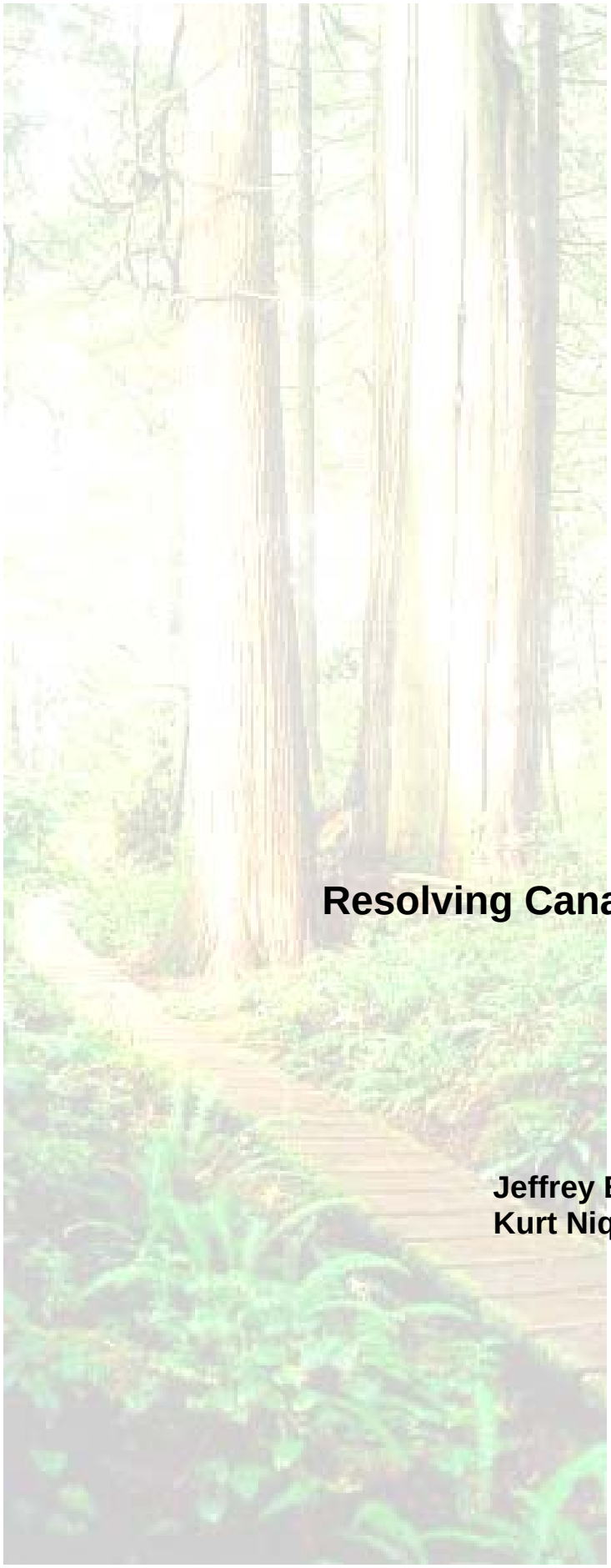

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Resolving Canada-U.S. Trade Disputes in Agriculture and Forestry: Lessons from Lumber

Jeffrey Biggs, Susanna Laaksonen-Craig,
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RESOLVING CANADA-U.S. TRADE DISPUTES IN AGRICULTURE AND FORESTRY: LESSONS FROM LUMBER

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ABSTRACT

Prominent trade disputes between Canada and the U.S. involve agriculture and forestry, with lack of transparency caused by Canadian non-market institutions a source of U.S. objections. Though there has been a recent flurry of activity in the binational dispute resolution panel on Canadian exports of wheat, one of every six panels since 1989 has involved softwood lumber. We examine lessons from the lumber dispute to shed light on U.S. objections to the Canadian Wheat Board (CWB). We argue that U.S. lumber lobbyists will continue to use perceived Canadian institutional obscurity to keep pressure on policymakers, while the CWB system enables similar agricultural interests in to agitate for trade sanctions. Traditional strategies such as dispute resolution boards, appeals to the WTO, and bilateral policy reform can only buy Canada time – new strategies are needed if Canada is to maintain sovereignty over its trade institutions.

