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Softwood Lumber Imports From Canada: Current Issues

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Summary

Softwood lumber imports from Canada have been of concern to Congress for many years. Under the Constitution, Congress has the power to regulate interstate commerce and exercises authority over trade relations with foreign nations. Lumber production is a significant industry in many states, and U.S. lumber producers are concerned they are at an unfair competitive disadvantage in the domestic market against Canadian lumber producers because of Canada's timber pricing policies. This has resulted in four major disputes (so-called "lumber wars") between the United States and Canada since the 1980s. The last major dispute was resolved when the 2006 Softwood Lumber Agreement (SLA) was signed. Under the agreement, Canadian softwood lumber shipped to the United States is subject to export charges and quota limitations when the price of U.S. softwood products falls below a certain level. That agreement is set to expire on October 12, 2015, although both countries are prohibited from filing for trade protections for one year after the expiration.

Tension between the United States and Canada over softwood lumber trading has been persistent and may be inevitable. Both countries have extensive forest resources, but they have quite different population levels and development pressures. Vast stretches of Canada are still largely undeveloped, while relatively fewer areas in the United States (outside Alaska) remain undeveloped. These differences have led to different forest policies.

For decades, U.S. lumber producers have argued that they have been injured by subsidies to their Canadian competitors in the form of lost market share and lost revenue. In the United States, the majority of the timberlands are privately owned and prices are determined by competitive bidding in an open market. In Canada, the majority of the timberlands are owned by the provincial governments and leased to private firms. The provinces administratively set the price of timber through a stumpage fee, a per unit volume fee charged for the right to harvest trees. Some assert that the stumpage fees charged by the Canadian provinces are subsidized, or priced at less than their market value. Directly comparing Canadian and U.S. lumber prices is difficult and often inconclusive, however, due to major differences in tree species, sizes, and grades; measurement systems; requirements for harvesters; environmental protection; and other factors.

With the pending expiration of the agreement, the softwood lumber trade relationship between the United States and Canada may be of interest to Congress. While neither the U.S. nor the Canadian government has taken a formal position on extending or reauthorizing the SLA, the U.S. lumber industry is in favor of letting the agreement expire, due in part to unfavorable arbitration decisions under the SLA, as well as other factors. Congress may consider legislation or oversight on these issues.

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Introduction

Softwood lumber imports from Canada have been of concern to Congress for many years. Lumber production is a significant industry in many states. Canada is an important trading partner, and the U.S. lumber producers are a powerful economic influence. This has resulted in four major disputes (so-called "lumber wars") between the United States and Canada since the 1980s, with the U.S. industry filing for various trade protection measures and both countries taking their issues to various dispute settlement venues.[1] The last major dispute was resolved when the 2006 Softwood Lumber Agreement (SLA) was signed. The SLA applies export charges or quota limitations on Canadian softwood lumber shipped to the United States when the price of U.S. softwood lumber products is below a specified level. In January 2012, the United States and Canada extended the SLA for two years.

The SLA is now set to expire on October 12, 2015, and formal negotiations to extend the agreement have not been undertaken. Under the terms of the agreement, neither country may file claims until October 2016, which effectively provides another year for negotiations. In addition, the negotiation goals of many of the stakeholders may have shifted due to recent events. The U.S. lumber industry has identified perceived flaws in the latest arbitration decision under the SLA and favors letting the agreement expire.

Tension between the United States and Canada over softwood lumber trade has been persistent. Both countries have extensive forest resources, but quite different population levels and development pressures. Vast stretches of Canada are still largely undeveloped, while fewer areas in the United States (outside Alaska) remain undeveloped. These different situations have led in part to different forest policies. In Canada, the forests are largely owned by the provincial governments, which have allocated and priced timber to encourage the development of the extensive timber reserves. In the United States, the majority of timberlands are privately owned; private markets dominate the allocation and pricing of timber, although U.S. federal and other government-owned forests are regionally important. U.S. lumber producers view the Canadian policies as more favorable for timber production, and thus as an unfair competitive advantage in supplying the U.S. lumber market, especially when the market is weak. However, since the U.S. and Canadian governments influence timber production in different ways (because of different histories, purposes, and situations), comparing the relative competitiveness of U.S. and Canadian lumber producers is difficult, at best.

Under the Constitution, Congress has the power to regulate interstate commerce and trade relations with foreign nations. At issue for Congress is whether it desires to see the SLA continued, amended, or abandoned upon its expiration. This report examines the status and current issues surrounding Canadian softwood lumber imports since 2006. After providing background information on what constitutes softwood lumber, the stakeholders in the dispute, and the history of the dispute, the report introduces the 2006 SLA and analyzes its impacts on the U.S. lumber industry as well as on the trade relationship between the United States and Canada. Finally, the report discusses the potential issues Congress may consider when the agreement expires in 2015.

[1] For a complete background of the dispute up to the 2006 Softwood Lumber Agreement (SLA), see CRS Report RL33752, *Softwood Lumber Imports from Canada: Issues and Events*, by (name redacted) and (name redacted) ; and CRS Report RL30826, *Softwood Lumber Imports From Canada: History and Analysis of the Dispute*, by (name re dacted)

Background

Softwood lumber, for purposes of this report, is lumber produced from conifer trees. The definition of the term had been an issue leading up to the signing of the 2006 agreement and is discussed more thoroughly in the **Appendix**. The SLA definition is based on two tariff items under the Harmonized Tariff Schedule of the United States (HTSUS) and includes essentially all traditional softwood lumber items intended for residential construction.[2] Because softwood lumber is primarily used for residential construction, repair, and remodeling, the demand for softwood lumber is a secondary demand, derived substantially from the demand for new or remodeled houses and other buildings.[3]

Both the U.S. and Canadian softwood lumber industries are largely driven by the U.S. housing market in general and the new construction or remodeling market specifically. In the early to mid-2000s, the U.S. and Canadian softwood lumber industries enjoyed a period of prosperity as the residential real estate market boomed. However, the softwood lumber industry began to struggle when the real estate market began to crash in 2007. For example, from 2005 to 2009 the number of new home construction starts declined by 74%.[4] Over that same period, the use of softwood lumber in the United States decreased by 41%.[5] Further, the number of sawmills (used to process lumber) decreased by 17%, sawmill capacity decreased by 11%, and sawmill production decreased by nearly 30%.[6] Since 2010, the U.S. housing and softwood lumber markets have made a modest recovery. New home construction starts have increased annually.[7] U.S. consumption of softwood lumber has increased annually since 2009, although it remains well below the rates of the early 2000s and at levels not seen since the early 1980s.[8]

As a secondary demand, softwood lumber is largely price-inelastic. This means that modest changes in construction demand cause relatively large changes in lumber prices, but the price of lumber does not affect the supply or demand of lumber, or, debatably, the price of construction. For example, wood products are arguably a relatively minor component of construction costs. While some claim that wood products represent up to 15% of construction costs,[9] using the 2014 average framing lumber composite price of $383 per thousand board feet (MBF),[10] framing lumber in an average (2,690-square foot) new home would cost $7,512—3% of the 2014 median

[2] The SLA definitions also includes some products that are classified under certain other Harmonized Tariff Schedule of the United States (HTSUS) subheadings, but also excludes certain products, including windows and doors (with frames), garage doors, box springs, pallets, roof trusses, and other fabricated wood products.

[3] Spelter et al., *Profile 2009*.

[4] See New Residential Construction data statistics published by the U.S. Census Bureau, http://www.census.gov/construction/nrc/index.html.

[5] James L. Howard, *U.S. Timber Production, Trade, Consumption, and Price Statistics*.

[6] Spelter et al, *Profile 2009*. Production is calculated from 2005 to 2008, because 2009 numbers were not published.

[7] See New Residential Construction data statistics published by the U.S. Census Bureau, http://www.census.gov/construction/nrc/index.html.

[8] James L. Howard, *U.S. Timber Production, Trade, Consumption, and Price Statistics*.

[9] The National Association of Home Builders estimates that wood products represent 15% of the construction cost of an average home. However, there are some concerns about the methodology used to arrive at this estimate. Specifically, the results rely on a small number of self-reported responses (2% response rate, with 44 responses from N=2,185) and it is unclear if the estimate also includes the cost of labor. Heather Taylor, *New Construction Cost Breakdown*, National Association of Home Builders, November 1, 2011.

