U.S. - Canada Lumber Trade Dispute: A Brief History July 2012	
LUMBER I 1982-1983	The modern softwood lumber dispute began with a 1982 countervailing duty ("CVD") petition by a group of U.S. softwood lumber producers. The case introduced the central issue in the dispute: subsidization of Canadian lumber producers through the provision of Canadian government timber to them for far less than the market value of the timber. The International Trade Commission ("ITC") made an initial determination that Canadian lumber imports injure the U.S. industry. The Department of Commerce ("Commerce") made a negative CVD determination on technical grounds.
LUMBER II 1986	After Lumber I, Commerce issued new guidelines in other cases as to which subsidies fall within the CVD law. Based on these new guidelines, a different U.S. industry group, the Coalition for Fair Lumber Imports (the "Coaltion"), filed a new CVD petition in 1986. The ITC again made a preliminary affirmative injury determination. Commerce preliminarily found that the under-pricing of Canadian government timber constitutes a subsidy and found that the subsidy rate was 15%.
MEMORANDUM OF UNDERSTANDING (MOU) 1986-1991	The United States and Canada settled Lumber II through a "Memorandum of Understanding" ("MOU") before the U.S. agencies issued final Lumber II CVD determinations. Under the MOU, Canada imposed an export tax on shipments of softwood lumber to the United States. This tax, originally set at 15%, could be reduced for provinces that increased their administered timber prices or took other measures to offset subsidization. On this basis, the import tax was lifted entirely with regard to British Columbia in 1987 and in part with regard to Quebec in 1988.
LUMBER III 1991-1994	Canada withdrew from the MOU in October 1991. The United States immediately imposed a cash deposit requirement on Canadian lumber imports in the amount of the MOU export tax under Section 301 of the Trade Act of 1974, and Commerce self-initiated a new CVD investigation. After Commerce made a final affirmative CVD determination with a subsidy rate of 6.5%, the ITC made a final determination that subsidized imports injure the U.S. industry. Canadian parties again challenged Commerce's initiation of the investigation before a General Agreement on Tariffs and Trade ("GATT") dispute settlement panel and appealed both the final CVD and injury determinations to binational panels under Chapter 19 of the U.S.-Canada Free Trade Agreement ("FTA"). The GATT panel concluded that the temporary Section 301 cash deposit requirement imposed by the United States was GATT-inconsistent, but upheld Commerce's self-initiation of the CVD investigation. The FTA panel reviewing the injury determination remanded twice, but on both occasions an ITC majority reaffirmed its affirmative determination. The FTA panel reviewing the CVD determination remanded on three issues: specificity (for an analysis on all four *de facto* specificity factors then included in Commerce's regulations), whether the subsidy program had demonstrable trade effects, and to recalculate the benefit from BC log export restraints. On remand, Commerce again found that the programs were specific, that no express finding of trade effects was required under the statute (but that the evidence demonstrated such effects), and recalculated the CVD rate at 11.54%. In its second decision, the FTA panel – dividing 3-2 along national lines (Canadian panelists in the majority; U.S. panelists dissenting) – ordered Commerce to revoke the CVD order, concluding that the programs were not specific based on a balancing of all four specificity factors and that Commerce had not demonstrated trade effects. An FTA extraordinary challenge