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INTRODUCTION

Canada and the United States are each others most important trading partners. In 1988, the two countries concluded a Free Trade Agreement (FTA) that was subsequently expanded in 1994 when Mexico was included in the North American Free Trade Agreement (NAFTA). While NAFTA has benefited all three countries, tripling (nominal) merchandise trade between Canada and the U.S from under 200 billion CAD in 1989 to $550 billion CAD in 2003, there have also been glitches (Canadian Embassy 2004). Some of the most

prominent trade disputes have involved agriculture and forestry, where state intervention plays a significant role. From the U.S. perspective, Canada's state trading in wheat (and marketing boards in an earlier dispute[1]) and near exclusive public ownership of forestlands, with less than transparent setting of stumpage prices, are viewed as obstacles to free trade. From the Canadian perspective, political lobbying by vested interests in these sectors has resulted in U.S. intransigence in freeing the flow of agricultural and forest products.

In this paper, we examine these disputes and argue that lessons learned from two decades of conflict in softwood lumber can be applied to the dispute concerning state trading by the Canadian Wheat Board (CWB), which has been 'heating up' in recent years. The situations share several commonalities. Lobbyists in the United States protest that Canadian institutions violate the spirit of free trade as agreed to under NAFTA and the General Agreement on Tariffs and Trade (GATT) as administered by the World Trade Organization (WTO), and that they are injured as a result. In both the lumber and wheat cases, Canada appealed to the Department of Commerce, the NAFTA binational panel and the WTO in an effort to resolve the trade disputes. In both, similar rulings have been made by these panels: though Canadian institutions require minor reform, their non-market (or quasi-market) nature is not inherently trade distorting. As a result, large initial duties have been ruled unjustified in most instances. Nonetheless, given significant and repeated U.S. intransigence in accepting these rulings in the softwood lumber case, Canada has used Memoranda of Understanding (MOU), export quotas, export taxes, provincial policy reforms and other compromises in an effort to resolve the dispute and avoid duties.

The paper is organized as follows. We begin by providing a brief history of the CWB dispute, placing particular emphasis on specific U.S. complaints, relevant GATT/WTO principles and recent rulings. This is followed by an in-depth overview of the softwood

lumber dispute. Since the U.S. has imposed a condition on Canada for resolving the current trade dispute – greater transparency in the setting of administered stumpage fees on publicly owned forestlands – we discuss this condition in greater detail in the context of British Columbia's proposed reliance market-transaction evidence (data from timber auctions) to determine stumpage charges on all harvests, and the prospects that such changes have for resolving the lumber trade dispute. Similarities between this case and that of wheat will then be drawn, and we will conclude with some lessons that the lumber case may provide for Canada when it comes to its trade with the U.S. in wheat and other agricultural commodities.

CANADA U.S. TRADE DISPUTE IN WHEAT

The Canadian Wheat Board marketing regime has been the target of U.S. grain producers since the beginning of the FTA. Canada voluntarily entered into a one-year agreement to limit its wheat exports to the U.S. in 1994, but exports to the U.S. rose by 17% in the subsequent five years while imports from the U.S. fell. Consequently, the North Dakota Wheat Commission (NDWC) filed a petition with the U.S. Department of Commerce (DOC) in September 2000 alleging that Canada's state marketing system injured U.S. wheat producers. The action was subsequently supported by the U.S. Wheat Associates, the National Association of Wheat Growers, and the Wheat Export Trade Education Committee. Wheat growers also filed a petition with the WTO alleging that the CWB uses price discounts, over-delivery on quality factors and other discriminatory practices.

The U.S. government has long contended that the existence of the CWB as Canada's state-run exclusive exporter of wheat constitutes an illegal subsidy. Many of these complaints originated in North Dakota, which produces 50% of the U.S. hard spring wheat crop and identifies itself as the primary beneficiary of the recent dispute (NDWC 2005). However, an

economist at North Dakota State University identified several claims by U.S. producers and politicians that he described as "misguided, unsubstantial or irrelevant" (Johnson 1998). One claim is that the falling Canadian dollar during the 1990s has benefited Canadian producers. Although changes in the exchange rate may make Canadian wheat more competitive in the U.S. market, it will also decrease their buying power.