[10] This is a weighted average of U.S. and framing lumber prices calculated weekly by Random Lengths, Inc., a wood products price reporting firm located in Eugene, OR. Website: http://www.randomlengths.com.

price of a new home.[11] In contrast, the price of lumber dropped significantly as a result of the housing market crash. In 2009, the price of lumber fell below $200 MBF for several months, for the first time since the 1980s (see **Figure 1**). Although prices have begun to rise, when adjusted for inflation, the price of lumber remains relatively low, hovering below the prices of the late 1970s in real terms.

Stakeholders in the U.S.-Canada Softwood Lumber Dispute

In the United States, the major stakeholders in the dispute include timber producers (forest land owners), lumber producers, and lumber consumers (homebuilders and home buyers). Timber producers are included with lumber producers, since many lumber producers also own significant tracts of forest land. In Canada, the major stakeholders include the Canadian lumber producers and the provincial governments, as the timber land owners.[12]

The U.S. lumber producers support trade restrictions on Canadian imports.[13] In contrast, U.S. lumber consumers prefer access to affordable lumber and therefore many generally oppose trade restrictions on Canadian imports.[14] The National Association of Home Builders (NAHB), representing the interests of U.S. lumber consumers, argues that American home buyers are the ones who eventually pay for the cost of the trade restrictions and that unrestricted trade benefits the U.S. economy on a whole.[15] Further, they maintain that the restrictions have "reduced the incentive for U.S. producers to adopt new and innovative technology to increase production and improve efficiency of their mills so as to be internationally competitive."[16] However, under U.S. trade remedy laws,[17] U.S. lumber consumers do not have standing in the dispute and may only participate as an interested party.[18]

[11] According to the U.S. Census Bureau, in 2014 the average size of a new single family home was 2,690 square feet, and the median sales price of a new single family homes was $282,800 (http://www.census.gov/construction/chars/sold.html).

[12] Daowei Zhang, *The Softwood Lumber War: Politics, Economics, and the Long U.S.-Canadian Trade Dispute* (Washington, DC: Resources for the Future, 2007). (Hereinafter cited as Zhang, *The Softwood Lumber War*, 2006.)

[13] Andrew Kentz, David A. Yocis, and Jordan C. Kahn, *Comments Submitted to the Office of the United States Trade Representative on Behalf of the U.S. Lumber Coalition Regarding the Two-Year Extension of the Softwood Lumber Agreement*, U.S. Lumber Coalition, October 14, 2011 (Hereinafter referred to as U.S. Lumber Coalition Comments to the USTR).

[14] Gerald Howard, *Comments Submitted to the Office of the United States Trade Representative on Behalf of the National Association of Home Builders Regarding the Two-Year Extension of Softwood Lumber Agreement*, National Association of Home Builders, October 14, 2011. (Hereinafter referred to NAHB Comments to the USTR).

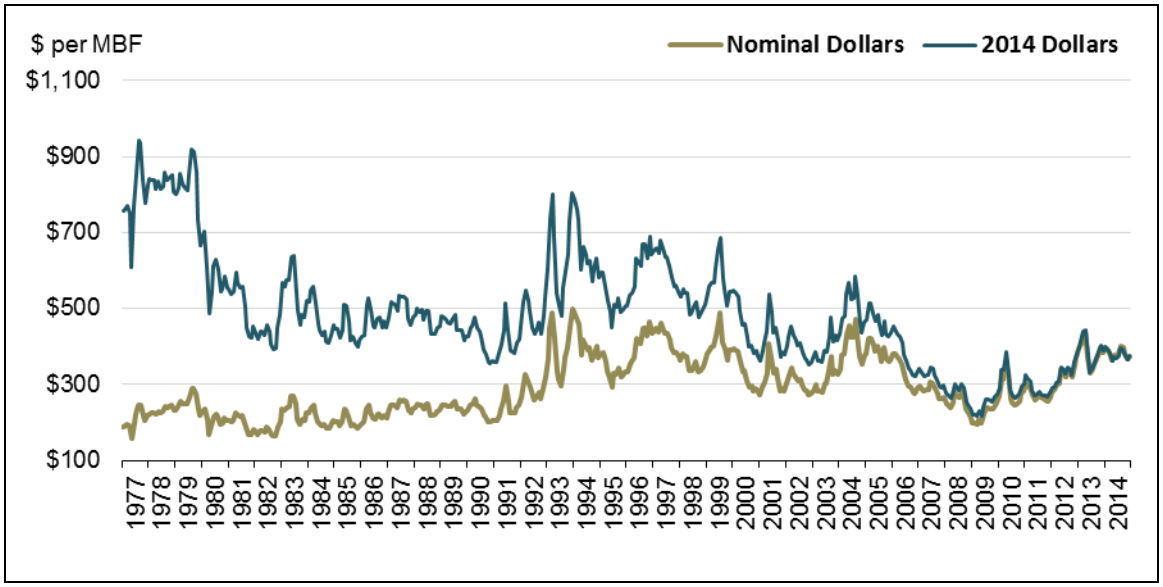
[15] James W. Tobin III, *Comments submitted to the U.S. Department of Commerce on behalf of the National Association of Home Buildings Regarding Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States*, National Association of Home Builders, May 29, 2014.

[16] NAHB Comments to the USTR.

[17] For more information on U.S. trade remedies, see CRS Report RL32371, *Trade Remedies: A Primer*, by (name reda cted) .

[18] 19 U.S.C. §1677 (9).

Figure 1. Average Monthly Composite Prices for Framing Lumber in Current (Nominal) and 2014 Dollars



Source: Random Lengths Publications, Inc., at http://www.randomlengths.com/ on June 15, 2015.

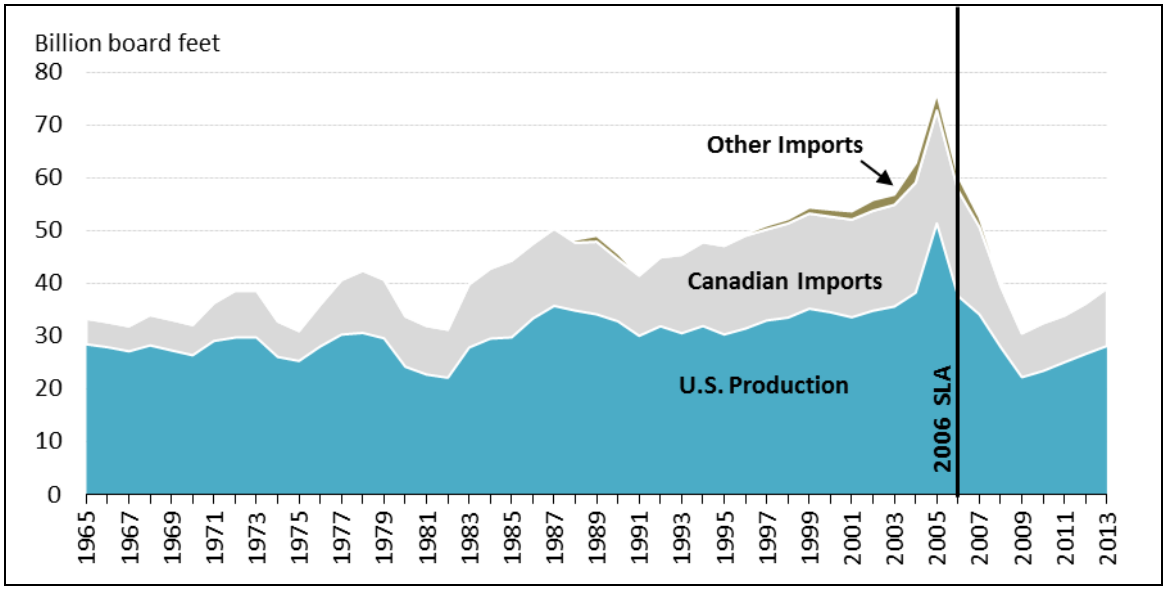
Notes: Adjusted to 2014 dollars using the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics.

U.S. Softwood Lumber Consumption

Historically, Canada has been the largest foreign supplier of softwood lumber in the United States, accounting for 95% of imports since 1965 (see **Figure 2** and **Figure 3**).[19] In 1965, the United States imported less than 5 billion board feet (BBF) of Canadian lumber, accounting for only 14% of U.S. consumption. However, Canadian imports rose to more than 20 BBF in 2004 and 2005, including an 80% increase from 1990. In comparison, U.S. lumber production for the domestic market (i.e., excluding U.S. lumber exports) during that same period increased by only 56%. The Canadian share of the U.S. market peaked at more than 35% in 1995-1996 and fluctuated around 33% until 2005. Since the 2006 SLA was entered into force, the Canadian share of the U.S. market has averaged 28% annually.

