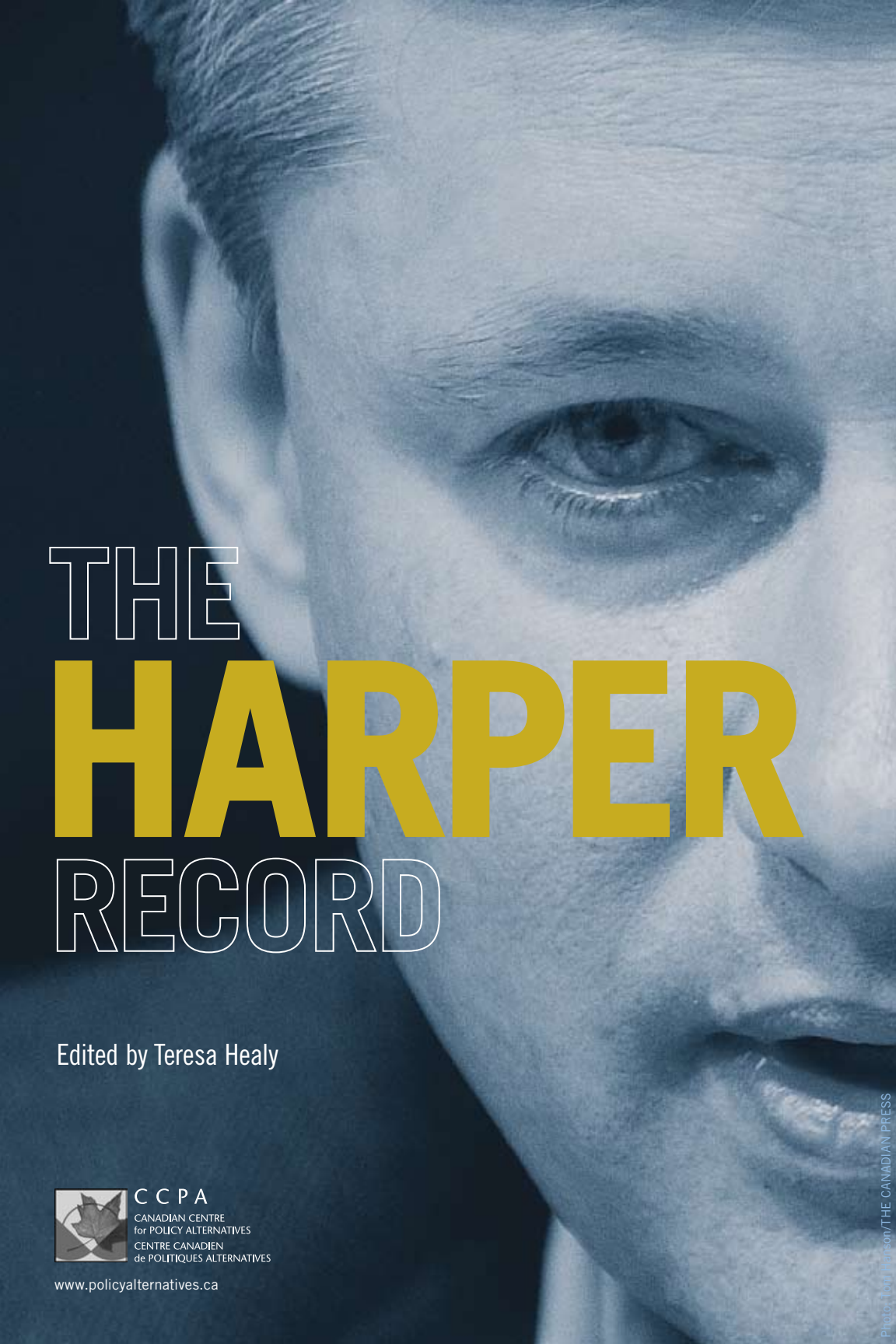

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The Softwood Lumber Agreement

Snatching defeat from the jaws of victory

Guy Caron

IT WOULD BE difficult to deny that Canadian politics have been increasingly polarized since January 2006. The handling of most public policy issues by the minority Conservative government has usually led to a great deal of acrimony and confrontation among political parties and stakeholders.

The 2006 Softwood Lumber Agreement is the exception to the rule. Inheriting the trade dispute which predated the Canada-U.S. Free Trade Agreement (CUFTA), the Conservatives managed to unite usually disparate voices against them, such as the *National Post*, the NDP, a major Fraser Institute spokesperson, and almost all players in the crucial forestry industry.

