

**CONFLICT AND INTEGRATION: AN EXAMINATION  
OF A SELECTION OF LUMBER TRADE CONFLICTS  
IN NORTH AMERICA AND EUROPE**

by

Cecilia Lei

MSc, Simon Fraser University, June 2002

BSc, University of British Columbia, April 1998

THESIS SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF PUBLIC ADMINISTRATION  
IN THE SCHOOL  
OF  
PUBLIC ADMINISTRATION

© Cecilia Lei 2005

UNIVERSITY OF VICTORIA

March 4, 2005

All rights reserved. This work may not be  
reproduced in whole or in part, by photocopy  
or other means, without permission of the author.

# Abstract

In a world that is moving at a feverish pace toward regional economic integration, much has yet to be understood about the process. In particular, research that delineates key factors in preventing, mitigating or resolving trade conflicts that arise between integration partners is in want. In the hope of contributing to filling this academic vacuum, this paper compares conflicts in different integration frameworks in North America and Europe. The cases are the Canada-U.S. softwood lumber dispute, an anti-dumping case involving the Nordic countries, a state aid conflict in Germany, and conflicts over export and import restrictions in the Slovak Republic and Poland respectively. Information on these cases was obtained from primary and secondary sources, as well as from interviews with officials in key stakeholder groups. These cases are assessed using variables of analysis familiar to integration theorists, namely, actors, mechanisms, and motivations. It is found that subnational actors were more likely than national or supranational actors to instigate and escalate conflicts. It is also found that the accessibility of multiple dispute resolution processes to actors at multiple levels were important in preventing, mitigating and resolving conflicts. From these findings, it is concluded that the multi-level governance theory of integration is better suited to explain the outcome than neofunctionalism or intergovernmentalism. These findings have significant implications for the management of relationships in integration frameworks.

*For my dad, whom I sorely miss.*

# Acknowledgments

I would like to begin by thanking the University of Victoria European Union Initiative, the Office of International Affairs, the School of Public Administration, the Faculty of Graduate Studies, and the Graduate Student Society. This research would not have been possible without their generous financial support. I am also very grateful to my supervisors: Emmanuel, for having faith in my work and challenging me to new heights; Amy, for building my confidence with her endless words of wisdom and encouragement; and Pierre, for choosing my thesis over an airplane movie, and for the snippets of thought-provoking conversations that make public policy fascinating. I am also much indebted to all the interviewees for sharing their knowledge and time with me. Special thanks to the official at DG Enterprise, who tirelessly solicited interests from colleagues to assist me with my research. I must also acknowledge the School of Public Administration staff who helped me navigate through the administration.

My experience in the MPA program was enriched because of the many wonderful people I met. I particularly treasure the opportunities to work with and learn from Jim McDavid and Thea Vakil. Despite my staunch resistance, countless persons have made my brief stay in Victoria enjoyable. The biggest culprits are: Sohee, for being a great mentor; Steph, for helping me stay sane through MPASS and beyond; Ula, for being a great roommate and partner-in-crime on many projects. I must also thank the dispute resolution crew - Carly, Carol, Josee, Kari, Rhiannon, Stacey - for sharing their enthusiasm and fresh outlooks, and for welcoming me on their journey of exploration.

I would be remiss if I fail to credit Arpal, who was responsible for planting in me the idea of starting a MPA degree. Thanks to my mom for her unwavering support and patience while I pursued yet another degree. Thanks also to Edmand, whose lens on life is one I wish I had inherited.

## *ACKNOWLEDGMENTS*

vi

Final thanks go to Matt, for sharing with me the most difficult but rewarding period of my life, for loving me in my best and worst, and for making life worthwhile.

# Contents

<b>Approval</b>	<b>ii</b>
<b>Abstract</b>	<b>iii</b>
<b>Dedication</b>	<b>iv</b>
<b>Acknowledgments</b>	<b>v</b>
<b>Contents</b>	<b>vii</b>
<b>List of Tables</b>	<b>x</b>
<b>List of Figures</b>	<b>xii</b>
<b>1 Introduction</b>	<b>1</b>
<b>2 Integration Theories</b>	<b>8</b>
2.1 Neofunctionalism . . . . .	8
2.2 Intergovernmentalism . . . . .	9
2.3 Multi-level Governance . . . . .	10
2.4 Summary . . . . .	11
<b>3 Case Studies</b>	<b>14</b>
3.1 North American Case Studies . . . . .	14
3.1.1 Lumber I . . . . .	15
3.1.2 Lumber II . . . . .	17

3.1.3	Lumber III . . . . .	21
3.1.4	Lumber IV . . . . .	25
3.2	European Case Studies . . . . .	28
3.2.1	Alleged Dumping by Nordic Countries . . . . .	28
3.2.2	Sawmill Subsidies in Germany . . . . .	35
3.2.3	Export and Import Barriers in Central Europe . . . . .	38
<b>4</b>	<b>Analysis</b>	<b>45</b>
4.1	Main Actors . . . . .	45
4.1.1	Subnational Actors . . . . .	47
4.1.2	National Actors . . . . .	55
4.1.3	Supranational Actors . . . . .	59
4.2	Primary Conflict Management Mechanisms . . . . .	64
4.2.1	Mechanisms Captured by Neofunctionalism . . . . .	65
4.2.2	Mechanisms Captured by Intergovernmentalism . . . . .	79
4.2.3	Mechanisms Captured by Multi-Level Governance . . . . .	82
4.3	Motivation(s) for the Manner Conflicts were Managed . . . . .	84
4.3.1	Motivations for Accessing Supranational Processes . . . . .	85
4.3.2	Motivations for Accessing National Processes . . . . .	92
4.3.3	Motivations for Accessing Subnational Processes . . . . .	98
<b>5</b>	<b>Conclusion</b>	<b>101</b>
<b>A</b>	<b>List of Abbreviations</b>	<b>109</b>
<b>B</b>	<b>Organisation Description</b>	<b>111</b>
<b>C</b>	<b>Methodology</b>	<b>115</b>
C.1	Cover Letter . . . . .	119
C.2	Participant Consent Form . . . . .	121
C.3	Interview Questions for European Officials . . . . .	123
C.3.1	Interview - Introduction . . . . .	123
C.3.2	Section A: General . . . . .	123
C.3.3	Section B: Interview Themes: Specific . . . . .	125

C.3.4 Section C: Interview Themes: Additional Comments . . . . . 126

# List of Tables

2.1	A summary of the three integration theories' hypotheses on the dominant actors, mechanisms and motivations in integration. . . . .	12
3.1	Approximate costs for obtaining a technical approval from the Polish Institute for Construction Techniques (Dehousse <i>et al.</i> , 2000). . . . .	41
4.1	Summary I of key actors in the North American case studies. . . . .	46
4.2	Summary II of key actors in the North American case studies. . . . .	47
4.3	Summary I of key actors in the European case studies. . . . .	48
4.4	Summary II of key actors in the European case studies. . . . .	49
4.5	Summary of key mechanisms accessed to manage Lumber I. . . . .	66
4.6	Summary of key mechanisms accessed to manage Lumber II. . . . .	67
4.7	Summary I of key mechanisms accessed to manage Lumber III (continued in Table 4.8 and 4.9). . . . .	68
4.8	Summary II of key mechanisms accessed to manage Lumber III (continued from Table 4.7. . . . .	69
4.9	Summary III of key mechanisms accessed to manage Lumber III (continued from Table 4.8. . . . .	70
4.10	Summary I of key mechanisms accessed to manage Lumber IV (continued in Table 4.11. . . . .	71
4.11	Summary II of key mechanisms accessed to manage Lumber IV (continued from Table 4.10. . . . .	72
4.12	Summary of key mechanisms accessed to manage the Nordic countries conflict. . . . .	73
4.13	Summary of key mechanisms accessed to manage the Germany conflict. . .	74

4.14 Summary of key mechanisms accessed to manage the Poland and Slovak Republic conflicts. . . . .	75
A.1 List of abbreviations from A-E. . . . .	109
A.2 List of abbreviations from F to W. . . . .	110
B.1 Description of North American actors mentioned in this study. . . . .	111
B.2 Description of North American actors mentioned in this study. . . . .	112
B.3 Description of North American organisations mentioned in this study. . . . .	113
B.4 Description of European organisations mentioned in this study. . . . .	114

## List of Figures

3.1	Correlation between stocks and prices . . . . .	30
3.2	Correlation between stocks and prices . . . . .	32
3.3	Correlation between prices in exporting and importing countries . . . . .	34

# Chapter 1

## Introduction

Economic integration is not a new phenomenon. It is a process that usually leads to enhanced interstate cooperation and sometimes intentional convergence or congruence of policies to the exclusion of non-member states. Modern-day examples include the African Economic Community, the Association of Southeast Asian Nations, the European Union (EU), the Mercosur, and the North American Free Trade Area. In an increasingly globalised world where free market principles dominate, economic integration between nation states is often trumpeted to generate mutual gains for all integration partners.

Integration literature has concentrated correspondingly on answering the question of why and how economic integration occurs. Much work has been done to understand the oldest integration framework, namely, the European Union and its former incarnations. Theorists such as Ernst Haas (1958, 1964), Leon Lindberg and Stuart Scheingold (1970) and Stanley Hoffmann (1966, 1982) did pioneering work on European integration and wrote about the roles of what they considered to be the main actors and processes involved in integration. More recent research on the European Union was performed by Hooghe and Marks (2001), Marks, Hooghe and Blank (1996), Marks (1998), Moravcsik (1993), and Verdun (2002b). Integration in the North American context has been examined by Dodge (2003) and Pastor (2001), and in the multilateral trading regime, by the Organisation for Economic Co-Operation and Development (1995). Comparisons of different types of integration frameworks have been made by El-Agraa (1989) and Milner (1995).

Amidst this body of work, some attention has been paid to the interplay between conflicts and integration. The creation of the European Community was itself an attempt by

Jean Monnet and his supporters to “permanently [neutralise] the aggressive tendencies of the nation-state.” (Lindberg and Scheingold, 1970, p. 3) David Mitrany (1975), reflecting on the two World Wars, envisioned that functional integration would bring about world peace as persons, united by mutual interests, form loyalties to a world community (p. 265-266). Robert Keohane (1984), in his work on cooperation, touched briefly on conflicts and trade relations. However, none of these authors placed emphasis on actual conflict development within integration frameworks. Charles Doran (1996), George Hoberg and Paul Howe (2000), and Billy Garton and James Duvall (2002) have examined formal dispute resolution processes in the North American context, but no attempts were made to draw on integration theories. The only research that has attempted to cross-fertilise cases of trade conflicts with integration theories was performed in 1972 by Ernst Haas, Robert Butterworth and Joseph Nye. In this comprehensive study, they explored a total of 146 cases of interstate conflicts and systematically laid out methods for evaluating the success of international organisations in managing conflicts.

The disproportionate lack of focus on conflicts between integration partners is perplexing for two reasons. First, the probability for conflicts, which may be regarded as real or perceived incompatibilities (Boulding, 1963), or, more generally, a divergence of expectations, goals or objectives (Chicanot and Sloan, 2003), is high between integrated partners because of increased interactions. Mitrany (1975) poignantly noted that “every point of economic contact between states is now apt to be also a point of political conflict between states.” (p. 254) A well-functioning integrated environment, characterised by enhanced cooperation, smoother trade flow, and decreased friction between member states, should accordingly provide effective means to resolve trade conflicts. By contrast, ineffective or inefficient management of conflicts provide telltale signs of deficiencies in the integration framework. By this logic, conflicts can test the robustness of an integration framework and can serve as a barometer for measuring its success. Second, conflicts throw into the limelight key actors and processes that are important in furthering or stalling integration. The insights gained on the driving forces behind conflicts can assist policy makers design appropriate improvements that can lower the chances for and mitigate the negative effects of conflicts in integration framework. In short, conflicts can shed light on integration, and, as “rich opportunities for growth” (Bush and Folger, 1994, p. 84), can provide clues on what ingredients would allow for better management of conflicts in integration frameworks.

More specifically, conflicts can be used as data to examine how institutions or public policy mechanisms allow decision-makers to avoid or reduce conflicts.

The present paper began as a search for solutions to a major quagmire plaguing policy makers in Canada and the United States (U.S.). The Canada-U.S. softwood lumber dispute is touted by Canada-U.S. relations experts (Cashore, 1997; Doran, 1996; Gagné, 2003) as the most significant trade dispute between Canada and the U.S. In terms of trade volume, forestry and forest industries accounted for approximately 3 percent of Canada's Gross Domestic Product (GDP) in 2003 (Natural Resources Canada, 2001) and 9 percent of total exports from Canada in 2004 (Statistics Canada, 2005). In terms of duration, the dispute boasts 23 years of longevity. Spanning from pre-Canada-U.S. Free Trade Agreement (FTA) to post-North American Free Trade Agreement (NAFTA), the softwood lumber dispute offers a rare chance to examine a consistently sore spot between the two trading partners against a backdrop of an evolving integration relationship. In an attempt to uncover variables that may be important to fostering a harmonious interstate trade relationship, the author set out to conduct a comparison study between the North American case with three lumber trade conflicts in Europe. Comparison cases were selected from the European Union (EU) (or its earlier incarnations) for two reasons. First, the EU, whose beginning can be traced to the creation of the European Coal and Steel Community in 1952, is the forerunner in integration and as such, promises a wealth of experience in the management of integration relationships. Second, the lumber sectors in North America and Europe have many similarities. In particular, the importance of forestry as an export sector in Sweden and Finland is comparable to that in Canada. In Sweden, forestry and forest industries accounted for approximately 4 percent of Sweden's GDP and almost 15 percent of its exports in 2003 (Swedish Forest Industries Federation, 2003, p. 4). In Finland, forestry and forest industries account for approximately 7 percent of Finland's GDP and 26 percent of its total exports (Finnish Forest Research Institute, 2003, p. 16). Moreover, all three countries have a mixture of public and private forest land ownerships. Approximately 94 percent of forest lands in Canada is owned by federal and provincial governments (Natural Resources Canada, 2003, p. 18). By contrast, approximately 29 percent of forest lands are under public ownership in the U.S. (Smith, Miles, Vissage and Pugh, 2004, p. 8). In comparison, 17 percent of forest lands in Sweden (Swedish Forest Industries Federation, 2003, p. 6) and 34 percent of forest lands in Finland are owned by the state (Finnish Forest Research

Institute, 2003, p. 35). Given these reasons, it was hoped that by comparing trade conflicts in a single industry sector and analysing them with a focus on the key variables studied by integration theorists, insights can be gained to reveal factors that may be important to maintain interstate trade relationships with few frictions.

In a search for trade conflicts in Europe, interviews were conducted with officials in industry, the Swedish government, and the European Commission.<sup>1</sup> The selection of the comparison European cases was a pragmatic one. Initially, all interviewees unanimously agreed that lumber trade among EU member countries is working very well. When pressed, they only revealed three cases that fit the criteria of being interstate conflicts between integration partners in the European lumber sector. It was a happy coincidence that these European conflicts illustrate different integration stages of the current EU. The first case was an anti-dumping dispute between France and the Nordic countries. At that time, France belonged to the European Community (EC), and the Nordic countries belonged to the European Free Trade Association (EFTA). The two sides had a free trade relationship bound by formal agreements. The second case concerned a subsidy dispute between Germany and several European countries in the European Union. At the time of the conflict, Germany had just joined the latter into the folds of the EU. The last European case involved trade barriers between the Slovak Republic and Poland and Western European countries. This conflict began at a time when the Central European countries in question were poised to join the EU. Interestingly, all interviewees who discussed these cases were quick to point out that the conflicts have been solved (as in the Nordic and German cases) or “must have been solved by now” (referring to the Central European case). Compared to the exasperation common in North Americans when they discuss the softwood lumber dispute, the Europeans’ seemingly unconditional faith in the functioning of the European integrated market and the resolution of interstate trade conflicts strengthened the researcher’s belief that lessons could be learned from the European examples.

This study aims to contribute to the field of integration theory by determining the type of integration framework that is best-suited to facilitate the resolution of conflicts between trade partners within an integration framework.<sup>2</sup> The case studies are dissected through the

---

<sup>1</sup>See Appendix C for the methods used to gather information for this study.

<sup>2</sup>A word on nomenclature is warranted. Today’s scholars have referred to both theory and framework when discussing economic and political integration. For example, neofunctionalism and intergovernmentalism have

lens of an integration theorist. The predictions of three key integration theories, namely, neofunctionalism, intergovernmentalism, and multi-level governance, are assessed against developments in each case.<sup>3</sup> To assist with this inquiry, two sub-questions are asked: which actor is most likely to spark and intensify conflicts between integrated countries? What aspect of an integration framework is important in preventing, mitigating or resolving ongoing and future conflicts?<sup>4</sup> It is hoped that in answering these two questions, this study can also contribute to the field of conflict resolution.

The paper is laid out as follows. Chapter 2 begins with a brief outline of three key integration theories. Particular focus is paid on the different actors, mechanisms, and motivations each predicts as central to integration. Neofunctionalism is a theory that views integration as an automatic process once policy-making power in a sector is transferred to the supranational level. Downplaying the role of national actors, neofunctionalists see integration driven by domestic and supranational actors and spillover processes. Intergovernmentalism takes a more state-centric approach by treating integration as a conscious attempt by national actors to further their national interests. Nation states are seen to be the gatekeepers of integration who only welcome integration when the outcome advances their interests. Hence, state preferences and power are considered to be the decisive determi-

---

been generally been treated as theories, but some have used them as frameworks. On the other hand, multi-level governance is typically considered a framework. However, the literature is unclear on the distinction between the two formulations. It is beyond the scope of this study to enter into this debate. Hence, for the purpose of this paper, the issue of theory versus framework will be sidestepped; these schools of thought will merely be used as tools to understand integration.

<sup>3</sup>One may find it far-fetched to map the North American case study to integration theories, which have largely been developed to explain European integration. One may also point out that structures set up by the Canada-U.S. Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA) can hardly be regarded as supranational institutions. The author does not dispute these facts. However, she feels that her approach is still justified for two reasons. First, integration theories have outgrown the original intent of only explaining European integration and have become important tools for understanding collaboration between states. Second, Canada and the U.S. may still be in the embryonic stage of the integration process. While one may have to take the mapping of the North American case to integration theories with a grain of salt (for example, when the Canada-U.S. FTA and NAFTA structures are referred to as supranational institutions), the author feels that there is nonetheless merit in this treatment. Pastor (2001), for example, has drawn on the lessons of the European Union in his examination of NAFTA.

<sup>4</sup>This research does not attempt to determine the factors that contributed to trade conflicts because it is more interested in the 'how' than the 'why' of integration.

nant of integration. Multi-level governance assumes that integration is driven by an eclectic mix of actors and occurs in a variety of and across levels. It stresses inter-connected and multi-level policy networks. It also acknowledges the existence of variable forces, whose dominance depends on the role and power of the actors and institutions in a given situation, as well as on the specific circumstances and surrounding environment.

After looking at these three integration theories, Chapter 3 describes four North American and three European case studies. Although the North American cases all revolve around the softwood lumber dispute, the integration context between the two conflict countries has evolved in the dispute history from that of two autonomous trading partners to one where both are bound by formal trade agreements and dispute resolution processes. The European case studies also exhibit a similar diversity in the varying degrees of integration between the conflict parties. The first concerns a trade dispute between countries tied to a free trade agreement. The second involves EU member states and a newly-acceded country bound by the rules of the EC. The third case began as conflicts between EU members and soon-to-accede countries. The latter have since acceded and the conflicts have consequently become ones that need to be settled between EU members. Reflecting on the theories outlined in the previous chapter, if the conflict resolution process follows a neofunctionalist approach, one would expect a gradual transfer of policy-making to the supranational level and a corresponding diminish in control at the national level. If intergovernmentalism dominates, the opposite would be true. Bargaining between national governments would be the main channel for settling conflicts. If integration follows a multi-level governance approach, one would expect that conflicts can only be understood by examining the outcomes and the processes at the various levels.

Following the presentation of the case studies, the conflicts are analysed in Chapter 4 according to the three themes, corresponding to factors with which integration theories are concerned. The first theme is the key actors involved in instigating and escalating the conflicts. Key actors are examined at the local or regional, state, and supranational levels with the intent of determining which level of actors are most capable of influencing policy processes and outcomes. The second theme is the mechanisms that characterise the dispute resolution approaches accessed. The third theme is motivation, which relates to the incentives or reasons behind actors' choice of dispute resolution processes. Each of these themes is then linked back to the assumptions and predictions of the integration theories

discussed in Chapter 2.

Finally, Chapter 5 provides a summary of the findings. The sample of cases led to the conclusion that the key drivers for trade conflicts between integration members are subnational actors. It is also found that the availability of a variety of dispute resolution processes at multiple levels is key to attaining resolutions that are satisfactory to the conflict parties. Consequently, multi-level governance is seen to be the best framework for accounting for the outcomes observed in the case studies. The chapter concludes by drawing some implications for policy makers working in an integrated environment.

## Chapter 2

# Integration Theories

In the past half century, myriad theories have been proposed to describe and predict integration. No attempt is made here to describe each as the endeavour has already been undertaken elsewhere (Verdun, 2002b). Instead, this chapter discusses the three major integration theories, namely, neofunctionalism, intergovernmentalism, and multi-level governance. While the three theories are not mutually exclusive, they do place different stress on the actors, mechanisms and motivations that are perceived to be most integral to shaping the integration process.<sup>1</sup> Verdun (2002b) has set up a classification scheme that sees neofunctionalism on one end of a linear spectrum, anchored by intergovernmentalism on the other, with multi-level governance somewhere in between. More details on each theory is provided below.

### 2.1 Neofunctionalism

Neofunctionalism is an integration theory that identifies supranational institutions and domestic players such as interest groups, trade unions, and business associations as the key actors in the integration process (Verdun, 2002b). While recent neofunctionalists have also included governments at all levels to be relevant actors (Verdun 2002a), the driving forces behind integration are still seen to be non-state actors (Hix, 1999). Rosamond (2000) pointed out that subnational actors, eager to gain access to and influence decisions made

---

<sup>1</sup>In this paper, the term “actors” is used loosely to include individuals, groups and institutions.

at the supranational level, would transfer their loyalty and perhaps even “transnationalise” their organisational form. Subnational actors are motivated to do so because they believe they can create policies more effectively by exerting their influence at the supranational level (Verdun, 2002b). Integration is seen to be based on functional needs and is considered functionally practical. In turn, supranational agencies offer societal groups direct access to them so that subnational actors do not need to pass through national governments as intermediaries. In this way, supranational institutions end up either acting as policy entrepreneurs or assuming some of the tasks previously performed at the national level (Verdun, 2002a).