[19] James L. Howard, *U.S. Timber Production, Trade, Consumption, and Price Statistics 1965– 2002*, Res. Pap. FPL–RP–615 (Madison, WI: USDA Forest Service, December 2003), Table 28, pp. 52 and Table 31, pp. 55. Data from 2002-2010 provided via personal correspondence. (Hereafter referred to as Howard, *U.S. Timber Statistics*).

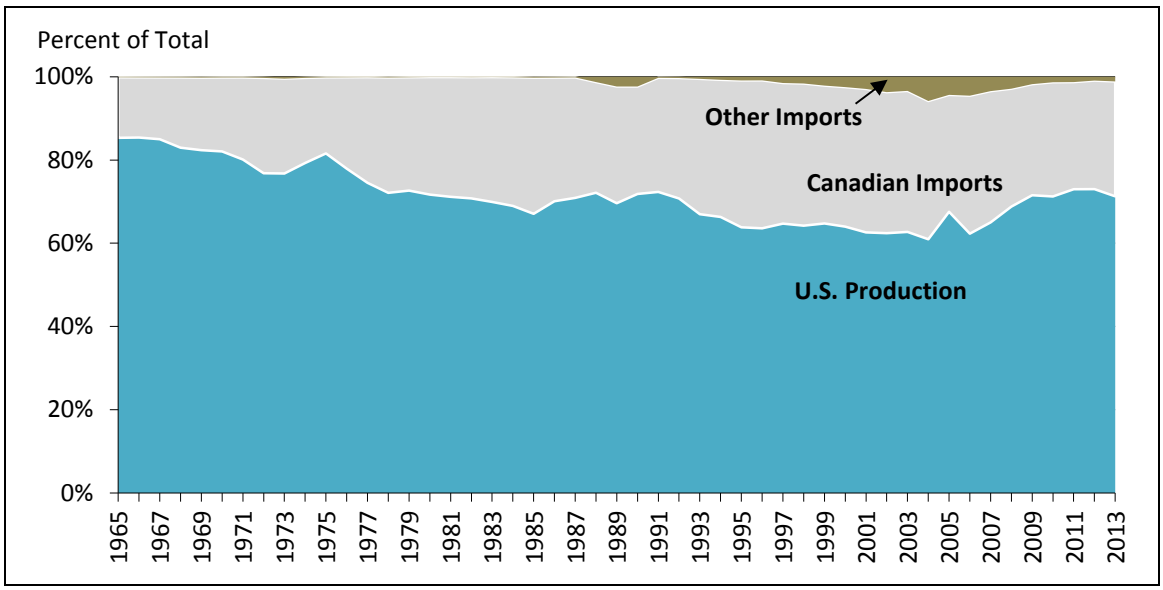
Figure 2. U.S. Lumber Consumption by Source



Sources: Congressional Research Service (CRS); James L. Howard, *U.S. Timber Production, Trade, Consumption, and Price Statistics 1965– 2002,* Res. Pap. FPL–RP–615 (Madison, WI: USDA Forest Service, December 2003), Table 28, p. 52 and Table 31, p. 55. Data update provided via personal correspondence.

Notes: Black line indicates when the 2006 SLA was entered in force.

Figure 3. U.S. Lumber Consumption by Source Percentage



Sources: CRS; James L. Howard, *U.S. Timber Production, Trade, Consumption, and Price Statistics 1965– 2002,* Res. Pap. FPL–RP–615 (Madison, WI: USDA Forest Service, December 2003), Table 28, p. 52 and Table 31, p. 55. Data update provided through personal correspondence with USDA.

Alleged Subsidies to Canadian Lumber Producers

The main basis of the United States-Canada softwood lumber dispute is the allegation that Canadian lumber production is subsidized by the Canadian government. U.S. lumber producers

allege that these subsidies give Canadian lumber producers an unfair advantage in the U.S. market, causing injury to U.S. producers.[20] The U.S. Lumber Coalition, which represents the U.S. lumber industry, has argued that absent a trade agreement or other trade protection measures, Canadian imports have risen due to government programs in Canada.[21] In particular, they assert that the fees set by the provinces for government-owned timber are less than prices in a competitive free market in North America would be. However, comparing the relative competitiveness of U.S. and Canadian lumber producers is difficult, at best. This is due to differences in land ownership and thus timber supply, pricing and allocation systems, and measurement systems, among other factors, as described below.

Different Land Ownership and Management Regimes

The United States and Canada both have vast forest resources, but the ownership patterns, development pressures, and forest management policies in each country are very different. In Canada, about 92% of the timberlands are "crown lands" owned and administered by the federal and provincial governments.[22] Overall, the provinces own 90% of the timberlands, the Canadian federal government owns 2%, and 6% is in private ownership, although the provincial ownership percentage varies by province. Most of the federally owned timberlands are northern boreal forests located in the Yukon, Nunavut, and Northwest Territories that do not produce significant amounts of softwood lumber. This contrasts with U.S. timberlands, where 44% are owned by the government (33% federal, 9% state, and <1% local) and 56% are privately owned.[23] As a result, the United States lumber industry relies more heavily on private timber sources and the Canadian lumber industry relies mostly on public sources of timber.

Each Canadian province has its own forestry laws, regulations, and standards. In general, the provinces require management plans for forested areas, typically prepared by certified professional foresters and subject to participation or review by a broad spectrum of users and interests.[24] The provinces also allocate timber harvest. The provinces typically use tenure agreements, or leases, which grant exclusive rights to the specific annual harvest level with various management obligations (e.g., road construction and reforestation).[25] The tenure agreements may be long-term (5-25 years) or short-term (as brief as 6 months, with fewer management obligations). Many provinces also have other agreements for selling various types of timber to specific, often quite small or family-operated firms.

Different Fee Systems

In large part due to the different land management regimes in the different countries, the United States and Canada each rely on different price allocation systems to determine the cost of lumber.

[20] Zhang, *The Softwood Lumber War*, 2006.

[21] U.S. Lumber Coalition Comments to the USTR.

[22] Natural Resources Canada, Canadian Forest Service, *The State of Canada's Forests: 2014* (Ottawa, ON, Canada: 2011), pp. 6.

[23] U.S. Dept. of Agriculture, Forest Service, "Table 2–Forest Land Area in the United States by Ownership. Region, and Subregion, and State, 2007," *Forest Resources of the United States, 2007*, GTR WO-78. at http://www.treesearch.fs.fed.us/pubs17334.

[24] Natural Resources Canada, Canadian Forest Service, *Sustainable Forest Management: A Continued Commitment in Canada*, Monograph No. 9 (Ottawa, ON, Canada: 2000).

[25] David Haley and Martin K. Luckert, *Forest Tenures in Canada: A Framework for Policy Analysis*, Information Report E-X-43 (Ottawa, ON, Canada: Forestry Canada, 1990). (Hereinafter cited as Haley and Luckert, *Forest Tenures in Canada*.)

In the United States, prices are established in competitive markets between willing buyers and willing sellers, often through auctions. This is the situation for wood product manufacturers and private timberland owners and arguably, federal timber sales in areas with competitive bidding.[26] Thus, much of the timber from lands in the United States is probably sold at fair market values. This may not be the case in Canada, where leases (rather than competitive bids) are used to allocate timber.

In Canada, the provinces charge fees for timberland leases and timber harvests. There is generally a flat annual fee for maintaining the leases, and a stumpage fee—a per unit of volume fee charged for the right to harvest the trees—for the timber harvested. In many of the 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.

Since the SLA went into force, at least one province has modified its stumpage pricing systems. In 2013, Quebec passed the Sustainable Forest Development Act,[27] which, among other provisions, established that 25% of the annual allowable crown harvest will be sold at auction starting in 2013. The price received at auction is then factored into the timber agreements covering the remaining 75% of the harvest.

The stumpage fees administrated by the Canadian provinces may not match market-determined prices, because the fees are determined by agency personnel who some argue have an incentive to set the fees below market value to assure the competitiveness of their products.[28] The U.S. lumber industry asserts that the provinces have intentionally set the fees substantially below market prices, to assure the competitiveness of the Canadian producers.[29] Whether provincial administrative 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, as discussed below.