How did they enrage so many, so quickly? In recent years, the dispute had cost Canadian producers US$5 billion as Canadian softwood lumber was exported to the United States. The U.S. producers maintained that Canada was engaged in unfair trading practices and imposed an extra duty, which was then collected into a fund. Although trade panels continued to rule in Canada's favour, the U.S. lobby was relentless. A few weeks after coming to power, the neophyte Conservatives announced they had come to a deal with the Americans.

Conservative broken election promises

The public flogging the Conservatives received was well deserved. A few months earlier, at the Conservative party's Halifax convention, Stephen Harper, then leader of the Official Opposition, stated that any Canadian Prime Minister should ensure that the U.S. respect the rule of trade law:

> It is at least now established that the Prime Minister and President will speak about the softwood issue in the hopefully not too distant future. If I were Prime Minister at that time, what would a Conservative Prime Minister say in that conversation?
>
> First and foremost, I would seek a clear commitment of the United States to comply with the NAFTA ruling. If the Canada-U.S. trade relationship is to remain a fair, stable, rules-based system, then the United States has a moral obligation to return those duties to Canadian lumber companies.
>
> There can be no question of Canada returning to a conventional bargaining table, as the U.S. ambassador has suggested.
>
> You don't negotiate after you've won.
>
> The issue is compliance. And achieving full compliance should be the objective of the Prime Minister.[1]

It is now clear that Stephen Harper did not follow his own advice before signing the Softwood Lumber Agreement. Worse, the Conservatives were so desperate to get an agreement — any agreement — that they broke no less than three 2006 electoral campaign promises to get it.[2]

First, in line with Harper's Halifax speech, the Conservatives promised to "demand that the U.S. government play by the rules on softwood lumber" and "that the U.S. abide by the NAFTA ruling and return more than US$5 billion in illegal softwood lumber tariffs." This did not happen.

Secondly, the Conservatives reneged on the promise to "provide real help for Canadian workers and businesses coping with illegal American trade actions" by guaranteeing the repayment of the illegal tariffs through

Export Development Canada. The forest companies were thus promised a win-win situation: they were getting back what they paid in tariffs from the U.S. (provided they won in court), or from the Canadian government (if they lost). In either case, they would get the much-needed security necessary to ensure sound investment decisions.

Once in power, the Conservatives refused to provide direct help or guarantee any loan to help the industry stay afloat. There were dire consequences, as the president of the Québec Forest Industry Council (QFIC), Guy Chevrette, attested to the House of Commons Standing Committee on International Trade[3]:

> On August 18, the Québec industry considered whether it would be better to accept a somewhat imperfect agreement or not have an agreement at all. The consensus was that we should accept the imperfect agreement, for a whole host of reasons...
>
> Would the result of vote [of the members of the QFIC] have been the same? Well, I can tell you that there would not have been as broad a consensus if there had been real loan guarantees in place...
>
> A whole host of reasons prompted people to vote the way they did. Some were just completely fed up and disgusted with the whole dispute. In other cases, their financial position is extremely weak. And as you know full well, others still have just asked for protection under the Bankruptcy and Insolvency Act. For them, these deposits will be a shot in the arm.

The third broken promise? The Conservative electoral platform vowed to "make all votes in Parliament, except the budget and main estimates, free votes" for ordinary Members of Parliament. But Stephen Harper declared the ratification of the Agreement by the House of Commons to be a motion of confidence in the government, in spite of this electoral commitment.

The root of the problem

The 2006 Softwood Lumber Agreement didn't put an end to the crisis which, it should be remembered, dates back over 25 years, not to 2001, as is commonly assumed.[4]

TABLE 1 *History of the Softwood Lumber Agreement*

Countervailing duty investigations	Outcome
Softwood Lumber I: 1982	U.S. authorities decided there was no Canadian subsidy
Softwood Lumber II: 1986	15% U.S. Import tax; Replaced by 15% Canadian export tax in MOU
Softwood Lumber III: 1991	After CUFTA, Canada unilaterally terminates the MOU; Countervailing case filed by U.S.; Canada wins appeal against countervailing duty in CUFTA (1993 and 1994); U.S. revokes duties against Canadian lumber (Aug. 1994); Bilateral consultation ends with a five-year Softwood Lumber Agreement (1996 SLA)
Softwood Lumber IV: 2001	In 2001, the U.S. imposes countervailing and anti-dumping duties amounting to 27.2% (Apr. 2002); Canada wins a series of WTO, U.S. International Trade Tribunal and NAFTA decisions; One day prior to the final appeal of the NAFTA panel decision ruling, the 2006 Softwood Lumber Agreement is signed.