	committee – dividing 2-1 along national lines – affirmed the panel decision. Judge Malcolm Wilkey, retired Chief Judge of the Court of Appeals for the D.C. Circuit, stated that in his view "the Binational Panel Majority opinion may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read." Nonetheless, Justice Gordon L.S. Hart of the Nova Scotia Supreme Court explained that, while the FTA provided that review panels should apply domestic law, it was to be expected that panels would in fact apply a more searching analysis. In the Uruguay Round Agreements Act, the Congress reinforced that both major holdings of the FTA panel – that Commerce may not find specificity based on only one of the four statutory factors and that Commerce may not impose a CVD order without demonstrating the trade effects of the subsidy – were erroneous.
SOFTWOOD LUMBER AGREEMENT 1996 1996-2001	After the final FTA decision in Lumber III, Commerce revoked the CVD order but, in the absence of an injunction providing for retroactive application of FTA decisions, did not refund duty deposits made prior to the final panel decision. The Coalition filed suit in the Court of Appeals for the D.C. Circuit, challenging the constitutionality of the Chapter 19 binational panel review system. As a result of an agreement between the U.S. and Canadian governments to find a durable solution to the dispute, duty deposits were then refunded, the Coalition withdrew its constitutional complaint, and the parties agreed to seek a negotiated settlement. The first "U.S.-Canada Softwood Lumber Agreement" ("SLA 1996"), which emerged from these negotiations, took effect as of April 1, 1996, for a five-year term. The SLA 1996 established a tariff-rate quota on imports of softwood lumber from British Columbia, Alberta, Ontario and Quebec. Fees on over-quota shipments were collected by the Government of Canada. If prices for a given quarter were above a moderate level, additional tax-free quota volume was made available. In return, the United States agreed not to initiate any CVD or other trade-restricting action for the duration of the agreement. Considerable enforcement problems arose over the duration of the SLA 1996, as Canadian exporters experimented with various minor modifications to softwood lumber in an attempt to reclassify lumber products to evade SLA 1996 quotas. These efforts were eventually rejected by the courts, although not before significant evasion had occurred.
LUMBER IV 2001-2006	Canada declined to renew the SLA 1996 when it expired at the end of March 2001, and the Coalition submitted both CVD and antidumping duty ("AD") petitions to the U.S. government in April 2001. In 2002, Commerce made final determinations of an 18.8% subsidy and dumping margins averaging 8.4%, and the ITC made a final affirmative threat-of-injury determination in 2002. In May 2002, Commerce implemented CVD and AD orders at a combined duty rate of 27.2%. Canada challenged all three U.S. agency determinations -- CVD (subsidies), AD (dumping) and threat-of-injury -- before NAFTA Chapter 19 panels and dispute panels at the World Trade Organization ("WTO"). Canadian parties also challenged some Lumber IV agency findings before the U.S. Court of International Trade. **Countervailing Duty (Subsidy)**: Canada's WTO challenges to Lumber IV CVD outcomes failed. Its NAFTA challenges were inconclusive as a NAFTA extraordinary challenge proceeding was outstanding when Lumber IV was settled in October 2006 (see below).

	• August 2003: A NAFTA binational panel sustained most aspects of Commerce's findings, but remanded Commerce use of U.S. timber prices for benchmarks under a particular provision of the U.S. CVD regulations. (The panel subsequently reinforced, explicitly, that it did not categorically rule against "cross border" benchmarks in the lumber case.) During remand proceedings, Commerce relied on benchmarks based on Canadian log prices -- benchmarks that could not possibly account for a substantial portion of the subsidy because they are depressed by the abundance of under-priced government timber. At the same time, there was no basis in U.S. law or the evidence to force Commerce's subsidy calculations even lower, as the NAFTA panel did. • January 2004: Like the NAFTA panel, the WTO Appellate Body rejected Canada's claims that under-pricing of timber is not an actionable subsidy. The WTO found that if Canada so dominates the market that even *private* prices for timber in Canada are distorted, the United States can use U.S. timber prices to measure the subsidy as long as those U.S. prices are informative about Canadian market conditions. Commerce has found that both of these factual predicates exist. The WTO sustained only one, minor Canadian subsidy claim: that Commerce should consider whether a subsidy is passed through to the lumber producer if an independent party sells government-origin logs to the producer. • December 2004: Commerce completed the first administrative review of the CVD order. As revised in February 2005, the first CVD administrative review determination established a new CVD rate of 16.4%. • November 2005: Under pressure from the NAFTA panel, Commerce recalculated the original 2002 18.8% subsidy estimate and purported to show a *de minimis* subsidy (below 1%). • December 2005: Second CVD administrative review final results issued: 8.7% subsidy rate. • April 2006: The United States requested review of the NAFTA panel CVD outcome by a NAFTA extraordinary challenge committee ("ECC") at the time that the U.S. and Canadian governments announced their intention to settle Lumber IV (see below). Soon afterward, the two governments suspended the ECC proceeding pending completion of the settlement. • June 2006: Third CVD administrative review preliminary results issued: 11.2% subsidy rate. This was the last Lumber IV subsidy calculation. **Antidumping Duty**: Canada's only significant success in its WTO and NAFTA challenges against Lumber IV AD findings related to the "zeroing" margin-calculation practice. A NAFTA panel proceeding was ongoing when Lumber IV was settled in October 2006 (see below), but there was little prospect that the panel would invalidate the AD order. • July 2003: The NAFTA AD panel rejected all but a handful of the Canadian parties' claims. The panel subsequently acted outside of its jurisdiction in sustaining certain of the Canadian parties' arguments, but this never had an effect on margin calculations. • April 2004: The WTO Appellate Body sustained rejection of almost all of Canada's claims. The only material ruling in Canada's favor was that Commerce had improperly used "zeroing" in calculating dumping