Comparing U.S. and Canadian Stumpage Fees

Allegations that Canadian lumber production is subsidized by the Canadian government rest in part on the claims that Canadian stumpage prices—which are set administratively—are lower than the market-determined stumpage prices in the United States. This results in a lower cost of production for Canadian firms compared to U.S. firms, and is believed by many to be a subsidy from the Canadian government. However, evidence to demonstrate the possible disparity between U.S. and Canadian stumpage fees is widespread, but inconclusive. Some reports have found significantly higher stumpage fees in Canada, while other reports have found the United States to have higher stumpage fees.[30] Also, throughout the history of the dispute, the U.S. International

[26] Some may argue that the U.S. government is not comparable to a traditional private "willing seller," since the U.S. government does not make investments or sales based on profitability, as a private landowner presumably would. However, since the U.S. federal government only owns 33% of U.S. timberlands, it likely has a significant but less substantial impact on timber markets than do the Canadian provinces. However, this may vary in terms of the regional impact of federal land ownership and regional lumber markets.

[27] Sustainable Forest Management Act, CQLR c A-18.1, http://canlii.ca/t/ks3n.

[28] See USLC Comments to the USTR; and John A. Ragosta, Harry L. Clark, Carloandrea Meacci, and Gregory I. Hume, *Canadian Governments Should End Lumber Subsidies and Adopt Competitive Timber Systems: Comments Submitted to the Office of the United States Trade Representative on Behalf of the Coalition for Fair Lumber Imports*, unpublished report (Washington, DC: Dewey Ballantine LLP, April 14, 2000), appendix 1.

[29] Ibid.

[30] See Henry Spelter, "If America Had Canada's Stumpage System," *Forest Science*, vol. 52, no. 4 (2006); Coopers & (continued...)

Trade Commission (ITC) and the U.S. International Trade Administration (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.[31]

Several factors can explain such apparent contradictions. First, U.S. timber and Canadian timber are measured differently. In the United States, trees and lumber are measured in board feet (linear), as described above. In Canada, trees and lumber are measured in cubic meters (volume). The conversion—how many board feet of lumber can be produced from a cubic meter of logs—depends on the diameter of the log, ranging from about 130 board feet per cubic meter for a 6-inch diameter, 16-foot log to more than 275 board feet per cubic meter for a 44-inch, 16-foot log.[32] Thus, the conversion rate chosen (i.e., different assumptions about log diameters) can have a significant effect on the resulting price.

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. U.S. and Canadian forests differ in their species mix (percentage of trees or timber volume in each species) as well as in the size and quality of the trees of each species. Comparisons typically use a single dominant species (e.g., douglas-fir), but the stumpage fee for the dominant species can be affected by the fee for other species. In U.S. federal timber sales, for example, competitive bidding is generally limited to the dominant species, with the other species being sold at the appraised price; this leads to an overall balance, but limits the validity of the fees for comparing the prices of timber in different areas. Adjusting for these differences is difficult, under the best of circumstances.

Other factors also affect stumpage fees. For example, management responsibilities imposed on timber purchasers differ. In Canada, licensees are generally responsible for reforestation and for some forest protection.[33] In U.S. federal forests, timber purchasers generally make deposits to pay for agency reforestation efforts, and some of those deposits are typically reported as part of the stumpage fees. Road construction and road maintenance responsibilities and labor compensation also differ.

History of the Dispute

The dispute between the United States and Canada regarding softwood lumber trade dates back to the 1930s, but the so-called lumber wars began in the 1980s when the United States first

(...continued)

Lybrand, *Certain Forest Products From Canada, Before the United States Department of Commerce International Trade Administration: Valuation of Stumpage Subsidy*, unpublished report (Washington, DC: October 1982), 18 p; and Dewey Ballantine Comments for the CFLI to the USTR.

[31] See Zhang, *The Softwood Lumber War,* 2006; The Council of Forest Industries of B.C., A Brief Examination of Comparative Factors Affecting the Forest Industries of the U.S. Pacific Northwest and British Columbia, unpublished report (Vancouver, BC, Canada: October 1981), Brink Lindsay, Mark A. Groombridge, and Prakash Loungani, *Nailing the Homeowner: The Economic Impact of Trade Protection of the Softwood Lumber Industry* (Washington, DC: Cato Institute, 2000), 15 p. (Hereafter referred to as Cato Institute, *Nailing the Homeowner*.)

[32] David A. Hartman, William A. Atkinson, Ben S. Bryant, and Richard O. Woodfin, Jr., *Conversion Factors for the Pacific Northwest Forest Industry* (Seattle, WA: University of Washington, Institute of Forest Products, n.d.), p. 11; with conversion of cubic feet to cubic meters (at 35 cubic feet per cubic meter) by CRS.

[33] Haley and Luckert, *Forest Tenures in Canada*.

considered trade protection measures.[34] **Table 1** summarizes the major periods of trade dispute and agreement from 1982 to the present.

Table 1. History of the Dispute

1982-2015

Time Period	Trade Status	Summary
1982-1983	Trade Dispute: Lumber I	The U.S. lumber industry, represented by the Coalition for Fair Canadian Lumber Imports (CFLI; now known as the U.S. Lumber Coalition), filed a preliminary countervailing duty petition, arguing that the U.S. lumber industry had been harmed by subsidized Canadian provincial stumpage fees. However, the International Trade Administration (ITA) did not establish a countervailing duty.
1986	Trade Dispute: Lumber II	The U.S. lumber industry filed a new countervailing duty petition. In contrast to 1982, the 1986 preliminary finding established a 15% ad valorem countervailing duty, pending a final determination due by December 31, 1986. A final determination was avoided with the signing of a joint Memorandum of Understanding (MOU) between the two countries on December 30, 1986.
1986-1991	Trade Agreement: MOU	The 1986 MOU established a 15% tax on Canadian imports until the Canadian provinces raised stumpage fees. The MOU lasted six years.
1992-1995	Trade Dispute: Lumber III	Canada withdrew from the MOU and the United States imposed another countervailing duty (6.51% ad valorem) shortly thereafter. The United States and Canada filed competing claims against each other in U.S. and international courts for trade violations.
1996-2001	Trade Agreement: 1996 Softwood Lumber Agreement	The United States and Canada signed a five-year Softwood Lumber Agreement that established a fee on imports exceeding a specified quota.
2001-2005	Trade Dispute: Lumber IV	Immediately following the expiration the expiration of the 1996 agreement, the United States again imposed countervailing and antidumping orders on Canadian lumber imports (Lumber IV). Again, both countries initiated proceedings in international and U.S. courts claiming violations of various trade agreements, including the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) agreements. The lawsuits persisted until the 2006 Softwood Lumber Agreement was entered in force.
2006-present	Trade Agreement: 2006 Softwood Lumber Agreement	The United States and Canada signed a six-year Softwood Lumber Agreement that established a system of fees and quotas on Canadian imports. In 2012, the agreement was extended through October 12, 2015.

Source: CRS.

[34] For a complete background of the dispute up to the 2006 Softwood Lumber Agreement, see CRS Report RL33752, *Softwood Lumber Imports from Canada: Issues and Events*, by (name redacted) and (name redacted) and CRS Report RL30826, *Softwood Lumber Imports From Canada: History and Analysis of the Dispute*, by (name redacted)

The 2006 Softwood Lumber Agreement

On April 26, 2006, the United States and Canada announced a tentative agreement to terminate antidumping and countervailing duties and related litigation.[35] An early version of the agreement was signed on July 1, 2006, and the Softwood Lumber Agreement Between the Government of Canada and the Government of the United States of America (SLA 2006) entered into force on October 12, 2006. The SLA was set to expire in 2013 but included an option to be renewed for an additional two years. On January 23, 2012, the United States and Canada both agreed to the two-year extension. The current SLA is now set to expire on October 12, 2015.

Under the agreement, the United States revoked countervailing and antidumping orders on Canadian lumber and returned about $4 billion that was collected from the duties to the importers of record. The remaining deposits (about $1 billion) were split evenly between the U.S. lumber industry and jointly agreed-upon initiatives (see below, "Initiatives Funded by the 2006 SLA"). In exchange, the parties agreed to terminate, or in some cases dismiss, all North American Free Trade Agreement (NAFTA), World Trade Organization (WTO), and domestic court claims filed by Canada, Canadian producers, the United States, and the U.S. industry as represented by the CFLI (now known as the U.S. Lumber Coalition). The SLA precludes new cases, investigations and petitions, and actions to circumvent the commitments in the agreement. The SLA also included an agreement where the participating U.S. producers would not file new antidumping or countervailing duties petitions or investigations for a period of 12 months after the termination or expiration of the agreement.