SOURCE Gulati, Sumeet and Malhotra, Nisha, Estimating Export Response in Canadian Provinces to the Canada-US Softwood Lumber Agreement, Canadian Public Policy, Vol. XXXII, No. 2, 2006 (updated by author)

Act I

In 1982, the U.S. lumber industry was in bad shape. Interest rates had peaked at 20.5% the previous year and were in double-digit country in the four previous years, slowing down the housing industry. The Canadian lumber industry, boosted by a simultaneous 25% depreciation of the Canadian dollar, suddenly found itself in position to take over the North American market.

The U.S. industry cried foul and called for the Reagan administration to slap an import tax on Canadian lumber, claiming that the fees charged by some provincial governments for harvesting softwood on Crown lands were too low. The U.S. government was unwilling to follow up on these charges, and the first act of the softwood lumber dispute died down.

Act II

In 1986, the situation had barely improved, and the U.S. industry once again complained that the stumpage fee on Crown lands (as opposed to their auctioning) constituted an unfair trade practice. The industry's arguments may have been more convincing this time around, or it might have been that the Reagan government wanted a trump card for their ongoing trade agreement negotiations with Canada. In any case, the U.S. government slapped a 15% countervailing duty on Canadian lumber.

The Mulroney government felt the pressure and caved in by agreeing to set a 15% export tax that replaced the U.S. import tax through a Memorandum of Understanding (MOU). This MOU was eventually included as a side agreement to the Canada-U.S. Free Trade Agreement (CUFTA). In buying the peace in this manner (or more accurately, by using the industry's money to buy the peace), Canada closed the second act in the softwood lumber drama.

Act III

In 1991, feeling that CUFTA (the Canada-U.S. Free Trade Agreement, which came into effect in 1989) provided sufficiently adequate provisions to regulate the lumber trade, Canada terminated the export tax. The U.S. replied by re-establishing the countervailing duty. The U.S. was compelled to revoke this action after Canada won its case through CUFTA's dispute settlement mechanism appeal process. Bilateral negotiations were then undertaken, and a five-year Softwood Lumber Agreement was signed on April 1, 1996. That is how the curtain fell on the third act.

Act IV

The Agreement ran its course and expired in March 2001. The U.S. response was swift: A mere month later, the U.S. Department of Commerce initiated yet another investigation, and the following March applied countervailing duties of up to 35%. The curtain was lifted, and the fourth act included ongoing litigation in trade courts at all levels of govern-

ance. In a short while, the U.S. had collected over $5 billion in duties from Canadian producers exporting to the U.S.

In the spring of 2006, the Conservative government was swift to declare victory, claiming the Softwood Lumber Agreement ended the fourth instalment of this drama, which Canadian lumber companies would surely call a tragedy. But most industry experts and players quickly predicted that the terms of this Agreement all but ensured there will be an Act V to the softwood lumber dispute in the near future.

Privatized forests vs. socialized Crown lands?

Why is the Canadian lumber industry consistently in the cross-hairs of the U.S. Department of Trade? Are the companies and provincial government really guilty of unfair trade practices? Are they illegally pricing the U.S. lumber industry out of their own markets?

The core of the dispute lies in the ownership of North American forests and the way access to the resource is distributed.

In the United States, most forestland is private and, in large part, belongs to lumber companies. Constitutionally protected property rights provide full freedom for these owners to dispose of these forests as they see fit, and, because of their importance, the companies largely set market prices.

Canada's forests belong mostly to the Crown. Logging rights are attributed at a set price, and, unlike the U.S. public forests, the industry here pays for most of the costs attached to roads, replanting, and protection against forest fires and other disasters. Other conditions are regularly set, depending on the provinces, such as "appurtenance," or the obligation for a company to cut and transform the lumber where it is picked up, thus ensuring livelihood for communities living near the resource.

Living in a privatized world, the U.S. lumber industry perceives Canada's largely public forests to be an example of creeping socialism, contrary to the principles of free enterprise, and concludes that, because it exists in a "socialized" system, the Canadian industry must be living off subsidies and thus unfairly competes with the U.S. market system.

This explains why the U.S. has repeatedly tried to impose its system in Canada, albeit with limited success so far. British Columbia has agreed to implement some form of auction, but no province is seriously considering privatizing its forests in the American way. At least, not yet.

