

# CRS Issue Brief for Congress

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## **Lumber Imports From Canada: Issues and Events**

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Ross W. Gorte  
Resources, Science, and Industry Division

Jeanne Grimmett  
American Law Division

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## Lumber Imports From Canada: Issues and Events

### SUMMARY

U.S. lumber producers have raised concerns about softwood imports from Canada many years. Alleged Canadian subsidies (subsidies are a prerequisite for establishing countervailing duties — CVDs) were investigated in 1982, 1986, and 1992. No subsidies were found in 1983; however, preliminary subsidy findings led to a 1986 Memorandum of Understanding (with a 15% Canadian tax on lumber exported to the United States), and to a 6.51% CVD in 1992. The 1992 CVD was challenged under the U.S.-Canada Free Trade Agreement, and was terminated in 1994. A U.S.-Canada Softwood Lumber Agreement (SLA) was reached in 1996 to restrict lumber exports to the United States for 5 years, and expired on March 31, 2001. (See CRS Report RL30826 for more information and analysis.)

**U.S. Industry Arguments.** The U.S. producers argue that they have been injured by unfair Canadian competition. They argue that the provinces set “stumpage fees” (for the right to harvest trees) at less than their market value. In Canada, the provinces own 90% of the timberlands; this contrasts with the United States, where 42% of timberlands are publicly owned and where government timber is often sold competitively. These differences in land tenure make comparisons difficult.

In addition, U.S. lumber producers argue that log export restrictions in Canada confer a subsidy to Canadian producers by preventing other producers from getting direct access to Canadian timber. The United States also restricts log exports from federal and state lands, but logs can be exported from the private lands that dominate the U.S. timber market. Canada has argued in the WTO that U.S. treatment of export restrictions as a subsidy violates with the Agreement on Subsidies and Countervailing Measures (SCM).

Finally, U.S. producers argue that they have been injured by imports of Canadian softwood lumber. They point to the steady growth in Canadian exports and market share, from less than 3 billion board feet (BBF) and 7% of U.S. lumber consumption in 1952 to more than 18 BBF annually since 1998 and a market share of more than 33% since 1995. Canadians counter that the U.S. industry has been unable to satisfy the growth in demand. U.S. homebuilders and other lumber users assert that Canadian lumber is needed to satisfy U.S. demands.

**Current Issues.** In response to petitions, the Department of Commerce initiated CVD and antidumping investigations on April 30, 2001. On May 16, the International Trade Commission (ITC) issued its preliminary finding that the U.S. industry had probably been injured by Canadian imports. On August 10, Commerce announced preliminary findings that Canadian subsidies (and thus the preliminary duty) amounted to 19.31% of sale value, and that critical circumstances existed, allowing the duties to apply retroactively. On November 6, Commerce published preliminary findings that Canadian firms were dumping lumber, with a margin of 12.58%. Final Commerce determinations are due in March 2002; if affirmative, they will be followed by ITC final injury determinations.

On August 23, 2001, the WTO adopted a panel report finding that U.S. treatment of export restrictions as a subsidy violated the SCM Agreement, but not recommending remedial action, since a CVD based on this treatment is not mandatory. A WTO panel was established December 5, 2001, to hear Canada’s complaint that preliminary determinations in the CVD case also violate the Agreement.



## MOST RECENT DEVELOPMENTS

*The 1996 U.S.-Canada Softwood Lumber Agreement expired on March 31, 2001. On April 2, the U.S. Coalition for Fair Lumber Imports filed countervailing and antidumping petitions with the relevant U.S. federal agencies, charging that subsidized and below-cost Canadian lumber was being dumped on U.S. markets, harming the U.S. lumber industry. On May 16, the U.S. International Trade Commission issued its preliminary finding a reasonable indication that the U.S. lumber industry was threatened with material injury by softwood lumber imports from Canada. On August 17, the Commerce Department issued preliminary findings that Canadian subsidies amounted to 19.31% ad valorem (as a percent of lumber values); thus, the Department established a preliminary duty of 19.31%. On August 23, the WTO adopted a panel report that agreed with Canada's challenge of U.S. treatment of export restraints as a subsidy that violated the WTO Agreement on Subsidies and Countervailing Measures (SCM), but did not recommend remedial action because a CVD based on this treatment is not mandatory under U.S. trade law. On November 6, the Commerce Department announced that Canadian firms were dumping lumber, and added 12.58% to the duty (ranging from 5.94-19.24% for certain firms). On December 5, a WTO dispute panel was established to hear Canada's complaint that the Commerce Department's preliminary determinations in the CVD case also violate the SCM Agreement.*