Second, the NDWC argues that the CWB subsidizes Canadian wheat, thereby allowing Canada to dump below cost wheat in the U.S. market; clearly Canadian prices could not be lower than those in the U.S. because it produces the most wheat in the world. Although identifying subsidies can be difficult, especially in the context of NAFTA, there is no evidence that the CWB exports wheat into the U.S. at prices below its initial payment (dumping) (Schmitz and Furtan 2000). Furthermore, a 1990 report by the United States International Trade Commission (ITC) revealed that Canadian and U.S. prices for durum wheat showed no consistent difference. A 1994 ITC ruling found in favour of import restrictions, not because of Canadian subsidies to wheat, but because the imports caused 'material interference' with USDA commodity programs (Johnson 1998).

Finally, the argument has been made that imports of Canadian wheat depress U.S. wheat prices and farm incomes. While true, the U.S. has committed to trade liberalization, and this is simply one consequence. Under WTO guidelines, just because one's trading partner produces a product less expensively does not constitute grounds for sanctions.

On more substantive issues, such as unfair rail transport subsidies, several reforms have occurred in Canada, including suspension of the Crow benefit and replacement of the Western Canadian Grain Transportation Act by the Canadian Transportation Act (1995), the Estey Report of 1997, and Bill C-40 (2005), to make the transportation system more efficient (Schmitz and Furtan 2000; Frechette 2005). Furthermore, the Government of Canada

announced in March 2005 that it intends to sell the publicly-owned hopper car fleet to a private coalition of farmers in a further attempt to rationalize grain transportation in Canada (USDA 2005). Both Bill C-40 and the hopper fleet sale result from a WTO ruling in April 2004 in favour of U.S. claims of unfair transportation practices, which Canada did not appeal. Nonetheless, a NAFTA dispute panel affirmed a 0.35% U.S. duty on Canadian wheat resulting from government ownership of the hopper cars (USDA 2005). Although the 0.35% duty is insignificant relative to parallel actions taken by the DOC, both sides of the dispute recognize the policy reforms underway in the transport sector.

In support of U.S. wheat growers, the DOC imposed provisional duties of 8.15% on durum and 6.12% on hard spring wheat from Canada in May 2003. Upon further investigation, in August 2003 the DOC announced countervail duties of 5.29% for durum and hard red spring wheat from Canada, and anti-dumping duties of 8.26% for durum and 8.87% for hard red spring wheat. A follow-up injury investigation led the DOC to conclude in October 2003 that imports of hard red spring but not durum wheat from Canada were injurious to U.S. producers. Provisional duties on hard red spring wheat were replaced by the above countervail and anti-dumping duties, and the Canadian government immediately filed a petition with NAFTA to review the DOC's final determinations in the countervail case (NAFTA Secretariat 2004).

Chapter 19 of NAFTA provides for a binding, binational panel review of final determinations in trade disputes. Panels consist of three Americans and two Canadians and are established to ascertain whether the determinations are consistent with the trade laws of the country conducting the investigation, both in terms of injury and the setting of duties. In May 2005, the panel directed the DOC to review the manner in which it set the duties on hard spring wheat. This has resulted in claims of victory by the CWB, although these have

been dismissed by the NDWC (USDA 2005; NDWC 2005). In June 2005, the panel ruled that the ITC ruling that hard red spring wheat exports by the CWB were injurious was deeply flawed – the DOC has yet to respond (Anissimoff et al. 2005).

More significantly for Canada, however, is not whether duties should be levied against CWB grain, but whether the CWB should be allowed to exist as a single-desk seller of Canadian wheat and non-feed barley under the guidelines of the WTO. The most common U.S. position is that the CWB, as a State Trading Enterprise (STE), is trade discriminating by nature and thus in contravention of the principles of free and fair international trade (Johnson 1998). The CWB practice of setting prices that discriminate between markets, which has been admitted (and at times promoted), is a particular target of U.S. trade action (Schmitz and Furtan 2000; Schmitz, Gray, Schmitz and Storey 1997).