A central dictum to neofunctionalism is the assumption that decision-making authority would be delegated to a supranational institution. The supranational agency would “slowly [extend] its authority so as to progressively undermine the independence of the nation-state.” (Lindberg and Scheingold, 1970, p. 7) More precisely, mechanisms of integration are characterised by functional and political spill-overs. Functional spill-over refers to the phenomenon whereby integration in one economic sector would induce integration in other sectors (Haas, 1958). Verdun (2002b) notes that functional spill-over is especially relevant when policy areas become “more difficult to handle at the national level in isolation from cooperation with other states” (p. 24). Rosamond (2000) agreed that neofunctionalism sees that “problems in one economic sector could not be remedied without recourse to action in other sectors.” (p. 60) Political spill-over, seen to follow on the heels of functional spill-over, refers to the increased likelihood that actors would shift their loyalties to the supranational level (Haas, 1958). In these respects, once integration commences, it is governed by deterministic mechanisms that are self-driven and automatic.

## **2.2 Intergovernmentalism**

Intergovernmentalism, as the name suggests, holds that nation states and national governments are the central actors in integration (Hoffmann, 1966, 1982). In other words, national governments solely determine if and when integration occurs and halts. That said, domestic actors can indirectly influence the integration process by lobbying their national government through political means (Verdun 2002b; Marks, Hooghe and Blank, 1996). However, domestic actors are only influential to the extent that they affect national government inter-

ests and preference formation (Moravcsik 1998).

In contrast to neofunctionalists, who believe that integration is automatic, intergovernmentalists believe that integration is a voluntary process initiated by national governments. Through the lens of intergovernmentalists, the primary means through which integration is carried out is interstate bargaining. The result is what is often referred to as "lowest common denominator" bargaining, whereby the extent of integration hinges on the state with the least desire to integrate (Moravcsik, 1993, p. 501).

Intergovernmentalists hold that nation states only pursue integration when their interests converge (Wolf, 2002). When their interests diverge, integration stalls or even reverses direction. Hence, states would only devolve control to supranational institutions if their policy goals are achieved. While interests are seen to be guided by national preferences, Hoffmann (1982) did not elaborate on exactly what defined national preferences. He only said that "low" politics may be integrated, but that integration in "high" politics is unlikely. By "high" politics, he was referring to politics that "aims at or allows for the maximization of the common good" and essential "to the government for the survival of the nation or for its own survival" (p. 29). While "high" politics is usually seen to involve foreign and defence policies and "low" politics economic and social policies, Hoffmann (1982) stressed that what is "high" politics can become "low" politics depending on "its momentary saliency" (p. 29). In an attempt to better define state interests, Andrew Moravcsik, a liberal intergovernmentalist, attributed national preference formation to economics and domestic sources (1998). Accordingly, "An understanding of domestic politics is a precondition for, not a supplement to, the analysis of the strategic interaction among states." (Moravcsik, 1998, p. 481)

### **2.3 Multi-level Governance**

Multi-level governance, proposed first by Gary Marks (1998) and later by Liesbet Hooghe and Marks (2001), is an integration theory that neither wholeheartedly embraces state-centrism nor supranational institution and domestic group dominance (Rosamond, 2000). While "high" politics is still seen to be within the purview of national actors (1998, p. 406), "decision-making competencies are shared by actors at different levels rather than monopolized by national governments." (Hooghe and Marks, 2001, p. 3) More impor-

tantly, multi-level governance predicts “the increasing importance of subnational levels of decisionmaking and their myriad connections with other levels.” (Marks, 1998, p. 342) As such, subnational actors “operate in both national and supranational arenas, creating transnational associations in the process” (p. 4). Supranational institutions only set the policy framework, and there is increased opportunity for regional and local actors to get involved in the integration process by participating in problem definition activities. This is especially relevant when the policy of supranational institutions affect regional and local actors such as the private sector.

The mechanism characterising integration involves “a system of continuous negotiation among nested governments at several territorial tiers - supranational, national, regional, and local - as the result of a broad process of institutional creation and decisional reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level” (Marks, 1998, p. 342). The theory likens integration to a centrifugal process, whereby decision making is “spun away from member states in two directions: up to supranational institutions, and down to diverse units of subnational government” (Marks, 1998, p. 402).

Unlike neofunctionalism and intergovernmentalism, multi-level governance is not a prescriptive theory. Rather, it is interested in describing and understanding the integration process. While it is uncertain which actor should prevail in the complex web of relationships (since influence depends on the circumstances and surrounding environment), subnational actors are expected to be active in accessing whatever means necessary to increase their power.

## **2.4 Summary**

This brief discussion has shown that differences between neofunctionalism, intergovernmentalism and multi-level governance may be captured by three variables. The first is the actor that is presumed to be the most important in an integration process. The second is the mechanisms of integration, and the final variable is the motivations for furthering or stalling integration. Table 2.1 provides a summary of the three integration theories’ hypotheses on these three key variables.

Since the three theories examined all stress the dominance of different actors, mecha-

Theory	Actor	Mechanism	Motivation
Neofunctionalism	Supranational; Domestic	Self-driven; Automatic; Functional spill-over; Political spill-over	Functionally practical to access actors and processes at the supra- national level
Intergovernmental- ism	National	Voluntary, conscious decision to initiate, further or halt inte- gration; convergence of state interests; interstate bargaining	National preferences, defined by economics and domestic demands
Multi-level Governance	Multi-levels	Decisions made at myriad levels; na- tional government dominate “high” politics	Interests of actors at different levels; raising the importance of non-government actors

Table 2.1: A summary of the three integration theories’ hypotheses on the dominant actors, mechanisms and motivations in integration.

nisms and motivations, one would hold different expectations on what would be observed in the case studies. A subscription to the neofunctionalist theory would lead one to anticipate conflicts mainly managed by supranational actors. National actors are likely too lethargic or unable to resolve conflicts. Subnational actors should have a high degree of interaction with supranational actors as the supranational level is seen to be the only avenue for them to effectively influence policy decisions. In addition, the conflict resolution process should be self-driven and automatic. If, on the other hand, intergovernmentalism holds, one would forecast conflicts controlled by national actors. Subnational actors would likely engage actively in lobbying their state governments to advance their interests, and intervention by supranational actors would be non-existent or low. Intergovernmental bargaining would be prominent, and conflict progress or regress should see the deliberate hands of national governments. One should also expect to see conflict outcomes catering to the interests of

national actors. Finally, the existence of multi-level governance should raise expectations of multiple dispute resolution processes pursued at the same time by multiple actors. Sub-national actors should be observed to be one of the most powerful groups in the conflicts, but national actors should still dominate “high” politics.

Without further ado, the case studies are presented in the following chapter.

# Chapter 3

## Case Studies

This chapter describes the case studies that are used to compare integration in the two contexts. Since the goal is to provide sufficient details for the subsequent analysis, instead of presenting a thorough account of the conflict, attention is focused on the key actors, the mechanisms characterising the dispute resolution processes accessed, and possible motivations for the key actors' choice of dispute resolution mechanisms.

### 3.1 North American Case Studies

Although conflict over lumber trade between Canada and the U.S. had antecedents dating back to the turn of the century, it was not until the early 1980s that it reached new heights, to the extent that it has become the most significant bilateral trade dispute in terms of duration and trade volume. The following is a brief account of the twenty-three-year-old saga, which included four episodes, referred to respectively as Lumbers I, II, III and IV.<sup>1</sup>

---

<sup>1</sup>British Columbia (B.C.) accounts for the largest percentage of Canadian forest product exports. Most of the focus in this paper is placed on B.C. According to Natural Resources Canada (2001), B.C. accounted for 31.8 percent of total forest product exports, compared to Quebec (27.0 percent), Ontario (21.5 percent), and other provinces (19.7 percent).

### 3.1.1 Lumber I

The roots of the first episode of the softwood lumber dispute can be traced to events following the 1974-75 recession in the U.S. From the mid- to late 1970s, the U.S. experienced a housing boom, from which Canadian lumber exporters benefited due to restricted timber supplies in the U.S., a decreased value of the Canadian dollar against U.S. currency, and an expanded and more automated lumber industry in Canada. From 1975 to 1978, Canadian share of the U.S. lumber market rose from 18 percent to 28 percent. The 10 percent increase in market share was tolerated by the U.S. industry until 1979, when high interest rates instituted by the U.S. Federal Reserve Board caused a severe recession and a collapsed housing market. U.S. mills began to close, and while the absolute volume of Canadian lumber to the U.S. decreased, the Canadian share of the U.S. lumber market continued to increase slightly.

Canadian sawmills' better performance in light of the recession and economic downturn was also attributed to the Canadian tenure system. In Canada, stumpage rights, which gives a forester the claim to harvest timber in a specified area, are bought by short-term contracts. In comparison, stumpage contracts in the U.S. are longer-term. However, inflation after the 1974-75 recession in the U.S. and the subsequent high demand for lumber led speculative Pacific Northwest lumber producers who wished to secure supply to bid at stumpage prices that exceeded the selling prices of finished lumber in 1979. According to one report, since Canadian stumpage prices better reflect the market conditions by virtue of the short-term contracts, Canadian stumpage fees were five to ten times lower than U.S. fees at that time (Doran and Naftali, 1987).

Concerned over the competitive position of Canadian sawmills, the Northwest Independent Forest Manufacturers (NIFM), a small association of independent sawmillers in the United States Pacific Northwest, published a report in 1981 alleging that next to the recession in the residential construction market, imports of Canadian lumber was the most important cause of the high level of unemployment in the Pacific Northwest forest industry (Apsey and Thomas, 1997).<sup>2</sup> Given that 94 percent of forest lands in Canada were publicly owned, compared to the U.S., where only approximately 30 percent of timber lands were

---

<sup>2</sup>A list of the abbreviations is provided in Appendix A. Appendix B provides brief descriptions of the organisations mentioned in this paper.

under public ownership, NIFM argued that the high level of imports was attributable to unfair Canadian trade practices, specifically government subsidisation of stumpage (Natural Resources Canada, 2003; U.S. Department of Agriculture, 2001).

At the urging of NIFM, the Governor of Oregon appointed a Timber Strategy Panel to determine the difficulties faced by the lumber industry in Oregon. The Panel agreed that lumber subsidies by the Canadian government provided Canadian lumber exporters a “substantial competitive advantage in the U.S.” (Apsey and Thomas, 1997, p. 7) Senator Robert Packwood of Oregon subsequently held a one-day hearing in Washington, D.C. on the impact of Canadian lumber imports. He then requested the United States Senate Finance Committee to direct the International Trade Commission (ITC), reportedly an independent, non-partisan, quasi-judicial federal agency that determines the impact of imports on U.S. industries, to investigate the factors that affected the competitiveness of United States producers of softwood lumber (Apsey and Thomas, 1997).

Meanwhile, NIFM expanded its base to form the Coalition for Fair Canadian Lumber Imports (CFCLI). According to Krista Iverson (2001), “By the fall of 1982, this enlarged group represented approximately 20 percent of the productive capacity of the United States lumber industry, but only included two major producers, International Paper and Louisiana Pacific” (p. 78). On the Canadian side, the Council of Forest Industries (COFI), which represents lumber companies in the interior of British Columbia (B.C.), gathered lumber manufacturing associations from across Canada to form the Canadian Softwood Lumber Committee (CSLC). The CSLC’s task was to take the lead role in preparing a unified response to the ITC enquiry. It sought legal counsel in Washington, D.C. even before the petition was filed, and it commissioned a few studies in anticipation of the need to defend Canadian stumpage policies (Iverson, 2001). The federal and provincial governments and industry eventually joined the CSLC to coordinate the Canadian response. Eager to defend their positions, forestry ministers from the provinces of British Columbia, Ontario and Québec also travelled to Washington, D.C. in February 1983 to voice their concerns with the U.S. Secretary of Commerce Malcolm Baldrige (Iverson, 2001).

Confident that the ITC report supported its allegations, the CFCLI launched in October 1982 a countervailing duty petition with the U.S. Department of Commerce (DOC), arguing that Canadian stumpage rates conferred a subsidy. The investigation that followed began with a determination of the existence of subsidy by the International Trade Administration

(ITA), which is an arm of the DOC that oversees import administration. A subsidy exists if the government program in question can be shown to be “specific”. That is, it must be provided to a specific enterprise or industry, or group of enterprises or industries. If a program was “specific”, the ITA must then show that it is “preferential”, which means that the good is provided at a preferential rate. After that, the ITC would judge if the U.S. industry had been “materially injured” or threatened with material injury as a result of the subsidy.

In March 1983, the ITA issued a preliminary negative determination because it found that stumpage rights were not specific and were not provided at preferential rates. CFCLI appealed this decision to the U.S. Court of International Trade. The U.S. Justice Department representing the DOC made a motion in response, and the CSLC was the only Canadian party that made a motion. After hearing these motions, the Court dismissed the appeal.

In May 1983, seventeen months after the filing of the petition, ITA upheld its preliminary decision and found that Canadian stumpage programs did not constitute a subsidy. In particular, it determined that stumpage programs applied to the pulp and paper industry and the furniture industry and were therefore non-specific. As such, the ITC did not need to make a determination on the injury test. The ITA negative final determination marked the conclusion of Lumber I.

### **3.1.2 Lumber II**

Unsurprisingly, the U.S. lumber industry was unhappy with the ITA ruling in Lumber I. This dissatisfaction was augmented by the Canadian industry’s increasing market share in the U.S. The availability of lumber supply from Canada was attributed by the U.S. industry as the cause for preventing the increase in lumber prices expected from increased demand (Iverson, 2001, p. 7-8). Meanwhile, the CFCLI metamorphosed into the Coalition for Fair Lumber Imports (CFLI), growing “from a membership that represented approximately 20 percent of the American softwood lumber production to a membership that was representative of 70 percent of production.” (Iverson, 2001, p. 8) Its membership grew beyond the Pacific Northwest to “across the country and into the south.” and “some of the largest top ten companies had joined, notably companies with large holdings of private timberland, such as Union Camp, Georgia-Pacific, International Paper and Temple Inland.” (Iverson,

2001, p. 8) The corresponding physical and financial growth translated into stronger political pull.

Three specific developments in this period encouraged the U.S. lumber industry to reopen the softwood lumber dispute. First, Canada formally requested in September 1985 for the negotiation of a free trade agreement with the U.S. Since trade and commerce were under the jurisdiction of Congress, the U.S. Administration, which is the executive arm of the U.S. federal government, needed Congress to grant it fast track negotiating authority.<sup>3</sup> There were indications that in exchange for this negotiating authority for President Ronald Reagan, members of Congress demanded that the lumber issue would be resolved. For example, “sixty-four members of Congress wrote to Secretary of State George Schulz urging him to resolve the lumber issue before commencing the free trade negotiations” (Apsey and Thomas, 1997, p. 17). U.S. Trade Representative Clayton Yeutter also sent a letter to Senator David Pryor on April 17, 1983 which said “We’ll get timber fixed” (Apsey and Thomas, 1997, p. 19). T.M. Apsey and J.C. Thomas (1997) further pointed out that “the fact that a number of Republican senators from lumber-producing states were facing re-election in November of 1986 put greater pressure on the Reagan Administration.” (p. 18).

Second, the CFLI gathered momentum from *Cabot Corp. v. The United States*, where imports of Mexican carbon black and ammonia were alleged to be subsidised by the Mexican government. The U.S. industry argued that the U.S. countervailing duty law failed to address “clearly trade-distorting subsidies which threatened many U.S. industries” (Apsey and Thomas, 1997, p. 16). Under criticism of the interpretation of U.S. Trade Law by Congress and the U.S. Court of International Trade, the DOC changed its interpretation of specificity and preferentiality in *Cabot Corp. v. The United States*, and the altered legal analysis provided justification for the CFLI to file another countervailing duty petition even though Canadian lumber practices remained the same in that period (Percy & Yoder, 1987).

Third, some of the same Pacific Northwest players who initiated Lumber I succeeded in getting the ITC to impose a 35 percent import tax on Canadian red cedar shingles and shakes. They were thus optimistic that their softwood lumber case would fall on sympa-

---

<sup>3</sup>Agreement that results from the President’s negotiations needs to be approved by Congress. If the President obtains fast track authority, legislation that needs to be implemented to fulfill the agreement is voted by “simple majority in both chambers on a limited timetable without the opportunity for amendment.” (Apsey and Thomas, 1997, p. 17)

thetic ears.

In March 1985, the ITC conducted an investigation under Section 332 of the Tariff Act on the competitiveness of the Canadian and American softwood lumber industries at the request of Clayton Yeutter (Iverson, 2001). The report, "USITC Report: Conditions Relating to the Importation of Lumber into the U.S.", was released in October 1985 and the U.S. lumber industry believed that it supported its claim that the Canadian lumber industry receives subsidies (Iverson, 2001). In the six months following the report, the U.S. government initiated several meetings with the Canadian government, but a negotiated settlement was not realised (Iverson, 2001).

On May 19, 1986, the U.S. softwood lumber industry petitioned again for a countervailable duty investigation based on new evidence of subsidies and the recent changes in U.S. trade law. Apsey and Thomas (1997) observed that the case "was strategically timed under the countervailing duty statutory timeframes so that Commerce would have to make its preliminary determination as to whether subsidies were being conferred just before the mid-term congressional election where key Republican seats were at stake" (p. 20). In a preliminary determination, the U.S. found that the Canadian system of calculating stumpage conferred a subsidy of approximately 15 percent to lumber producers. Canada argued, to no avail, that the situation had not changed since the ITA's 1983 final negative determination. At its request, a General Agreement on Tariffs and Trade (GATT) panel was established under the GATT Subsidies Code.

In this episode of the dispute, the provincial governments became significantly more active because given the affirmative preliminary determination, there was a real threat that their ability to manage the forest resource would be jeopardised and revenues that could flow to provincial treasury would be diverted to the U.S. Treasury (Apsey and Thomas, 1997). For example, New Brunswick independently argued that it should not be included in the petition because it had just raised stumpage. Meanwhile, the B.C. Minister of Forests, Jack Kempf, and his deputy, Bob Flitton, held secret talks with Gus Kuehne, a representative from the CFLI. An alliance was established between the B.C. government and the CFLI when "Kempf made it plain to the coalition that the B.C. government wanted to take more out of the industry", which would be possible if a Canadian export tax was levied to settle the dispute (Whiteley, 1987, p. F1). Subsequently, the B.C. Premier William Vander Zalm and Jack Kempf "announced a plan to look at and revise forest policy and stumpage pricing

in the province, stating that the province wasn't receiving sufficient revenue from the forest" (Iverson, 2001, p. 13). The B.C. opposition New Democratic Party also criticised the low stumpage rates. The CFLI picked up on the convergence of opinions by raising these criticisms in Congress. Hence, Lumber II sees regional actors beginning to seek avenues other than the federal government to resolve the dispute.

Given the negative determination in Lumber I, it was difficult for some Canadian actors to fathom the U.S. lumber industry's petition in Lumber II would be successful. According to Iverson (2001), the federal government was complacent in the beginning of the dispute, despite repeated warnings that there was strong resolve and support to solve the "lumber problem" (p. 7). In her opinion, "Canada was unable to prepare the necessary political campaign and there were very few Canadian-friendly advocates in the right places in Washington" (Iverson, 2001, p. 12). This was augmented by the departure of key personnel who had been involved in the 1983 case. However, the attitude soon changed. The federal government, which had initially refused to consider settling the case with an export tax, made, under pressure from British Columbia and Québec, a "one-time" offer to have the key provinces increase their stumpage rates by \$350 million, which would amount to a tariff equivalent of approximately 10 percent (Apsey and Thomas, 1997). However, this offer was not accepted by the U.S. side.

On October 7, Congressman Don Bonker and thirty-six other members of Congress wrote to Clayton Yeutter threatening a "legislative solution" if the Commerce Department did not make the right decision (Apsey and Thomas, 1997). Due to these pressures, the Canadian government entered into negotiations with the U.S. government, despite its earlier threat of the one-time offer. These negotiation sessions only permitted attendance by representatives of the two federal governments, but Canadian and U.S. subnational actors were briefed and consulted with regularly between negotiation sessions.

On December 30, seven months after the countervailing duty petition was filed, an agreement was finally reached. Noteworthy was the fact that Kuehne claimed the resolution would not have been possible without Kempf. Under the Memorandum of Understanding (MOU), the Canadian government would voluntarily impose a temporary export charge of 15 percent on softwood lumber entering the U.S. market from Canada. This charge was collected by the Canadian federal government and remitted to the provinces. In exchange, the CFLI would withdraw the petition and the DOC would issue a termination

of the investigation accordingly. Since the dispute reached a resolution, the GATT panel was terminated. The MOU provided that the export tax may be removed or reduced on a province-by-province basis if the alleged subsidy was eliminated by increased stumpage fees or changes in forest management practices.

### 3.1.3 Lumber III

As lumber prices fell at the end of 1991, pressure from the B.C. government and the forest industry for the termination of the MOU began to escalate as they were frustrated with the province's inability to decrease stumpage to reflect the market situation at the time.<sup>4</sup> As a safety precaution, Canada used the U.S. government's own Timber Sales Program Information Reporting System to compare forest costs and revenues in the four provinces in question and was satisfied that the U.S. would agree that there was no longer any subsidy on Canadian softwood lumber production by the U.S. standards (Gagné, 2002). Confident that the elimination and reduction of the export tax on B.C. and Québec respectively signified changes to their forest management policy that were acceptable to the U.S. as replacement charges for the export tax, and convinced that the Canada-U.S. Free Trade Agreement (FTA) dispute resolution process would protect their interests, on September 3, 1991, they succeeded in persuading the Canadian federal government to exercise its contractual right to terminate the MOU.

Immediately, congressional representatives lobbied the U.S. government by threatening action if the Administration does not react to the termination. On October 4, 1991, the DOC announced it would self-initiate a countervailing duty investigation, and it imposed an interim bonding requirement of imports of lumber from Canada except those from the Atlantic provinces.<sup>5</sup>

The first reaction of the Canadian federal government was to appeal to supranational

---

<sup>4</sup>The province could not decrease stumpage because any decrease would have been regarded by U.S. actors as further subsidies to the Canadian lumber industry. In fact, such a move would likely increase costs for the Canadian lumber industry because the U.S. could raise the rate of the export tax in response to what they would regard as further state subsidy by the provincial government.