## BACKGROUND AND ANALYSIS

Concerns among U.S. lumber producers about softwood lumber imports from Canada have been raised for decades; the current dispute has persisted for at least 20 years. U.S. producers argue that they have been harmed by unfair competition, which they assert results from subsidies to Canadian producers, primarily in the form of low provincial stumpage fees (the fees for the right to harvest trees from Province-owned timberlands) and Canadian restrictions on log exports. Canadians defend their system, and U.S. homebuilders and other lumber users advocate unrestricted lumber imports. This issue brief provides a concise historical account of the dispute, summarizes the subsidy and injury evidence, and discusses the current issues and events. (For more historical background and analysis, see CRS Report RL30826.)

### Historical Background

The current dispute began in 1981, when letters from Members of Congress and a petition from the U.S. lumber industry asked the U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) to investigate lumber imports from Canada for a possible countervailing duty (CVD).<sup>1</sup> The ITC found preliminary evidence of injury to

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<sup>1</sup> U.S. trade law (19 U.S.C. 1671-1671h) authorizes countervailing duties on imported goods, if the DOC determines that the imports are being subsidized (directly or indirectly) by a foreign country and if the ITC determines that the imports have materially injured a U.S. industry. The duty is set at the calculated level of the subsidies.

the U.S. industry, but in 1983, the DOC's International Trade Administration (ITA) determined that subsidies were *de minimis* (less than 0.5%), ending the CVD investigation.

In 1986, the U.S. lumber industry filed a petition for another CVD investigation with the DOC and the ITC. A 1985 court ruling on an ITA determination of countervailable benefits on certain imports from Mexico was seen as a favorable precedent for reversing the ITA finding on Canadian lumber subsidies. The ITC again found preliminary evidence of injury to the U.S. industry, and the ITA reversed its 1983 determination, with a preliminary finding that Canadian producers received a subsidy of 15% *ad valorem* (i.e., 15% of lumber market prices). On December 30, 1986, the day before the final ITA subsidy determination, the United States and Canada signed a Memorandum of Understanding (MOU), with Canada imposing a 15% tax on lumber exported to the United States, to be replaced by higher stumpage fees within 5 years. This agreement led the U.S. industry to withdraw its petition.

In September 1991, the Canadian government announced that it would withdraw from the MOU, because most of the provinces had increased their stumpage fees. The U.S. Trade Representative (USTR) responded by beginning a §301 investigation,<sup>2</sup> pending completion of a new CVD investigation by the ITA and the ITC. In March 1992, the ITA issued a preliminary finding of 14.48% *ad valorem* subsidies, with a final determination in May establishing a 6.51% *ad valorem* subsidies, leading to a 6.51% *ad valorem* duty. This was confirmed in July with a final ITC finding that the U.S. industry had been injured by Canadian lumber imports.

The Canadian federal government appealed both the ITA and the ITC final findings to binational review panels under the U.S.-Canada Free Trade Agreement (FTA), which was signed on January 2, 1988. In May 1993, the binational subsidy panel remanded the ITA finding for further analysis, and in September, the ITA revised its finding to 11.54% *ad valorem* subsidies. In December, the binational subsidy panel again remanded the ITA finding and ordered the ITA to find no subsidies. In January, the ITA complied with the order. Using a provision of the FTA, the USTR requested an Extraordinary Challenge Committee (ECC) to review the binational panel decisions, but the ECC was dismissed in August 1994 for failing to meet FTA standards. In August, the DOC revoked the CVD, and in October, the USTR announced that it would terminate the §301 action.