The terms of the Agreement

For two countries that are consistently praying at the altar of freer trade and unfettered markets, the 2006 Softwood Lumber Agreement is deeply interventionist and protectionist — even though the protectionist aspect is one-sided in favour of the southern industry.

There are three main aspects of the Agreement:

- Canada received US$4 billion back from the total of US$5 billion in duties illegally collected by the U.S.
- Canadian producers were compelled to choose between two options involving export taxes and quotas.
- Canada had to forfeit $1 billion of the disputed funds, which were then distributed to U.S. lobby and industry groups.

1. Canada gets back some of the money illegally collected

At the heart of the matter was the US$5 billion paid over the previous five years by Canadian lumber producers in duties. Trade courts from NAFTA and the WTO repeatedly ruled that such duties were illegally collected, but, in signing the Agreement, Canada agreed to forfeit a portion of these duties, collecting only US$4 billion.

To add insult to injury, the Canadian forest industry paid $5 billion in countervailing duties with a strong U.S. dollar, but got $4 billion back of a much weaker currency. This means that the industry didn't get back 80 cents on the dollar, but more around 60 cents on the dollar. In other words, if Canadian lumber companies were to get back these duties with a constant U.S. dollar, they would have obtained close to $6.5 billion.

TABLE 2 *2006 Softwood Lumber Agreement export tax and quota formulas*

Prevailing Monthly Price	Option A: Export Tax (as a % of Export Price)	Option B: Export Tax (as % of Export Price) AND Quota
Over US$355	No Export Tax	No Export Tax and No Quota
US$336–355	5.00%	2.5% Export Tax and 34% U.S. Market Share
US$316–335	10.00%	3% Export Tax and 32% of U.S. Market Share
US$315 or under	15.00%	5% Export Tax and 30% of U.S. Market Share

2. Canadian producers must choose between two options

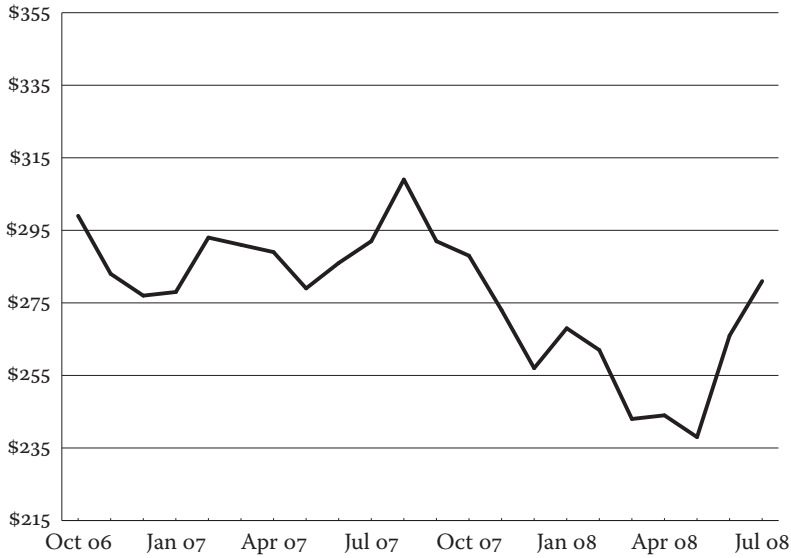
As Table 2 shows, should the price of lumber fall below US$355 per thousand board feet, the main regions of Canada will either pay an export tax that increases as the price decreases or will be subject to a quota and an export tax, both varying according to the price of lumber.

Alberta and British Columbia chose Option A while Québec, Ontario, Saskatchewan, and Manitoba chose Option B. (The Maritimes were excluded from the Agreement, arguably because most of the softwood exploited in Atlantic Canada grows in private forests.)

At the time of the signing, the lumber price was US$290 per thousand board feet. Since then, it reached a peak of US$309 in August 2007. As these lines are written, in June 2008, the last month for which data were available, prices stood at US$281.[5] This means that Canadian producers have paid the highest export tax possible and were subjected to the lowest quota amounts during every single month that elapsed since the signing of the Agreement, and will continue to do so for the foreseeable future.

Over and above option A's export taxes is also a "surge mechanism," a surcharge that kicks in if a region exceeds a given maximum volume in exports. If this volume is exceeded by more than 10%, the applicable export tax increases by half.