The CWB does constitute an STE as defined by WTO (1994), and must therefore fulfill GATT/WTO requirements that are based on the principles of non-discrimination and transparency (McCorriston and MacLaren 2002). Given that the CWB admittedly discriminates between markets, its violation of the GATT is superficially clear. However, Article XVII points out that an STE can price discriminate as long as it does so in the same manner it would if it were not an STE, namely, by seeking to take advantage of market conditions. Given that there is no published evidence that the CWB dumps wheat below cost, it cannot be price discriminating in a non-commercial manner, by charging high prices in one market in order to fund below cost pricing in another (Johnson, 1998). In terms of price discrimination, the CWB does not violate the GATT.

With respect to transparency, the WTO requires states to respond to a questionnaire describing the number, nature and justification for STEs (Veeman, Fulton and Larue 1999; McCorriston and MacLaren 2002). Canada has notified the WTO that the CWB (among

other institutions) is an STE and has described its functions in detail (Paddock 1998). In fulfilling the WTO's requirements for transparency,[2] the CWB is considered in full compliance by the WTO. Indeed, the WTO ruled in April 2004 that the structure, mandate and activities of the CWB were consistent with the GATT (AAFC 2004). Nonetheless, the government of Canada ratified a framework deal in 2004 which would eliminate the federal government's payment and borrowing guarantees to CWB members. In order to eliminate the CWB, however, its ability as a single-desk (monopoly) seller must be successfully challenged at the WTO. This is tantamount to proving that the CWB holds a monopoly position because it is an STE – a position the U.S. government is taking in the Doha round with respect to all state enterprises in agriculture (Paddock 1998). In this the U.S. faces an uphill battle because some 70% of all STE notifications received by the WTO are in agriculture or a closely related sector (McCorriston and MacLaren 2002).

Though the DOC has yet to respond to the most recent CWB rulings, evidence from the Canada-U.S. softwood lumber trade dispute does not bode well for early resolution. Since the softwood lumber case may be instructive for agricultural policymakers, we examine it in greater detail in the remainder of this paper. The softwood lumber dispute is likely the best example of the problems encountered by a small country, which accepts a significant degree of state intervention in markets, in dealing with a large one that permits single-issue political interests to drive its trade policies. Further, of all the dispute resolution panels initiated by Canada against the United States under Chapter 19, five of 36 FTA and seven of 41 NAFTA panels focused on softwood lumber.

BACKGROUND TO THE LUMBER DISPUTE[3]

Lumber I and II

Canadian softwood lumber exports have long been the target of U.S. trade action, with four countervail duty (CVD) investigations occurring since 1982. The main source of the alleged subsidy has centered on provincial stumpage and the associated administered stumpage rates. Issues such as log export restraints in B.C. and dumping of softwood lumber on the U.S. market have further hindered the efforts to find a lasting solution. In 1982 the U.S. Coalition for Fair Canadian Lumber Imports (hereafter Coalition) filed a petition with the DOC alleging that provincial stumpage fee systems and methods of managing public forestlands constituted countervailable subsidies. The resulting investigation completed in May 1983 found no evidence for the imposition of a CVD, because the stumpage programs were considered to provide no preferential treatment to any specific industry or enterprise.

A new petition filed in 1986 by a slightly reconstituted Coalition reasserted the previous claims, but this time the DOC reversed its earlier ruling, finding that stumpage programs did indeed constitute a countervailable subsidy, and imposed a CVD of 15%. The investigation was terminated when negotiations between the two governments led to a Memoranda of Understanding whereby the Canadian government imposed an export tax of 15% beginning in 1987. The MOU provided for tax reductions if provinces implemented 'replacement measures', such as increased stumpage fees or other charges. By 1991, British Columbia, Quebec and most Atlantic provinces had made sufficient changes to their stumpage systems that export charges could be substantially eliminated. Hence, Canada elected to terminate the MOU in September 1991.

Lumber III

As a response to the termination of the MOU, the DOC self-initiated a third investigation the following month, which led to the imposition of a CVD of 6.5% in mid 1992. Canada appealed the decision to the binational panel for dispute resolution under Chapter 19 of the then FTA. The panel subsequently ruled twice against the DOC, arguing that the DOC's decision was unsupported by the evidence. The U.S. requested an Extraordinary Challenge Committee to review the panel decisions but it rejected the request. In August 1994, all the money collected under the CVD (worth approximately 800 million USD) was refunded and both countries agreed to seek a consultative mechanism.