Two events in September 1994 induced Canada to negotiate restrictions on its lumber exports to the United States. First, the U.S. lumber industry filed a lawsuit challenging the constitutionality of the FTA review process. Second, the Uruguay Round Agreements Act (URAA; P.L. 103-465) explicitly approved the President's "statement of administrative action" (SAA) that had accompanied his proposed legislation; the SAA stated that, because of Canadian practices, lumber imports from Canada could be subject to a CVD. In February 1996, the two nations announced an agreement-in-principle — a fee on Canadian lumber exports to the United States in excess of a specified quota for 5 years — with the final U.S.-Canada Softwood Lumber Agreement (SLA) signed in May and retroactive to April 1, 1996. The SLA was effective through March 31, 2001.

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<sup>2</sup> Under §301 of the Trade Act of 1974 (19 U.S.C. 2411-2420), the USTR can investigate and can respond, with a broad range of feasible actions, to foreign trade practices which are found to be illegal, unreasonable, or discriminatory, and are burdensome to U.S. interests.

## Analysis: Subsidies and Injury

Annual Canadian lumber imports have risen from less than 3 billion board feet (BBF), about 7% of the U.S. market, in the early 1950s to more than 18 BBF, more than a third of the U.S. market, in the late 1990s. U.S. lumber producers argue that subsidies to Canadian producers give them an unfair advantage in supplying the U.S. market and that this has injured U.S. producers. These two issues — subsidies and injury — are the basis in U.S. trade law for determining if a CVD is warranted.

**Subsidies: Canadian Stumpage Fees.** The U.S. lumber industry has argued that the stumpage fees charged by the Canadian provinces are less than the market price of the timber would be and are therefore a subsidy to Canadian producers. About 90% of the timberlands in the 10 provinces are owned by the provinces. The provinces require management plans for forested areas and allocate the timber harvests through a variety of agreements or leases, often for 5 or more years with renewal options. Stumpage fees for the timber are determined administratively, often with adjustments to reflect changes in market prices for lumber. This contrasts with the U.S. situation, where 42% of the forests are publicly owned and where public timber is typically sold in competitive auctions; thus, much of the timber in the United States is sold by public and private landowners at market prices.<sup>3</sup> The use of administered fees in Canada opens the possibility that the Canadian system results in transfers to the private sector at less than their fair market value, as the U.S. lumber industry has charged. However, comparisons of U.S. and Canadian stumpage fees are often disputed, because of: differences in measurement systems and the imprecision of converting Canadian cubic meters of logs to U.S. board feet of lumber; differences in the diameter, height, quality, and species mix of U.S. and Canadian forests; differences in management responsibilities imposed on timber buyers (e.g., road construction, reforestation); differences in environmental conditions and policies; and other factors.

**Subsidies: Export Restrictions.** Export restrictions by British Columbia (BC) were identified as a subsidy to BC lumber producers by the ITA in its 1992 CVD investigation. BC generally prohibits the export of logs from Crown (provincial) lands, to assure domestic production, provide jobs, and encourage economic development. Export restrictions on public timber in the United States indicate substantially higher prices for export logs than for comparable logs sold domestically. Most economists would consider restrictions that reduce domestic prices below the world market price to be subsidies, and the General Agreement on Tariffs and Trade (GATT) generally prohibits export restrictions. In addition, current U.S. trade law allows the DOC to consider an export restraint on a product to be a subsidy if the private parties who would be exporting the product provide the restrained good to domestic purchasers for less than adequate remuneration. Nonetheless, Canada has challenged the ITA treatment of export restrictions as a subsidy, arguing that this treatment is inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures. This challenge is discussed more below.

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<sup>3</sup> Some argue that U.S. federal agencies are not comparable to traditional, market-oriented private “willing sellers,” because they do not make investments or sales based on profitability, as a private landowner presumably would. However, the U.S. federal government owns only 33% of U.S. timberlands, and thus probably has less impact on timber markets than do the Canadian provinces.