CHART 1 *Prevailing monthly lumber price (US$)*



3. Canada must return US$1 billion to U.S.

The Harper government also agreed to give away US$1 billion of the collected duties that legitimately belonged to the Canadian softwood industry players. Half of this money found its way toward the coffers of the U.S. Coalition for Fair Lumber Imports, the same group that is behind all the trade challenges.

The Conservatives thus yielded lunch money to the school bully and undoubtedly endowed him with a war chest for future trade challenges.

The U.S. government announced that the remaining US$500 million would be distributed as follow:

- US$200 million to the U.S. Endowment for Forestry and Communities to support educational and charitable causes of public interest in American timber-reliant communities (Canada's timber-reliant communities receive nothing);

- US$150 million to the American Forest Foundation, an organization representing the interests of private forestland landowners;
- US$100 million to Habitat for Humanity, which announced the funds will be allocated through 4,000 grants of US$25,000 each — the cost of lumber for the typical U.S. Habitat home.
- US$50 million to the Bi-national Council, a mysterious organization whose officers are the executives of large timber companies and one of whose co-chairpersons is the chairman of the U.S. Coalition for Fair Lumber Imports, Steve Swanson.

When the deal was announced to Parliament on April 26, Stephen Harper said: "I am pleased to announce today that the United States has accepted Canada's key conditions for the resolution of the softwood lumber dispute. Canada's bargaining position was strong, our position was clear, and this agreement delivers."[6]

The Agreement did deliver...lots of moneybags to the U.S. lumber industry.

Canada comes to the rescue of the U.S....twice

Harper was at least right about Canada's bargaining position, which was strengthened by numerous decisions from international and American trade courts that consistently ruled in favour of Canada in this dispute. The last such decision prior to Harper's April 2006 announcement was rendered unanimously. A month before the Harper-Bush Softwood Lumber Agreement, a NAFTA panel ruled that Canada's subsidies to its lumber industry amounted to less than 1%[7]. Thus, the U.S. was not entitled to collect countervailing duties.

The panel itself was composed of three Americans (including a judge who had specifically been appointed by the U.S. to ensure the panel would respect the standard of review) and two Canadians. There was no impropriety noted during the decision, but the U.S. was entitled to a last kick at the can by filing an extraordinary appeal. It had until April 27 to do so, and a final decision would have been announced seven months

later. That decision would have meant the end of the dispute. All the trump cards were in Canada's hand.

But Canada folded this winning hand. By announcing this Agreement on April 26 — the day before the extraordinary (and final) appeal-filing deadline, the Conservative government prevented this major case for jurisprudence from getting in the books. The announcement of the Agreement effectively suspended the NAFTA panel decision.

It gets worse. As long as a final Agreement was not signed — and negotiations were ongoing in regard to the last details of the deal — trade courts continue to study and rule on the cases that were presented to them. The World Trade Organization continued to assess the dispute. Canada's bargaining position was strengthened yet again with the August 15, 2006 WTO ruling in favour of Canada in the calculation of anti-dumping duties.[8]

Refusing to be swayed by this ruling in Canada's favour, the Conservative government reacted by announcing it would introduce the Softwood Lumber Agreement to Parliament and it would raise the stakes by making the vote a question of confidence. This meant Harper was threatening an election over the matter. The Agreement was signed on September 12 and, with the support of the Bloc Québécois, it was adopted on September 19 to come into force on October 12.

Fool me once, shame on you; fool me twice, shame on me

The announcement of the Softwood Lumber Agreement occurred the day before the deadline for the filing of a last appeal, while the signing occurred one day before a ruling of the U.S. International Court of Trade. The Court ordered the Bush administration to fully refund the US$5.3 billion in duties to the Canadian lumber industry.[9] By signing the Agreement, the Conservative government threw away a full victory, through a U.S. trade tribunal, in a decision that could not be appealed. It was, however, rendered moot since Canada abandoned its claims when Stephen Harper signed the deal. Thus, Canada bailed out the U.S. softwood lumber industry not once, but twice in six months.

By doing so, they all but ensured that there will be a fifth lumber dispute where both countries will start from square one again.

That October 13 decision isn't the only thing that was rendered moot. In fact, the Softwood Lumber Agreement nullified all of Canada's previous legal wins. As Carl Grenier, vice-president of the Free Trade Lumber Council, said after the April announcement: "Every victory obtained over the past three years under NAFTA has just been erased with the single stroke of a pen."

What Mr. Grenier means is that, if litigation starts again, for whatever reason, the Agreement leaves the United States entirely free to reassert all its former positions, even those that were rejected as illegitimate by the NAFTA and WTO panels, as well as the U.S. courts.