<sup>5</sup>Unlike most of the other provinces, which harvest lumber in public lands, lumber in the Atlantic provinces is mostly harvested on private land. U.S. exempted the Atlantic provinces from the countervailing duty investigation because their auction-based timber-pricing system was deemed to resemble the U.S. system.

bodies. Following GATT procedures, it sought consultations four days after the announcement, and failing to reach a mutually acceptable solution, it requested the establishment of a GATT dispute settlement panel to examine the bonding requirements, as well as the legitimacy to the DOC's self-initiation.

On October 23, 1991, the DOC formally initiated the case. On December 23, 1991, the ITA formally included in its countervailing investigation log export restrictions after it was provided with evidence from the CFLI claiming that provincial log export restrictions conferred a subsidy on softwood lumber as well. This was so despite the fact that the Pacific Northwest states had log export restrictions on public lands. According to Iverson (2001), since the Pacific Northwest states did not support the inclusion of log export restrictions, the countervailing duty allegation was likely initiated by the Southern states (p. 40).

The Canadian effort to diffuse the dispute occurred on several fronts. For example, the federal government "contacted their political and bureaucratic counterparts in the U.S. requesting that the case be dropped." (Iverson, 2001, p. 30) Federal opposition Members of Parliament also went to Washington to meet with the chair of the CFLI in April 1992 (O'Neil, 1992, p. A13). According to Helmut Mach (2001), the dispute concerned provincial forest management systems and provincial determinations of stumpage prices, and "since the provincial forest management practices were all different in each of the provinces, what each of the provinces were willing to put forward as items for potential change were different in each of the provinces." (p. 291) Consequently, the U.S. Trade Representative would conduct negotiations with the Governments of Alberta, B.C., Ontario and Québec individually, while provinces would reconvene "back in the Canadian Embassy to share the results of their discussions" in between negotiations (Mach, 2001, p. 291). Ontario was apparently reluctant to negotiate with the U.S. Trade Representative and thus did not get involved in negotiations until very late in the process (Mach, 2001, p. 291). In the end, due to the complexity of individual negotiations to produce the desired outcome, namely, a 10 percentage decrease in the volume of Canadian lumber entering the U.S., negotiations shifted to changing from the "province based system into a Canadian national export restraint program based on a quota system with a total number for all of Canada." (Mach, 2001, p. 291-292) The onus was therefore on the Canadian federal government to distribute the duty-free quotas.

Lumber III saw a significant growth in cross-border alliances or attempts at alliances.

The B.C. government, with the understanding that the log export restriction allegation originated from the Southern U.S., "attempted to create an alliance with parties in the Pacific Northwest to pressure the ITA to drop the [log export restraint] component of the case." (Iverson, 2001, p. 30) The B.C. premier Mike Harcourt visited Washington state Governor, Booth Gardner, and they jointly issued a press release condemning the log export restrictions allegation (Iverson, 2001, p. 30). In October 1991, the Maritime Lumber Bureau, which represented lumber producers in the Maritimes, wrote *jointly* with the CFLI to request an exemption of the Maritime industry from the investigation. Its request was subsequently granted. For the first time in the dispute, the CFLI joined British Columbia environmental groups in a lobbying campaign directed towards Congress and the public. For example, Congressman Ron Wyden cited the Western Canada Wilderness Committee and B.C. Sierra Club as supporting the argument that "there was a direct relationship between this long-standing, heavy subsidization of Canadian stumpage and poor forest practices in British Columbia." (Cashore, 1997, p. 20) At the same time, other U.S. lobby groups, including the U.S. National Lumber and Building Material Dealers Association, the U.S. National Association of Home Builders, and the American Consumers for Affordable Homes, began to lobby for the interests of the home building industry and home buyers. These two groups had significant interactions with the Canadian industry and government representatives (Cashore, 1997, p. 20).

On May 28, 1992, the DOC issued a final affirmative determination on subsidisation, finding that Canadian lumber exports to the U.S. received countervailable subsidies. On July 15, the ITC found by a 4-2 vote a final affirmative determination on injury. The federal government, in conjunction with the provinces and the lumber industry, filed challenges against the final determinations of subsidy and an injury before two FTA binational review panels. The FTA binational review panels were charged to rule on whether the U.S. has properly applied its own domestic law on countervail duties. Iverson (2001) noted that upon the convening of a binational review panel, the CFLI filed a motion to the FTA panel requesting for its dismissal (p. 41). CFLI believed that since softwood lumber was excluded from the FTA, the panel had no jurisdiction. This motion was denied.

In December 1992, the GATT panel ruled in a preliminary decision that the U.S. was justified in self-initiating the investigation, but its demand for bonding requirement was inappropriate. This decision was made final in February 1993. According to Iverson (2001),

both "Canada and the U.S. had delayed accepting the decision. Canada delayed acceptance of the decision in order to avoid any uncertainty in the FTA panel process. The Americans postponed adopting the decision because they objected to returning the interim bonds that had been collected. In fact, the U.S. did not return the bonds until several years after the decision was accepted" (Iverson, 2001, p. 40).

On May 6, 1993, the FTA panel ruled in favour of Canada, stating that there was insufficient evidence of Canadian subsidy by stumpage or log export restrictions. The panel remanded the determination back to the ITA for further consideration. The ITA subsequently recalculated and again reached an affirmative determination. Once more the FTA panel remanded the determination, at which point the ITA finally issued a negative determination of subsidy. Noteworthy was that the negative determination was dissented by the two U.S. panellists.

On April 6, 1994, under pressure from CFLI and its congressional supporters, the U.S. Trade Representative appealed the decision of the second FTA panel on subsidy to an Extraordinary Challenge Committee under the FTA. The charge was that the two Canadian FTA panellists had a conflict of interest. On August 3, 1994, the Extraordinary Challenge Committee found 2-1 in favour of Canada, with the dissent from the U.S. panellist. The DOC finally accepted the panel finding, terminated the countervailing duty order, and refunded the bonds.

However, the CFLI was still unsatisfied with the outcome. On September 13, 1994, CFLI filed a challenge to the constitutionality of the softwood lumber decision and the FTA process. Apsey and Thomas (1997) pointed out that this was met with resistance from the U.S. Administration because the challenge "questioned the President's executive powers and raised important issues of principle that the Justice Department would defend vigorously." (p.64) On October 25, the U.S. government "confidentially approached Canada to enter into consultations on softwood lumber exports." (Iverson, 2001, p. 46) Industries on both sides were consulted throughout the process. The process culminated on May 29, 1996 in the Canada-U.S. Softwood Lumber Agreement (SLA), which provided Canadian exporters with a guarantee against U.S. trade actions for five years. In return, a fee was established on softwood imports from Canada exceeding a quota. Manitoba, Saskatchewan and the Atlantic provinces were exempted from this agreement. Four years and six months after the DOC's self-initiation of the case, Lumber III officially concluded.

### 3.1.4 Lumber IV

Once the SLA expired, the CFLI, the Paper and Allied Chemical Engineers International Union, and the United Brotherhood of Carpenters and Joiners Union filed on April 2, 2001 countervailing duty and anti-dumping duty petitions with the U.S. government. The petitions were amended on April 20, 2001 to add four lumber producers, Moose River Lumber Co., Shearer Lumber Products, Shuqualak Lumber Co. and Tolleson Lumber Co., Inc., as petitioners. The CFLI alleged that the Canadian governments subsidised Canadian softwood lumber exports by 39.9 percent through the stumpage system, log export restraints and other federal and provincial programs. The Canadian government held consultations with the U.S. government, but its plea to the government to deny an investigation was not heeded. On April 23, the U.S. government launched countervailing and anti-dumping investigations.

On March 22, the DOC issued an affirmative final countervailing duty determination and, given that it did not find a surge of softwood lumber from Canada since the countervailing petition was filed, it issued a negative critical circumstances determination. Twenty companies and the Atlantic provinces were exempt from the countervailing duty. It also found an affirmative final dumping determination on the same day. On May 2, the ITC ruled 4-0 that the U.S. lumber industry was threatened with material injury.

The two federal governments had much contact during Lumber IV, which has been the longest episode in the history of the dispute. Between February to March 2002, the Canadian and the U.S. federal governments engaged in discussions but failed to resolve the dispute. In July 2003, the Canadian federal government submitted to the DOC a proposal for an interim agreement while long-term policies are implemented according to the Policy Bulletin. The interim agreement would see a set quota of Canadian softwood lumber entering the U.S. However, the negotiations stalled in late July when the CFLI imposed a new set of conditions. In August 2003, the DOC published a draft policy bulletin which outlined changes to provincial forest policies that would revoke the countervailing duty. However, the final policy bulletin is still not released at the time of writing.

The Canadian federal government's close relationship with Canadian subnational actors continued in Lumber IV. It consulted regularly with provincial governments and domestic lumber industry on a feasible proposal for settlement with the U.S. actors. In International

Trade Minister Pierre Pettigrew's trip to Washington in September 2002, he brought along representatives of the Canadian lumber industry to meet members and staff of the U.S. House of Representatives and the Senate. The Department of Foreign Affairs and International Trade stated that "This event will provide an opportunity for Canadians to once again advocate Canada's position in the softwood lumber trade dispute to politicians and those with links to the media and the legal and academic world." (Department of Foreign Affairs and International Trade, September 18, 2002). In December 2002, the Department also announced a \$15-million assistance package for Canadian softwood lumber industry association to help them "continue to operate effectively under the burden imposed by the softwood lumber dispute." (Department of Foreign Affairs and International Trade, December 23, 2002) This gesture was in recognition of the associations' role in providing "detailed legal and policy advice in the development of the Government of Canada's challenges before the World Trade Organization and the North American Free Trade Agreement and during negotiations with the United States Administration." (Department of Foreign Affairs and International Trade, December 23, 2002) In May 2004, International Trade Minister Jim Peterson hosted a federal-provincial-territorial ministers' meeting and reached the conclusion that "forest policy changes offer the best hope for such a resolution." (Department of Foreign Affairs and International Trade, May 17, 2004) After the meeting, the provincial ministers consulted with their respective industry stakeholders.

The establishment of cross-border links remained an important strategy in Lumber IV. U.S. National Lumber and Building Material Dealers Association, the U.S. National Association of Home Builders, and the American Consumers for Affordable Housing continued to interact with Canadian industry and provincial governments while lobbying Congress for their interests. First Nations and environmental groups in Canada have also joined U.S. lumber industry and environmental groups in criticising Canadian forest practices by, for example, submitting *amicus curiae* briefs supporting the U.S. subsidy allegations to the WTO panel (World Trade Organization, January 19, 2004, p. 5). However, their influence to the conflict is limited, especially since the WTO panel noted that "No participant or third participant adopted the arguments made in these briefs" and the panel "did not find it necessary to take the two *amicus curiae* briefs into account in rendering its decision." (World Trade Organization, January 15, 2004, p. 5)

On the Canadian domestic front, the BC Lumber Trade Council (BCLTC) continued its

operations with the hope of reaching a negotiated settlement. At the same time, the Free Trade Lumber Council (FTLC) was established in 1998 to bring together Canadian stakeholders in preparation for the end of the Softwood Lumber Agreement (SLA) and to seek re-establishment of free trade for lumber products between Canada and the United States.<sup>6</sup> In the meantime, the BC Lumber Trade Council, Alberta Softwood Lumber Trade Council, the Ontario Forest Industries Association, the Ontario Lumber Manufacturers Association, Free Trade Lumber Council, and the Québec Forest Industry Council, joined together to speak out with one voice through the Canadian Lumber Trade Alliance.

After U.S. final determinations of subsidy and dumping, Canada appealed to two supranational bodies for review of U.S. final determinations. To the World Trade Organization (WTO), the Canadian federal government challenged the determination of subsidy, determination of dumping, and determination of the threat of injury. The WTO panel eventually found that ITC's threat of injury determination was inconsistent with WTO rules. The Canadian federal government has also sought authority to retaliate on a maximum of C\$200 million of U.S. imports. The WTO panel also found that the U.S. countervailing and anti-dumping determination to be inconsistent with the WTO Agreements. However, the U.S. appealed in October 2003 to the WTO Appellate Body (Office of the United States Trade Representative, January 19, 2004), which hears appeals from reports issued by panels in disputes brought by WTO Members.

To the North American Free Trade Agreement (NAFTA), the federal government, along with six provincial governments, two territorial governments, and four regional lumber associations, requested in April 2002 a NAFTA binational panel review of the ITA countervailing duty determinations. In the same month, three lumber companies requested a NAFTA binational panel review of the ITA dumping determination. In May 2002, the Canadian Lumber Trade Alliance, which is made up of six regional industry groups including the BC Lumber Trade Council and the Free Trade Lumber Council, two additional lumber associations, one lumber company, and the federal, provincial and territorial governments named in the NAFTA panel review of countervailing duty requested a NAFTA binational panel review of the ITC threat of injury determination. The panels concluded that the ITC's determination of threat of injury, as well as the ITA's application of coun-

---

<sup>6</sup>An official from BCLTC alleged that FTLC's approach differed from that of BCLTC because it preferred litigated action to negotiated settlement (private communication, July 19, 2004).

tervailing and anti-dumping duties on Canadian softwood lumber was contrary to U.S. law. After two remands of the ITC's threat of injury determination, the ITC finally agreed with the WTO panel that Canadian softwood lumber exports do not pose a threat of injury to U.S. domestic industry. Following the ITC's changed determination, the U.S. Administration has filed a request for Extraordinary Challenge Committee on the injury case. The countervailing and anti-dumping duty determinations have each been remanded twice, and the panels' final decisions are awaiting the remand determinations from the U.S. at the time of writing.<sup>7</sup>

This concludes the description of the North American case studies. The following section provides background information on the European case studies.

## **3.2 European Case Studies**

Despite a resounding consensus among European lumber representatives approached in this study that the lumber market has been functioning very well in Europe, the interview process nevertheless uncovered instances where conflicts have arisen in the lumber sector. This chapter describes three of the most notable ones. The first is a dispute over timber and paper dumping in 1992, involving primarily France, a member of the European Community (EC), and its Nordic free trade partners, not members of the EC at the time. The second case concerns subsidies provided to a sawmill in Northern Germany and involved members of the European Union and the former German Democratic Republic, newly-acceded by virtue of its reunification with Western Germany. The third case concerns effective export restrictions and involved European Union (EU) members and two of the soon-to-accede Eastern European countries.

### **3.2.1 Alleged Dumping by Nordic Countries**

One of the main lumber trade disputes in Europe happened between France and the Nordic countries before the fourth Enlargement of the EU. At this time, France belonged to the EC, while the Nordic countries were part of the European Free Trade Association (EFTA). A measure of free trade existed between the EC and the Nordic countries by way of free

---

<sup>7</sup>March 4, 2004

trade agreements that insured uniformity between the two organisations in many areas of economic policy.

Against this backdrop, French sawmill associations approached the French government because they were concerned that they could not compete with Nordic lumber imports. An official from the European Commission Enterprise Directorate General (DG) noted that while the Nordic prices were not below French production costs, they were below the prices at which the French industry could compete (private communication, May 6, 2004).<sup>8</sup> He said that as a consequence, the French Department of Industry, Economics and Industrial Affairs filed a complaint at the end of 1992, alleging that Nordic companies, which had been a traditional exporter of forest-based products, were dumping sawn wood and paper products into France. According to Alain Lamassoure, the French Minister of European Affairs, the dramatic increase in French import of Finnish wood in 1992 resulted in the closure of almost one sawmill per day (Ministère des Affaires Étrangères, December 31, 1993). France appealed to the Safeguard Clause in one of the EC-EFTA's free trade agreements as its legal basis for trying to limit the import of certain types of forest-based products (DG Enterprise official, private communication, May 6, 2004).<sup>9</sup>

Several factors were attributed to sparking the dispute. The official at DG Enterprise said that the sawmilling capacity in France had increased (private communication, May 6, 2004). In addition, Finland had just lost the Soviet Union market, which amounted to approximately 30-50 percent of their total export trade. Stefan Gerlach, writing for the Bank for International Settlement, noted that "The collapse of exports to the former Soviet Union and a terms-of-trade shock stemming from weakness in world market for forestry products caused a severe recession in Finland in 1991." (1997, p. 236) Noting that the Finnish economy was "heavily dependent on exports of forestry products and paper," the Commission of the European Communities (1993, p. 8) said that "part of Finland's capital stock became redundant with the loss of the former Soviet market, which had largely sheltered major industries...from international competition." In an effort to develop new trade links, Finland

---

<sup>8</sup>According to the DG Enterprise official, Norway was eventually excluded from the investigation that followed because its lumber export to France was a lot smaller than the other two Nordic countries (private communication, May 6, 2004). For this reason, discussion on this case focuses solely on Finland and Sweden.

<sup>9</sup>The DG Enterprise official said that Safeguard Clauses were built into these free trade agreements to function as a means to counter problems that might be disrupting a sector or part of an importing country's economy (private communication, May 6, 2004).

expanded its forest industry production and redirected its exports to other industrialised countries' markets (DG Enterprise official, private communication, May 6, 2004; Commission of the European Communities, 1993). An official from the European Confederation of Woodworking Industries (CEI-Bois) further noted the French industry's perceived threat of Nordic timber imports was a factor that led to the eruption of the dispute. This was because France, despite having one of the largest timber reserves in Europe, had mainly smaller size sawmills and fragmented forest areas. Compared to the Nordic countries, which had large sawmills and vast forest areas, France's lumber sector was seen to be at a disadvantage.

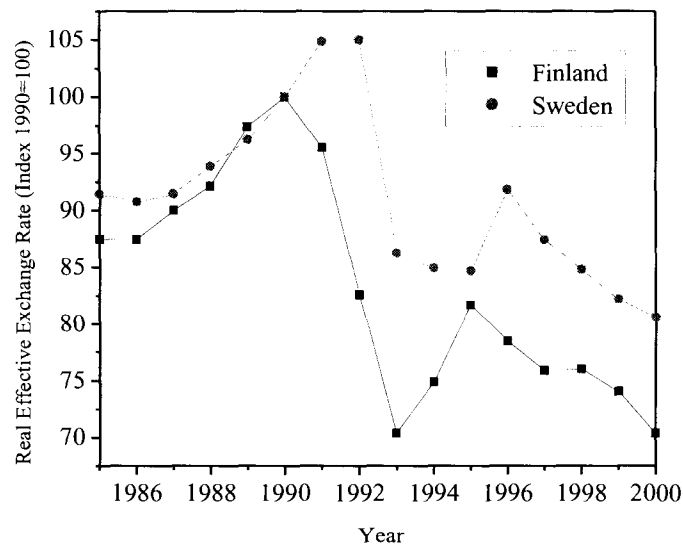


Figure 3.1: Real effective exchange rate of the Swedish krona and the Finnish markka from 1985-2000 with an index of 1995=100 (World Bank Group). Real effective exchange rate is the nominal effective exchange rate divided by a price deflator or index of costs.

Currency devaluation was also attributed to provide the Nordic countries with a competitive advantage. Both Sweden and Finland suffered in 1991 “from shrinking economies, soaring unemployment, large budget deficits and wobbly financial sectors.” (The Economist, 1992, p. 82) In an effort to demonstrate their financial stability and hence strengthen their applications for membership in the European Communities, Sweden and Finland unilaterally

ally pegged their currencies to the European Currency Unit (ECU) in May and June 1991 respectively.<sup>10</sup> Immediately in November 1991, the markka was devalued. Finland's subsequent decision to abandon the markka's peg to the ECU to let it float in September 1992 further devalued the markka. The Commission of the European Communities noted that the markka depreciated 23 per cent against the ECU between October 1991 and October 1992 (1991, p. 9). Immediately after this move, the Gazette reported that "One of the biggest industries, forestry, took a blow this week from the devaluation of the Finnish currency, which will make it harder for the Swedish exporters to compete with their counterparts in Finland." (Stevenson, 1992, p. D2). One eventually observes Sweden following suit in November 1992 by allowing its currency to float freely. This move was also documented to have led to the immediate depreciation of the krona by 10 percent of the effective exchange rate (Berg and Groöttheim, 1998, p. 141). Figure 3.1 shows the effective exchange rates of the krona and markka from 1985 to 2000. As a result of the devaluations, Swedish and Finnish exports became more competitive in the international market. An official at the Swedish Forest Industries Federation said that competitors were naturally unhappy about the devaluation because Swedish companies could export their products at lower prices (private communication, May 12, 2004). The DG Enterprise official noted that further augmenting the problem was the fact that Finland and Sweden had a long tradition of competitive devaluations of the markka and the krona, and they had continually tried to outbid each other by pumping the currency at specific times by specific amounts (private communication, May 6, 2004). He said that there were claims that their competitive devaluation actions were coordinated, and that they used these tactics to skilfully remain competitive in the lumber and paper market.

The official at the Swedish Forest Industries Federation offered additional factors that contributed to the dispute. For example, he recalled that a structural change took place in the 1990s in Finland, Central Europe, Austria and Germany because of a change in the trade patterns of the end users (private communication, May 12, 2004). This trend was also noted by the Commission of the European Communities (1993). In particular, he noted that buyers of wood products such as house, furniture and window manufacturers became larger in size than before, and they demanded more sophisticated products such as component systems, planed goods and lumber of special dimensions. In response, distribution channels

---

<sup>10</sup>The European Currency was an artificial basket of currencies of the member states of the EU.

expanded to satisfy this change in demand, and sawmills had to either become bigger to attract the big buyers, or, for those that could not expand, specialise to create their own niches. The corresponding uncertainty generated by the structural change eventually drove the distribution channels to speculate. When prices were low, they would buy a lot, and when prices were high, they would stop buying. The result was a fluctuation of prices in the beginning of the 1990s. At the same time, severe storms in Europe in the same period contributed to a volatile stock market, which in turn augmented the price fluctuations due to the inversely proportional relationship between prices and stocks as illustrated in Figure 3.2.

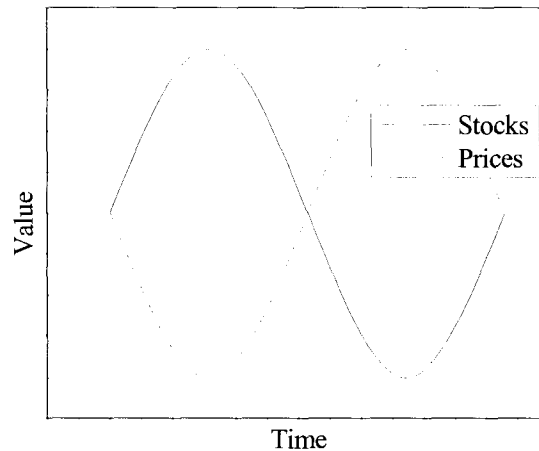


Figure 3.2: Correlation between stocks and prices. When stocks are high, prices are low, and when stocks are low, prices are high (Swedish Forest Industries Federation official, private communication, May 12, 2004.)