rates.

- December 2004: Commerce completed the first administrative review of the AD order ("AD AR1"). As revised in January 2005, the first AD administrative review results established new AD rates of 3.1% for Abitibi, 4.8% for Buchanan, 1.8% for Canfor, 9.1% for Tembec, 0.9% for West Fraser, 8.0% for Weyerhaeuser and an "all others" rate applicable to most imports of 3.8%. The final results were appealed to the Court of International Trade, but the appeals were ultimately dismissed on mootness grounds.
- December 2005: Second AD administrative review final results issued. Primary ("all others") AD margin: 2.1%.
- June 2006: Third AD administrative review preliminary results issued. Primary ("all others") AD margin: 3.5%. This was the last Lumber IV dumping calculation.

Injury: Canada's WTO challenges to the Lumber IV threat-of-injury outcome failed. A NAFTA panel invalidated the May 2002 ITC threat-of-injury finding. But the ITC issued a different, affirmative threat-of-injury determination in connection with WTO proceedings.

- March 2004: A WTO panel ruled that the ITC needed to more thoroughly explain aspects of its 2002 finding of threat-of-injury from unfair Canadian lumber imports.
- August 2004: A NAFTA panel engaged in a wholesale reevaluation of the evidence underlying the ITC's 2002 threat-of-injury determination. The NAFTA panel also, among other things, forbade the ITC to reopen the evidentiary record, in violation of controlling court precedent. In addition, one member of the panel acted as an attorney in another ITC case during which common legal issues were litigated. Canada blocked the United States' request that the panelist be replaced. The panel ordered the ITC to enter a negative determination.
- September 2004: Under protest, the ITC complied with the August 2004 NAFTA panel ruling requiring the ITC to issue a negative threat-of-injury determination.
- November 2004: In response to the WTO panel's March 2004 decision that the 2002 threat-of-injury determination was inadequately explained, the ITC issued a new threat-of-injury determination ("Section 129 Determination"). Under Section 129 of the Uruguay Round Agreements Act, the United States began collecting duties pursuant to this new determination.
- August 2005: On August 10, 2005, a NAFTA extraordinary challenge committee ("ECC") dismissed a U.S. challenge to the August 2004 NAFTA panel decision that ordered the ITC to enter a negative determination. The ECC found that the panel exceeded its authority on one issue, but did not disturb the underlying panel decision.
- November 2005: The WTO panel approved the Section 129 Determination.
- April 2006: The WTO Appellate Body issued an opinion criticizing the November 2005 WTO panel decision but did not change the outcome.