The market and income redistributional effects of the MOU were most significant. Wear and Lee (1993) estimated that U.S. softwood lumber prices increased approximately 20 percent annually between 1987 and 1990. Total U.S. consumption of softwood lumber decreased less than one percent annually during that period, whereas U.S. lumber production increased by over seven percent annually. As anticipated, U.S. producers gained from the MOU and their estimated producer surplus increased by 2.6 billion USD (in 1982 dollars) between 1987 and 1990, while U.S. consumer surplus decreased by 3.8 billion USD.

Softwood Lumber Agreement

The two governments negotiated the Canada-U.S. Softwood Lumber Agreement (SLA) in 1996 to forestall further petitions and countervail action. The SLA employed a quota device that constrained annual lumber exports to the U.S. from British Columbia, Alberta, Ontario and Quebec to 14.7 billion board feet (BBF) annually with an escalating fee structure on shipments over that volume.[4] These four provinces account for nearly 90% of all softwood lumber exported by Canada to the U.S. The SLA expired on 31 March, 2001 without another agreement in place.

The SLA was the subject of many disputes concerning its scope of coverage (most famously the loophole excluding pre-drilled studs), and it created distortions as provinces not covered by the SLA, as well as European producers (notably Austria), more than doubled their exports to the U.S. Zhang (2001) estimated that U.S. producers increased their profits by 7.7 billion USD (in 1997 dollars), with U.S. consumers losing 12.5 billion USD. Canadian producers lost in terms of export volume, but, due to higher prices and the capture of quota rents (van Kooten 2002), their profits increased by an estimated three billion USD. While the SLA provided large benefits, Canada failed to renegotiate because it could not manage a national quota system for lumber exports, despite substantial experience operating complex quota regimes in agriculture (van Kooten 2002).

Lumber IV

Along with two unions and four forest companies, the Coalition filed a new petition with the DOC on 2 April 2001 requesting initiation of an investigation to determine whether Canadian lumber producers were receiving countervailable subsidies. As a result of this fourth investigation, the DOC imposed a 19.31% CVD in August 2001, along with an anti-dumping duty of 8.43%. As a result of Canadian appeals, the CVD was revised downwards to 18.79% in May 2002 and to 13.23% in November 2003. Under NAFTA's Chapter 19 (Article 1904), three separate dispute resolution panels submitted a total of seven reports on DOC determinations. The panel looking into CVD determination ruled on three occasions (13 August 2003, 7 June 2004 and 1 December 2004) that the DOC needed to lower their CVD duties, but no rulings on 'revised' duties have so far been forthcoming (Jack 2004). Meanwhile, the panel on injury ruled that there was no injury – that there were no grounds for countervailable action (NAFTA Secretariat 2004).

By the end of 2004, about $4 billion in cash deposits collected from Canadian

producers was in escrow with the U.S. Treasury, with $5.4 million paid out to U.S. producers in mid-December 2004 (Canadian Press 2004). Producers claim they are entitled to these funds under the "Continued Dumping and Subsidy Offset Act of 2000" – the Byrd Amendment to the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2001". Indeed, unless the U.S. repeals the Byrd Amendment, some $1 billion per year could be disbursed to U.S. lumber producers by 2007 (International Trade Canada 2004).[5] The higher prices and potential CVD payouts under the Byrd Amendment constitute a 'double jeopardy' that encourages U.S. lumber producers to continue trade action against Canada, particularly as Canadian provinces have generally eschewed market forces in the setting of timber prices thereby making them vulnerable to such action.