In terms of the dispute resolution mechanism, Lamassoure, the French Minister of European Affairs, mentioned the importance of negotiations between the government administrations and concerned industry (French Embassy, February 25, 1994). In particular, he acknowledged the efforts of Finnish authorities, especially the Minister Salolainen, in the interstate negotiations and conversation between the countries' industries (Ministère des Affaires Étrangères, February 12, 1995). The official from DG Enterprise said that, since

France was a member of the EC, it also went through the usual diplomatic channels in the Commission to voice its complaint (private communication, May 6, 2004). Subsequently, DG Enterprise and DG Trade examined this complaint, but the only measure that the Commission took was to set up a system to monitor weekly all imports from Norway, Sweden and Finland. Although no quantitative restrictions were enforced, over a period of monitoring that lasted throughout the winter of 1993-94, exports to France were maintained within certain thresholds. The DG Enterprise official said that these thresholds were not set by the Commission or France. Instead, he believed that Nordic industries had calculated what was safe to export without disrupting prices or damaging domestic competitors in France unduly. As a result, there was no further recourse to diplomatic or economic measures. He also suggested that the dispute did not recur because Nordic countries discontinued the practice of competitive devaluations. In fact, their currencies, which had the tendency to rise, did not over time, and the Nordic pricing became more in line with French domestic costs.

Interestingly, the official from the Swedish Forest Industries Federation stressed a different process that contributed to dispute settlement (private communication, May 12, 2004). While he confirmed that French stakeholders appealed to the Commission and French authorities, he said that the dispute played out to a large extent at the industry level. He considered the main arena for addressing the dispute to be the European Organisation of Sawmilling Industry (EOS), whose composition included Nordic and France wood trade associations. According to this official, the EOS served as a meeting point in which the disputants discussed the relevant issues raised in the dispute. While the French stakeholders threatened the imposition of import restrictions throughout the several industry-level meetings held over a period of approximately a year, the Swedish trade associations argued that the Swedish government's decision to devalue its currency and the big price fluctuations due to stocks and speculation were not events over which they had any control. In addition, they demonstrated using statistical data that prices of importing countries mirrored those of exporting countries with a time delay, as depicted in Figure 3.3. They tried to convince French stakeholders that prices had been increasing in Sweden, which meant that the French industry should experience a rise in prices shortly after. Hence, they cautioned that the erection of import restrictions would only worsen the situation for the French industry.

The official from the Swedish Forest Industries Federation believed that the dispute

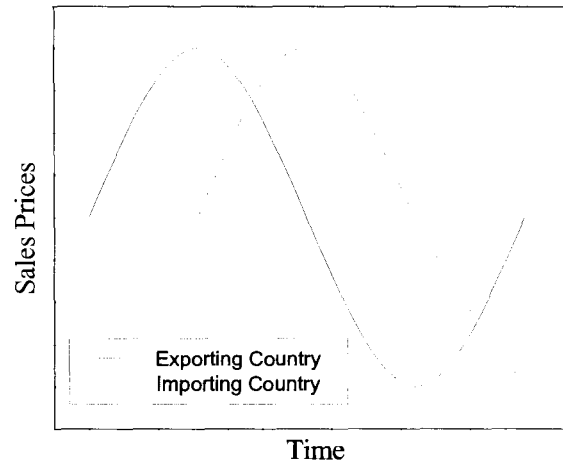


Figure 3.3: Correlation between prices in exporting and importing countries. Timber and paper prices of the importing country are alleged to trail behind those of the exporting country (Swedish Forest Industries Federation official, private communication, May 21, 2004).

ended either because the French trade associations were convinced of their Swedish counterparts' argument, or because prices eventually rose (private communication, May 21, 2004). In any case, he suggested that the dispute did not resurface because the Nordic stakeholders insisted the appointment of a Nordic representative as Vice-Chair of the EOS to ensure that the EOS would not again become a forum for bickering over disputes such as this. As the structural change that occurred in the Nordic countries spread across Europe, the EOS began to shift its attention away from small trade disputes and concentrated instead on lobbying authorities for support in creating more market opportunities for the wood industries.

It is interesting to note that while the officials from DG Enterprise, the Swedish Forest Industries Federation and the European Confederation of Woodworking Industries all agreed that the industry was ultimately responsible for resolving the dispute, the former stressed effort on the supranational front while the latter two stressed negotiations at the industry level. Also noteworthy is the fact that French trade associations had contacts with

the national government, while Swedish trade associations, as the exporter, did not involve the Swedish government in any significant way.

### 3.2.2 Sawmill Subsidies in Germany

The second major conflict uncovered in the interview process involved subsidies provided to a sawmill in Northern Germany. After the reunification of Germany, a large part of the former East Germany was classified as assisted areas. These are regions where the standard of living is abnormally low or where there is serious underemployment. According to Article 1(1)(b) of Council Regulation (EC) No. 994/98 (Commission of the European Communities, 1998, p.2) and Article 87(3)(a) of the Treaty establishing European Community (Commission of the European Communities, 2002a, p. 67), regional aid schemes given to designated assisted areas are compatible with the common market as long as they serve to promote economic development. Article 1(1)(a)(i) of the Council Regulation (EC) No. 994/98 also declares that under certain conditions, aid to small and medium-sized enterprises (SMEs) is compatible with the common market (Commission of the European Communities, 1998, p.2). SMEs are targeted because the Community recognises that they are important to creating jobs and furthering the economic drive but they “suffer from a number of handicaps that can slow down their development.” (Commission of the European Communities, 1996a, p. 1) Special incentives are therefore allowed “provided that such aid does not affect trade to a disproportionate extent relative to the contribution it makes to the achievement of Community objectives.” (Commission of the European Communities, 1996a, p.1)

In this context, Klausner Nordic Timber GmbH & Co. KG (KNT), an Austrian wood-processing firm, received between 1997 and 1999 a number of financial aid measures from German authorities under the joint Federal Government/*Länder* scheme for improving economic structures to construct and expand a sawmill in Wismar, Mecklenburg-Western Pomerania. This aid met a lot of opposition from the European sawmilling sector, which alleged that KNT did not deserve the level of aid it received because it was not a SME according to the definitions set out in the Community guidelines on state aid for small and medium-sized enterprises (Commission of the European Communities, 1996a) and Commission Recommendation No 96/280/EC (Commission of the European Communities,

1996b). This allegation was based on the fact that Fritz Klausner, who owns the shares in the limited partnership KNT and all its capital, also owns several other companies, including three other sawmills (Commission of the European Communities, 2003). Complainants argued that, taken together, these companies form a single economic unit that cannot be considered a SME.

The CEI-Bois official noted that the European sawmilling sector further strengthened their position by pointing out that there is already a sawmilling over-capacity in Europe (private communication, May 6, 2004). The Swedish Timber Association and the Association of the Swedish Forestry Industry “emphasised that the subsidised formation of KNT and other mills has contributed to the increase in overproduction which the European industry has been seeking intensively to bring under control for many years.” (Commission of the European Communities, 2003, p.7) In their view, providing incentives to KNT to create and expand a new mill aggravates the problem. Consequences of this overproduction included declining prices for sawn timber and increasing raw material costs. The CEI-Bois official also said that the new capacity was built with state aid and hence gives KNT a bigger competitive advantage (private communication, May 6, 2004). The Swedish Forest Industries Federation official said, for example, that the assistance it receives allows it to purchase raw material from a larger radius (private communication, May 12, 2004). He claimed that, to the European sawmilling industry, the creation of new capacity in Wismar meant that an equivalent capacity was taken away somewhere else. In addition, sawmills in Western Germany in particular were claimed to have suffered as a result of the KNT sawmill.

The Swedish Federation of Forest Industries subsequently brought its complaint to the SOLVIT Centre in the Sweden National Board of Trade, which belongs to the SOLVIT network coordinated by the European Commission to solve trade problems between member states without resorting to legal proceedings. The SOLVIT Centre in the Sweden National Board of Trade explained that while bilateral trade talks with countries within the EU was not typical, Germany was a special case because it was a large trading partner for Sweden (private communication, May 17, 2004). Officials SOLVIT in Sweden therefore took advantage of this opportunity and put the Federation’s concern on the agenda during the trade talks with Germany. However, a resolution was not reached.

Eight interested parties also brought the complaint to the Commission. The seven par-

ties that argued the aid KNT received was incompatible with the common market were two sawmill enterprises that were competitors of KNT sawmills, the Swedish Timber Association, the Swedish Forestry Industry, a German law firm representing a party whose identity was unknown, the Austrian Chamber of the Timber Industry, and the Association of the German Sawmill and Timber Industry (Commission of the European Communities, 2003).<sup>11</sup> KNT was the only party that defended the aid. Upon receiving these complaints, the European Commission asked Germany in 1999 and 2000 to provide all relevant information that would assist it to determine whether the aid was compatible with the common market. Defending the aid was the legal representatives of KNT (European Commission, 2003). The Commission, unsatisfied with the evidence provided that the aid was without doubt compatible with the common market, eventually initiated formal investigation procedure on June 20, 2001.

The Commission subsequently determined from the investigation that KNT's activities were linked to Klausner Holz Thüringen GmbH & Co. KG (KHT), another one of Fritz Klausner's group of companies that also had sawmilling operations. Given the size of this conglomerate, the level of aid provided exceeded what was allowed under the Investment Allowance Law (European Commission, 2003). The Commission therefore concluded on January 15, 2002 that some of the aid given to KNT was incompatible with the common market and that it must repay some of the aid it received (Commission of the European Communities, 2002b).

However, KNT claimed that the Commission had interpreted the aid scheme erroneously. According to the provisions in the German Investment Allowance Law, KNT was the proper recipient of the aid, not Fritz Klausner. It complained on March 27, 2002 to the Court of First Instance of the European Communities (Commission of the European Communities, 2003). On its own initiative, the Commission re-examined and concurred that it had indeed misinterpreted the Investment Allowance Law. It subsequently withdrew its earlier decision.

---

<sup>11</sup>The Swedish Timber Association joined the Swedish Forestry Industry in 2003 to form the Swedish Forest Industries Federation.

### 3.2.3 Export and Import Barriers in Central Europe

The third major conflict area concerns real or effective export and import restrictions in Central Europe. The DG Enterprise official said that since the Berlin Wall came down, there had been increased trade between the Central European countries and EU member states (private communication, May 6, 2004). This was due on the one hand to increased production that resulted from Chinese, Western European, Japanese and North American investment, which were attracted by the lower costs in material, production, energy and labour. For example, Schweighofer, an Austrian sawmilling companies that saw one of the most outstanding records in terms of growth and profitability, has moved all of its operations into new accession states. On the other hand, there was also a natural advantage to export to the EU where market prices were higher. An example is the investment by International Paper in a sawmill in Poland located close to the German border, where the natural market would include Germany as much as, if not more than, Poland.

In this environment of increased trade flow, EU members have faced mainly two sets of issues regarding forest-based product trade with some countries that, at the time, had yet to accede. More specifically, there have been restrictions on the export of “roundwood”<sup>12</sup> from these countries and restrictions on their import of forest-based goods produced in the EU countries.

#### **Export Restrictions by the Slovak Republic**

The DG Enterprise official said that, for the forest-based industries, the cheaper roundwood prices in the Central European countries resulted in significant sales from the Czech Republic, Poland, and the Slovak Republic to cross-border states such as Austria and Germany (private communication, May 6, 2004). Remote Central European countries such as Romania, Bulgaria and Yugoslavia also benefited from hardwood sales because the higher prices for these products overcame the additional costs from the greater distance. As sales increased, there were concerns from the Central European countries, and from Romania and the Slovak Republic in particular, that there would not be enough roundwood for domestic consumption. Consequently, some countries instituted quantitative restrictions or bans on

---

<sup>12</sup>The term “roundwood” is used interchangeably in this thesis with “raw logs”, both of which refer to unprocessed wood.

roundwood.

The official from DG Enterprise argued, however, that the shortage was perceived rather than actual. He substantiated this claim by the fact that these countries have only cut on average 60 percent of what is considered sustainable. He attributed the limitations or difficulties imposed on the mobilisation of roundwood partly to the desire to direct the roundwood supply to the country's own wood-processing industry to assist the domestic building sector and develop the country's economics. In addition, he said that the countries were hoping to build up their currently limited capacities for infrastructure, institution, investment and plants so that they can add value to the roundwood before it is exported.

The CEI-Bois official concurred that actions on the part of these countries did suggest protectionist reflexes (private communication, May 6, 2004). An example was the Slovak Republic, which had imposed strict quantitative export restrictions on roundwood. EU companies subsequently complained to DG Enterprise, DG Trade, DG Internal Market and DG Competition. After it was pointed out that this was not in keeping with the spirit of the Europe Agreement between the European Communities and the Slovak Republic to open the Slovak market to EU countries, the Slovak Republic removed the direct restrictions, only to enact indirect ones that *effectively* limited the export of roundwood (DG Enterprise official, private communication, May 6, 2004). The DG Enterprise official noted that these restrictions involved very complex and prolonged procedures for obtaining licenses for the felling of trees and their exports from state-owned forests (private communication, May 6, 2004).<sup>13</sup> At official levels, these procedures were claimed to be for statistical and administrative purposes. There were also claims at official levels that the export of lumber and roundwood from the Republic caused difficulties for the local sawmilling and building industries because foreign demand for Slovak roundwood drove up the prices, resulting in domestic consumers having to compete for higher prices for roundwood supply. EU buyers of Slovak roundwood countered that this claim was unjustified and that the local sawmilling and building industries experienced difficulties only because they were not as efficient as those in the neighbouring countries. Some EU buyers questioned whether delays, particu-

---

<sup>13</sup>The DG Enterprise official noted that private forests were affected as well, but they were subjected to less stringent guidelines (private communication, May 6, 2004). In any case, the impact of roundwood from state-owned forests was more important considering 60-70 percent of productive forests in the Slovak Republic is owned by the State.

larly those associated with licensing, were actually caused by corruption at local and other levels. Some EU material buyers have continued to lobby the European Commission to correct these restrictions, but some have chosen to look for alternative sources elsewhere to circumvent the difficulties imposed by the Slovakian licensing systems.

### **Effective Import Restrictions from Poland**

The DG Enterprise official said that EU member states also experienced barriers when exporting forest-based products to Central European states (private communication, May 6, 2004). This problem was particularly significant in Poland, where EU wood products were subject to measures including technical approval and certificates of conformity (Dehousse *et al.*, 2000).<sup>14</sup> According to a report commissioned by DG Trade, the technical approval stage was considered to be the most significant problem for the importation of EU wood-working products in Poland because it was time-consuming and burdensome (Dehousse *et al.*, 2000).

The two-step technical approval procedure conducted by the Polish Institute for Construction Techniques involved a check of relevant documents, followed by laboratory analysis conducted by the Institute of Wood (Dehousse *et al.*, 2000). The entire procedure might take between six months to two years to complete (Dehousse *et al.*, 2000). The DG Enterprise official pointed out that it was not insignificant that there were testing charges for obtaining certification (DG Enterprise official, May 6, 2004). A schedule of the approximate costs involved is detailed in Table 3.1. The lack of a list detailing exactly which products needed to go through this process has also caused confusion at times (Dehousse *et al.*, 2000). Contributing to the confusion was the requirement that some products needed to obtain additional forms of approval from other organisations or government bodies before applying for technical approval. Since Polish authorities did not inform about the status of the application, the technical approval stage was more burdensome because the onus was on the importer to verify that the submission was successful (Dehousse *et al.*, 2000). Finally, if the producer changed the product during the approval procedure, the entire process needed to be repeated again (Dehousse *et al.*, 2000). Small changes in the product could delay the approval process by several months (Dehousse *et al.*, 2000).

---

<sup>14</sup>The import of EU paper products were apparently subjected to similar difficulties, but only wood products are considered in this study.

Process	Approximate Cost (Polish Zloty)	Approximate Equivalent Cost (CAD \$)
Demand for technical approval	2,000	700
Laboratory analysis <sup>15</sup>	25,000 - 30,000	9,000 - 11,000
Delivery of technical approval	7,300 - 11,300	2,600 - 4,000

Table 3.1: Approximate costs for obtaining a technical approval from the Polish Institute for Construction Techniques (Dehousse *et al.*, 2000).

After obtaining a technical approval, the EU producer or the Polish importer must apply for a conformity certificate from the Polish Centre for Testing and Certification (Dehousse *et al.*, 2000). By Polish law, the imported products must conform to Polish standards, and the certification must be performed by a third-party (Dehousse *et al.*, 2000). This procedure could take up to four weeks (Dehousse *et al.*, 2000). The biggest complaint concerning this procedure was the non-recognition of the EU conformity certificates and the EU producers' declarations for conformity, even if the products had passed all EU standards and CE Marking requirements (Dehousse *et al.*, 2000).<sup>16</sup> The conformity certification process could also be rather costly. If the certificate was requested by the producer, the producing company must finance at least three working days worth of travel and related costs for two Polish experts' production site visits (Dehousse *et al.*, 2000). An official from DG Trade remarked that this was often an excuse for the Polish officials to finance their holidays (private communication, May 10, 2004). If the certificate was requested by the importer, the inspection would be carried out in the warehouse, but this might require laboratory tests of variables such as the storage conditions (Dehousse *et al.*, 2000). The cost of a conformity certificate was approximately 3,000 Euro or CAD \$4,900 (Dehousse *et al.*, 2000).

The DG Enterprise official said that the European Commission pointed out that these practices were contrary to the spirit of the European Agreement between the European Communities and Poland (private communication, May 6, 2004). The situation improved somewhat in 1998, when Poland and the EU signed a European Conformity Assessment Agreement that would prepare Poland for the adoption of EU certification rules prior to

<sup>16</sup>CE Marking, which translates to *Conformité Européene*, is a manufacturer's declaration that the product complies with the requirements set out in the EU's product directives.

Poland's accession (Dehousse *et al.*, 2000). The Agreement provided that, for products originating from the EC and subject to the Polish requirement of third party certification, automatic conformity certificates would be granted upon the presentation of relevant documents to the Polish Conformity assessment body (Dehousse *et al.*, 2000). For products that are subject to the declaration of conformity in the EC, the Polish law on testing and certification was amended in 1999 such that the number of products that required conformity certification was reduced (Dehousse *et al.*, 2000). A procedure for the verification of EU conformity certificate and the EU producer's declaration was also created (Dehousse *et al.*, 2000). In addition, the amended law provided that verification must begin within seven days following the submission of application, and the entire process cannot exceed twenty-one days (Dehousse *et al.*, 2000). However, despite this measure, EU companies still complain of various difficulties. For example, products that are not subjected to certification or declaration of conformity in the EU are still subjected to mandatory certification in Poland (Dehousse *et al.*, 2000). The implementation of the amended law was also said to be difficult, although the exact reasons were not provided (Dehousse *et al.*, 2000). Finally, some companies felt that the differences between Polish and EU standards effectively rendered the EC products not in conformity with the Polish standards and were hence subject to certification (Dehousse *et al.*, 2000).<sup>17</sup>

In addition to the difficulties associated with technical approvals and conformity certificates, the DG Enterprise official noted that there were also delays in the physical movement of EU goods (private communication, May 6, 2004). These included border stops and specific transit requirements, which only allowed the transport of certain goods on Polish trucks. This, of course, was another restriction that added costs. Some EU companies expressed that they were deterred from entering the Polish market because of restrictions such as these (Dehousse *et al.*, 2000). According to the report commissioned by DG Trade, the situation was particularly bad for woodworking products targeted for the construction industry because contracts might be cancelled if the products failed to obtain the necessary certifications and approvals before the start of construction (Dehousse *et al.*, 2000).

The DG Enterprise official said that these issues were raised when the Commission met

---

<sup>17</sup>The Polish Ministry of Economy has apparently responded to these complaints by attempting to harmonise the Polish standardisation by classifying certain Polish standards as voluntary instead of mandatory (Dehousse *et al.*, 2000).

with Polish authorities to discuss accession requirements, but he said that the Polish authorities' response to these complaints have been sluggish (private communication, May 6, 2004). The DG Trade official said that efforts of several DGs on this front was also hampered by DG Enlargement, who held that all problems would be abolished and resolved upon Poland's accession (private communication, May 10, 2004).<sup>18</sup> This sentiment was reflected in the interviewees' unanimous assumption that the problems experienced with Polish authorities *should* have been resolved by now, even though no single interviewee could produce concrete evidence that the issues have indeed been resolved. This suggests a general faith in Poland's adherence to EU legislation after its accession on May 1, 2004. The DG Trade official pointed out, for example, that Poland's technical approval and conformity certificates must not exist any more because they are harmonised within the Internal Market.<sup>19</sup> Most interviewees were willing to grant that it takes time for the administration and industries to adapt to new policies, especially since officials in charge must be educated and trained on the ways to properly apply the new procedures. It also seems that they have faith in the dispute resolution process, which allows DG Internal Market to administer the infringement procedures concerning market rules after receiving a complaint from individuals, organisations, member states or the Commission that a new member state is failing to comply with EU legislation. According to the DG Trade official, DG Enlargement urged that resources be saved from attempting to settle problems in the run-up of accession. Without DG Enlargement's support, the DG Trade official noted that other DGs decided to forgo mentioning these issues in the relevant committee meetings. He further suggested that accession countries might have been maintaining or preserving trade barriers as a bargaining tool for accession, because deviations from the agreements provided EU member states with the incentives to invite the accession countries to become full members. He also noted that the governments of the accession countries, fully cognisant of the leverage of non-compliance prior to accession, took advantage of the situation by formulating policies that offered to foreign investors what was essentially privileged treatment and protection of their

---

<sup>18</sup>DG Enlargement was in charge of accession negotiations and administering the Association Agreements between candidate countries and the EU. The Association Agreement with Poland, also known as the Europe Agreement, contained a free trade chapter that allowed DG Development to suggest agenda items to DG Enlargement in terms of issues that ought to be resolved prior to accession.

<sup>19</sup>Since officials and stakeholders were interviewed within two weeks of the latest Enlargement, it was too early to determine what consequences these countries' accession had on the conflicts mentioned in this study.

investment for a defined period. In this regard, accession countries were able to benefit by attracting foreign investors.

# Chapter 4

## Analysis

After perusing through the histories of the case studies in Chapter 3, attention is now turned to an analysis of the conflicts. Recall that the purpose of this paper is threefold: first, to determine which actors are more likely to initiate, maintain and intensify conflicts between integration partners; second, to pinpoint factors that are important in preventing, mitigating or resolving ongoing and future conflicts; third, to conjecture which of neofunctionalism, intergovernmentalism, and multi-level governance provides the best framework for facilitating the management of interstate conflicts.