	• July 2006: The Court of International Trade ruled that the Section 129 Determination was not a valid basis to maintain the CVD and AD orders. • October 2006: The day after the Lumber IV settlement came into effect (see below), the Court of International Trade purported to rule that the U.S. government was obligated to return all Lumber IV duty deposits. Setting aside the substance of the ruling, its issuance was irregular since the previous day's settlement made Canadian parties' claims moot. In February 2007, the Court of International Trade vacated its judgment in this case. **Constitutional Challenge:** Following invalidation of the May 2002 ITC threat-of-injury determination by bodies under the NAFTA, the Coalition challenged the constitutionality of the NAFTA Chapter 19 dispute system -- as it had done during Lumber III. As before, the constitutional challenge did not continue to a court decision because of a settlement (see below). But the legal underpinnings of the challenge had support among many respected constitutional law experts, the court hearing the challenge took it very seriously and it was an important factor leading to the settlement. • September 2005: The Coalition initiated the constitutional challenge before the U.S. Court of Appeals for the District of Columbia Circuit. • January-April 2006: Briefs were submitted in the case. • September 2006: The Court of Appeals held a hearing in the case. It subsequently requested and received additional briefs from the parties. • December 2006: The court dismissed the constitutional challenge in light of the October 2006 settlement of Lumber IV.
SOFTWOOD LUMBER AGREEMENT 2006 2006-present	The second "U.S.-Canada Softwood Lumber Agreement" ("SLA 2006") came into effect October 12, 2006. Under the SLA 2006: 1) the United States terminated collection of countervailing and antidumping duties on Canadian lumber; 2) Canada imposed taxes and quantitative restrictions on lumber exports to the United States; 3) the provinces are encouraged to move to non-subsidizing timber-pricing systems; and 4) roughly US$5 billion in duty deposits have been allocated in various ways. By its terms, the SLA 2006 is to last seven to nine years. Beginning shortly after the outset of Lumber IV, the United States and Canada made many attempts to settle the litigation. Agreement terms negotiated by U.S. and Canadian officials in December 2003 were supported by the Bush Administration and the U.S. lumber industry, but were rejected by Canada. SLA 2006 milestones: • April 2006: The United States and Canada announce their intention to settle Lumber IV based on a specified

set of terms.

- July 2006: United States and Canadian officials initial a settlement agreement text.

- September 2006: United States and Canadian officials sign a definitive settlement agreement text.

- October 2006: United States and Canadian officials sign amendments to the SLA 2006 and, on the same day (October 12), bring the agreement into force.

  Within a few days of the agreement coming into force, Quebec announces the first of many provincial lumber subsidy programs that violate the SLA's anticircumvention rules.

- December 2006: Canada enacts legislation to implement aspects of the SLA 2006.

- January 2007: Canada begins miscalculating SLA 2006 "surge mechanism" trigger volumes and quota volumes by failing properly to calculate "Expected U.S. Consumption" as required by the agreement.

- April 2007: At the request of the United States, the United States and Canada engage in official consultations regarding SLA 2006 compliance issues: 1) Canada's administration of provisions regarding calculation of trigger (surge mechanism) and quota volumes and 2) the provision of forbidden lumber subsidies.

- May 2007: Official consultations having failed to resolve the dispute, United States has the right under the agreement to commence binding arbitration. Hoping for a negotiated resolution, the U.S. government refrains from doing so.

- Spring 2007: In violation of the SLA, British Columbia adjusts its log-grading practices in a way that vastly expands the volumes of timber for which it charges a token 25 cents per cubic meter.

- August 2007: U.S. government commences arbitration regarding the trigger/quota volume issue, and announces intent to commence arbitration regarding the provision of forbidden lumber subsidies.

- December 2007: In trigger/quota volume arbitration, London Court of International Arbitration ("LCIA") tribunal holds a hearing in New York.

- January 2008: U.S. government commences second arbitration proceeding regarding forbidden subsidies.

- March 2008: In trigger/quota volume arbitration, LCIA tribunal rules that Canada violated SLA 2006 by failing to enforce properly quota restrictions on eastern provinces' exports in first two quarters of 2007. But the tribunal adopts Canada's interpretation that the SLA does not require the western provinces to make a

market share adjustment for surge export tax purposes (calculating the volume of shipments beyond which surge taxes must be paid).