**Injury to the U.S. Lumber Industry.** Proving injury or threat of injury to U.S. lumber producers is also essential to establishing a CVD. The share of the U.S. softwood lumber market provided by Canadian lumber has grown substantially over the past 50 years. In 1952, lumber imports from Canada were less than 3 BBF, and Canada's market share was less than 7%. In 1998 and 1999, Canadian lumber imports were more than 18 BBF, and Canada's market share has fluctuated between 33% and 35% since 1995. These facts are cited by U.S. producers as evidence that Canadian imports have come at the expense of normal domestic growth in industrial lumber production. U.S. homebuilders and other lumber users counter that Canadian lumber is essential to meeting domestic demand, and argue for unrestricted imports. Despite consistent ITC findings of injury, indisputable proof of injury to U.S. producers is difficult to establish.

## Current Issues and Events

Three aspects of this situation are currently the focus of attention in this long-running dispute over the exports of softwood lumber from Canada to the United States.

**Expiration of the 1996 Agreement.** The SLA expired on March 31, 2001, thus ending the rights and obligations of Canada and the United States regarding lumber products covered by the Agreement. Since neither an extension of the SLA nor a new agreement is currently being negotiated, private and governmental parties are employing and exploring other options regarding the future of U.S.-Canadian lumber trade. On March 28, Commerce Secretary Evans reportedly stated to a group of Senators that he would monitor lumber import levels upon expiration of the SLA, as a step toward a possible "critical circumstances" determination allowing early relief (*Inside US Trade*, April 6, 2001). Canada has dismissed the idea of imposing an export tax on lumber products for the time being; Canadian International Trade Minister Pettigrew reportedly stated in the Canadian House of Commons that the government would not support such a measure unless the four Canadian provinces that export softwood lumber favored it (*International Trade Reporter*, March 22, 2001, p. 476). USTR Zoellick has stated that he may consider the negotiation of an export tax were any unfair trade proceedings to be resolved in favor of U.S. producers (*International Trade Reporter*, March 8, 2001, p. 386). Some industry and consumer groups, as well as some in Congress, have called for the agreement not to be extended or replaced and for instead allowing any trade cases to proceed to conclusion or to be pursued through the World Trade Organization (WTO).

On April 2, the U.S. Coalition for Fair Lumber Imports filed antidumping and CVD petitions. On April 24, the DOC announced that it was initiating the antidumping and CVD investigations, because the petitioners had standing and had shown adequate industry support. The investigations were officially initiated with notices in the *Federal Register* on April 30, at pages 21328–21332 for the antidumping petition and at pages 21332–21335 for the CVD petition. On May 16, the ITC issued its preliminary determination that there was "a reasonable indication that a U.S. industry is threatened with material injury by reason of imports of softwood lumber from Canada that are allegedly subsidized and sold in the United States at less than fair value" (Investigations Nos. 701-TA-414 and 731-TA-928 (Preliminary)). The DOC published its preliminary determination on Canadian subsidies in the *Federal Register* on August 17, at pages 43186–43216. It found subsidies of 19.31% *ad valorem* (as a percent of sale value), and established a preliminary duty at that level. DOC also found that critical circumstances exist, allowing retroactive application of the duty. In

the November 6 *Federal Register* (pages 56062–56078), the DOC published its preliminary determination that Canadian firms were dumping lumber, with margins ranging from 5.94–19.24% (12.58% for most firms). The DOC also announced it would align, and postpone until March 25, 2002, final determinations in the CVD and antidumping cases.

**Canadian WTO Challenges Regarding U.S. Countervailing Duty Law.** The DOC recognized the countervailability of export restrictions in its 1992 determination of subsidies involving Canadian softwood lumber and in a 1990 determination of subsidies involving leather from Argentina. In the SAA accompanying the Uruguay Round Agreements Act (H.Doc 103-316, vol.1, pp. 925-926), and in the DOC's *Federal Register* explanation of its implementing rule (63 *Federal Register* 65349–65351, Nov. 25, 1998), the Executive Branch confirmed that if it were again to investigate situations and facts similar to those in the two cases just described, U.S. trade law would continue to permit it to reach the same conclusion. Canada has challenged this policy in the WTO, alleging that the U.S. interpretation, as set forth in these documents, is inconsistent with U.S. obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM). On August 23, the WTO adopted the final panel report in the case agreeing with Canada, that export restraints do not constitute a financial contribution from the government, and thus do not confer a countervailable subsidy under the SCM Agreement; however, the report recommended no remedial action, since U.S. law does not *require* the DOC to treat an export restraint as a subsidy and since there is no current U.S. measure based on such a finding.