Softwood lumber industry: Take it or leave it

Why would the Canadian softwood lumber industry agree to such a bad deal? By and large, it did not. In fact, most Canadian companies initially denounced the deal as a cop-out and accused the Conservative government of caving in. However, the industry was in such a dire financial situation that it was in no position to fight against the U.S. lobby and the Conservative government at the same time. It was a bad agreement, but, as these testimonies to the House of Commons Standing Committee on International Trade demonstrate, the deal was seen by the stakeholders as a better alternative than no deal at all:

> We've been told that this is the deal, take it or leave it, and if you leave it, don't expect support. Under these circumstances, given the state of the industry after four or five years of being bled to death, I doubt the industry would use its so-called veto, because it's a party to these litigations. It has to agree to drop these legal suits. I doubt, as we speak now, it would re-exercise that veto. It's just too badly off. That's unfortunate, in my view, but that's the situation we're in now.[10]

> When you don't have a financial quagmire over your head, it allows you to think more long term. I think right now, as everyone around this table has recognized, getting the deposits back is obviously a huge plus. It's a huge lure. It's short-term gain, and everyone needs that right now. But then, as Mr. Wakelin said, you have that short-term gain, but where are you going to be seven years from now? So you get this de-

> posit in year one — we won't get it back in a year, but maybe 18 months from now — and what happens after that? What happens for the next five and a half years?[11]
>
> If the only question were, do you want this deal, and if you don't we'll go back to Washington, carry on litigation, and try to get you a better deal, that's where we'd be today: at the second choice. But we haven't been given that choice. We've been told by the government, take it, or we're walking away and leaving you an orphan. That's the problem.[12]
>
> My conclusion is that this deal is not a good deal. It's very difficult, but it can be made acceptable to those who find it important to leave the uncertainty and the costs of the past several years and to go to a land where there will be greater certainty and greater ways to plan. There are things that can be done.[13]

Despite the federal government's arm-twisting of the industry, not all companies were coerced. The Agreement required Canadian companies holding a balance of 95% of the US$5 billion duties returned to Canada to promise the collective surrender of US$1 billion to the U.S., and it soon became obvious that the numbers wouldn't be there.

Resorting to the old divide-and-conquer strategy, the Conservative government bullied the resisters by promising, on the one hand, a tax amnesty on the returned duties if a company returned 20% of it to a fund that would be handed to the U.S. government and, on the other hand, by threatening to slap a special 19% charge on the returned funds for those companies who refused to pay their share of the US$1 billion. The Conservatives then added these fines to the same Washington-bound fund.

Behind the madness

A neutral observer could be excused for being unable to make sense of the situation. During the electoral campaign, the Conservatives promised to "stand up for Canada." Why would they sign a deal which:

- refunds the legal fees of their opponents and competitors five times over;

- gives an additional US$500 million to various industry groups;
- sets export taxes and a quota system that are certain to limit the growth and development of the industry; and
- arm-wrestled the industry to force them to accept a deal nullifying all the previous legal victories?

Gordon Gibson, former B.C. politician and a Senior Fellow at the Fraser Institute, provides an answer:

> The inexperienced Harper administration seized the chance to brag that in only a couple of months it had been able to fix an issue the Libs couldn't solve for five years. And it would validate Emerson's sleazy jump to the Tories. As a result, they bought a deal so loaded in favour of the Americans it was arguably worse than the one the Martin government had turned down earlier.[14]

Gibson will avoid any suspicion as to his beliefs in matters of trade. After all, he has written extensively in the past on the need for closer economic links with the U.S. But Gibson simply couldn't swallow this deal. In the same scathing opinion piece published in the *Globe and Mail*, he wrote:

> Bad deal? Never mind. On April 27, Mr. Harper told an astonished House of Commons the issue had been settled. At that very hour, American lawyers were filing papers to restart the legal process. The U.S. lied, and we said nothing. Without that betrayal, the very next day the final NAFTA decision would have kicked in and countervail duties would have ended at once.

Gibson's foresight was certainly confirmed by a leaked copy of a letter written by the U.S. Department of Commerce to the U.S. Coalition for Fair Lumber Imports. This letter stated the U.S. government viewed the Accord's purpose was to "mitigate to the greatest extent possible Canadian practices found by the Department of Commerce to constitute unfair trade practices... This will be a guiding consideration in the U.S. government's monitoring and enforcement of the 2006 Softwood Lumber Agreement."[15]

So intent were the Conservatives to claim victory at all costs that International Trade Minister David Emerson simply dismissed any allegation that his U.S. counterpart could be negotiating in bad faith.