- June 2008: United States Congress enacts the Softwood Lumber Act of 2008. The statute provides for declarations by lumber importers as to shipments' compliance with export tax requirements in trade agreements, including the SLA.

- September 2008: In quota volume arbitration, LCIA (formerly London Court of International Arbitration) tribunal holds hearing in New York regarding a remedy for Canada's improper enforcement of quota restrictions.

- January 2009: BC reduces Coast region stumpage by 70% expressly to aid its lumber industry.

- February 2009: United States Congress enacts American Recovery and Reinvestment Act of 2009, which, among other things, reverses U.S. Customs and Border Protection demands for repayment of funds distributed to U.S. lumber companies (and others) under Continuing Dumping and Subsidies Offset Act (Byrd Amendment).

- February 2009: In quota volume arbitration, LCIA tribunal rejects Canada's position that there should be no remedy and prescribes the preferred remedy recommended by the United States – an additional 10% export tax on Ontario and Quebec shipments to the United States until C$68 million is collected.

- April 2009: Canada having failed to implement the remedy prescribed by the LCIA tribunal in February or an alternative cure, the United States imposes 10% import tax on lumber imports from Ontario, Quebec, Manitoba and Saskatchewan as authorized by the SLA, utilizing authority provided under Section 301 of the Trade Act of 1974. Canada initiates a third LCIA proceeding under the SLA challenging the import tax.

- April 2009: Quebec announces that it will guarantee $100 million in financing to the insolvent AbitibiBowater, Canada's fourth largest softwood lumber producer.

- June 2009: In arbitration regarding U.S. import tax remedy to Ontario's and Quebec's quota overshipments, LCIA tribunal holds hearing in Washington, DC. Canada argues that it cured the breach by offering a Canadian government payment to the U.S. government.

- July 2009: In arbitration regarding forbidden Quebec and Ontario lumber subsidies, LCIA tribunal holds hearing in Ottawa. Canada argues essentially that no subsidies had been provided and that provincial authorities were being untruthful when they publicly announced programs to aid Ontario and Quebec lumber producers.

- September 2009: In arbitration regarding U.S. import tax remedy to Ontario's and Quebec's quota

	overshipments, an LCIA (formerly London Court of International Arbitration) tribunal ruled that measures imposed by the United States to address violations by Canada of the SLA are appropriate and justified. Canada indicates that it intends to comply with the LCIA decision, but takes no immediate action to comply and the United States continues to collect the remedial duty pursuant to Section 301. • January 2010: In arbitration regarding forbidden Quebec and Ontario lumber subsidies, the LCIA tribunal issues a new procedural order, directing the expert witnesses of both the United States and Canada to submit additional reports estimating the amount of the benefit provided to Canadian lumber producers under two Ontario subsidy programs and three Quebec subsidy programs. After several delays, the two expert witnesses submitted the requested report to the Tribunal in June 2010. • June 2010: British Columbia begins implementing changes to its timber pricing system. The price of many B.C. Interior timber stands sold without competition will be based solely on the volume and quality of timber estimated by a "cruise" of the timber before harvest. Until now, the B.C. government has required payment based on a "scale" (or measure and grade) of the timber after harvest. The new system appears intended to lock in recent timber pricing abuses in the B.C. Interior that are in violation of the SLA 2006. • September 2010: In arbitration regarding U.S. import tax remedy to Ontario's and Quebec's quota overshipments, Canada finally complies with the February 2009 LCIA decision and begins imposing the 10% remedial export on September 1, 2010. • October 2010: On October 8, 2010, the United States initiates formal consultations with Canada under the Softwood Lumber Agreement to address timber pricing practices in the British Columbia (BC) Interior that circumvent the SLA export tax regime. Since the spring of 2007, the BC Government has sold enormous amounts of timber to Interior lumber producers for the minimum price of C$0.25 per cubic meter, contrary to the rules governing eligibility for minimum stumpage prices that are grandfathered under the SLA. In effect, BC has collected export taxes from Interior lumber producers, and then funneled back hundreds of millions of dollars of those taxes in lower stumpage – basically nullifying the export taxes Canada promised to collect under the SLA. • January 2011: On January 18, 2011, the United States initiates arbitration against Canada to address timber pricing practices in the British Columbia (BC) Interior that circumvent the SLA. • January 2011: In arbitration regarding forbidden Quebec and Ontario lumber subsidies, the LCIA tribunal on January 21, 2011 issues ruling that subsidies provided by the Ontario and Quebec governments to lumber manufacturers in their provinces violate the terms of the SLA. The Office of the U.S. Trade Representative states that, according to the terms of the Tribunal award, Canada must implement a cure for this breach within 30 days or impose additional export taxes for the duration of the SLA. It is anticipated that these additional export taxes will amount to U.S. $ 59.4 million.