The U.S. has stipulated conditions for the lifting of the trade barrier against Canadian softwood lumber. In January 2003, the DOC released a proposed framework for analyzing 'changed circumstance' reviews for countervail and anti-dumping duties imposed on softwood lumber from Canada (U.S. DOC 2003). The report stressed that provincially administered stumpage fees in Canada need to be established using a 'market-based system', which it defined as one that "produces results consistent with those the province could expect from the sale of all its timber at open auction". In translating auction results to administered stumpage fees, the DOC stated that it has a "strong preference for regression analysis". Thus, for example, despite rulings in Canada's favor, the Government of British Columbia, which owns 96% of the province's forestland and accounts for nearly half of Canada's softwood lumber exports, is positioning itself to meet the DOC's requirements for greater openness in the setting of stumpage fees charged forest companies operating on public lands. Are B.C.'s efforts likely to satisfy the Coalition and DOC?

GREATER OPENNESS IN THE SETTING OF STUMPAGE FEES: A WAY OUT?

The regression analysis approach to stumpage appraisal recommended by the DOC is a form of Transaction Evidence Appraisal (TEA). The use of regression analysis to predict stumpage rates originates with Steer and Guttenberg (1938), who used multiple regression analysis to relate timber stand characteristics to stumpage values. Over time, regression analysis was used not only to relate timber stand characteristics to stumpage value, but also to examine the effect of competition and auction design on bids (e.g., Mead, Schniepp and Watson 1983; Brannman 1996). The DOC recommended the use of TEA because the U.S. Forest Service also uses TEA as an alternative to complex residual value calculations in setting reserve prices for timber sales from National Forests.

The B.C. Ministry of Forests (MoF) adopted a TEA system when it developed the Market Pricing System (MPS) in 1999 to set stumpage prices for both the Coast and the Interior regions (B.C. MoF 1999).[6] The MPS was used to appraise timber sales under the Small Business Forest Enterprise Program (SBFEP), which employed two types of sales: 'Section 20' timber sales were awarded to the highest bidder using a first-price, sealed-bid auction with an announced minimum price that the government will accept – the upset or reservation price. 'Section 21' sales were awarded on the basis not only of revenue, but also the contribution the sale made to local manufacturing and employment. Since the SBFEP made up less than 10% of the harvest, the amount of timber transacted was relatively small. This changed when the *Forestry Revitalization Plan* proposed widespread adoption of a new MPS in order to meet the DOC's TEA requirement (B.C. MoF 2003).

The new plan calls for the elimination of Section 21 sales, with that volume to be diverted to Section 20, and the return to the MoF of 20% of the annual harvest of major tenure holders – those licensees with rights to more than 200,000 m^3 of replaceable annual

allowable cut. Approximately half of the 'take back' from licensees is to be added to the amount of volume sold at auction (with the remainder to go to First Nations), with such sales administered under a new entity called British Columbia Timber Sales. All of the auction volume (which still amounts to about 20% of total harvest) will use the MPS as a method for determining the seller's upset stumpage rates in the same fashion as before – 70% of the high bid predicted by the MPS econometric model. The plan also proposes to use the MPS to set stumpage fees on timber harvested by long-term tenure holders or licensees, which represents a major shift in the use of the MPS.

As demonstrated by Niquidet and van Kooten (2005) using empirical data from SBFEP auction data, two important characteristics of forestry in British Columbia, and by extension all of Canada, are unlikely to appease the U.S. First, competition for timber in many regions is sparse because of long truck haul distances to mills. Knowing this, firms will shade their bids accordingly, so that bids are below the true value of timber. In order to meet DOC conditions, it is necessary to demonstrate that the effects of bid shading are limited. However, the alternative of interjecting greater competition for standing timber will be difficult if not impossible in much of Canada's working forest, because of distance to competing mills and high hauling costs.

Second, the tenure system ensures that stumpage is the residual income claimant. Thus, any changes in output price are immediately reflected in bids at timber auctions. Indeed, Niquidet and van Kooten (2005) find that, since the most recent countervail duty, bids have dropped by more than $\$5/m^3$, almost exactly offsetting the amount of the duty. Under a market based pricing system and when faced with lower output values (e.g., due to a CVD), firms adjust their input costs leaving output unchanged. Hence, if the goal of U.S. duties is to restrict the flow of wood into the domestic market, a price mechanism (import

tax) is less likely to succeed than a quantity restriction (quota).