This chapter seeks to answer these questions by analysing the case studies using three key variables from integration theories. It proceeds in the first section with a look at the main actors involved in the conflicts. The second section details the mechanics characterising the development of the conflicts, and the third section explores probable motivations for key actors' approach to the conflicts.

### 4.1 Main Actors

The three integration theories examined in this paper, namely, neofunctionalism, intergovernmentalism, and multi-level governance, differ in their prediction of who would be the primary drivers in an integrated framework. In the search for the level of actors that are more likely to spark, maintain and resolve conflicts between integrated countries, this section scrutinises conflict parties at three levels: subnational, which includes actors that represent local or regional interests but do not command national or supranational authority;

national, which refers to national governments and their delegated bodies; and supranational, which comprise of organisations whose authority transcends national boundaries and national governments.

Tables 4.1, 4.2, 4.3, and 4.4 provide summaries of the key actors involved in the various conflicts described in Chapter 3. Note that instead of providing a comprehensive list, these tables only highlight the most prominent actors. Particular actors within a level are specified within parentheses where appropriate.

Case	Main Actors
Canada-U.S. (Lumber I)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• Industry groups (NIFM, CFCLI, COFI, CSLC)</li> <li>• Subnational governments (Government of B.C., Government of Ontario, Gouvernement du Québec, Government of Oregon)</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Government of Canada</li> <li>• Government of the United States (Senate Finance Committee, ITC, DOC (ITA), Secretary of Commerce, U.S. Court of International Trade)</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul>
Canada-U.S. (Lumber II)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• Industry groups (CFLI)</li> <li>• Subnational governments (Government of B.C., Government of New Brunswick, Gouvernement du Québec)</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Government of Canada (Ministry of Trade)</li> <li>• Government of the United States (Members of Congress, U.S. Trade Representative, Senators, ITC, DOC (ITA))</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• GATT panel</li> </ul>

Table 4.1: Summary I of key actors in the North American case studies.

<b>Case</b>	<b>Main Actors</b>
Canada-U.S. (Lumber III)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• Industry groups (CFLI, NLBMDA, NAHB, ACAH, Maritime Lumber Bureau)</li> <li>• Subnational governments (Government of B.C., Gouvernement du Québec, Government of Washington)</li> <li>• Interest groups (Western Canada Wilderness Committee, B.C. Sierra Club)</li> </ul> <p><b>National:</b> Government of Canada (Members of Parliament)</p> <ul style="list-style-type: none"> <li>• Government of the United States (DOC (ITA), U.S. Trade Representative, Members of Congress)</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• GATT panel</li> <li>• FTA (binational review panel, Extraordinary Challenge Committee)</li> </ul>
Canada-U.S. (Lumber IV)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• Industry groups (CFLI, NLBMDA, NAHB, ACAH, BCLTC, FTLC)</li> <li>• Subnational governments (Canadian provincial governments)</li> <li>• Interest groups (First Nations, environmental groups)</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Government of Canada</li> <li>• Government of the United States (DOC (ITA), ITC, Members of Congress)</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• WTO</li> <li>• NAFTA</li> </ul>

Table 4.2: Summary II of key actors in the North American case studies.

### 4.1.1 Subnational Actors

Subnational actors, defined as actors that represent local or regional interests but do not command national or supranational authority, were a very powerful group in all cases stud-

Case	Main Actors
Nordic Countries	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>● Industry groups (French wood trade associations, Nordic wood trade associations, Swedish trade associations, EOS)</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>● Government of France (French Department of Industry, Economics and Industrial Affairs, French Ministry of Foreign Affairs)</li> <li>● Government of Finland</li> <li>● Government of Norway</li> <li>● Government of Sweden</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>● European Commission (DG Enterprise, DG Trade)</li> </ul>
Germany	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>● Industry groups (Swedish Timber Association, Swedish Forestry Industry, Austrian Chamber of the Timber Industry, German Sawmill and Timber Industry, CEI-Bois)</li> <li>● Regional government (Germany)</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>● Government of Germany</li> <li>● Government of Sweden (SOLVIT Centre)</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>● European Commission</li> </ul>

Table 4.3: Summary I of key actors in the European case studies.

ied. While many subnational actors were involved in the conflicts, only two of the most influential types are explored here.<sup>1</sup> In the following discussion, attention is focussed on industry groups and subnational governments.

<sup>1</sup>For example, interest groups such as the Western Canada Wilderness Committee and B.C. Sierra Club were circumstantially involved in two of the North American cases, but they were not instrumental to shaping the dispute outcome.

Case	Main Actors
Poland & Slovak Republic	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• Industry groups (European companies, CEI-Bois)</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Government of the Slovak Republic</li> <li>• Government of Poland (Polish Institute for Construction Techniques, Polish Centre for Testing and Certification)</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• European Commission (DG Enterprise, DG Trade, DG Internal Market, DG Competition)</li> </ul>

Table 4.4: Summary II of key actors in the European case studies.

### Industry Groups

The most influential subnational actor in every case studied in this paper is the group of industry. This is supported by the fact that all conflicts stemmed, whether directly or indirectly, from industries' concerns over what they considered to be harmful to their interests. In the North American cases, the recurrence of the dispute over the twenty-three-year period speaks to the power of this subnational group in bringing its concerns to the forefront of Canada and U.S. international relations. After all, three of the four episodes of the softwood lumber dispute were formally initiated by U.S. sawmillers, represented at different stages by the Northwest Independent Forest Manufacturers (NIFM), the Coalition for Fair Canadian Lumber Imports (CFCLI), and the Coalition for Fair Lumber Imports (CFLI). Lumber III, although formally initiated by the U.S. federal government, involved the same concerns from the U.S. lumber industry and was likely fuelled by encouragement from the latter. The success of U.S. sawmillers in getting their issues on the forefront of the national agenda lies in their ability to increase their political clout by rallying support from other stakeholders that share similar interests. In 1982, CFCLI only "represented approximately 20 percent of the productive capacity of the United States lumber industry" (Iverson, 2001, p. 78). However, by Lumber IV in 2001, the metamorphosed CFLI boasted representation for "hundreds of large and small lumber producers from across the United States, account-

ing for 75 percent of US lumber production and forest landowners." (CFLI, 2003, p. 1) In Lumber I, it was the sole petitioner for the countervailing duty investigation. In Lumber IV, it managed to enlist two unions and four lumber producers as co-petitioners for the countervailing and anti-dumping duty investigations. Together, the petitioners represented almost 67 per cent of U.S. softwood lumber production (WTO, 2003).

Obviously, a large membership provides legitimacy. This fact is not lost on Canadian industry groups. Members of the BC-based Council of Forest Industries (COFI) accounted for approximately 80 percent of all B.C. softwood lumber shipments and 35 percent of Canadian softwood lumber shipment in 2002. In Lumber I, COFI attempted to broaden its base by forming the pan-Canadian Canadian Softwood Lumber Committee (CSLC), which was ultimately instrumental in preparing the Canadian response in Lumber I but has since disappeared from the softwood lumber scene. A subsequent attempt was the BC Lumber Trade Council (BCLTC), which was formed to represent B.C. companies involved in the lumber sector and was primarily tasked to support and seek free trade in softwood lumber with the U.S. Another important Canadian industry group is the Free Trade Lumber Council (FTLC), which is a pan-Canadian organisation representing Canadian forest products companies and forest industry associations. Its members account for more than 40 percent of Canadian softwood lumber exports to the U.S.

Some U.S. industry groups that are cognisant of the advantages of large memberships but cannot garner the same type of support from within the industry have resorted to increase their clout through partnerships with non-industry groups. For instance, the National Lumber and Building Materials Dealers Association (NLBMDA) and the National Association of Home Builders (NAHB), neither of which had a presence in Lumbers I and II, gained more prominence in Lumbers III and IV after forming an alliance with the American Consumer for Affordable Homes (ACAH). This was an attempt to increase policy makers' awareness to the negative effects of the dispute on groups outside of the industry, and NLBMDA and NAHB have strategically zoomed in on consumers, a powerful group but one that was notoriously difficult to get organised and had, up until Lumber II, failed to gain standing in the dispute. ACAH, an ad hoc alliance of U.S. lumber users and consumers that claims to represent more than 95 per cent of U.S. softwood lumber consumption, was a natural spokesperson for the consumers.

In the European cases, the contentions that gave rise to the conflicts also stemmed from

concerns from industry groups. The Nordic countries dispute was brought on when French sawmill associations approached the French government with their concern that the French industry could not compete at the importing lumber prices from the Nordic countries. The Germany case stemmed from the dissatisfaction of various industry groups over state aid provided to one company. Of the eight submissions received by the European Commission in its investigation of the case, six of them were from industry or industry groups. Of the other two, one was from a German law firm, and the other was from KNT. In the Central European case, export and import restrictions became a conflict issue because they negatively impacted industries in several European countries.

Returning to the issue of large membership, one type of industry group that cannot be ignored is transnational industry organisations. These are industry entities that have representations across national boundaries and are thus likely to have larger memberships. For example, the European Organisation of the Sawmilling Industry (EOS) represents the sawmilling industry from 11 European countries. The European Confederation of Woodworking Industries (CEI-Bois), whose primary goal "is to further the interests of the European wood sector" and "to influence EU policy-making", includes some 100,000 companies in 20 European countries. The European cases saw much active participation and influences from such transnational industry organisations. The EOS was attributed by officials at the Swedish Forest Industries Federation and CEI-Bois to be the ultimate forum for settling the French-Nordic dispute. Other pan-European associations were likewise very active in lobbying the European Commission to address the state subsidy in the Germany case and the import and export problems in Central Europe.

These European transnational industry organisations interacted mainly at the supranational level. In many cases, the interaction between industry organisations and the Commission continues to be strong today. For example, the official from CEI-Bois noted that the organisation works very closely with the Commission, mostly by providing information or suggestions to Commission civil servants who are in charge of writing legislations or policies (private communication, May 6, 2004). He noted that while CEI-Bois also meets with representatives from EU member states, its focus is on European administration; smaller-scale disputes that did not involve too many different countries and advocacy to national governments is generally left to the national associations that make up the CEI-Bois membership. Part of the reason is because CEI-Bois could only advocate for an issue if it has

the support of all its members. Herein lies the shortcoming of transnational industry organisations: an organisation with a large and broad-based membership may speak volume in terms of the members it represents, but when the members do not speak with one voice, it cannot act. Hence, transnational industry organisations are only useful in large-scale issues that concern a number of its members. Since these organisations are typically only sanctioned to act with the support of members from different countries, their effectiveness is more likely to be optimised at the supranational rather than national front.

There is an absence of transnational industry organisations in the softwood lumber conflicts. This is likely because since the North American softwood lumber dispute only ever involved two member states, and since the North American supranational body is less enabled than the European Commission, the existence of transnational industry organisations is less essential. Instead, one sees the growth of ad hoc, informal cross-border alliances. These alliances, by virtue of their ad-hoc nature, are more responsive to circumstances (because they can be formed and disbanded as the needs arise and fall) and hence more immune to the deadlock that can plague transnational industry organisations. These alliances generally involve individual, nationally-based industry groups that establish associations with counterparts on the other side of the border. CFLI had a short-lived alliance with the Government of B.C. in Lumber II. The National Lumber and Building Materials Dealers Association and the National Association of Home Builders interacted frequently with the Canadian lumber industry and Canadian federal and provincial government representatives in Lumbers III and IV (Cashore, 1997, p. 20). An official from the American Consumers for Affordable Homes (ACAH) also confirmed that ACAH stays in touch on the Canadian side with government officials, key Members of Parliament, Embassy officials, and industry representatives. This connection allows ACAH to inform Canadian actors of latest developments in the U.S. and to provide them with encouragement that there is support for the Canadian interests in the U.S. (private communication, July 12, 2004). ACAH's intent is to demonstrate to the U.S. Administration and Canadian federal and provincial governments that there is support in the U.S. for unrestricted access of Canadian softwood lumber into the U.S. market.

Another type of powerful subnational actor is the group of lumber companies that operate on both sides of the border. These companies tend to have a trans-border perspective because they have interests in the lumber sector in both countries. A number of sawmillers,

especially the big companies, had operations in Canada and the U.S. For example, Weyerhaeuser was previously a member of CFLI, but it stepped out in Lumber IV and has since tried to broker peace between the two sides (British Columbia Lumber Trade Council official, private communication, July 19, 2004). This is consistent with the speculation that the number of disputes would likely decrease with increased cross-border ownership of sawmills (Department of Foreign Affairs and International Trade official, private communication, February 9, 2004; Government of Québec official, private communication, July 4, 2004; Mach, 2001, p. 294). The rationale is that transnational companies that have stakes on both sides of the border are unlikely to spark or aggravate conflicts that would negatively impact an arm of its operations. Unfortunately, there is at least one instance where this speculation is not true. International Paper, which has operations in both Canada and the U.S., has also been one of the main linchpins of the conflict, to the extent that the official from the BCLTC noted that without the funding from International Paper, the CFLI would not have the same financial means and political clout to lobby the U.S. governments (private communication, July 19, 2004). The main difference between International Paper and Weyerhaeuser is that the former is the largest private forest landowner in the U.S., while the latter mostly relies on tenure timber rights from Canada. According to International Paper, approximately 78 percent of its 11 million acres of the forestlands it owns or leased is in the U.S. (2003, p.4). By contrast, 81 percent of Weyerhaeuser's 38 million acres of owned or leased forestlands is in the Canada. Hence, the speculation that an increase in transnational companies would decrease interstate conflicts is only correct if the companies' interests are not overtly biased in one country over another.

### **Subnational Governments**

Subnational governments were the other type of subnational actors that was prominent in the North American cases. U.S. state governments were instrumental in raising the political profile of the softwood lumber issue at the federal level. For example, the Governor of Oregon's appointment of a panel to determine the difficulties faced by the Oregon lumber industry in 1981 paved the way for the U.S. sawmilling industry to file a countervailing duty petition to the Department of Commerce that eventually led to Lumber I. This involvement illuminates the symbiotic relationships between the industry groups and subnational governments. U.S. sawmillers understood the importance of having supporters at the level of

subnational governments, especially since regional interests such as softwood lumber might never have become an audible issue at the federal level had state governments not raised its profile. Meanwhile, U.S. state governments that saw softwood lumber as an important industry in their states were very responsive to the concerns of sawmillers because they were keenly aware of how their actions could translate into electoral votes.

One sees similar cooperation between the Canadian provincial governments and Canadian sawmillers. The former were cognisant of the political stakes involved, and the latter were aware of the provincial governments' ability to lobby the federal government. However, beside these factors, the provincial governments, being the guardians of the majority of timber lands in Canada, had three additional considerations. First, the softwood lumber dispute centred on Canadian forestry policies, which were under the jurisdiction of provincial governments. If the countervailing and anti-dumping allegations were found to be justified, and if remedial actions such as the imposition of a U.S. import tax were taken, the provincial governments' coffers would be negatively impacted. This is supported by Iverson's observation that, conveniently for the provincial governments, the settlement reached in Lumber II "prevented the establishment of a natural resource pricing precedent in the DOC" and was therefore less invasive on Canadian policy than a countervailing duty (2001, p. 17).

Second, provinces were interested in maximising the financial returns on the sale of provincial timbers. This was evident in the B.C. Minister of Forests Jack Kempf's central role in the settlement reached in Lumber II. The solution, an export charge, essentially translated into increased revenue for the provincial governments because the charge was remitted to the provinces. Understandably, provincial governments that did not rely heavily on lumber sales did not seem to value this consideration as much as those that saw the lumber sector as an important industry. This explains why the Ontario government was not front and centre in pushing for a negotiated settlement in Lumber II.

These two concerns were balanced with the third consideration, whereby provinces had to ensure that any price increase would not be so dramatic as to render domestic sawmillers uncompetitive in the U.S. market. This is demonstrated in the prologue of Lumber III, which saw the B.C. government pressuring for the termination of the MOU due to frustration over its inability to decrease stumpage rate to reflect the market conditions at the time. All these considerations explained an observed fact: provincial governments that were most

dependent on their lumber revenues were most proactive in the crafting of solutions to the conflicts.

By contrast, subnational governments did not seem to be a big player in any of the European cases discussed. Interviews with representatives at the European Commission and industry level did not reveal any significant role for regional governments. It is hypothesised that one reason might be the presence of a strong European supranational institution and effective mechanism for dispute resolution, both of which are arguably lacking in the North American context. This is discussed in more detail in Section 4.2.

Taking stock of the myriad subnational actors involved in the conflicts, as well as the considerable influences they had on the conflicts' development and outcome, it is safe to conclude that subnational actors were very important in the interstate conflicts studied. Since the relative importance of national and supranational actors have yet to be analysed, it is premature at this point to declare which of neofunctionalism, intergovernmentalism or multi-level governance best accounts for this amount of pull subnational actors had on the conflicts. Suffice it to say that intergovernmentalism fails to predict this degree of involvement from the subnational level.

#### **4.1.2 National Actors**

In all the interstate conflicts studied, national actors, which include national governments and their delegated bodies, played a significant role. This is to be expected for two reasons. National governments, as state representatives, bear the responsibility of advocating for their citizens' interests in the international arena. In addition, as signatories to formal integration frameworks, they are the recognised, legitimate brokers in the international realm and, accordingly, the default bodies for handling interstate conflicts.

In the North American conflicts, the Canadian and U.S. governments were front and centre in trying to resolve the softwood lumber conflicts. After all, the electoral concerns facing provincial and state governments noted in Section 4.1.1 also apply to national governments. Domestic politics, driven largely by the U.S. lumber industry, was obviously one catalyst that spurred the U.S. federal government into action. One observes, for example, the self-initiation of a countervailing duty investigation by the U.S. Department of Commerce in Lumber III. Thomas and Apsey suggested that the U.S. federal government

was compelled to support the domestic sawmillers' interest because "key Republican seats were at stake" (1997, p. 20). In addition, U.S. president Ronald Reagan, under pressure from Congress members, committed to addressing their, and, by extension, the U.S. lumber industry's concerns over lumber. In return, Congress granted it fast-track negotiating authority for the Free Trade Agreement. Reagan's commitment also served to lend support to the Republic senators who were facing re-election in lumber-producing states. In another instance, the Office of the U.S. Trade Representative bent to the U.S. lumber industry's pressure by appealing the Lumber III Canada-U.S. Free Trade Agreement (FTA) decision to the FTA Extraordinary Challenge Committee.

Commentators (Apsey and Thomas, 1997; Iverson, 2001) claim that the U.S. federal government was so concerned about its role to advocate for the lumber industry's interests that the impartiality required for two of its agencies to carry out their roles was compromised. The International Trade Association (ITA) is tasked to investigate foreign producers and governments to determine whether dumping or subsidisation has occurred (International Trade Administration, no date). The International Trade Commission (ITC), according to its website, "is an independent, non-partisan, quasi-judicial federal agency", tasked to determine "the impact of imports on U.S. industries" and direct "actions against certain unfair trade practices" (International Trade Commission, 2004). Given that Canadian lumber practices and forestry policy had remained essentially unchanged throughout the twenty-three-year dispute, these commentators believe that the ITA and ITC's reversal of their Lumber I decisions in Lumbers II, III and IV is an indication that the U.S. federal government has surrendered to the political pressure to protect domestic industries (Apsey and Thomas, 1997; Iverson, 2001).

However, it would be remiss to say that the U.S. federal government was only driven by domestic interests. After all, the U.S. federal government did pursue negotiations with the Canadian federal government, some of which were initiated by the U.S. federal government before and during ITA and ITC's investigations. While this level of involvement is expected, since both national governments have jurisdictions over their respective countries' international trade, it nevertheless suggests that the U.S. federal government placed some degree of importance on interstate relations.

On the other side of the border, domestic interests, articulated by Canadian subnational actors, was likewise influential in steering the Canadian federal government's actions. In

particular, the Canadian federal government acted to protect the concerns of provincial governments, many of which stood to lose significant revenue as landowners of forest lands if Canada loses the trade dispute. Consequently, the Canadian federal government collaborated heavily with provincial governments and the Canadian lumber industry, and it lobbied for their interests by appealing to actors in the U.S. and accessing dispute resolution mechanisms at the supranational level.

The situation was somewhat similar in the European cases. In the French-Nordic conflict, the French government addressed the complaint from French sawmillers on two fronts: by having the Department of Industry, Economics and Industrial Affairs file a complaint against the Nordic countries to the European Community (EC) under the EC Free Trade Agreement, to which France and the Nordic countries were signatories; and by having authorities from the French government engage in conversations with their Finnish counterparts. However, an official from the Swedish Forest Industries Federation suggested that the national governments for the exporting countries were not as involved as that for the importing country (private communication, May 12, 2004). He claimed that the Swedish government was not involved in the French-Nordic dispute in any significant way. A plausible explanation is provided by the official from CEI-Bois, who said that only national governments that see the wood industry as important to its national economy would support it in a dispute (private communication, May 6, 2004). This is congruent to the finding reached in Section 4.1.1, namely, that Canadian provincial governments that were most dependent on their lumber revenues were the most proactive in trying to resolve the softwood lumber conflicts.

In the Germany subsidy case, the Government of Germany became involved because the dispute centred on the financial aid it provided to Klausner Nordic Timber (KNT). The German national government complied with the Commission's demand to supply all the information the Commission felt it needed to establish whether the state aid provided to KNT conformed to the Commission's rules. Similarly, the Swedish government became engaged in the conflict after it was approached by the Swedish Federation of Forest Industries with the complaint against the state aid provided to KNT. An official at SOLVIT in Sweden, which is a network coordinated by the Commission to solve trade problems between member states without resorting to legal proceedings, confirmed that the Swedish government managed to put the Swedish Federation of Forest Industries' concern on the agenda of the

trade talks conducted with the German national government (private communication, May 17, 2004). Unfortunately, a resolution was not reached through this means.

Domestic interests also drove the involvement of national governments in the Central European cases. The official from DG Enterprise said that the Slovak government heard complaints from local sawmilling and building industries that foreign demand for Slovak roundwood drove up prices to the extent that the domestic industry could no longer compete (private communication, May 6, 2004).<sup>2</sup> The Slovak government, responding to the domestic concerns, and following its preference to direct roundwood supply to its own wood-processing industry so as to assist the development of the Slovak building sector, decided to impose strict quantitative export restrictions on roundwood. After the Commission complained that this measure violated the Europe Agreement, the Slovak government removed the restrictions, only to impose requirements that still effectively limited the export of roundwood. It is evident, therefore, that the Slovak government acted to promote domestic interests. Similarly, the Polish government's requirement for product testing and conformity certification, which subjected foreign firms to additional costs and delays when importing to Poland, created conditions that favoured domestic actors. Transit requirements, such as the restriction to transport certain goods on Polish trucks only, also hinted of the Polish government's intention to promote the interests of Polish truckers and trucking companies. Noteworthy is the fact that not only did the Slovak and Polish national governments succeed in satisfying domestic interests, but these policies also allowed them to advance their respective national interests at the bargaining table with the rest of the EU.

