports to the United States. Under Conybeare’s framework, one could argue that Canada is a ‘small’ country and the United States a ‘large’ country. Under this scenario, we would expect the United States to have the upper hand in a majority of trade conflicts involving Canada. This would confirm the impression held by many Canadians that Americans used their economic weight to ‘abuse’ their Northern neighbors, despite the existence of legal dispute resolution bodies. However, if we consider Foreign Direct Investments, we uncover a more symmetrical relationship:

Canada and the U.S. have also one of the world’s largest investment relationships. The United States is the largest foreign investor in Canada and the most popular destination for Canadian investment. In 2004, U.S. direct investment in Canada was worth more than $228 billion, while Canadian direct investment in the United States was close to $165 billion, which makes Canada the 7th largest investor in the U.S. accounting for 7.6% of all Foreign Direct Investment (FDI) in that country.

The results obtained by Duchesne’s study of the United States Section 301 do not support Conybeare’s trade war hypotheses. His model accurately predicts the level of success obtained by American officials when they resort to Section 301 against international targets, with one exception. That exception is Canada. According to his
model, American officials should do much better when confronted with Canada than the actual results they obtain. The same puzzling result occurs when we consider the level of success that both countries obtained when they challenged countervailing and antidumping duties. This paper considers 89 cases of antidumping and countervailing duties that parties challenged under the FTA or NAFTA dispute resolution bodies. A first indication that Canadians trust Binational panels comes from the realization that Canadians have initiated 60 of those 89 cases between 1989 and 2003. Overall, the level of success for those challenges, i.e. cases where the defendant lowered its duties, is 32.5% (29 out of 89). Successful cases were those where the targeted country acquiesced to the demands of the initiating country by lowering its customs duties. The status quo represents an ineffective challenge. While the percentage of successful challenges is not substantial, it may come as a surprise that more Canadian-initiated cases are successful (37%) than those initiated by Americans (32.5%). Therefore, it would be erroneous to claim that Binational dispute settlements procedures are driven by power politics and that they work against Canadian interests.

A multivariate analysis of the level of fruitful challenges confirms that political factors, such as divided governments and approval ratings, are not significant factors. Economic factors, such as trade interdependence and diversification, provide better explanations. To assess relative trade dependence, the first independent variable is the relative economic weight of the targeted product. In order to measure this variable, we proceed in two steps: First, for each country we calculate the share of the GDP that comes from the production of the targeted product. Second, we take ratio of this value for the initiating country over the value for the targeted country. If the value of this ratio is greater than one, we assume that the targeted product is of greater importance for the initiating country and this may reveal a bargaining weakness for that country. To evaluate trade dependence, we believe that measuring only the relative economic importance of the targeted product is not sufficient. In fact, a country that has a more diversified trade is logically less likely to be affected by trade interruption or restriction. This is why we must also account for relative trade diversifications for the targeted products. This is also a better measure of Conybeare’s trade war hypothesis. More specifically, we calculate the
share of the disputed product total exports by the initiating country that goes to the targeted country, divided by the share of all imports of the disputed product to the defendant country that comes from the initiating country.  

Curiously, the result for the trade interdependence variable did not have the anticipated sign. This means that the *most dependent country* is more likely to win a legal challenge against countervailing and antidumping duties. For example, *ceteris paribus*, Canada was more likely to win the softwood lumber dispute because this product is much more vital for the Canadian economy than it is for the American economy. Therefore, this variable could be a proxy to measure political resolve. It may also explain why it was much more publicized issue in Canada than South of its border. The Canadian government expended great energy and much of its currency to debate the issue in front of Binational and international courts. We do, on the other hand, get the expected sign for the trade diversification variable. A country for which a great share of output for a specific product goes to another country is in a position of weakness. Our results support our claim. If we apply this logic to the softwood lumber dispute, we find little advantage for each country. Americans are just as highly dependent on Canadian softwood lumber imports as are Canadian dependent on the United States for its exports of the same product.