In apparent anticipation of possible U.S. antidumping and CVD cases against Canadian softwood lumber imports, Canada filed another WTO complaint against the United States on January 17, 2001, challenging § 129(c)(1) of the URAA, which sets forth procedures for administrative compliance with adverse WTO panel reports involving U.S. antidumping or CVD measures. Canada alleges that § 129(c)(1), which prohibits the United States from refunding estimated duties in trade remedy proceedings that are found to be inconsistent with WTO obligations, violates portions of the WTO Dispute Settlement Understanding and various WTO antidumping and countervailing duty obligations. Consultation was not successful, and on August 23, a WTO panel was established to examine the complaint.

On August 21, 2001, Canada requested consultations with the United States, claiming that the Commerce Department's preliminary CVD and critical circumstances determinations in the softwood lumber proceeding violated the SCM Agreement and the GATT 1994. Regarding the CVD determination, Canada cited, among other things, the Department's treatment of stumpage as a financial contribution, the finding that stumpage was specific to an industry, and inflation of the subsidy by calculating a country-wide rate based upon only a portion of Canadian exports to the United States (*see* 66 *Federal Register* 45724-45725, August 29, 2001). A dispute panel was established December 5, 2001.

## LEGISLATION

### **H.Con.Res. 45 (Kolbe)/S.Con.Res. 4 (Nickles)**

Express the sense of Congress of the desirability of open trade in softwood lumber between the United States and Canada. H.Con.Res. 45 introduced February 28, 2001;



referred to the House Ways and Means Committee. S.Con.Res. 4 introduced January 29, 2001; referred to the Senate Finance Committee.

**H.Con.Res. 54 (Chambliss)/S.Con.Res. 8 (Snowe)**

Express the sense of Congress that the Administration should resolve problems of unfairly traded Canadian lumber, and should make it the top trade priority. H.Con.Res. 54 introduced March 7, 2001; referred to the House Ways and Means Committee. S.Con.Res. 8 introduced February 7, 2001; referred to the Senate Finance Committee.

## CHRONOLOGY

- 12/01 -- On December 5, a WTO dispute panel was established to hear Canada's complaint that the DOC's preliminary determinations in the softwood lumber CVD proceeding violate the SCM Agreement and the GATT 1994.
- 11/01 -- On November 6, the DOC announced its preliminary finding of Canadian lumber dumping, with margins of 5.94–19.24% (12.58% for most firms), and the alignment of the antidumping and CVD cases, with the final finding postponed until March 25, 2002.
- 08/01 -- On August 23, the WTO adopted a panel report holding that U.S. treatment of export restraints as subsidies violated WTO agreements. Also on August 23, a WTO panel was established to examine Canada's complaint that a U.S. law prohibiting the refund of estimated duties in proceedings found to be inconsistent with WTO obligations also violated WTO agreements.
- 08/01 -- On August 21, Canada requested consultations with the United States in the WTO regarding the DOC's preliminary determinations in the CVD case.
- 08/01 -- On August 17, the DOC issued its preliminary finding of 19.31% *ad valorem* Canadian subsidies and of the existence of critical circumstances.
- 05/01 -- On May 16, the ITC issued its preliminary finding of injury to the U.S. lumber industry by Canadian lumber imports.
- 04/01 -- On April 2, the U.S. Coalition For Fair Lumber Imports filed antidumping and CVD petitions to restrict Canadian softwood imports. On April 24, the DOC announced the initiation of the antidumping and CVD investigations.
- 03/01 -- At midnight on March 31, the 1996 Softwood Lumber Agreement expired.
- 01/01 -- On January 17, Canada requests consultations with United States under WTO Dispute Settlement Understanding, arguing that U.S. procedures for administrative compliance with adverse WTO panel reports violate the Understanding.