In sum, most of the cases saw involvement from national actors, but this was mostly due to the nature of their position as the legitimate representative of their citizens in international relations. By dint of this position, they played an essential role in formal interstate negotiations and brokers for peace. They were rarely the instigators for the conflicts, and they usually relegate themselves to a role that provided support to domestic interests. All in all, their level of influence on conflict development and resolution was moderate compared

---

<sup>2</sup>Foreign firms that purchase Slovak roundwood countered that Slovak domestic industries were experiencing difficulties because their operations were not efficient enough to render them competitive in the free market. In this respect, the situation facing the Slovak government is reminiscent of that confronting the U.S. federal government. Both national governments were appealed to by domestic interests to shelter them from the consequences of free trade.

to that of subnational actors.

### 4.1.3 Supranational Actors

Interestingly, all but one case studied in this paper saw the involvement of at least one supranational actor.<sup>3</sup> The types of supranational bodies that were involved in the conflicts can be categorised into two types: international supranational bodies, which are ones that have memberships from multiple countries in different continents, and regional supranational bodies, which are ones that only have memberships from countries within one continent. It is found that of the two types of supranational actors, regional supranational bodies were more effective in drawing some of the previously state-owned dispute resolution powers to the supranational level.

#### International Supranational Bodies

International supranational bodies had a constant presence in the Lumbers II, III and IV conflicts. The ambits of these bodies are detailed in international trade agreements. For example, the General Agreement on Tariffs and Trade (GATT), a provisional agreement that was “directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce” (WTO a, no date), was very specific about its procedure for settling trade disputes between member states. If a party wanted to dispute a countervailing or anti-dumping duty investigation by another party, it could refer the matter to the Committee on Subsidies and Countervailing Measures to establish consultation procedures with the other party. If no settlement was reached after consultation, a party could appeal to the Committee to establish a panel to examine the dispute. The panel would then inform the Committee of its findings and the Committee would make recommendations to the parties for the purpose of settling the dispute (GATT Subsidies Code, 1986, p. 14).

In the North American cases studied, the first request by the Canadian federal government for the establishment of a GATT panel occurred in Lumber II. However, the signing

---

<sup>3</sup>The absence of a supranational actor in Lumber I was mainly because the dispute was resolved early enough by the U.S. federal government to make it unnecessary for the Canadian federal government to submit appeals at the supranational level.

of the Memorandum of Understanding between the Canadian and U.S. federal governments settled the dispute and hence made it unnecessary for the GATT panel to complete its finding. Another request for the establishment of a GATT panel was made by the Canadian federal government in Lumber III. The panel found sufficient evidence for the Department of Commerce to initiate the investigation, but it found that the imposition of the interim bonding requirement was invalid. Consequently, it recommended that the U.S. federal government release all bonds and return all cash deposits imposed on all Canadian softwood lumber imports as a result of its countervailing duty investigation. However, the U.S. Trade Representative, an arm of the U.S. federal government, did not follow this recommendation. Instead, the U.S. federal government used the withholding of bonds and cash deposits as a means to encourage the Canadian federal government to enter into negotiations that resulted in the Softwood Lumber Agreement.

This incident highlights a shortcoming that limited the authority of the GATT, namely, that panel decisions were non-binding. If the panel's recommendations were not followed in a reasonable period, the only recourse for the injured party is to seek authorisation from the panel for the right to impose *limited* trade sanctions against the other party. Obviously, this measure would only serve to escalate the conflict, and it may negatively impact industries in other sectors. Other shortcomings that existed but did not surface in this development include GATT's silence on what constituted a subsidy, as well as its lack of a prescription for a proper process for countervailing duty investigations.<sup>4</sup>

GATT was eventually renewed and included in the more comprehensive World Trade Organisation (WTO) agreements. The WTO is the institution that oversees the agreements. One of Canada's appeals of the U.S. final determinations in Lumber IV was made to the WTO. The WTO dispute resolution mechanism and recourse for non-compliance with the panel recommendation are essentially the same as those under the GATT. The only notable difference was that the WTO provided a definition of subsidy.

The GATT and the WTO did shift some of the previously state-centric power in dis-

---

<sup>4</sup>Noteworthy is that, despite these shortcomings, the GATT is highly regarded by policy makers to be the best international organisation. According to William Davey, the Director of the Legal Affairs Division of the World Trade Organization between 1995 and 1999, the GATT's "success was seen both in absolute terms, in that it seemed to resolve trade disputes effectively, and in comparative terms vis-a'-vis other forms of less successful examples of state-to-state dispute settlement (such as the International Court of Justice)" (2000, p. 15).

pute settlement to the supranational level by providing a dispute resolution avenue beside interstate negotiations. This in essence created a place for supranational bodies in interstate conflicts. The jurisprudence the GATT and the WTO gained from handling these conflicts also helped raise their profiles and made them a viable option for assisting nations settle their conflicts. Moreover, the strict procedural rules they imposed on their respective dispute resolution mechanisms severely constrained how the two federal governments handled the conflict, thus limiting their degrees of freedom on that front. On the other hand, both enshrined the Westphalian state system by only permitting signatories (*i.e.*, state governments) to initiate the dispute resolution process.

Interestingly, none of the European case studies saw the involvement of international supranational bodies. One reason could be because regional supranational bodies were adequate in addressing member states' concerns. Regional supranational bodies are discussed next.

### **Regional Supranational Bodies**

Compared with international supranational bodies, regional supranational bodies played an equally significant role in the conflicts studied, and they were more effective in devolving powers formerly constrained within the purview of the state up to the supranational level. In both *Lumbers II* and *III*, Canada appealed under the Canada-U.S. Free Trade Agreement (FTA) to challenge the U.S. final determinations. Under the FTA, the exporting party could request the establishment of a binational review panel to review anti-dumping and countervailing duty disputes. However, the panel could only provide opinion as to whether the importing party's final determination was in accordance with its domestic anti-dumping or countervailing duty law. The panel could either uphold a determination, or it could remand it for action that would make it consistent with the panel's decision. Although the decisions of FTA review panels were final, a review of the panel's decisions could be made by requesting the establishment of an Extraordinary Challenge Committee (ECC).

The only time the Canadian federal government appealed the U.S. final determinations to the FTA was in *Lumber III*. In its decision, the FTA found that there was not sufficient evidence or legal basis to sustain the U.S. Department of Commerce's finding of subsidy. The U.S. Trade Representative subsequently appealed to the ECC to challenge the binational review panel's decision, but a majority of the ECC members found in favour for Canada.

Soon after, the Department of Commerce revoked the U.S. countervailing duty order and directed that all countervailing duties collected be refunded. This example demonstrates the power owned by supranational bodies that are endowed with the ability to make binding decisions.

One shortcoming of the FTA was that it did not specify a maximum number of times a determination could be remanded. In addition, the FTA did not create a body of law that is superior to national law. According to Garton and Duvall, that the panel was limited to providing opinion on the compliance of a country's application of its domestic laws (and hence prohibited from imposing its own finding) significantly curbed its dispute settlement power (2002).<sup>5</sup> In *Lumber III*, there was also the threat of a constitutional challenge from the side of the U.S. lumber industry. Its argument was that, since the binational panel removes to a certain extent the jurisdiction of the domestic courts, its very existence violated the U.S. Constitution. The two federal governments ultimately managed to placate the industry enough that the threat to the legitimacy of the FTA binational review panels was never realised.

The FTA eventually expanded into the North American Free Trade Agreement (NAFTA) to include Mexico as a signatory. In *Lumber IV*, Canada appealed the U.S. final determinations of dumping, subsidy and threat of injury to the NAFTA binational review panels.<sup>6</sup> In all three NAFTA cases, the panels have remanded the U.S. determinations, but the conclusion to the dispute is not yet in sight.

The NAFTA dispute resolution process and its shortcomings were essentially the same as those of the FTA. However, regardless of their shortcomings, the FTA and NAFTA did help draw some dispute resolution powers from the state to the supranational level for the same reasons mentioned for the GATT and WTO earlier. In addition, a new development in *Lumber IV* seems to have furthered the devolution of dispute resolution power from the state. For the first time in the history of the softwood lumber dispute, subnational actors were afforded the chance to appeal to NAFTA because the anti-dumping investigation concerned the pricing practices of individual firms, not the practices of provincial or federal

---

<sup>5</sup>This prohibition served to preserve the parties' rights to amend their own national laws.

<sup>6</sup>Although NAFTA applied to Mexico in addition to Canada and the U.S., its binational review panel, as the name suggests, only involved the two nations under dispute. Since Mexico did not have any representatives in the review process, the dispute resolution process evolved in much the way as it did under the FTA.

governments.<sup>7</sup> Subsequently, a pan-Canadian lumber association and three regional lumber associations requested a panel review of the U.S. final determination of injury, and three lumber companies appealed the U.S. final determination of dumping to a NAFTA panel. In other words, the U.S. federal government's inclusion of the anti-dumping allegation in its investigation has effectively opened a channel for direct interaction between Canadian industries and the NAFTA panel, thus shifting some appeal power previously centralised in the national government level down to the subnational level.

In the European cases, the European Commission was the most involved supranational body. Unlike the Canada-U.S. FTA and NAFTA bodies, which were only enabled to review whether the importing party's final determinations were in accordance with its own national law, the Commission is the politically independent institution that is tasked to represent and uphold the interests of the EU as a whole. It is responsible for proposing legislation, policies and programmes of action, and implementing the decisions of Parliament and the Council. The work of the Commission is divided into 37 Directorate Generals (DGs), each responsible for a specific area of expertise. Hence, the seeming simplicity of having only one supranational body involved in the European cases studied is somewhat illusory. In fact, many different DGs were involved in resolving the conflicts. In the France-Nordic conflict, for example, both DG Enterprise and DG Trade were involved. In the Polish and Slovak conflicts, DG Enterprise, DG Trade, DG Internal Market, and DG Competition were all involved. These DGs mostly tried to resolve conflicts by shuttling between the various parties in quiet diplomacy.

One difference that distinguishes the regional supranational body in Europe from those in North America is institutional permanency. FTA and NAFTA bodies (beside the Secretariat, which performs administrative duties) are ad hoc; that is, they are established on an as-needed basis, and the composition of the panels and committees may differ from one case to the next. By contrast, the Commission is a permanent, large bureaucratic institution that operates year-round. From this difference alone, one can conclude that the Commission's resources and powers are much larger than those that of the FTA and NAFTA bodies.

This assessment finds that supranational actors, like national actors, were an essential player in the conflicts studied. This is mainly due to the fact that they are the recognised regulators of international trade and they provide dispute resolution services that are gener-

---

<sup>7</sup>This is unlike the GATT and the WTO, which only allows appeals from signatories.

ally seen to be non-partisan. Moreover, regional supranational bodies were found to have two advantages over international supranational bodies in the conflicts: first, unlike international supranational bodies, they are more accommodating in allowing for the participation of subnational actors. Second, some of the regional supranational bodies could issue binding decisions.

In any case, the level of power seen in the supranational actors involved in these conflicts can only be accounted for by the neofunctionalism and multi-level governance theories. They had correctly predicted that deepened integration should see a decrease in the power of national governments and an increase at the subnational and supranational levels. By contrast, intergovernmentalism is not as capable of accounting for the prominence of the supranational actors in these conflicts.

## 4.2 Primary Conflict Management Mechanisms

The purpose of this section is to determine which of neofunctionalism, intergovernmentalism and multi-level governance best facilitates the resolution of conflicts discussed in Chapter 3. Before diving into the case studies, the three theories' views on the mechanisms of integration are recapitulated.

Neofunctionalism asserts that integration is characterised by functional and political spill-overs. The former refers to the natural propensity for similar policy-making areas to shift to the supranational level once one area of policy-making has been transferred to that level. Functional spill-over is predicted to be followed closely by political spill-over, which “consists of a convergence of the expectations and interests of national elites in response to the activities of the supranational institutions.” (Cram, 1997, p. 16) This may involve national actors shifting their efforts and attention to the supranational front, or, more seriously, a transfer of national authority or legitimacy. Due to spill-overs, neofunctionalism predicts that, integration, once initiated, becomes a self-driven, automatic process. Contrasting this view, intergovernmentalism describes integration as a process guided by voluntary, conscious decisions made by national actors and carried out through interstate negotiations. This is partly agreed with by multi-level governance, which asserts that decisions involving “high” politics are made by national governments. It departs from intergovernmentalism, however, by attributing policy outcomes in “low” politics to decisions made at multi levels

by myriad actors.

After this theoretical review, attention is now turned to the mechanisms that characterise how the conflicts unfolded. The predictions of neofunctionalism and intergovernmentalism are tested first against developments at the supranational and national levels. It is seen that neither neofunctionalism nor intergovernmentalism paints a complete picture of the major developments in the case studies. In fact, a sole focus on these theories misses some equally integral dispute resolution avenues accessed by the key actors. Following this realisation, major dispute resolution processes that cannot be captured by these two theories are examined with a view to assess the predictions of the multi-level governance theory. It is concluded that multi-level governance, besides being able to describe developments that are predicted by neofunctionalism and intergovernmentalism, can also explain other important processes that do not necessarily happen at the supranational or national level.

A summary of the key mechanisms accessed to manage each of the conflicts is provided in Tables 4.5 to 4.14. For ease of classification, the levels of actors that initiated the mechanisms are indicated. In two cases, the work of the supranational bodies did not directly contribute to the development of the conflicts. These cases were marked by “None” under the mechanisms column. The ultimate mechanisms that produced a resolution to the conflicts are noted in the third column.

### **4.2.1 Mechanisms Captured by Neofunctionalism**

Neofunctionalism predicts that processes at the supranational level would be self-driven, automatic, and characterised by functional and political spill-overs. Accordingly, this subsection proceeds by examining the degree of automaticity and spill-overs inherent in the supranational dispute resolution arena.

#### **Automaticity**

In the North American cases, officials in the Canadian lumber industry, provincial governments, and Canadian federal government all stressed that litigation is one of two primary ways for fighting the U.S. countervailing duty and anti-dumping determinations. These legal challenges have all been initiated at the supranational level, and the procedures for handling interstate trade disputes were methodically set out in the relevant legal agreements. It

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Canada-U.S. (Lumber I)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• NIFM lobbied Governor of Oregon</li> <li>• CFCLI lobbied U.S. state and federal governments;</li> <li>• Canadian provincial governments appealed to U.S. Secretary of Commerce</li> <li>• CFCLI challenged ITA decision to U.S. Court of International Trade</li> <li>• CSLC made a motion to U.S. Court of International Trade</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Senator asked the ITC to conduct a report on soft-wood lumber</li> <li>• U.S. federal agencies DOC (ITA) and ITC investigated</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• (None)</li> </ul>	U.S. domestic quasi-judicial system

Table 4.5: Summary of key mechanisms accessed to manage Lumber I.

was found that the clear procedures provide a rather linear and predictable process aimed toward conflict resolution, but there is little automaticity in the processes. This is partly due to the fact that, although the supranational actors involved in the North American cases had a regulatory role to play in interstate trade conflicts, they lack the power to self-initiate proceedings. In fact, these supranational bodies could only assume their regulatory function when formally requested to do so by a party. Another reason that contributed to the lack of automaticity is due to the multiple ways national governments can stall or arrest the dispute resolution processes. For example, in the case of the FTA and NAFTA, where the national governments involved are responsible for selecting the binational review panel, a country can delay the panel formation process by exercising its right to four preemptory challenges, “disqualifying from appointment to the panel up to four candidates proposed by the other

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Canada-U.S. (Lumber II)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• CFLI appealed to Congress backed by arguments from B.C. government</li> <li>• B.C. government approached CFLI to form an alliance</li> <li>• New Brunswick government appealed to DOC for separate treatment</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• State-state negotiations with consultations with respective lumber industries and subnational governments</li> <li>• U.S. federal agencies DOC (ITA) and ITC investigated</li> <li>• Congress threatened U.S. Administration of legislative solution</li> <li>• Canadian federal government requested the establishment of a GATT panel</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• (None)</li> </ul>	Negotiated settlement

Table 4.6: Summary of key mechanisms accessed to manage Lumber II.

involved Party.” (North American Free Trade Agreement, 1994, Annex 1901.2) The countries in dispute then have to mutually decide on a fifth panellist, and if no agreement is reached within 55 days of the request for a panel, the fifth panellist is to be chosen by lot from a roster of individuals submitted from each country on the 61st day.

The process that continues after a panel has issued its decision can also be lengthy. If a binational review panel decided that a country’s final determination is inconsistent with its domestic laws, it could only remand the determination. The country that issued the determination is then obligated to correct the determination to comply with its laws. In

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Canada-U.S. (Lumber III)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• B.C. subnational actors lobbied Canadian federal government to terminate settlement reached in Lumber II</li> <li>• Provincial governments negotiated individually with the U.S. Trade Representative</li> <li>• Maritime Lumber Bureau wrote to CFLI for exemption from investigation</li> <li>• Alliance between Government of B.C. with Washington State Governor</li> <li>• Alliance between CFLI and British Columbia environmental groups to lobby Congress</li> <li>• U.S. homebuilding industry and home buyers lobbied Congress</li> <li>• Alliance between U.S. homebuilding industry and home buyers with Canadian lumber industry and Canadian governments</li> <li>• U.S. industry challenged FTA panel on its authority to rule on the case</li> <li>• U.S. industry issued a constitutional challenge of the FTA process to the Court of Appeals for the District of Columbia Circuit</li> </ul>	Negotiated settlement

Table 4.7: Summary I of key mechanisms accessed to manage Lumber III (continued in Table 4.8 and 4.9).

theory, this dance of remand and remanded determination can continue indefinitely. In practice, up to three remands have been issued in the softwood lumber dispute before a U.S. federal agency reached a determination that satisfied the binational review panels. In addition, under appropriate circumstances, a country can appeal panel rulings by requesting

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Canada-U.S. (Lumber III) (continued)	<b>National:</b> <ul style="list-style-type: none"> <li>• Members of Congress lobbied U.S. federal government</li> <li>• U.S. ITA and ITC self-initiated investigation</li> <li>• State-state negotiations with consultations with respective lumber industries and subnational governments</li> <li>• Members of Parliament met with CFLI</li> <li>• Canadian federal government requested establishment of GATT panel</li> <li>• Canadian federal government requested establishment of FTA</li> <li>• U.S. Trade Representative appealed for establishment of Extraordinary Challenge Committee under FTA</li> </ul>	Negotiated settlement

Table 4.8: Summary II of key mechanisms accessed to manage Lumber III (continued from Table 4.7).

for the establishment of an Extraordinary Challenge Committee. An Extraordinary Challenge Committee was convened in Lumber III after the U.S. federal government alleged that two Canadian FTA panellists had a conflict of interests. A request for an Extraordinary Challenge Committee was also made by the U.S. federal government in Lumber IV. Needless to say, all these procedures can impose significant delays in the dispute resolution process.

The chances for delays and quagmire in the GATT and WTO dispute resolution processes lie elsewhere. After a party has requested for the establishment of a panel, the GATT allows any contracting party to the GATT to block the creation of the panel if it fails to agree on terms of reference or the appointment of panellists or arbitrators. A contracting party could also block at the GATT Council the adoption of panel rulings and the authori-

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Canada-U.S. (Lumber III) (continued)	<b>Supranational:</b> <ul style="list-style-type: none"> <li>• GATT panel rules U.S. self-initiation of investigation justified, but demand for bonding requirement was inappropriate</li> <li>• FTA panel twice ruled insufficient evidence of Canadian subsidy and remanded determinations back to ITA for consideration</li> <li>• Extraordinary Challenge Committee ruled in favour of Canada</li> </ul>	Negotiated settlement

Table 4.9: Summary III of key mechanisms accessed to manage Lumber III (continued from Table 4.8).

sation of counter measures against a non-implementing respondent. Following complaints about these loopholes, which effectively rendered the GATT dispute resolution process ineffective, the WTO rules were amended to encourage a more automatic acceptance of panel decisions. Under the WTO, panel decisions can still be blocked, but only if it has the consensus of all of the members in the larger Dispute Settlement Body. However, a resolution of the conflict is still not necessarily automatic after a panel ruling has been passed. Under the GATT and WTO, a party can appeal a panel's ruling, as occurred in Lumber IV. From 1996 to 2005, a total of 65 cases have been appealed, amounting to approximately 68 percent of all panel reports in the same period (World Trade Organization, nd). Another difficulty arises in relation to implementation. Panel rulings are not binding. In Lumber III, for example, the GATT panel ruling that interim bonds collected from Canadian sawmillers be returned was not followed by the U.S. federal government until several years after the GATT ruling was passed. In situations where the offending country fails to implement a ruling, the complaining country can only resort to establishing limited trade sanctions. To further delay the process, the complaining party had to first obtain an authorisation from the GATT or WTO to undertake counter measures. Despite the onerous process, in Lumber IV, Canada did request the WTO to grant it the authority to retaliate against the U.S. in an

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Canada-U.S. (Lumber IV)	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• U.S. homebuilding industry and home buyers interacted with Canadian industry and provincial governments</li> <li>• U.S. homebuilding industry and home buyers lobbied Congress</li> <li>• Alliance between First Nations in Canada and U.S. environmental groups</li> <li>• Canadian industry lobbied federal and provincial governments</li> <li>• Canadian lumber companies requested establishment of NAFTA binational review panel</li> </ul>	To be determined

Table 4.10: Summary I of key mechanisms accessed to manage Lumber IV (continued in Table 4.11).

amount exceeding CAD\$4.1 billion because the U.S. federal government failed to comply with the WTO panel ruling on the U.S. positive threat of injury determination.

At first sight, automaticity also seemed to be a poor descriptor of how the European conflicts developed. However, a more careful analysis suggests two conditions under which the dispute resolution process is more likely to be automatic and self-driven. First, the conflict parties are subjects in nation states that are members of the European Union. Second, a formal dispute resolution process is followed. Developments in the European cases are evaluated against these hypotheses.