A war to end all wars?

Canadian companies have paid a steep price for peace in the softwood lumber dispute. The industry is betting that the Agreement will bring peace and will allow them to concentrate on getting back on track. Should we then believe that stability is guaranteed?

Stephen Harper wanted us to do so when he said of the Agreement that "this Agreement will end years of costly legal wrangling, and allow us to move on to build a stronger, more prosperous Canada."[16] B.C. Premier Gordon Campbell celebrated the Agreement by saying, "It's time for the costly litigation and instability experienced over the last decade to end and for a new chapter in British Columbia's ongoing forestry revitalization to begin."[17]

In theory, the Softwood Lumber Agreement is a seven-year deal, with a possible two-year extension. But when the Agreement reached the 18-month mark in April 2008, a provision was activated giving either country the right to abrogate the accord with a mere six-month notice, by simply contending that the other signatory hasn't respected its terms. No proof needed.

It is thus very possible that (accounting for the effect of the U.S. dollar depreciation), the Canadian lumber industry was forced to fork out about 40 cents on the dollar — 40 cents that all trade courts stated rightfully belonged to these Canadian companies — for the privilege of having a Softwood Lumber Agreement over which is suspended Damocles' sword.

Recent events demonstrate that the sword is dangling dangerously.

In August 2007, merely nine months after the signing of the Agreement, U.S. trade representative Susan Schwab announced the U.S. was launching arbitration proceedings, claiming that Canada was violating the terms of the treaty. First, they claimed that the full export tax should have been imposed from October to December 2006 for the regions that chose Option B (Canada only collected a 5% export tax, while

the U.S. contended it should have been 15%); and second, they claimed Canada hadn't properly collected the funds that should have been imposed through the surge mechanism.[18]

In a Solomon-like ruling, the London Court of International Arbitration rendered a split decision by agreeing with the U.S. on the first case, and with Canada on the second.[19]

It doesn't end there. In January 2008, the U.S. tabled a second complaint, arguing that the Conservative government's proposed creation of a $1 billion Community Development Trust was in violation of the Agreement. The Trust is aimed at helping communities that are dependent on a single industry (such as forestry, mining or automobile) to get through the manufacturing crisis, but the U.S. contends that the funds are used to subsidize the industry.[20]

In May 2008, the U.S. Congress passed a farm bill that will have serious repercussions on the Canadian lumber industry. The farming provisions won't affect softwood lumber, but a rider has been attached to the bill by some Congressmen sympathetic to the U.S. lumber lobby, which would mandate U.S. importers to certify that all taxes on the imported lumber have been properly paid.[21]

In the face of this evidence, it is hard to argue that the era of costly litigation is over.

Consequences for NAFTA

So far, we have seen that Canadian forest companies paid US$1 billion (of which US$500 million went to their direct competitors) for an Agreement that can be cancelled at any time, and which did not end litigation.

Is it getting any worse? It depends on what you think of the North American Free Trade Agreement (NAFTA).

Elliot J. Feldman, head of International Trade Practice at Baker Hostetler LLP, and a director of the Canadian-American Business Council, believes that the Agreement weakens NAFTA, to the point of making it irrelevant:

> It means that those countries that previously have agreed to settle their international trade disputes by the rule of law have succumbed to making deals instead. When deal-making replaces the rule of law, the process always favours the strong over the weak and rarely resembles anything like justice.[22]

In an editorial shortly after the April announcement, the *National Post* agreed with Dr. Feldman's assessment:

> The deal is too generous to American lumber producers. Even though they have been on the losing end of numerous World Trade Organization (WTO) and NAFTA hearings, the framework allows the United States to keep about US$1 billion of the penalty dues they have unfairly collected from Canadian softwood companies over the years.
>
> This is a terrible precedent to set. The message is that flouting trade rulings is not only acceptable behaviour, but will be rewarded. Acceptance of such a deal is a de facto admission by Canada that what we have with the United States is not free trade, as such, but trade on its protectionist terms.[23]

The Agreement doesn't ring NAFTA's death knell. However, it clearly shows that the dispute-resolution mechanisms that Canada fought for in CUFTA and NAFTA have no teeth and that, as was the case before these trade agreements were signed, Canadians will likely have to rely on U.S. trade law and U.S. administrative tribunals to right a wrong.