	• April 2011: In arbitration addressing timber pricing practices in the BC Interior, the LCIA Tribunal hearing the case conducts a procedural hearing in Washington, DC. The Tribunal subsequently issues a Procedural Order establishing a case schedule that allows for disclosure, briefing, and a hearing in February 2012. • May 2011: Examination of Alberta's reports pursuant to SLA Art. XV (17) of total harvest volume and total revenues collected for Alberta Crown softwood timber reveals that since at least the beginning of 2009 Alberta consistently has been collecting significantly less than the minimum stumpage charge of C$1.90/$m^3$. There is no discernible reason for this significant under-collection of stumpage dues. • June 2011: Mills holding tenure under a Timber Supply and Forest Management Agreement are required to perform silviculture under the terms of such Agreements. A number of tenure-holding sawmills in Quebec recently announced that they will not be performing the required silviculture work due to low lumber prices. The Government of Quebec responded by providing a $35 million grant to pay for the silviculture work itself, on the grounds that it would be bad for the silviculture workers to be unemployed. Quebec is effectively assuming the responsibilities of the tenure holders, and such action is inconsistent with the SLA. • July 2011: The anticipated regular update to the BC Coast Market Pricing System (MPS) fails to appear. Industry had been informed that the planned update would have increased timber prices by around C$7/$m^3$. Instead, the timber pricing formula from January 2009 remains in effect. • December 2011: The BC Timber Export Advisory Committee (TEAC) shifts its policy to make it easier for BC Coast mills to block log exports. The Minister of Forests overruled the TEAC (at least through April 2012) and continued to allow blocking of log exports when authorized under pre-December 2011 TEAC rules. Any strengthening of log export restrictions would increase the implicit subsidy to BC Coast producers and would be inconsistent with the SLA. • January 2012: The United States and Canada signed a two-year extension of the SLA on January 23, 2012, extending the expiration date to October 12. • February/March 2012: The LCIA held a hearing in the arbitration on the change in BC Interior log grading practices that led to hundreds of millions of dollars in stumpage reductions to BC Interior lumber produces. The hearing was held in Washington from February 27, 2012 through March 9, 2012. • July 2012: In the arbitration addressing timber pricing practices in the BC Interior, the LCIA tribunal on July 18, 2012 issued a ruling that BC's timber pricing practices do not circumvent the SLA. The LCIA did not take issue with the United States conclusion that the effects of the mountain pine beetle on the suitability of logs for producing lumber could not begin to justify the increase of timber graded and priced as mostly unsuitable for producing lumber in BC. The LCIA concluded, however, that it could not rule against Canada on this basis alone, and found that the United States was also required to demonstrate that a particular amount of misgrading could be attributed to each specific BC government action that facilitated

	misgrading. The LCIA concluded that without data connecting specific BC actions to specific changes in grading outcomes, it could not find an SLA violation – notwithstanding Canada's manifest inability to explain how half the BC Interior harvest could be graded as unsuitable for producing lumber, even as BC Interior mills were producing just as much lumber from the harvest as they produced prior to the mountain pine beetle outbreak.