In the Nordic countries conflict, the French government complained to the Commission that Nordic countries were dumping lumber in France at prices which the French lumber industry could not compete. In response, the European Commission set up a temporary system to monitor lumber imports from the Nordic countries. Meanwhile, Nordic and French industry representatives negotiated at a forum made available to them by way of common membership to a pan-European lumber organisation, and this was ultimately attributed to

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Canada-U.S (Lumber IV) (continued)	<p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Members of Congress lobbied U.S. federal government</li> <li>• State-state negotiations with consultations with respective lumber industries and subnational governments</li> <li>• U.S. ITA and ITC conducted investigations</li> <li>• U.S. DOC published draft bulletin of acceptable Canadian forest policy changes</li> <li>• Canadian federal government requested establishment of WTO dispute resolution panels</li> <li>• Canadian federal government requested establishment of NAFTA binational review panels</li> <li>• Canadian federal government sought WTO authority to retaliate on U.S. imports</li> <li>• U.S. federal government appealed to WTO Appellate Body</li> <li>• U.S. federal government requested establishment of an Extraordinary Challenge Committee</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• NAFTA binational review panels examining the U.S. final determinations</li> <li>• WTO dispute resolution panels examining the U.S. final determinations</li> </ul>	To be determined

Table 4.11: Summary II of key mechanisms accessed to manage Lumber IV (continued from Table 4.10).

be the means responsible for resolving the conflict. Note that while France was a member of the European Community, the Nordic countries were not. The two sides were only bound

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Nordic Countries	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• French sawmill associations lobbied French national government</li> <li>• Nordic and French wood associations met to discuss at the EOS</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• French government appealed to the Commission</li> <li>• Negotiations between French and Finnish governments</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• Commission investigated matter and monitored imports from Nordic countries</li> </ul>	Industry negotiations

Table 4.12: Summary of key mechanisms accessed to manage the Nordic countries conflict.

by free trade agreements. In this case, one observes a Commission that is reluctant to initiate the formal investigative process. The Commission's inactivity essentially encouraged the industry to resolve its own conflict.

In the Central European cases, EU companies complained about Slovak export restrictions on roundwood and Polish import restrictions to the Commission. The Commission approached the Slovak government to relay the message that this practice was not compatible with the spirit of the Europe Agreement. The Slovak government complied by removing the direct restrictive measures, only to enact indirect ones that effectively amounted to export restrictions. Similarly, the Polish government amended its import requirements, but more changes were in want. Taking into account the fact that these two cases occurred at a time when the accession of the Slovak Republic and Poland was imminent, the Commission resolved to wait until they entered into the folds of the EU to further pursue the matter. This demonstrates more clearly the Commission's preference to take a more active role in the conflict when the disputing parties are subjected to the internal market rules of the EU. Another interesting development is noteworthy. Despite the fact that efforts to resolve the

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Germany	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• Swedish Federation of Forest Industries complained to the SOLVIT Centre in the Sweden National Board of Trade</li> <li>• Subnational actors (including CEI-Bois) complained to Commission</li> <li>• KNT appealed Commission's decision to the Court of First Instance</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Swedish government discussed with German government during bilateral trade talks</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• Commission investigated</li> <li>• Commission re-investigated and withdrew earlier decision</li> </ul>	Commission decision

Table 4.13: Summary of key mechanisms accessed to manage the Germany conflict.

conflicts were put on hold, the complaining parties did not resort to more serious measures, such as appealing to the Court of First Instance of the European Communities.<sup>8</sup> This hints of a general expectation that once the Slovak Republic and Poland become EU members, their trade practices will automatically conform to those of the other EU members.

The Commission changed its approach in the state aid case, which involved companies in the EU and Germany, a newly-acceded EU member. From the instance the complaint was lodged with the Commission, the process took on a life of its own, to the point that beside submissions from interested parties, no other key actors except the Commission was involved. After hearing complaints regarding the state aid provided to Klausner Nordic Timber GmbH & Co. KG ('KNT'), the Commission immediately examined the case. Unsatisfied that the state aid conformed to EU rules, it undertook a formal investigative process

<sup>8</sup>The motivations for not using this avenue to resolve conflicts are addressed later in Section 4.3.1.

Case	Mechanisms for Managing Conflict	Resolution Mechanism
Poland and Slovak Republic	<p><b>Subnational:</b></p> <ul style="list-style-type: none"> <li>• EU companies and CEI-Bois complained to Commission</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• Government of Poland met with Commission</li> <li>• Government of the Slovak Republic met with Commission</li> </ul> <p><b>Supranational:</b></p> <ul style="list-style-type: none"> <li>• Commission pointed out practices incompatible with the spirit of the Europe Agreement</li> <li>• Commission discussed with Polish authorities during accession talks</li> </ul>	To be determined

Table 4.14: Summary of key mechanisms accessed to manage the Poland and Slovak Republic conflicts.

that eventually found that the aid provided was incompatible with aid schemes previously approved by the Commission. Upon ruling that KNT had to repay some of the aid it received, KNT appealed to the Court of First Instance and initiated what would likely have been another automatic process. However, the legal challenge never fully developed because the Commission sought to have the Court procedure suspended and eventually withdrew its decision because it realised it was “unsound in law.” (European Commission, 2002, p. 2) Here, the two conditions to an automatic process are indeed satisfied. The conflict occurred between subjects of EU member states, and the Commission conducted formal investigative procedures.

In sum, all but one case studied in this paper saw a lack of automaticity in the supranational dispute resolution processes. In the North American cases, where supranational dispute resolution processes all involved litigations, the lack of automatic processes is not limited to the initiation of proceedings. Instead, many opportunities exist throughout the processes for actors to introduce stalls and stoppages. After relevant supranational bod-

ies have made a ruling, the process for getting to the point where the conflict is eventually resolved is not self-driven either. Hence, although dispute resolution processes at the supranational level have some inherent forward drive, they are nevertheless dominated by deliberate decisions instead of automatic processes. In the European cases, the main dispute resolution process accessed involved appealing to a supranational actor, namely, the European Commission. It was found that the dispute resolution process possessed some degree of automaticity when the conflict occurred between subjects of EU member states and when the Commission undertook formal procedures to resolve a conflict. In the Nordic countries case where the conflict parties were only bound by trade agreements, the Commission was hesitant to exercise its formal investigative powers. This essentially rendered negotiations a more attractive option, one where the conflict parties could resolve their dispute on their own terms by their own means. Consequently, the dispute resolution process was more deliberate and afforded the conflict parties more control over the outcome. In the case where the offending party was poised to join the folds of the EU, the lack of forward progress seems to be tolerated by the EU complainants. Otherwise one would expect to see more frequent use of litigation procedures provided by the Court of First Instance of the European Communities. This seems to suggest that EU actors have faith that the offending party will automatically conform to EU rules once it becomes a member, thus rendering the intermediate litigation efforts unnecessary.

### **Spill-Overs**

The focus of this study has been in the lumber sector alone. Consequently, the lack of comparable development in other sectors makes it difficult to fully examine and draw conclusive statements about the existence of functional spill-over in North American and Europe. What is possible, however, is a cursory survey of the more global integration framework in which the conflicts in question occurred. Attempts at assessing political spill-over is made based on the extent of national authority/legitimacy transfer or growth/decline of political effort at the supranational level.

From the perspective of the Canadian governments and industry, the purpose of the FTA and NAFTA was to establish free trade. From the outset of the FTA negotiations, one of Canada's primary objectives was to seek exemption from U.S. countervailing duty and anti-dumping laws. According to Apsey and Thomas, "the United States' system had become

a complainants-driven and in some cases, a highly-politicised and expensive method of harassing Canadian exporters.” (1997, p. 25-26) One would therefore expect these Canadian actors, short of attaining a regime of complete free trade, to embrace functional spill-over, because it offers hope that the removal of trade restrictions in some policy areas should facilitate liberalisation in other areas. Unfortunately, this Canadian objective was not shared by the U.S. lumber industry. Look, for example, at the Lumber II. This episode of the dispute occurred at a time when the U.S. and Canadian federal governments were engaged in talks to establish a free trade agreement between the two countries. Evidence suggests that the U.S. Administration bent to pressure from Congress members and committed to protecting the domestic lumber industry. In exchange, it obtained fast-track authority from Congress and a better chance of re-election for some Republican senators. One sees the Department of Commerce issue a completely reversed determination from that in Lumber I, despite the fact that circumstances surrounding the softwood lumber trade had not changed in between the two dispute episodes. One also sees the Department of Commerce self-initiate countervailing duty investigations in Lumber III. After Lumber III concluded, the shadow of the softwood lumber dispute lived on, as was evident in the NAFTA, which explicitly stated that its provisions shall not impede on the terms of the negotiated Softwood Lumber Agreement reached in Lumber III. These demonstrate the U.S. Administration’s resolve to shelter the domestic softwood lumber sector from free trade, and thus its deliberate attempts to prevent functional spill-over of free trade into the softwood lumber sector.

Obviously, the Canadian federal government failed to achieve its objective of obtaining exemption from U.S. countervailing duty and anti-dumping laws. However, while this objective was not achieved in its entirety, Canada did gain ground by including in the FTA and NAFTA provisions for a binational review panel mechanism to “replace judicial review of anti-dumping and countervailing duty determinations with binational review.” (North American Free Trade Agreement, 1994, 1904(1)) Granted, the “replacement” of domestic judicial reviews was only partial, since binational review panels differ from a domestic court due to their ad hoc nature and limited scope and powers compared to the latter. Nonetheless, some authority previously held by domestic courts has been transferred to the supranational level, and this suggests some degree of political spill-over.<sup>9</sup>

---

<sup>9</sup>The GATT and WTO dispute resolution processes were different because they did not aim to replace any function of domestic courts and do not issue binding decisions.

Moreover, the FTA and NAFTA binational review panel process, as well as the GATT and WTO dispute resolution processes, opened up an avenue at the supranational level for states to address trade conflicts. Canadian political actors have directed a good portion of their dispute resolution efforts to the supranational level, as is evident from the fact that the Canadian federal government has accessed these processes in every episode they were available and needed.<sup>10</sup> In this respect, there was some evidence of political spill-over in terms of lobbying supranational institutions.

As to the European conflicts, it was impossible to observe evidence for or against functional spill-over in the cases studied. Part of the difficulty stems from the limited number and scope of cases. The other difficulty is related to the timing of this study. In a sense, the Eastern European cases would have been ideal candidates for examining spill-overs, since at the time information for this paper was collected, they were poised to join the EU, and they would undoubtedly be demanded to make policy changes to conform to the rules of the EU. Complaints about the lumber import restrictions in Poland, for example, should place pressure on the certification and ground transport sectors. Unfortunately, an analysis of functional spill-over would require a more in-depth study that is beyond the scope of this paper.

Some preliminary conclusions, however, can be drawn on the existence of political spill-over in the European cases, since some decision-making authority has been transferred to the supranational level. The European cases occurred in a context where the formal authority for regulating trade and trade conflicts between partner countries rests with supranational institutions. In the case of the alleged dumping from Nordic countries into France, the conflict parties' relationship was regulated by free trade agreements between the European Economic Community (EEC) and European Free Trade Association (EFTA), and the formal authority to manage the free trade agreements was assigned to EEC-EFTA Joint Committees. In the German state aid case, the authority was given to the Court of First Instance of the European Communities (and, by extension, the Court of Justice of the European Communities). In the Eastern European cases, the Commission was the legitimate liaison between the EU and the Slovak Republic and Poland.

In short, functional spill-over was either consciously prevented from happening (as in

---

<sup>10</sup>Appeals to supranational processes were unnecessary in Lumber I because the conflict was quickly resolved at the U.S. national level.

the North American cases), or its existence was inconclusive (as in the European cases). However, it does seem that political spill-over was present in most of the cases. This was mostly due to the fact that the establishment of supranational judicial bodies, such as the binational review panels and the Court of First Instance, has transferred some decision-making power from the national to the supranational level. These bodies' accessibility and utility have accordingly transferred some national actors' efforts to the supranational level. Taken together with the finding of little evidence of self-driven, automatic conflict resolution processes, it is concluded that neofunctionalism does not provide a complete account of the mechanisms behind the conflict developments in the softwood lumber dispute. In the following discussion, the predictions of intergovernmentalism are evaluated.

#### **4.2.2 Mechanisms Captured by Intergovernmentalism**

Intergovernmentalism predicts that interactions between states take the form of interstate bargaining characterised by voluntary and conscious decisions. In the North American cases, both the Canadian and U.S. federal governments have relied heavily on interstate negotiations to manage the softwood lumber dispute. Given that two of the three resolved conflicts were concluded by settlements negotiated between the federal governments, the importance of this means for resolving conflicts is obvious. These negotiations occurred, both formally, through official meetings, and informally, through contacts between political and bureaucratic counterparts.<sup>11</sup> In three of the four episodes of the dispute, the two governments conducted negotiations throughout the conflict cycle: before the conflicts began, with the intent of stopping them from erupting; during the conflicts, with the hope of resolving the conflict; and after the conflicts settled, with the aim of preventing future conflicts. There is typically an ebb and flow to interstate negotiations. In Lumber IV, sixteen days after the CFLI filed countervailing and anti-dumping duty petitions in April 2001, the Canadian federal government immediately held consultations with the U.S. federal government to urge the latter not to initiate investigations. But the Canadian government failed to achieve its objective, and it was not until February 2002 that it engaged the U.S. federal government in discussions to resolve the dispute again. Negotiations stalled and ended in March, only

---

<sup>11</sup>Although industries on both sides were regularly consulted during the negotiations, admittance to the actual negotiations was only privy to national government representatives because of anti-trust laws.

to recommence in July 2003. The hiccups and spurts of activities demonstrate that, far from being an automatic and self-driven process, interstate negotiations are actually acts of volition. In this sense, the prediction of intergovernmentalism is accurate.

Most of the interstate negotiations conducted between the Canadian and U.S. federal governments involved some bargaining. In Lumber II, after “furious backroom discussions between Canadian embassy officials and U.S. government officials”, the Canadian federal government finally announced that it would impose an export tax on Canadian lumber (Apsey and Thomas, 1997, p. 23). An official at the Department of International Trade, referring to this decision, concurred that the “’86 agreement to settle was a federal government unilateral decision” (private communication, February 9, 2004) in the sense that it did not have the support of the provincial governments and Canadian industry. According to Apsey and Thomas, “Canada’s Ambassador, Allan Gotlieb, had apparently become convinced that the bitterness engendered by the softwood lumber case could torpedo the free trade negotiations if it continued to dominate Canada-U.S. trade relations.” (1997, p. 23) Hence, the Canadian federal government relented on attaining a resolution that would appease its domestic actors in exchange for a free trade agreement for the nation. Even then, the free trade agreement negotiation involved further bargaining between the two countries. As mentioned earlier, the Canadian federal government had entered into the Canada-U.S. free trade negotiations with the intent of obtaining an exemption from U.S. countervailing and anti-dumping laws. However, the U.S. federal government apparently disagreed that its laws posed a problem for free trade, and it was unwilling to provide Canadian exporters with any special treatment. According to Apsey and Thomas, “This divergence in views nearly aborted the negotiations. It was only at the eleventh hour that a compromise was forged and an agreement became possible.” (1997, p. 25) This time, both governments had to forgo their wish lists in exchange for an agreement that both can accept.

While intergovernmentalism succeeded in accounting for interstate negotiations and bargaining between the two federal governments, it failed to explain an important phenomenon in interstate negotiations, namely, that bargaining was not limited to discussions between national governments. In an address to the National Lumber and Building Material Dealers Association, Doug Waddell, a former Assistant Deputy Minister from the Department of International Trade, noted that “Governments in Canada - both Federal and Provincial - have engaged the U.S. Government in a policy based discussion aimed at iden-

tifying changes in policy and practice required to confirm that timber harvested on public lands in Canada is sold at market prices.” (Waddell, 2004) According to an official from the Canadian Department of International Trade, both the Canadian federal *and* provincial governments met with representatives at the Department of Commerce to discuss acceptable terms in the draft policy bulletin (private communication, February 9, 2004). Throughout the various episodes of the lumber dispute, the Minister for the Canadian Department of International Trade held intergovernmentalist meetings and teleconferences involving federal, provincial, and territorial ministers. These are but a few of the ways subnational governments were involved in the interstate negotiations. More discussion regarding the involvement of subnational actors is provided in the following subsection. Suffice to say at this point that their level of involvement was not predicted by intergovernmentalism.

Interstate negotiations were also present in two of the European cases, but they seem to be less integral to the resolution of the conflicts. In particular, none of the resolved conflicts could be attributed to efforts from interstate negotiations. In the Nordic countries case, the Minister of European Affairs, Alain Lamassoure, did credit part of the eventual conclusion of the conflict to intergovernmental negotiations between the French and Finnish governments, but negotiations between industry groups was generally viewed by actors involved in the conflict to be the main contributor to conflict resolution (Ministère des Affaires Étrangères, February 12, 1995; CEI-Bois official, private communication, May 6, 2004; Swedish Forest Industries Federation official, private communication, May 12, 2004). In the German case, Sweden did conduct interstate negotiations with Germany, but the issue regarding the state aid was only of many issues raised in the larger context of the bilateral trade talks between the two countries. No account exists to demonstrate that interstate bargaining over the German state aid was ever granted a separate venue. More tellingly, an official at SOLVIT admitted that the Swedish government’s talk with the German government did not bring about a resolution to the conflict. This time, it seems that the Commission was the actor responsible for ending the conflict. In the Central European cases, while the Slovak and Polish governments were approached regarding the export and import restriction complaints, there is no evidence to show that they were ever engaged in negotiations with governments of EU countries. Again, the Commission was credited to be the main conduit that channelled between the complainants and the Slovak and Polish state authorities. In all three cases, the lack of interstate negotiations occurred against a backdrop

of general idleness on the part of state governments. There are three hypotheses for why governments involved in the European cases were less active than their North American counterparts. First, the European Commission, as the supranational body, is believed to have enough authority and resources to render negotiation efforts on the part of national governments unnecessary. Second, in instances such as the German state aid case and the Central European export and import restriction cases, where complainants belong to multiple countries, it was probably more effective and logistically sound to delegate the negotiating authority to the Commission. Third, some national governments did not view the lumber industry to be an important sector. Accordingly, they may be reluctant to expend the resources necessary to carry out interstate negotiations. Regardless of the accuracy of these hypotheses, it remains true that national actors did not spend as much energy in interstate bargaining as did the North American federal governments.

After reviewing the cases from the perspective of mechanisms, it is found that while intergovernmentalism may explain some of the actions of national actors, it does not paint a complete picture of all the important decision-makers in the dispute. In the North American cases, given the tight relationship between the two orders of government, as well as the fact that the softwood lumber issue hinge on both federal and provincial jurisdictions, to make sense of how the conflicts evolved, one needs to keep in mind governments at the provincial and territorial levels as well. In the European cases, if one had to rate the level of involvement of national, subnational, and supranational actors, the former will be given the lowest rating. For this reason, intergovernmentalism misleads conflict analysts by directing attention away from industry groups and the Commission, who, comparatively speaking, were more integral to the resolution of the conflicts.

### **4.2.3 Mechanisms Captured by Multi-Level Governance**

The analysis so far has shown that neither neofunctionalism nor intergovernmentalism paints a complete picture of conflict development in the cases studied. Consideration is now given to multi-level governance, which predicts that "high" politics is within the purview of national actors while "low" politics are pursued in the supranational and subnational levels by actors at and across different levels. Since the supranational and national dispute resolution arenas have already been discussed, attention is focussed on the subnational dispute

resolution arena. The objective is to highlight important conflict resolution processes that can be explained by multi-level governance but not by intergovernmentalism or neofunctionalism.

One of the two major strategies of the Canadian federal government in its approach to managing the softwood lumber dispute was appealing to supranational bodies. The involvement of the Canadian federal government at the supranational arena was especially important in terms of the GATT and WTO appeals because these dispute resolution panels could only be invoked by a signatory to the GATT or WTO, not a private party. In this sense, the Canadian federal government does dominate some areas of "high" politics. However, this cannot be adequately accounted for by intergovernmentalism or neofunctionalism. Although it was initiated by a national actor, it did not involve interstate negotiations. It also fails the neofunctionalist test of automaticity.

As mentioned earlier, the federal governments were not the only governmental actors involved in the negotiation effort in the North American cases. In Lumber IV, Minister Peterson from the Department of International Trade held numerous meetings and conference calls with provincial and territorial government representatives to discuss their concerns and explore options. The provincial and territorial governments' participation in the negotiation efforts was instrumental in any bargaining because public timber lands (comprising 94 percent of Canadian forest lands) and forest policy are both within the jurisdictions of provincial and territorial governments.

Another notable subnational actor initiative is seen in Lumber IV. The Department of Commerce had issued in August 2003 a draft policy bulletin, which outlined the conditions under which it would judge Canadian forest policy not to be market distorting. Although the Department of Commerce failed to issue a final bulletin, B.C. has forged ahead to implement policy changes that it believed would demonstrate its timber sales are based on a market system, not government subsidy as alleged by the U.S. lumber industry. It remains to be seen if this unilateral action will relieve the province of B.C. from the mire of countervailing and anti-dumping duty investigations, but it nevertheless shows that subnational governments are ready to pursue unilateral actions should they be convinced that these measures are beneficial to them. In addition, at different points of the dispute, the CFLI has been approached by the Maritime Lumber Bureau, the Government of B.C., and Canadian Members of Parliament. The B.C. government, for one, was successful in form-

ing an alliance with the CFLI, and Gus Kuehne, a representative from the CFLI, said that the Memorandum of Understanding that concluded Lumber II would not have been possible without Jack Kempf, the B.C. Minister of Forests. The Canadian attempts to establish alliance with the CFLI demonstrates an astuteness that the source of the conflict rests with CFLI, the primary instigator to the softwood lumber dispute. It made sense, therefore, that actors would try to approach the CFLI to bargain for peace. These appeals to an actor that has no authority at the national or supranational level cannot be accounted for by intergovernmentalism or neofunctionalism. In contrast, this shows that, as predicted by multi-level governance, decisions are made at myriad levels, not just at the national or supranational levels.

In the European cases, the most prominent development that can only be accounted for by multi-level governance is the industry-to-industry negotiations that resolved the Nordic countries case. Officials at the Swedish Forest Industries Federation and the European Confederation of Woodworking Industries both agreed that the dispute was ultimately resolved by discussions held between wood trade associations at the European Organisation of Sawmilling Industry meetings. This claim is substantiated by actors outside of the industry as well. An official at DG Enterprise said that, besides establishing a monitoring scheme, the Commission did not create any incentives to persuade the Nordic countries and industries to change their practices that led to the conflict (private communication, May 6, 2004). However, Nordic lumber exports to France were soon maintained within certain thresholds considered acceptable to the French lumber industry. He said that these thresholds were not set by France or the Commission. Instead, he believed they were probably set by Nordic industries after they had calculated what was safe to export without disrupting prices or damaging the French lumber industry unduly.