- 09/00 -- WTO panel established to assess Canadian objection to U.S. treatment of export restrictions.
- 05/00 -- Canada requests consultations with United States under WTO Dispute Settlement Understanding, arguing U.S. treatment of export restrictions is inconsistent with WTO Agreement on Subsidies and Countervailing Measures.
- 06/99 -- U.S. Customs Service reclassifies rougher-headed lumber and notched studs as softwood lumber subject to the SLA.
- 12/98 -- U.S. Court of International Trade upholds Customs Service ruling that drilled studs are softwood lumber subject to the SLA.
- 06/98 -- U.S. Customs Service issues final decision reclassifying drilled studs as softwood lumber subject to the SLA.
- 02/97 -- U.S. Customs Service issues New York Ruling Letter B81564 classifying drilled studs as builders' joinery exempt from the SLA.
- 05/96 -- USTR and Canada sign Softwood Lumber Agreement (SLA), retroactive to April 1, 1996.
- 12/94 -- Negotiations begin between the USTR and Canada to restrict lumber imports.
- 10/94 -- USTR terminates §301 action against Canadian lumber imports.
- 08/94 -- ECC dismissed, and 2/94 binational subsidy panel order affirmed.
- 01/94 -- Binational subsidy panel orders ITA to find no subsidies; ITA complies.
- 10/93 -- ITC reanalysis confirms original finding of injury to U.S. industry.
- 09/93 -- ITA reanalysis confirms and revises final finding to 11.54% *ad valorem* subsidies by Canada.
- 07/93 -- Binational injury panel remands ITC analysis of injury for further analysis.
- 05/93 -- Binational subsidy panel remands ITA analysis of subsidies for further analysis.
- 08/92 -- Canada challenges ITA and ITC findings under the U.S.-Canada Free Trade Agreement (FTA), leading to binational panels to review the ITA finding of subsidies and ITC finding of injury.
- 07/92 -- ITC issues final finding of injury, confirming the CVD.
- 05/92 -- ITA issues final finding of subsidies, establishing the CVD at 6.51% *ad valorem*.

- 10/91 -- USTR initiates §301 action; ITA self-initiates a CVD investigation.
- 09/91 -- Canada announces it will withdraw from the MOU.
- 12/86 -- Canada and USTR announce a Memorandum of Understanding (MOU) with a 15% Canadian export tax instead of a CVD.
- 10/86 -- ITA issues preliminary finding of subsidies, setting a CVD at 15% *ad valorem*.
- 05/86 -- U.S. Coalition for Fair Lumber Imports files a CVD petition.
- 03/83 -- ITA issues preliminary finding of *de minimis* subsidies, ending CVD investigation.
- 10/82 -- U.S. lumber industry files petition requesting a CVD.
- 12/81 -- Letters from Members of Congress to USTR requesting a CVD investigation of lumber imports from Canada.

## FOR ADDITIONAL READING

Benjamin Cashore, *Flights of the Phoenix: Explaining the Durability of the Canada-US Softwood Lumber Dispute* (Orono, ME: Canada-American Center, Dec. 1997).

Brink Lindsay, Mark A. Groombridge, and Prakash Lougani, *Nailing the Homeowner: The Economic Impact of Trade Protection of the Softwood Lumber Industry* (Washington, DC: Cato Institute, 2000).

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

FLC Les Reed, *Two Centuries of Softwood Lumber War Between Canada and the United States: A Chronicle of Trade Barriers Viewed in the Context of Saw Timber Depletion* (Montreal, Canada: Free Trade Lumber Council, May 2001).

Random Lengths, *What's New This Week? U.S.-Canada Trade Dispute Timeline* (at <http://www.randomlengths.com/newtimeline.html>) on May 2, 2000).

World Resources Institute, *Canada's Forest at a Crossroads: An Assessment in the Year 2000*, a Global Forest Watch Canada Report (Washington, DC: 2000).

### CRS Reports

CRS, "Softwood Lumber Imports From Canada," *Trade Briefing Book* (at

[<http://www.congress.gov/brbk/html/ebtra119.html>]).

CRS Report RL30826, *Softwood Lumber Imports From Canada: History and Analysis*, by Ross W. Gorte, Feb. 2, 2001.