Employment, community stability, revenue and sustained yield are the major objectives of most provinces' forest policies. To achieve them, forest ministries follow a simple rule: set annual harvest (annual allowable cut) equal to average annual timber growth (mean annual increment). Since growth does not fluctuate much from one year to the next, provinces implement a sustained yield, even-flow harvest requirement, which is thought to lead to stable employment, revenues and communities. In practice this policy often leads to instability in all of the objectives because it ignores economic realities. Yet, for the most part it remains in place, although British Columbia has recently removed minimum harvest requirements for licensees while keeping maximums in place. Harvest policies often fix quantity so price only serves to distribute the resource rent between the public forestland owner (province) and the forest companies. What then is the value of standing timber upon which to base upset prices at auctions and administered stumpage fees for long-term tenure holders?

The government of British Columbia could use a variety of (econometric) techniques to adjust results from auction data so as to maximize revenues in the setting of upset prices and stumpage fees for long-term tenure holders. For example, the extent of bid shading that occurs can be estimated in straightforward fashion (Niquidet and van Kooten 1995). This could increase transparency and accord with what a private firm would do. It might also help B.C.'s chances in a changed circumstance review. However, it can also be argued that this method results in the government exercising excessive market power. Under perfect competition, a seller would be willing to accept any price that exceeds the marginal cost of provision. To reflect this, upset prices would be set to ensure that the stumpage collected is greater than the costs incurred by the public agency to develop, offer and administer the

timber sale. This ensures harvesting is within the extensive margin, and that the quantity of timber produced does not exceed that of a competitive market and therefore does not artificially deflate domestic and international prices (Nordhaus 1992).

For setting stumpage prices to charge long-term tenure holders, the MPS data – the information derived from auction data – will require additional 'manipulation', because licensees have different forest management obligations than harvesters of auctioned timber. Forest management obligations for licensees include activities both prior to and after harvesting. Prior to harvesting they are responsible for preparing various forest development plans, laying out the harvesting units and conducting a timber cruise. Once harvesting is complete, the units must be reforested; when the newly established stand has reached a 'free to grow' state, the licensee has no further obligations (see Wang and van Kooten 2001). The rate predicted by the MPS must therefore be adjusted by appraised allowances reflecting these additional costs and responsibilities. This 'manipulation' introduces a source of ambiguity in the setting of stumpage fees.

Of course, in the absence of other coercive devices, upset prices and stumpage fees charged tenure holders eventually need to be set at rates that ensure that the Province's harvest targets are met. Since only about 20% of the current harvest goes to auction, the Province could still manipulate outcomes so that annual harvest targets are achieved.

The point is that, while British Columbia (and other provinces) will try to meet the U.S. Department of Commerce's 'changed circumstances' through greater openness in the setting of administered stumpage prices, there continues to be sufficient obscurity in the transaction evidence appraisal method and the effect that competition (number of bidders) has on predicted prices that Coalition demands are likely to remain unmet.

CONCLUSIONS

It is unlikely that the trade dispute in softwood lumber is about to disappear, despite the rulings of NAFTA dispute resolution panels favoring Canada. The way Canadian provinces determine stumpage rates and harvest levels are sufficiently vague that we expect the Coalition to exploit this obscurity in lobbying for continued protection against the erosion of U.S. producers' share of the domestic lumber market. Perhaps nothing less than divesture of a great deal of Canada's public forestlands (certainly the highest public proportion in the OECD) and/or an open border for free trade in logs will suffice. This is unlikely to be politically feasible in Canada.

At the same time, the provinces as resource owners generally set the amount of timber to be harvested based on biological criteria (sustained yield) that lead to stable harvest and revenue flows. In that case, stumpage prices and duties only affect the distribution of rents, but not the amount of lumber that gets produced and exported into the U.S. Clearly, a quantity restriction or quota on Canadian imports of softwood lumber is more effective than import duties in raising U.S. domestic prices and addressing the concerns of the Coalition. Canada should lobby for a trade agreement that involves lumber quotas with conditions on imports from other jurisdictions. Such an approach caters to extant political interests in the U.S. while providing large benefits to Canada (van Kooten 2002). It can then be revisited at some future date when the political winds shift.