Table 2. 2006 SLA Export Charges and Quota Limitations Options Based on Prevailing Monthly Price of U.S. Lumber

Prevailing Monthly Price per thousand board feet (MBF)	Option A—Export Charge (Expressed as a % of Export Price)	Option B—Export Charge (Expressed as a % of Export Price) with Volume Restraint
Participating Regions	British Columbia Coastal, British Columbia Interior, Alberta	Saskatchewan, Manitoba, Ontario, and Quebec
Over $355	No Export Charge	No Export Charge and no volume restraint
$336-355	5%	2.5% Export Charge plus regional share of 34% of U.S. Consumption
$316-335	10%	3% Export Charge plus regional share of 32% of U.S. Consumption
$315 or under	15%	5% Export Charge plus regional share of 30% of U.S. Consumption

Source: "Article VII, Export Charge and Export charge plus volume restraint," *Softwood Lumber Agreement Between the Government of the United States of America and the Government of Canada* (Washington, DC: October 12, 2006), at http://www.ustr.gov/webfm_send/3254.

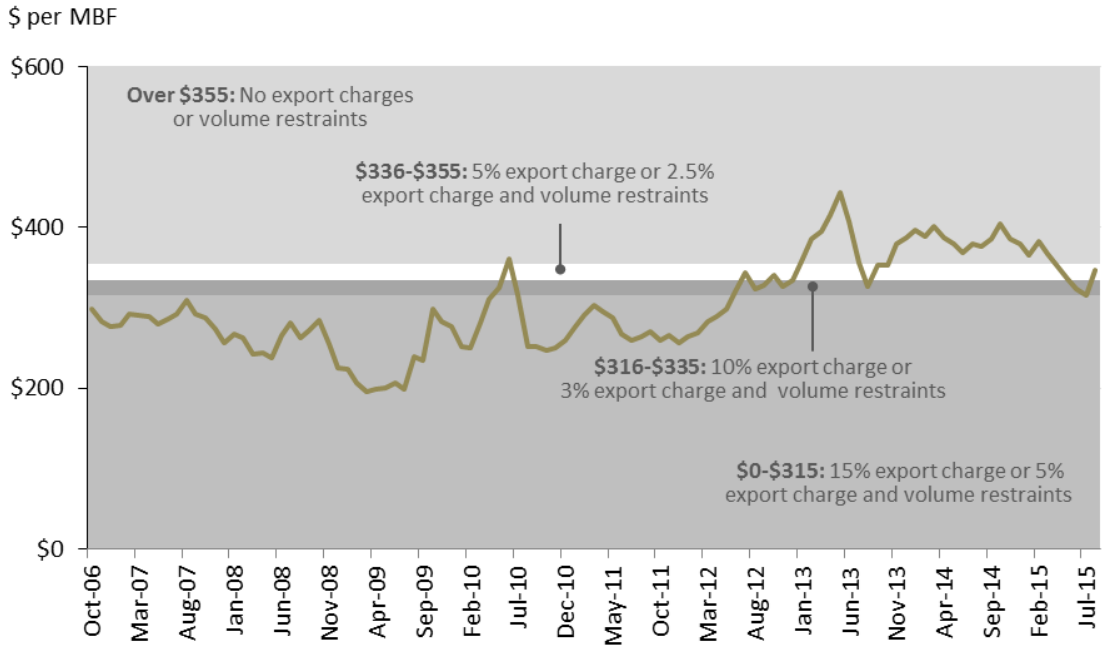
The SLA established export charges on Canadian softwood lumber when the Random Lengths' Framing Lumber and Composite Price falls below $355 per thousand board feet (MBF),[36] with

[35] For more information, see CRS Report RL33752, *Softwood Lumber Imports from Canada: Issues and Events*, by (name redacted) and (name redacted) .

[36] $355 MBF was the average monthly composite price for lumber between May 2002 and April 2006, as calculated by Random Lengths, Inc. Website: http://www.randomlengths.com.

the rate charged varying with how far the composite price falls.[37] The export charges can be significantly reduced if the Canadian producing region also agrees to volume restraints, which become increasingly restrictive as the average price falls (see **Table 2**). During the first six years the SLA was in effect, lumber prices largely remained below $315 MBF (see **Figure 4**) and only exceeded the trigger briefly for three months in 2010. However, for just over two years, from January 2013 through March 2015, lumber prices exceeded $355 MBF every month except one (August 2013), meaning that no export measures were applied during those months. Lumber prices began to fall in each successive month starting in March 2015. Export measures were applied in April 2015 and continue through August 2015, although the August 2015 price is an increase over previous months ($347 MBF).[38]

Figure 4. Prevailing Monthly Lumber Prices (Current Dollars) and Export Provisions Under the 2006 SLA



Sources: CRS. Prevailing month price data from published reports on the Government of Canada's Foreign Affairs, Trade and Development website, http://www.international.gc.ca/controls-controles/prod/index.aspx.

Notes: The prevailing monthly price is calculated as the most recent 4-week average of the weekly framing lumber composite price, available 21 days before the beginning of the month that the prevailing monthly price shall be applied.

There are several additional provisions relating to export charges and volumes. There is a third country trigger, allowing export charge refunds if, for consecutive quarters, the third country share of U.S. lumber consumption grows, the U.S. share increases, and the Canadian share

[37] As established in the SLA, the Canadian government calculates the prevailing monthly price to determine if export measures are to apply for any given month. The prevailing monthly price is calculated as the most recent 4-week average of the weekly framing lumber composite price, available 21 days before the beginning of the month that the prevailing monthly price shall be applied.

[38] Government of Canada, Foreign Affairs, Trade and Development, *Monthly Reports on Softwood Lumber Prices and Consumption*, http://www.international.gc.ca/controls-controles/softwood-bois_oeuvre/index.aspx?lang=eng&view=d.

decreases. A surge mechanism generally provides for substantially greater export charges if a Canadian region's exports exceed 100% of its allocated share of total Canadian exports. For high-value products—those valued at more than $500 per MBF—the export charges are calculated as if they were priced at $500 per MBF.

The SLA also establishes a third party arbitration system to handle any disputes under the agreement, discussed below.

In Article XV, the SLA sets forth information collection and exchange requirements that both the United States and Canada submit monthly reports aggregated to the Canadian regional level, along with quarterly data reconciliation requirements. These reports are to be publicly available.[39]

Canadian Provinces Covered by the SLA

The SLA applies export measures to lumber products from timber harvested in the provinces of Alberta, British Columbia Coastal, British Columbia Interior, Manitoba, Ontario, Quebec, and Saskatchewan (See **Figure 5**). The export measures do not apply to lumber products from timber harvested in the Yukon, Northwest, or Nunavut Territories. Lumber produced in the Atlantic Provinces, as well as lumber certified as originating in the State of Maine, is also exempt. In addition, 32 companies—so-called border mills primarily from Quebec but also Ontario—are named in the SLA as also being exempt, subject to certain quota limitations. At the time of negotiation, there were significant private timber land holdings in these provinces, so they were not seen as benefiting from a subsidy.

Figure 5. Canadian Provinces Covered by the SLA

Source: Map created by CRS using Esri Basemaps. British Columbia Forest Region boundary files were created by Data BC, a pilot project of the British Columbian government, current as of 1/13/2005: https://apps.gov.bc.ca/

[39] The United States' monthly reports are available from the U.S. Census Bureau website: http://www.census.gov/foreign-trade/Press-Release/softwood_index.html. The Canadian monthly reports are available from the Foreign Affairs and International Trade Canada website: http://www.international.gc.ca/controls-controles/softwood-bois_oeuvre/index.aspx?lang=eng&view=d. The monthly data reconciliation reports are also available from the Foreign Affairs and International Trade Canada website: http://www.international.gc.ca/controls-controles/softwood-bois_oeuvre/other-autres/other-info-supp.aspx?lang=eng&menu_id=71&view=d.

pub/geometadata/metadataDetail.do?recordUID=32891&recordSet=ISO19115. Forest cover boundaries provided by the World Wildlife Fund Terrestrial Ecoregions data, current as of 2005.

Initiatives Funded by the 2006 SLA

Prior to the enactment of the 2006 SLA, the United States collected approximately $5.3 billion under the antidumping and countervailing duty orders on Canadian softwood lumber imports. As part of the SLA, the United States returned $4 billion to the importers of record. The remaining deposits were split evenly among the U.S. lumber industry, a binational panel to advance softwood lumber, and three types of initiatives in the United States. The initiatives were to provide (1) promotion of sustainable forest management practices; (2) assistance for timber reliant communities; and (3) low income housing and disaster relief.[40] The recipients of the initiative funds include $200 million for the United States Endowment for Forestry and Communities; $150 million for the American Forest Foundation; and $100 million for Habitat for Humanity.