The softwood lumber dispute was so salient in the minds of Canadians that it gave them the wrong impression that NAFTA’s conflict resolution mechanisms had run their course. These international dispute resolution mechanisms are far from perfect. As the lumber disputes demonstrate, they cannot solve all political problems. In addition, they impose limits on Canadian sovereignty. In fact, one could easily argue that they have a more limiting role that American “power politics.” Canadians’ dissatisfaction with the latest conclusion to yet another round of acrimonious softwood lumber disputes is understandable, considering that so many of their jobs are tied to the downtrodden industry. Nevertheless, empirical results demonstrate that Section 19 is the best safeguard Canadians have against potential American trade power plays. In addition, we should not lose sight that episodic trade conflicts between the two countries are exceptions, not the norm. Over the last twenty-five years, softwood lumber constituted the main trade irritant.
between the two countries. It is likely to remain an important point of contention, but despite an unsatisfying political compromise with Lumber IV, this issue is not likely to resurface for another seven years. Yet, fundamental problems remain. As long as Canadian provinces refuse to modify their forest management systems, American lumber coalitions will continue to assert that Canadian industries benefit from unjustified support and they will continue to petition the U.S. DOC for countervailing and antidumping duties. This seven-year agreement constitutes an excellent opportunity to prepare the stage for a final solution to the dispute. The Canadian government must use its entire means to maintain the integrity of Chapter 19.\textsuperscript{42} It must also be ready to support its lumber industry against American protectionist surges. In consultation with American and Canadian governments (and industries), Canadian provinces must clarify the rules by which they manage their forested lands. They should also implement some reforms - respecting environmental, social and economic imperatives- that gradually move their public stewardship of forested lands towards a free-market system. With this eventual progressive movement towards a free-market economy, the American government should allow for an equivalent reduction of softwood lumber quotas and export taxes.

NAFTA and WTO trade dispute resolutions procedures have provided the proper and satisfying channels to deal with episodic trade quarrels and it is likely to remain so in the near future. In the agricultural sector, Canada’s supply management programs will come under close American scrutiny. The next section of this paper covers this topic.

2. Multilateral Trade Negotiations. (Forthcoming)

3. The Trade-Security Nexus. (Forthcoming)

Conclusions (Forthcoming)

C.L. Higham and David N. Biette, eds., ARCS (Summer 2005).

Kate O’Neill, “How Two Cows Make a Crisis: U.S.-Canada Trade Relations and Mad Cow Disease,” ARCS, Summer 2005, p. 311.

This first draft of the paper covers only the first theme. A second draft will discuss agricultural issues and the trade-security nexus.

Canadian and American trade officials had first reached a negotiated agreement in principle on April 27, 2006. They successfully concluded negotiations on July 1 and the Canadian government announced on August 26 that it had received support from a clear majority of Canadian softwood lumber companies in all regions for the negotiated agreement, in addition to the three largest softwood-producing provinces of British Columbia, Quebec and Ontario.

The DOC also determines in October of the same year that Canadian companies are “dumping” softwood lumber on the American market.

The chapter is entitled Review and Dispute Settlement in Antidumping and Countervailing Duty Matters (Chapter 19 of NAFTA).


The coalition alleges that Canadian forestry management practices constitute subsidization of the Canadian softwood lumber industry. In Lumber I (1982), the USDOC dismissed the allegations. Lumber II (1986) resulted in an imposition of a 15 percent countervailing duty, later replaced by a 15% export tax. In Lumber III (1991), the USDOC imposed a 6.51 percent countervailing duty, which was eventually revoked following a Canadian legal victory. Following the refund of deposits, both parties negotiated a quota-based agreement in 1996 that expired in March 2001.

The allegation was that Canada’s provincial and territorial governments had subsidized forest companies by setting the stumpage fees too low. Instead of being charged the market price for logging rights, Canadian companies pay what is known as a stumpage fee for logs harvested on Crown’s land. This purportedly gives Canada’s softwood lumber exporters an unfair price advantage over American softwood suppliers, who must sell their lumber at market price.

Canada also had cases before the U.S. Court of International Trade.

The strongest commitment to end the conflict came at the NAFTA Leaders Summit in Cancun on March 30-31, 2006. Prime Minister Harper and President Bush expressed their desire to see a resolution and both leaders instructed their officials to examine the options for pursuing an agreement. Given that a framework for an agreement appeared less than a month later, lead us to believe that the month of April was dedicated to discussing the fine prints of an Agreement. Both leaders must have known at Cancun than an end of the conflict was in sight.

In fact, the agreement could be abrogated before a seven-year period. Either party may, at any particular time after the Agreement has been in effect for 18 months, terminate by providing six months’ notice. However, the Agreement requires a 12-month standstill on trade remedy actions should either party terminate the Agreement. This is in addition to the 12-month standstill on U.S. trade remedy action upon expiry of the Agreement. For a more complete overview of the agreement, see Department of Foreign Affairs and International Trade Canada, “The Canada-U.S. Softwood Lumber Agreement,” Page consulted December 5 2006 (http://www.international.gc.ca/eicb/softwood/SLA-backgrounder-en.asp).

Some of them are joined initiatives and others are American meritorious initiatives selected by the American government, in consultation with Canadian officials. Both parties agreed that this distribution of collected duties does not represent a precedent.

Border measures don’t apply to softwood lumber that are produced in Atlantic provinces from log harvested in Atlantic provinces or the state of Maine, to logs harvested and produced in the Yukon, the Nunavut or Northwest Territories, and to logs from 32 companies found by U.S. authorities to not benefit from alleged subsidies.