Similarly, despite repeated rulings in favour of Canada and the CWB by both NAFTA and the WTO, the DOC has remained committed to instituting a range of duties against Canadian wheat and changing WTO agreements that would make it difficult for the CWB to maintain its single-desk status. Given U.S. intransigence on softwood lumber that has stretched the recent incarnation of the conflict into negotiations lasting 23 years, Canadian

policy makers should not hope for an early resolution to the wheat dispute.

The Byrd Amendment is not an issue in wheat to the same extent it is in lumber, as the amount of revenue collected by U.S. Treasury from Canadian wheat producers is so small compared to the number of parties that can claim injury. However, due to the number and political power of U.S. wheat producers, Canadian appeals to NAFTA and the WTO are less likely to be effective. The DOC has already demonstrated in the softwood lumber case that neither the number nor vigour of rulings against it will cause it to waver from its goal of remaking Canadian trade institutions in its own image. Our analysis of the Canadian response indicates that appeals to NAFTA and the WTO are mostly fruitless, and that many Canadian policies are ephemeral and ineffective in ultimately appeasing U.S. special interests. This has implications for recent CWB reforms in governance and pricing, and proposals for the same. Recent attempts to integrate negotiable final payment certificates, pool equity cash-outs and fixed forward-price contracts (Schmitz and Furtan 2000) or public reporting procedures (Gray 2001) to make the CWB more market responsive are unlikely to satisfy DOC concerns.

Different strategies than a series of defensive battles and appeals to duly legislated bodies accompanied by minor reform are necessary to protect the sovereignty of Canadian trade institutions. One alternative is to co-opt U.S. lobbyists by bringing them into already existing Canadian institutions. Incorporating North Dakota wheat farmers into a pan-American version of the CWB has been proposed on both sides of the border, though significant obstacles exist (Johnson 1998). A complementary option would be more aggressive promotion and proliferation of STEs domestically (in creating new institutions) and internationally (for instance, during Doha round WTO negotiations). This would make it increasingly difficult for the DOC to justify its trade action in the face of coordinated

international pressure. Finally, Canada has always been reticent to link trade disputes to other issues. However, to resolve the current trade disputes in agriculture and forestry, Canada may need to adopt a more aggressive posture by linking trade to non-trade issues. These and other options will be necessary in a bi-national policy environment whose traditional dispute settlement institutions are not contributing to lasting solutions that respect Canadian trade sovereignty, which the last 23 years of the softwood lumber dispute and the recent history of the CWB dispute have made clear.

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NOTES

1 Canada's marketing board system, which covers dairy and poultry products, came under early scrutiny, with Canadian import quotas replaced by a tariff regime under the FTA. Tariffs are scheduled to be reduced over a long period, but will also be singled out in global trade negotiations.

2 WTO transparency requirements are distinct from transparency complaints levied against the CWB – that the governance structure (the CWB's CEO is a political appointee) and operating (especially marketing) costs are not transparent (Carter and Wilson 1997). However, ten of 15 CWB board members are elected by farmers, while many of the CWB's U.S.-based competitors do not publish their marketing costs.

3 Information in this section was obtained from various sources, including NAFTA binational panel reports (see http://www.sice.oas.org/ and NAFTA Secretariat). Subsection titles refer to the names that are often attached to the various 'rounds' in the dispute.

4 Only the U.S. measures lumber in board feet, with the rest of the world using cubic meters (m^3). The conversion is 1000 board feet (MBF) = 2.36 m^3.

5 As a result of WTO rulings against the Byrd Amendment, the U.S. agreed on 7 December 2004 to 'deal' with this matter (http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm). But this did not prevent payouts to U.S. lumber producers shortly thereafter (Canadian Press 2004).

6 The Interior is defined as areas east of the Cascade mountain range to the Alberta border, while the Coast is areas west of the Cascades. A more essential difference pertains to tenure arrangements, with long-term (25-year) Tree Farm Licenses (TFL) predominant on the Coast. These require licensees to submit forest management plans that provide them with an annual allowable harvest. In the Interior, tenure is characterized by short- to long-term (upwards of 20 years) cutting licenses. With the exception of some short-term rights to harvest timber that are sold at auction, stumpage fees are administratively set. See Wang and van Kooten (2001) for further details.