Conclusion

The Softwood Lumber Agreement is a victory of form over content. The Conservative government is possibly alone in believing that the Agreement settles the dispute, and represents a victory for Canada and its forestry industry.

In the end, the industry went along because it had no choice. Call it a survival instinct or merely resignation over things it can't change. Furthermore, the Conservatives can be expected to boast about their "win" during the next election.

TABLE 3 *Trade decisions from April 2001 to October 2006*

Date	Body	Decision
May 2002	US-ITC	Lumber imports from Canada threaten material injury to the U.S. Industry (but hasn't caused this injury yet)
July 2002	WTO	(1) Preliminary ruling that the U.S. should scrap or change the Byrd Amendment (which gives back the collected duties to U.S. industry); (2) Interim report that states Canadian stumpage fees can be a subsidy, but the U.S. cannot use cross-border comparisons to determine the level of subsidy.
May 2003	WTO	Final report is released confidentially. Canada claims it declared its lumber industry is not subsidized; The U.S. claims it declares it subsidized, but calls the U.S. method to determine the subsidy level improper.
July 2003	NAFTA	Anti-dumping duty on softwood lumber can stay in place, but needs to be lowered from its 8.4% level.
August 2003	NAFTA	The U.S. has been unable to properly demonstrate that Canada's "subsidies" provided a benefit to its lumber industry. It is given 60 days to restate the case that Canadian stumpage rates conferred a benefit to its forest companies.
September 2003	NAFTA	Remanded the 2002 U.S. International Trade Commission decision, citing "extensive lack of analysis"
April 2004	NAFTA	Remanded the 2002 U.S. International Trade Commission decision for a second time (after the U.S. modified their calculations), saying the U.S. International Trade Commission has not provided enough evidence to prove its case.
May 2004	USITC	Demanded that the NAFTA panel reconsider its position, saying it has "manifestly and repeatedly overstepped its authority".
June 2004	NAFTA	The NAFTA panel rejects the USITC request.
August 2004	NAFTA	Orders the USITC to rule that lumber imports from Canada don't pose a threat of injury to the U.S. industry.

The main question at this point is: will they still be at the country's helm to pick up the pieces for the inevitable Fifth Act?

TABLE 3 (CONT.) *Trade decisions from April 2001 to October 2006*

Date	Body	Decision
September 2004	USITC	Complies with the NAFTA panel's ruling and declares that lumber imports from Canada don't pose a threat of injury to the U.S. industry.
November 2004	NAFTA	U.S. government requests an Extraordinary Challenge Committee (ECC) to contest the NAFTA panel injury ruling.
May 2005	US-CIT	Canada files a lawsuit challenging the Byrd Amendment
August 2005	NAFTA	The ECC confirms the NAFTA panel's decision, ruling that lumber imports from Canada don't pose a threat of injury to the U.S. industry; The U.S. continues to collect duties, invoking the confidential WTO report declaring the threat of injury from subsidies existed.
August 2005	US-CIT	Following the previous ECC decision, Canada files another lawsuit with the U.S. Court of International Trade seeking the refund of duties collected.
October 2005	NAFTA	A NAFTA panel found once again that the countervailing duties were too high and orders the U.S. to lower them again. The U.S. tries to delay by asking for clarification of the ruling, but the NAFTA panel rejects the request. The U.S. appeals that decision.
March 2006	NAFTA	Denies a challenge filed by the Coalition for Fair Lumber Imports that the countervailing duty should have stayed above 1%. The U.S. government has until April 27 to request an Extraordinary Challenge Committee. On April 26, the Softwood Lumber Agreement is announced.
July 2006	US-CIT	Ruled that the U.S. can't legally collect duties on lumber shipped from Canada.
October 2006	US-CIT	The day after the implementation of the Agreement, the US-CIT ruled that Canada should be refunded the full amount of the duties.

ACRONYMS US-ITC: U.S. International Trade Commission (An independent federal agency determining import injury to U.S. industries in antidumping, countervailing duty, and global investigations); WTO: World Trade Organization; NAFTA: North American Free Trade Agreement; US-CIT: U.S. Court of International Trade (Customs panel with exclusive jurisdictional authority to decide any civil action against the United States, its officers, or its agencies arising out of any law pertaining to international trade).
SOURCE U.S.-Canada Trade Dispute Timeline — 1982 to present, Random Lengths Publication, http://www.randomlengths.com/pdf/Timeline.pdf.