To preserve Canada’s share of the U.S. market and to address increases in third country share of the U.S. market, the Government of Canada will retroactively refund export charges (up to 5 percent charge) if:
third country share of the U.S. market increases by 20 percent; Canadian market share decreases; and U.S. domestic producers’ market share increases.

Regional shares are determined by each region’s average exports to the United States for the period 2001-2005. If shipments from a province exceed 110 percent of its base allocation, then the export charge on shipments from that province during that month will be increased by 50 percent. For instance, if there were a ten percent export charge during that month, then the export charge would be increased to 15 percent. In 2005, British Columbia accounted for over 57 percent of Canada’s lumber exports to the United States, followed by Quebec (16 percent), Ontario (9 percent), the Maritimes (8 percent), Alberta (7 percent), Saskatchewan (1 percent) and Manitoba (1 percent).


At a recent conference that took place in Columbus (OH), I asked by a show of hands how many American International Relations experts knew about the Canada-U.S. softwood lumber dispute. I estimated that about 40% of them had heard of it. When I asked how many of them could discuss its content for 15 minutes, no one answered positively. On the contrary, the dispute made the front page of several newspapers in Canada and it seems to me that over the years every Canadian citizen has become a softwood lumber expert!

This Latin locution is Canada’s motto, which means “from sea to sea.”

Under the Constitution Act of 1867, provincial governments have jurisdiction over all aspects of forest management within their respective territories. However, trade issues fall under the responsibility of the federal government. Because each provincial government uses its own forest management style, they are key players at the negotiation table.


There is much less dissatisfaction regarding the dispute settlement process at the WTO. More than likely, the main explanation is that many Canadians perceive that the resolution of the softwood conflict at NAFTA is based on American laws and that American judges are bound to pursue American interests. This misperception is deeply ingrained within the Canadian public. This is why, in this paper, I concentrate on an empirical analysis of NAFTA’s DSB.


One could easily turn the argument on its head in the specific case of softwood lumber, if he considers that over 90 percent of American importations of this product come from Canada. As much as Canada could not sustain the shock of complete interruption of softwood lumber to the United States, it would be
hard to imagine a case where the United States could sustain the loss of all its Canadian softwood lumber products. Thus, it would be fair to assume that if we apply Conybeare’s framework to the specific softwood lumber case, we are dealing with two ‘small’ countries that have no other choice, but to find a peaceful resolution to their trade conflict.


32 The Trade Act of 1974, under Sections 301-302, "expanded discretionary authority to retaliate against unjustifiable and unreasonable foreign barriers". More specifically, it authorized action against foreign export subsidies. The Trade Agreement Act of 1979 expanded the Trade Act of 1974 and gave to the President the authority to enforce trade agreements. It also allowed for detailed procedures for investigation (including deadlines for action), and the use of available settlement procedures. Later, the Trade and Tariff Act of 1984 authorized retaliation in the service sector. Finally, "the Omnibus Trade and Competitiveness Act of 1988 created Super 301" and shifted the authority to retaliate from the president to the United States Trade Representative (USTR). However, the process is still dependent on some presidential directives. It also made retaliation against "unjustifiable" practices mandatory. See Thomas O. Bayard and Kimberly Ann Elliot, Reciprocity and Trade Relations in U.S. Trade Policy, Washington, D.C., Institute for International Economics, 1994, p. 24.


34 Seven cases were eliminated because Canadian firms initiated them against their own government.

35 This measure of success is different from remands by dispute resolution bodies. If a political resolution leads to the abandonment or the diminution of countervailing and antidumping duties, it becomes a successful case.

36 Data and results are available from the author. The author and Marie-Hélène Cantin presented these results at the Annual Meeting of the Peace Science Society (International) in Columbus, Ohio, November 2006. A revised analysis will account for the political economy of trade disputes. The organization of trade groups, such as the FTLI, and their access to key political leaders is a factor that should not be neglected. Collecting data on these factors is however a difficult and time-consuming task.

37 Both variables are significant at the 95% level of confidence.

38 To construct these variables we used data from the Bureau of Economic Analysis, Statistics Canada, and Industry Canada.

39 Duchesne, op. cit., obtained similar results in his multivariate analysis of Section 301.

40 The creation of a special “softwood lumber” section within the Department of Foreign Affairs and International Trade (DFAIT) is one sign of such resolve.

41 Mellroy, “Lessons Learned…”, p. 33. Mellroy rightfully adds on the same page that “cries of righteous indignation may play well at home, but they do not promote the resolution of international disputes.”

42 When the American government sided with its Canadian counterpart against the legal challenge brought be the FTLI against NAFTA Chapter 19, it demonstrated a similar willingness to maintain the dispute settlement mechanism.