The 2008 Softwood Lumber Act

The 2008 farm bill (P.L. 110-246) included a provision (§3301) establishing a softwood lumber importer declaration program to ensure compliance with the SLA. The 2008 Softwood Lumber Act (codified at 19 U.S.C. §§1683-1683g) required the Department of the Treasury (later delegated to the U.S. Customs and Border and Protection in the Department of Homeland Security) to verify and reconcile data on softwood lumber imports from Canada. However, according to a 2009 Government Accountability Office report, the additional record-keeping requirements "do not provide the U.S. government with additional assurance of compliance with the bilateral trade agreement."[41] GAO further recommended that U.S. Customs and Border Protection develop and report to Congress plans to fulfill the requirements of the act upon the expiration of the SLA.

Analysis of the 2006 Softwood Lumber Agreement

The enactment of the 2006 SLA ended the fourth major "lumber war" and trade dispute between the United States and Canada. In the period between the expiration of the 1996 Agreement in 2001 and the signing of this agreement in 2006, both countries had been engaged in a series of domestic and international legal challenges. The United States was collecting dumping and countervailing duties on Canadian imports of softwood lumber, which was having impacts down the supply chain to U.S. lumber consumers, as well as causing overall tension between the two neighboring countries. Given that context, the primary goals of the 2006 SLA were to protect the U.S. lumber industry, stabilize the U.S. lumber market, resolve on-going disputes between the U.S. and Canada, create an alternative dispute resolution system, and maintain U.S.-Canadian relationships. The following sections of this report will analyze the extent the SLA has achieved

[40] Office of the United States Trade Representative, "Schwab Announces Plans for Disposition of Funds for Meritorious Initiatives under the United States-Canada Softwood Lumber Agreement," press release, September 12, 2006, http://www.ustr.gov/archive/Document_Library/Press_Releases/2006/September/Schwab_Announces_Plans_for_Disposition_of_Funds_for_Meritorious_Initiatives_under_the_United_States-Canada_Softwood_Lumber_Agree.html.

[41] U.S. Government Accountability Office, *Softwood Lumber Act of 2008*, 10-220, December 2009, p. 1.

those goals, what issues continue to persist, and then will discuss the opposition to the trade protection measures.

Protecting U.S. Lumber Producers

One of the primary aims of the U.S. negotiators to the 2006 SLA was to protect the U.S. lumber industry in the domestic market. The U.S. lumber producers were losing market share to Canadian producers, who were believed to have an unfair competitive advantage due to provincially subsidized pricing practices. The Canadian share of the U.S. market had been steadily rising while the U.S. share had been falling. As noted earlier, prior to the 1996 Softwood Lumber Agreement, Canada's market share peaked at 35%, while the domestic U.S. market share was 63% (See **Figure 3**).[42] From 2001 through 2006, Canada's market share averaged 33%, while the U.S. share averaged 63%. Since the 2006 SLA went into force, the Canadian market share declined to a low of 26% in 2011 and has averaged 28%, while the U.S. market share has averaged 71%. Therefore, in terms of market share, the SLA appears to have contributed to increasing the U.S. lumber producer's share of the U.S. market and decreasing the Canadian competition's share.

As of August 2015, the price of lumber is below the trigger price of $355 MBF, meaning that the export charges and quota limitations are in effect (see **Figure 1**). During the first 75 months the agreement was in effect (through December 2012), lumber prices had been so low that the highest export measures applied during 68 of those months. Since then, lumber prices have risen above the trigger for 24 of the 32 months, meaning that goods have flowed freely across the border for most of the last few years. Therefore, in terms of shielding the U.S. lumber industry from allegedly subsidized and unfair Canadian competition, the SLA appears to have worked during the time when the U.S. lumber market was in a downturn. How the agreement has functioned since lumber prices, and U.S. production, have been in recovery remains to be seen.

Stabilizing the Lumber Market

U.S lumber producers and consumers are both interested in having a stable lumber market, in terms of price and supply. Lumber consumers have argued that the overall softwood lumber dispute, and the enactment of trade protection measures, has harmed them by increasing the volatility of lumber prices. Relative volatility can be assessed by examining the average and standard deviation of lumber prices. **Table 3** shows the annual average and standard deviation for the weekly Random Lengths framing lumber composite price, and the ratio of standard deviation to average, to allow comparison of years with different averages.

Table 3. The Annual Average and Standard Deviation for the Random Length's Framing Lumber Weekly Composite Price

Year	Average	Standard Deviation	Ratio	Year	Average	Standard Deviation	Ratio
1977	$798.41	$89.39	11.2%	1996	$609.06	$59.21	9.7%
1978	$833.95	$15.48	1.9%	1997	$618.57	$46.03	7.4%
1979	$822.50	$69.85	8.5%	1998	$510.23	$26.25	5.1%
1980	$592.73	$62.55	10.6%	1999	$575.65	$50.68	8.8%

[42] Howard, *U.S. Timber Statistics.*

Year	Average	Standard Deviation	Ratio	Year	Average	Standard Deviation	Ratio
1981	$513.78	$60.05	11.7%	2000	$449.73	$64.82	14.4%
1982	$431.93	$25.51	5.9%	2001	$422.10	$52.33	12.4%
1983	$546.39	$60.52	11.1%	2002	$397.52	$32.06	8.1%
1984	$467.41	$52.45	11.2%	2003	$397.26	$35.87	9.0%
1985	$442.89	$36.48	8.2%	2004	$501.72	$50.89	10.1%
1986	$467.44	$30.74	6.6%	2005	$465.25	$30.65	6.6%
1987	$503.26	$26.64	5.3%	2006	$380.67	$50.75	13.3%
1988	$469.20	$27.90	5.9%	2007	$321.26	$18.15	5.6%
1989	$456.37	$21.98	4.8%	2008	$274.43	$20.86	7.6%
1990	$413.66	$42.60	10.3%	2009	$242.81	$21.27	8.8%
1991	$406.90	$43.21	10.6%	2010	$305.66	$39.69	13.0%
1992	$480.06	$40.05	8.3%	2011	$284.27	$19.52	6.9%
1993	$640.88	$110.87	17.3%	2012	$329.56	$26.42	8.0%
1994	$650.72	$71.95	11.1%	2013	$386.78	$35.12	9.1%
1995	$520.00	$43.73	8.4%	2014	$379.63	$12.51	3.3%

Source: CRS calculations using data from Random Lengths, Inc.

Note: Adjusted to 2014 dollars using the CPI-U from the Bureau of Labor Statistics.

These data indicate no obvious trend. Volatility (measured by the standard deviation-to-average ratio) appears to be higher during the years that Canada and the United States were negotiating the start or end of a trade agreement (1991, 2000, 2001, 2006) or when an active dispute was ongoing (1984, 1993, 2004). However, volatility has also been high during years when an agreement was in place and no active negotiating occurred (2010), suggesting that the changes in volatility are likely affected by factors other than the SLA and trade restrictions. The demand for softwood lumber, which relies heavily on the U.S. housing market, arguably also contributes to volatility and could explain the 2010 spike.

Dispute Resolution

The SLA appears to have at least temporarily quieted long-running disagreements about the level of Canadian imports of softwood lumber into the United States, although disputes have persisted. In Article XIV, the SLA created a dispute resolution process that precludes either country from initiating any litigation or other dispute settlement proceedings such as those under NAFTA or the WTO.[43] Through the dispute resolution process, either party must begin with bilateral consultation and then may request non-binding mediation by a neutral third-party or binding arbitration through the London Court of International Arbitration (LCIA). There have been three disputes resolved through the arbitration process.

The first dispute began in August 2007, when U.S. officials requested a ruling from the LCIA on the export quota volumes and export tax levels for earlier that year. In March 2008, the LCIA

[43] "Article XIV, Dispute Settlement," *Softwood Lumber Agreement Between the Government of the United States of America and the Government of Canada* (Washington, DC: October 12 2006) at http://www.ustr.gov/webfm_send/3254.

ruled that Canada had violated the export quota volumes for Manitoba, Ontario, Quebec, and Saskatchewan for the first six months of 2007, but was not required to collect taxes related to export surges from Alberta and British Columbia during that period. To comply with the above ruling, Canada was ordered to collect an additional 10% *ad valorem* export charges from the four provinces until C$68.26 million (then valued at US$54.8 million) had been collected. The USTR rejected a Canadian offer of a compensation payment of US$36.66 million, and on April 15, 2009, began collecting 10% duties on lumber from the four provinces. The United States removed its duty after Canada began collecting the 10% export charge on September 1, 2011.[44] Canada announced that it had completed collection of the C$68 million as of July 1, 2011.[45]

The second dispute began in January 2008, when the United States requested arbitration over ten provincial forest sector assistance programs in Quebec and Ontario which the United States believed violated the anti-circumvention provision of the SLA. In January 2011, the LCIA found that four out of the 10 examined programs encouraged Canadian exports to the U.S. market, and thus breached the SLA. Canada began imposing additional charges on lumber exported from Quebec (2.6%) and Ontario (0.1%) to collect an estimated $59.4 million in additional export taxes, a figure short of the $1.86 billion sought by the United States.[46] A subsequent LCIA ruling affirmed Canada's decision to terminate the export charges upon the initial expiration of the SLA on October 2013, despite its extension until October 2015.[47]

The third dispute concerns certain timber pricing practices in the British Columbia (BC) Interior region. On January 18, 2011, the United States filed a request for arbitration over allegations the region was falsely downgrading lumber classifications. The United States claimed that the BC government had been classifying an increasing amount of its cut as salvage Grade 4 lumber, which is priced less than better grades, resulting in a subsidy for Canadian timber processors because the amount of lumber produced did not decrease. Canada attributed this increase to an infestation of mountain pine beetles. U.S producers disputed this, claiming that BC changed its grading procedures and producers were heating lumber prior to grading, resulting in greater cracks and defects. In July 2012, the LCIA held that it could not conclude that the increase in Grade 4 lumber was based on specific pricing and grading policies of the BC government, and that the United States did not back it claims with specific and quantifiable evidence. Thus, the tribunal could not conclude that Canada had violated the SLA.

While Canada and the British Columbia provincial government welcomed the ruling, USTR expressed disappointment and noted that the tribunal "did not sanction pricing practices in British Columbia," and criticized "a flawed approach to evaluating evidence before it."[48] The U.S. Lumber Coalition maintained the ruling "clearly defined the limitations" of the SLA, and that the industry would need to "assess the value of the SLA at the appropriate time."[49] Other observers foresee that the tribunal's burden of proof exercised in this proceeding would make it difficult to pursue other allegations that Canada had violated the SLA. In turn, this may put a damper on

[44] "USTR Lifts Duty on Softwood Lumber from Provinces as Canada Begins Collection," *International Trade Reporter*, September 9, 2010.

[45] *Canada Gazette*, July 6, 2011, http://www.gazette.gc.ca/rp-pr/p2/2011/2011-07-06/html/sor-dors130-eng.html.

[46] "U.S. Prevails on Lumber Dispute with Canada, But Falls Short on Remedy," *Inside U.S. Trade*, January 28, 2011.

[47] "Tribunal Upholds Canada's Position on Termination of Softwood Lumber Charges," *International Trade Reporter, April 3, 2014.*

[48] "Statement by the Office of the U.S. Trade Representative in Response to Decision in Third Softwood Lumber Arbitration," July 18, 2012.

[49] "U.S. Lumber Coalition Disappointed by Arbitral Decision Regarding British Columbia Softwood Lumber Agreement Timber Pricing Violations," http://www.uslumbercoalition.org/doc/press_release_07-18-12.pdf

enthusiasm among U.S. lumber producers to extend or to negotiate a new agreement when the current SLA expires in 2015.[50]

Opposition to the 2006 SLA

The National Association of Home Builders (NAHB), representing many U.S. lumber consumers (i.e., home builders, home building supply stores, home buyers), opposed the original 2006 agreement, and opposed extending the SLA to 2015.[51] The NAHB also was opposed to using the Trans Pacific Partnership (TPP) to renegotiate the SLA.[52] As the end-users of softwood lumber, the consumer interest is in access to affordable softwood lumber, which is best achieved through unrestricted free trade. The NAHB argues that they largely assume the costs of the trade protection measures, but due to the structure of U.S. trade law, are not able to directly participate in the trade remedy process.[53] To further support the position of the U.S. lumber consumers, one analyst argues the position of most economists: that unrestricted free trade benefits the overall U.S. economy while trade protections decrease overall welfare.[54]

Issues for Negotiation

If negotiations commence to extend or replace the SLA, those discussions could include various issues that have been raised by stakeholders. For example, log export restrictions, discussed below, may be an issue. Dispute resolution may also be an issue. Another point of negotiation may be to revisit providing exemptions to certain provinces or companies. Further, negotiations may also include provisions to address the conditions under which a province may become exempt in the future, as discussed in the "Quebec Reforms" section below.

Log Export Restrictions

The U.S. Lumber Coalition is seeking to eliminate restrictions on Canadian log exports. Such restrictions were exempted from NAFTA, as well as from free trade agreements (FTAs) Canada has negotiated with TPP partners Chile and Peru. Under these restrictions, timber harvested on crown lands must be manufactured into lumber in the province or, in the case of Ontario, within Canada. Some exceptions exist for surplus timber, or timber that is not bid upon by domestic manufacturers, although a "fee in lieu of manufacturing" is levied on BC timber exports. By restricting the export of unprocessed timber, the U.S. Lumber Coalition maintains that Canada is driving down the price of raw logs, and hence providing a subsidy to its lumber processors. This practice, according to the U.S. Lumber Coalition, shields Canadian producers from the world timber price and promotes domestic manufacturing.[55] The United States also maintains log export restrictions on timber harvested from western national forests, but the U.S. Lumber Coalition

[50] "U.S. Loses Softwood Lumber Case; Ruling Could Impact Future of SLA," *Inside U.S. Trade*, July 20, 2012.

[51] NAHB Comments to the USTR.

[52] Gerald Howard, *Written Comments Submitted to the Office of the United States Trade Representative on Behalf of the National Association of Home Builders Regarding Participation of Canada in the Trans-Pacific Partnership Trade Negotiations*, National Association of Home Builders, September 4, 2012.

[53] NAHB Comments to the USTR.

[54] Zhang, *The Softwood Lumber War*, 2006.

[55] See, U.S. Lumber Coalition, "Negotiating Objectives with Respect to Canada's Participation in the Proposed Trans-Pacific Partnership Trade Agreement (Docket No. USTR-2012-0015), September 4, 2012.

claims that these restrictions have a negligible impact because most of the U.S. lumber supply is derived from private forests.[56]

Quebec Reforms

The SLA includes an "exit ramp" provision (Article XII) that allows for the creation of a commission to determine the circumstances under which a province could be removed from the export measures under the SLA to encourage the adoption of market pricing mechanism. However, this commission was never created. In April 2013, the Province of Quebec's Sustainable Forest Development Act came into effect, which created a timber marketing board to sell lumber from provincial land by auction. This board replaced a system in which processing mills in Quebec held long-term contracts for all provincially harvested lumber from public forests. The government of Quebec and its producers contends that this change satisfies the requirements to be exempted from the SLA and has sought the Canadian federal government to push for the activation of this panel to consider this system. A subsequent SLA may address the creation of a panel as envisioned by Article XII and the specific request of Quebec to be excluded from a potential follow-on agreement.

Issues for Congress

On October 12, 2015, the 2006 SLA will expire. Under the terms of the agreement, neither country may initiate trade actions for one year after the agreement expires, meaning the United States and Canada potentially have another year to negotiate an agreement. While current and previous SLAs historically have been conducted by the executive branch, Congress can signal by oversight, legislation, or resolution whether it desires to see the SLA continued, amended, or abandoned when it expires in 2015.

If negotiations to extend the SLA commence, Congress may seek to examine several issues relating to a potential future agreement. For example, Congress may examine the current arbitration provisions and the evidentiary standards that U.S. lumber producers allege have resulted in a decision unfavorable to its side in the third SLA decision (see above). Likewise, Congress may seek the removal of export log restrictions on any future agreement with Canada. Congress may also consider the extent to which U.S. lumber consumers are affected by the removal of the agreement and the possibility of renewed anti-dumping and countervailing duties being placed on softwood lumber.

Summary and Conclusion

Concerns about softwood lumber imports from Canada have been raised for decades. In 2006, the United States and Canada signed a Softwood Lumber Agreement (SLA) to end the most recent dispute. Among other things, the nine-year agreement provides for the settlement of pending litigation and established Canadian export charges, varying by weighted average lumber prices and lower if the Canadian exporting regions also accepts volume restraints. The United States revoked the existing antidumping and countervailing duty orders, with at least 80% of the duty deposits being returned to the importers of record. The remaining 20% is being used to fund lumber-related entities and initiatives provided for in the agreement.

[56] Ibid.

U.S. lumber producers assert they have been injured by Canadian subsidies that have given Canadian lumber producers an unfair advantage in selling lumber in the U.S. market. These two conditions—subsidies and injury—are prerequisites for a countervailing duty under U.S. trade law. One alleged subsidy is Canadian provincial stumpage fees (fees for the right to harvest trees) which may be less than the value of the timber in a competitive market. In the 10 Canadian provinces, 90% of the timberland is owned by the provinces. The majority of provincial timber is allocated to lumber producers under long-term area tenure agreements, which specify harvest levels, management requirements, and stumpage fees. The stumpage fees are generally set administratively, and adjusted periodically to reflect changes in lumber markets. This contrasts with the situation in the United States, where most of timberlands are privately owned, and timber from federal and state lands is typically offered for sale at competitive auctions. Administered fees are not likely to match market values, but could be higher or lower, depending on the purpose and methods by which they are established; critics have claimed that the fees are set low to assure profitable production, regardless of market conditions. Several studies have shown significantly lower Canadian stumpage fees, but other studies have found comparable cross-border prices. These contradictory results may be explained by the adjustments made to account for differences in timber measurement systems (one cubic meter of Canadian logs yields 125–275 board feet of U.S. lumber, depending on the logs' diameters); in tree species, sizes, and grades; in requirements imposed on the timber purchaser (e.g., reforestation and road construction); and in other factors. Analyses of the differences are difficult and generally problematic.

Injury to the U.S. lumber industry remains a complex issue. The Canadian share of the U.S. softwood lumber market grew substantially over the past 60 years, from less than 7% in 1952 to more than 35% in 1996. During that 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 remained at a relatively stable rate, fluctuating around 33-34%. Under the 2006 SLA, Canadian imports began to decline and currently hover around 28%. This decline is likely attributable—at least in part—to the SLA and a drastically decreased demand for softwood lumber due to the crisis in the U.S. housing market.

Other factors might also be important in the dispute over lumber imports from Canada. Some believe the persistence of the dispute is due, at least in part, to the conflict between a U.S. trade policy focused on the removal of trade barriers and the process for obtaining industry protection under U.S. trade law. Others contend that the dispute is fueled by interest-group politics, and that the U.S. lumber industry is better organized and more influential than U.S. lumber consumers, who mostly feel the cost impacts of the trade protection measures.[57] 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. Finally, the dispute may be alleviated in part due to increasing cross-border firm integration.[58] In other words, lumber producers may increasingly become globalized, with holdings in both the United States and Canada, and as such may begin to question these border protection measures.

The 2006 SLA appears to have appeased Canadian interests, but U.S. lumber producers have for the most part signaled displeasure with the agreement. Given the complexity of the issues at play in the dispute—different land ownership patterns, pricing and management policies, and measuring systems—the approach of export taxes and quota limitations when lumber is priced

[57] Zhang, *The Softwood Lumber War*, 2006.

[58] Ibid.

below a specified trigger level does not appear to be achieving satisfactory results for all sides of the issue.

Appendix. What Is Softwood Lumber?

The definition of "softwood lumber" subject to the SLA had been an issue leading up to the signing of the 2006 agreement.[59]

Softwood is a classification of tree species and contrasts with the other major classification, *hardwood*. Both, however, are misnomers. Some hardwoods, "such as aspen and poplar, are softer (less dense) than many softwoods," such as yellow pines.[60] Softwood species are all in the order Coniferales—the conifers. Conifers generally have needle-like leaves and cones for reproduction. These plants are often called evergreens, because most retain their needles in winter.[61] The hardwood timber species are in the phylum Anthophyta—the angiosperms, or flowering plants. These plants are often called deciduous, because most species in temperate climates lose their leaves in the winter; however, some temperate-climate species (e.g., holly) and most tropical and subtropical species are evergreen, retaining their leaves throughout the year. Despite the imprecision, softwood is the term of art for conifer species and is used in this report to indicate lumber produced from conifer species. This use is also consistent with the definition of softwood lumber in the harmonized tariff schedules and in the 2006 SLA. (See below.)

Lumber is the collective term for products sawn from logs. This contrasts with the panel products—plywood, particleboard, etc.—where the logs are sliced, peeled, or chipped and the wood pieces are then glued together to form sheets or panels.[62] It also contrasts with paper products, where wood chips are dissolved to remove the lignin and the fibers adhere by being pressed together under heat. Lumber is grouped into different categories based on cross-sectional dimensions. *Boards* are lumber products of less than 2 inches in nominal thickness—typically 1 inch thick and 1 inch to 12 inches wide (in 2-inch increments).[63] *Dimension lumber* are products of 2 inches to 5 inches in nominal thickness—most commonly 2 inches thick and 2 inches to 12 inches wide (in 2-inch increments) in nominal dimensions. *Timbers* are lumber products at least 5 inches thick and wide, and timbers include products destined for further processing. The vast

[59] The definition of which softwood lumber products would be subject to the quota had been at issue in the years leading up to the 2006 SLA. In previous agreements, only standard construction lumber was included in the quota calculations and specialty products (such as builders' joinery) were outside of the quota. Drilled studs were originally classified as builders' joinery, but were reclassified by the U.S. Customs Service in the late 1990s as softwood lumber subject to quota limitations in the agreement, along with various other items previously classified as builders' joinery. The issue, essentially, was whether various products were specialty products with particular construction applications or standard construction lumber with minor modifications to avoid the quota. The items continue to be classified under tariff item 4407 and are subject to the quota limitations in the 2006 SLA.

[60] The major softwood species—the pines, firs, and spruces—are generally softer (less dense) than the major hardwood tree species of temperate climates—the oaks and maples.

[61] Trees of the larch genus (*Larix spp.*) are deciduous, with bare limbs in winter.

[62] A process similar to plywood production can be used to produce lumber-sized products. Known as parallel-laminated veneer (PLV) lumber, the product is made of wood layers glued together in parallel (in contrast to the perpendicular layers in plywood) and then sawn to traditional lumber sizes. The process has been used for producing large wooden beams (timbers) for many years, but is uncommon for traditional lumber products because the production costs are higher than for traditional products.

[63] Lumber is identified in nominal sizes, rather than actual dimensions. The nominal sizes were the original dimensions of green, rough-sawn lumber; the actual dimensions are the minimum sizes for dry, finished lumber as specified by the American Lumber Standards Committee, a committee of lumber producers, distributors, and users who have developed voluntary product standards and methods for grading, testing, and marking lumber products, under the aegis of the National Institute of Standards and Technology. See 71 *Federal Register* 61399 (October 16, 2006) for the softwood lumber agreement.

majority of softwood lumber—nearly 75%—is used for residential construction, remodeling, and repair.[64]

For purposes of the dispute, softwood lumber is defined in Annex 1A of the SLA using two tariff items under the Harmonized Tariff Schedule of the United States (HTSUS):[65]

> **Softwood lumber** products include all products classified under tariff items 4407.1000, 4409.1010, 4409.1020, and 4409.1090 (for purposes of description only):
>
> coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm [about $^{1}/_{4}$ inch];
>
> coniferous wood, coniferous wood siding and coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods), whether or not planed, sanded or finger-jointed ...[66]

These tariff items include essentially all the traditional softwood lumber items intended for residential construction, as described above, including softwood drilled and notched lumber and angle-cut lumber and excluding logs, poles, wood fencing, and railway sleepers (cross-ties). The definitions also allow for products that are classified under certain other HTSUS subheadings but meet the SLA's definition of softwood lumber products. This definition also excludes certain products, including windows and doors (with frames), garage doors, box springs, pallets, roof trusses, and other fabricated wood products.

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[64] Henry Spelter, David McKeever, and Daniel Toth, *Profile 2009: Softwood Sawmills in the United States and Canada*, USDA Forest Service, Research Paper FPL-RP-659, October 2009, http://www.fpl.fs.fed.us/documnts/fplrp/fpl_rp659.pdf. (hereafter referred to as Spelter et al, *Profile 2009*).

[65] "Annex IA Softwood Lumber Products," *Softwood Lumber Agreement Between the Government of the United States of America and the Government of Canada* (Washington, DC: October 12 2006) at http://www.ustr.gov/webfm_send/3254.

[66] Ibid.