Hence, by predicting that authority would be shared between various levels of actors, multi-level governance succeeded in providing a better account of the developments in the cases studied.

### **4.3 Motivation(s) for the Manner Conflicts were Managed**

The motivations neofunctionalism, intergovernmentalism and multi-level governance promote as the reasons for furthering or stalling integration are tied to their predictions about

the key level(s) of actors involved and the main mechanisms characterising integration. Neofunctionalism claims that subnational and supranational actors are motivated to access supranational processes because they can influence decisions more effectively at that level. Intergovernmentalism holds that national actors' motivations are guided by national preferences, defined by interstate relations or economic and domestic demands. Multi-level governance predicts that actors at multi-levels access processes at myriad levels because their interests cannot be addressed at one level alone. Although "high" politics is still expected to be within the purview of national actors, non-governmental actors are eager to elevate their importance by using whatever means at whatever levels they can to influence decisions. The goal in this section is to determine which of these three theories best accounts for key actors' motivations for how they handled the conflicts. The analysis systematically examines potential reasons behind efforts expended at the supranational, national, and subnational levels.

### **4.3.1 Motivations for Accessing Supranational Processes**

The investigation begins with an examination of actors' motivations for accessing supranational dispute resolution processes in the North American conflicts. Officials in the Canadian lumber industry, provincial governments, and federal government all stressed that a crucial component of Canada's two-track dispute resolution approach is litigation. Since litigation is an option only at the supranational level, much Canadian activity is seen on that front. There must be some utility to this approach, given that Canadian actors have pursued legal challenges in three of the four softwood lumber episodes, and all available legal avenues were accessed in each episode.

For the Canadian federal government, one of reasons for taking the legal approach stems from a sense of righteousness. The Canadian federal government did not consider that it, or the provinces, was providing subsidy to the lumber industry. Eager to vindicate themselves of any wrongdoing, it believed that their names were best cleared if the U.S. determinations were measured against transparent rules and subjected to rigorous legal procedures conducted by third, non-partisan bodies. Given the favourable rulings issued by supranational bodies in the past, and that circumstances surrounding the Canadian lumber industry had not changed substantially throughout the dispute history, the Canadian federal government

probably thought that supranational bodies would continue to assist Canada's case. Former Canadian Assistant Deputy Minister of International Trade summed up these reasons by saying, "Decisions to date on the legal track point to eventual reductions in the duties and call into question the basis for the U.S. International Trade Commission threat of injury determination." (Waddell, 2004) Another possible appeal of litigation was the pressure it could apply on the U.S. actors, which could effectively provide the Canadian federal government with more leverage during interstate negotiations.

Dispute resolution channels at the supranational level were not limited to national actors. Chapter 19 of the FTA and NAFTA opened a door of opportunity for Canadian subnational actors to challenge the U.S. final determinations at the supranational level. Chapter 19 states that signatories to the agreements are obligated to, "on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review." (Canada-United States Free Trade Agreement, 1989, 1904(5), p. 274; North American Free Trade Agreement, 1994, 1904(5)) Consequently, throughout the last two episodes of the softwood lumber dispute, the Canadian lumber industry and Canadian provincial and territorial governments have actively interacted with supranational bodies. In Lumber IV, for example, the Canadian lumber industry was a petitioner in each of the requests for NAFTA binational panels to review the U.S. final countervailing, anti-dumping and threat of injury determinations. The provincial and territorial governments were likewise involved in the requests for NAFTA panel review of the countervailing duty and injury determinations. The opportunity to appeal to supranational bodies is significant. For the Canadian lumber companies, it is especially important to have standing to argue against the anti-dumping case because they, not the Canadian federal government, were the alleged violator. The Canadian provincial and territorial governments, who were the bodies with jurisdiction over natural resources and associated policies, were likewise afforded the right to defend their policies at the supranational level. By extending to non-state actors this privilege previously afforded to national actors only, the former has gained a legitimate place in the international arena. In sum, regional integration frameworks have provided subnational actors with more choices on how they could respond to the softwood lumber dispute, and these actors have correspondingly taken advantage of their newfound right to seek redress at the supranational level.

At first sight, U.S. actors seem to be very opposed to the supranational dispute reso-

lution avenues. Of the supranational bodies involved in the softwood lumber dispute, the FTA, and more recently, the NAFTA, have been a particularly sore spot for supporters of the U.S. lumber industry. One of the main issues was whether the power exercised by supranational bodies extinguishes or trumps the power of U.S. federal bodies. This concern can be seen in the U.S. Congressional Record of October 5, 2004, three years into the initiation of Lumber IV. Senator Max Baucus of Montana appealed to U.S. President George W. Bush during the Congress session that NAFTA panels failed to act within their legal obligations of making decisions based only on the domestic laws of the country under investigation. He said, “the U.S. Court of Appeals for the Federal Circuit had issued an opinion stating plainly that the decision to reopen the record on remand rested exclusively with the ITC. Incredibly, the NAFTA panel ignored this binding court ruling and forbade the Commission to consider new evidence, and again demanded a new determination by the ITC” (Baucus, 2004, p. 10420). Senator Saxby Chambliss of Georgia agreed that NAFTA panels overstepped their authority by second-guessing the ITC or reweighing the evidence considered by the ITC, in essence substituting their judgment for that of the ITC or the Department of Commerce (Chambliss, 2004, p. 10420). Senator Mike Crapo summed up by saying that it was “unacceptable for a NAFTA panel to dictate the outcome of an investigation to any U.S. court or agency” because “Such authority was not granted by the U.S. Congress to the NAFTA, the WTO, or any other foreign organisation.” (Crapo, 2004, p. 10421) Another contention was whether dispute resolution channels available at the supranational level diminish the importance of interstate negotiations in the conflict. According to Senator Gordon Smith, the Canadian federal government backed “away from a tentative agreement reached in December 2003” and had since “pursued an even more aggressive litigation strategy in an effort to insulate its unfair practices”, thus creating the fear that “Canada will continue its strategy of litigation over negotiation.” (Smith, 2004, p. 10421)

These misgivings from U.S. actors should not be misinterpreted as a categorical rejection of supranational processes. The U.S. lumber industry and its supporters’ dissatisfaction with the supranational dispute resolution channels amounted to the worry that U.S. actors’ ability to influence the outcome of the dispute would be curbed by supranational actors and processes. This fear is mainly attributed to a structural difficulty they faced in terms of access to supranational dispute resolution processes. In the FTA and NAFTA, the original complainants of interstate trade conflicts are not provided with any opportunities to block

the request for the establishment of a supranational body. The GATT and WTO are more stringent in that their dispute resolution processes only permit involvement by signatories to the agreements, not private parties. Yet, when provided with the opportunity, U.S. actors readily took up the opportunity to argue their case on the supranational front. The FTA and NAFTA provide that “other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.” (Canada-US Free Trade Agreement, 1989, 1904(7), p. 274; North American Free Trade Agreement, 1994, 1904(7)) Accordingly, one sees representatives of the U.S. federal government and U.S. lumber industry appearing in all of the FTA and NAFTA hearings. The Department of Commerce and the International Trade Commission were understandably keen in defending their determinations before the supranational panels. Caving in to domestic pressure to appeal the FTA and NAFTA rulings, the U.S. Trade Representative also requested for the establishment of an Extraordinary Challenge Committee in both Lumber III and IV. Appearance of representatives from the CFLI in all FTA and NAFTA hearings demonstrates that the U.S. lumber industry, similar to the Canadian subnational actors, had no qualms about accessing all available means to advance their interests. In fact, they would arguably have had a bigger presence on the supranational level had dispute resolution channels on this front been more accessible to them.

An assessment of these developments against integration theories is in place. Intergovernmentalism’s prediction that national actors would be driven to act due to domestic demands or economic concerns accurately described the Canadian and U.S. federal government’s motivations to access supranational processes. Neofunctionalism can also account for the Canadian federal government’s motivation to more effectively influence the dispute outcome by appealing to supranational dispute resolution bodies. This is particularly true at times when negotiations between the two national governments break down and no other means to resolving the dispute was possible. In Lumber IV alone, the Canadian federal government initiated rounds of discussions or consultations no less than seven times (including those required under the WTO) with the U.S. federal government, and none of them have yet been able to resolve the conflict.

However, intergovernmentalism fails to explain why subnational actors would lobby at

the supranational level. Similarly, neofunctionalism cannot comprehensively account for the Canadian federal government's dual-track approach because it does not predict that interstate negotiations would be an important strategy. Just because subnational actors could appeal to supranational dispute resolution bodies does not mean that they did not need to rely on national actors. In fact, they still depended to a large extent on their national governments to advocate for them. Note, for example, that the GATT and the WTO required national governments, as the first step of the dispute resolution process, to consult with each other with a view to settle their differences. The FTA and NAFTA also placed most of the onus of the dispute resolution process on national governments. For instance, national governments are responsible for establishing a roster of individuals to serve as panellists. They are also the only actors who can initiate the Extraordinary Challenge procedure to review the decisions of binational review panels. Hence, the importance of national actors cannot be dismissed entirely.

In truth, the developments just described are best explained by multi-level governance. First, by predicting that it is in the interests of actors to pursue means at different levels, it can account for why the Canadian federal government adopted supranational legal challenges as one of its main strategies, why the U.S. federal government appeared in the FTA and NAFTA hearings, and why Canadian and U.S. subnational actors actively participated in the supranational processes. Second, subnational actors had always been important and relevant in the softwood lumber dispute, and their participation in the FTA and NAFTA dispute resolution processes is congruent with the multi-level governance prediction that actors would access whatever means is strategic to their desired outcomes. Third, there is some element of truth to the senators' concerns raised earlier. Under the FTA and NAFTA, binational review panels can review and make binding decisions on members' final anti-dumping and countervailing duty determinations, and members must respond to the panel's suggestions when their determinations are remanded. Hence, when a panel remands a final determination in the softwood lumber dispute, the U.S. federal government had no choice but to respond to the rulings of a non-U.S. body. The loss of control over how it addressed the Canadian actors' defence on the supranational front exemplified, as predicted by multi-level governance, devolution of previously state-centric power to the supranational level. Fourth, there is evidence that the Canadian federal government is increasingly drawn to the litigation process at the supranational level. The Canadian government's complacency

noted by Iverson in the beginning of Lumber II is captured by the International Trade Minister Jim Peterson's statement issued at the World Economic Forum in Davos, Switzerland (Iverson, 2001, p. 12). He said that "When Canada negotiated the FTA and NAFTA with the U.S., both parties recognised a solid commitment to the rule of law as the foundation of our trading relations." (Peterson, 2005) In other words, the Canadian federal government believed that the dispute would be resolved according to rules. Based on the outcome of Lumber I, as well as the fact that circumstances surrounding the Canadian lumber industry had not changed since then, the Canadian federal government had no reason to expect ITA and ITC determinations that differed from the outcome of Lumber I. In light of the realisation that its assumptions were wrong in Lumber II, the Canadian federal government has since accessed all channels available to defend its domestic lumber industry. One therefore observes a government that was fairly dormant in Lumber I to one that used whatever means was available at the national (state-state negotiations) and supranational (GATT, FTA, WTO, and NAFTA litigations) levels to fight the U.S. allegations.

As to the European cases, it was observed that, in general, the full capacity of supranational dispute resolution channels was rarely exercised. More specifically, litigation to the Court of First Instance of the European Communities was only accessed once in the German case to appeal a Commission decision. Even then, the process never unfolded because the conflict resolved before formal Court proceedings began. An official from CEI-Bois noted that industry typically does not use this channel to resolve disputes because it is expensive (private communication, May 6, 2004). In addition, there was a general consensus that with the backlog of cases before the Court, decision through this channel would take so long that it would be impossible to prevent damages incurred as a result of the violations. The official further noted that even when the Court does make a decision three or four years later, the situation would have change so much that the decision would likely be useless and ineffective. For these reasons, appeals to the supranational level usually only goes as far as the European Commission.

Indeed, the Commission did have a constant presence in all the European conflicts examined, albeit in varying degrees of involvement. In the Nordic countries case, the Commission did not seem to have many interactions with actors at other levels, suggesting that there were few motivations for accessing dispute resolution processes at the supranational level. The conflict was brought to its attention by the French government, which likely no-

tified the Commission because France, as a member of the EC, had to go through the usual diplomatic channels in the Commission before it took measures to limit Nordic imports (DG Enterprise official, private communication, May 6, 2004). Beyond that request, the French national government did not appear to have any more dealings with the Commission. The Commission must have also had to connect with the Nordic countries to set up the monitoring system, but no evidence exists to show that there were any significant interactions. There were also no indications that subnational actors appealed to the Commission. In short, compared to negotiations conducted between industry representatives and between the Nordic and French governments, the Commission did not seem to be regarded as a high priority dispute resolution avenue. Given this, and the fact that negotiations did occur between the national actors, the neofunctionalist prediction of the functional practicality of accessing supranational processes stands on precarious ground. Again, intergovernmentalism fails to account for why supranational processes would be accessed at all. This leaves multi-level governance, which, by stating that the interests of actors at different levels drive them to access processes at different levels, is the only of the three theories that can provide an adequate account for why the Commission was asked to get involved in the conflict.

The German case saw a more active role for the Commission compared to the Nordic countries case. The Commission was approached by industry organisations in Sweden, Austria and Germany to investigate the state aid provided to KNT. Despite this, the Swedish lumber industry did bring lobby the SOLVIT Center at the Swedish National Board of Trade and succeeded in including this concern on the agenda of trade talks held between the Swedish and German governments. Since national avenues were accessed to address the conflict, neofunctionalism is not a good theory to explaining the developments in this conflict. Instead, multi-level governance's predicted motivation is compatible with the subnational actors' approach to lobby the Commission and national governments at the same time.

As to the Eastern European cases, the Commission acted mostly as a conduit between the conflict parties. The concerns over export and import restrictions in the Slovak Republic and Poland respectively were brought to the attention of the Commission by the lumber industry in EU countries. While subnational complainants only appealed to the Commission and not to their national governments, the suggestion that neofunctionalism can be a contender theory in this case is weakened by virtue of the fact that the Commission's sole

strategy to resolving the conflict was to negotiate with the Slovak and Polish governments. In other words, the supranational body chose not to exercise its formal investigative authority and impose orders on the Slovak Republic and Poland's national policies. This strategy must be understood in the context of the imminent accession of the Slovak Republic and Poland at the time of the conflict. DG Enlargement, which was convinced that the two governments would amend their trade practices once they have acceded to the EU, persuaded other DGs to forgo wasting resources to resolve the conflicts before their accession. Once again, only multi-level governance can provide an adequate account of why the Commission did not exercise its formal investigative authority and relied instead on informal negotiations with the national governments in question.

### 4.3.2 Motivations for Accessing National Processes

Attention is now turned to dispute resolution processes accessed at the national level. All of the North American cases saw a lot of activity at this level. Most of the activity involved subnational actors lobbying national governments, but negotiations between national actors were also significant. In contrast, the European cases saw national processes play a minor role compared to supranational and subnational processes.

Appeal to the national level was the primary means through which the U.S. lumber industry elevated its concerns regarding Canadian lumber imports to the level of an interstate trade conflict. Three of the four episodes to the dispute were initiated by the U.S. lumber industry. One reason for the U.S. lumber industry's sustained lobby to the U.S. federal government is because the Department of Commerce and the International Trade Commission had a track record of issuing affirmative determinations (except in Lumber I). According to an official from the Gouvernement du Québec, the Department of Commerce "has total freedom to decide [on] the [countervailing duty] and [anti-dumping] rates until NAFTA and WTO appeals are over. Even when [it is] sure to lose [a case at the supranational level], it is an actual win for the U.S. industry for 2 or 3 years." (private communication, July 4, 2004) For this reason, he quipped that "Investing on a trade lawyer seems to have a very high rate of return for the U.S. industry; much higher than in U.S. mills." (private communication, July 4, 2004)

By all accounts, the U.S. lumber industry was very successful in pressuring the U.S.

federal government in addressing its concerns. The one episode where the Department of Commerce self-initiated a countervailing duty investigation was regarded by most actors involved in the dispute to be a sign that the Department had bent to the pressure from domestic interests. The Department of Commerce's reversal of the final negative determination reached in Lumber I in subsequent episodes was also touted to be a factor of pressure from the U.S. lumber industry. In Lumber III, it tried to have the rulings of the FTA panel dismissed by filing a constitutional challenge of the FTA process to the U.S. Court of Appeals. The prospects of a successful constitutional challenge eventually prompted the Canadian and U.S. federal governments to the table to negotiate a settlement in Lumber III. It seemed that the U.S. lumber industry was also instrumental in stalling initiatives that could have brought an end to Lumber IV. In June 2003, the Department of Commerce issued a draft policy bulletin, which outlined the conditions under which it would judge Canadian forest policy not to be market distorting. The intent of this bulletin was to craft a policy-based solution that would prevent future conflicts as long as Canadian forest policy adheres to the guidelines in the bulletin. Besides providing Canadian actors clear criteria of forest policies that would be acceptable to the Department of Commerce, it would also shield the Department from future unreasonable petitions from the U.S. lumber industry. However, it still has not published the final bulletin to date. Doug Waddell, a former Assistant Deputy Minister from the Department of International Trade, claimed that the final bulletin had become a "hostage to the agenda of some in the U.S. industry to lever another managed trade agreement." (Waddell, 2004) The delay in the publication of the final bulletin was believed to be another instance of the Department of Commerce caving in to the interests of the U.S. lumber industry.

Besides addressing the U.S. lumber industry's concerns domestically, the U.S. federal government was also engaged in negotiations with the Canadian federal government in three of the four episodes of the softwood lumber dispute. In fact, negotiated settlement was the ultimate means responsible for two of the three resolved cases. The involvement of the federal governments in interstate negotiations in the softwood lumber dispute was natural, given that both national actors have jurisdictions over their respective countries' international trade. An official from the B.C. Ministry of Forests noted that governments "bring the deal to a close because they are the only ones who can." (private communication, July 20, 2004) Interstate negotiation is, in fact, the means through which most of the

Canadian actors involved believe would lead to a durable resolution that would prevent Lumber V, and both federal governments have continued to choose interstate negotiations as an important means to achieving a resolution to the conflict.

For the Canadian federal government, a few disadvantages of litigation made interstate negotiations an especially attractive complementary option. First, litigation is expensive. Beside the costs of lawyers, the lengthy processes also incur costs on the industry. Former Assistant Deputy Minister of International Trade Doug Waddell noted that in Lumber IV, exporters “have already close to \$2 billion in deposits with the U.S. Treasury. This amount increases by about \$90 million each month or by \$3 million each and every day.” (Waddell, 2004) Second, there is a general consensus among officials interviewed that litigation would never produce a lasting resolution. Waddell noted that “history tells us that winning in the courts does not guarantee unfettered access to the U.S. lumber market, and it does not get us to our goal of a durable solution to the dispute.” Third, according to an official at the B.C. Ministry of Forests, it was a challenge to find panellists to sit on the binational review panels because the positions pay low rates and it is difficult to find persons who are knowledgeable in this area of law but are not involved (private communication, July 20, 2004).<sup>12</sup> Fourth, negotiations offer actors more control over the outcome compared to litigations and, by extension, removes some degree of uncertainty inherent in legal challenges.

At first sight, it seems that the motivations guiding the U.S. federal government’s decisions to cater to the U.S. lumber industry can be explained adequately by intergovernmentalism. As noted in Section 4.1.2, the U.S. Administration, Congress members, and senators were driven to protect the domestic lumber industry largely out of their concerns for electoral success. This seems to satisfy the intergovernmentalist prediction of motivation by domestic demands. The U.S. Administration’s resolve to solve the softwood lumber dispute in exchange from Congress reprieve from its lobbying and fast-track negotiating authority for the Free Trade Agreement, as well as its efforts in interstate negotiations, suggests that the U.S. federal government placed a degree of importance on interstate relations.

---

<sup>12</sup>This was exactly the point seized on by the U.S. Trade Representative, who alleged in Lumber III that one of the rationales for requesting for an Extraordinary Challenge Committee was because “Two members of the Panel materially violated the FTA Rules of Conduct by failing to disclose information that revealed at least the appearance of partiality or bias and, with regard to one of the Panelists, a serious conflict of interest.” (Extraordinary Challenge Committee, 1994, p. 11-12)

The motivation for furthering its interstate relations can also be explained by intergovernmentalism. However, one development cannot be accounted for by intergovernmentalism. The U.S. federal government had demonstrated its willingness to directly receive and consider individual Canadian subnational requests from provincial governments. Throughout *Lumbers II* and *III*, Canadian provincial governments directly called on the Department of Commerce and the U.S. Trade Representative. Intergovernmentalism fails again to explain this development because, if indeed national interests are either driven by interstate relations and motivations or economics and domestic sources, the only actors whose requests the U.S. federal government would seriously entertain are its Canadian counterpart and U.S. domestic actors. Multi-level governance, on the other hand, is better at explaining the U.S. federal government's actions because it proposes that interactions may occur across different levels and the degree of influence of the each actor's interaction is dependent on the role and power of the other actors involved.

Intergovernmentalism also seems to provide an adequate account of the Canadian federal government's actions for the same reasons. It expends significant resources to fight for the interests of Canadian subnational actors because it wanted to address domestic demands to resolve the dispute. Its continual efforts to resolve the softwood lumber dispute by engaging in negotiations with the U.S. federal government exemplified its concern for interstate relations. Moreover, although it sought from the WTO the authority to impose retaliatory measures in *Lumber IV*, it is not expected to exercise this legal right even if the U.S. fails to implement the rulings of the WTO. This also exemplifies its cognisance that softwood lumber is but one sector of the commerce conducted between the two trading partners, and by extension, its interest in maintaining an amiable interstate relations with the U.S. However, intergovernmentalism cannot explain why the Canadian federal government has continually supplemented its interstate negotiation effort with litigation on the supranational front. In addition, representatives of the Canadian federal government have met with U.S. subnational actors, including the CFLI and the American Consumers for Affordable Homes. Similar to the case of the U.S. federal actors, these actions speak to the readiness to access whatever means is best for advancing its interests, and they are better accounted for by multi-level governance.

Compared to subnational and supranational actors, national governments in general had little participation in the European cases. In instances where national actors were involved,

their motivations could typically be accounted for by intergovernmentalism. However, the puzzling fact remained that some national governments that see the lumber industry as an important sector of their economy chose to stay away from being more involved in the efforts to resolve the conflicts. This was observed in all the European conflicts, and cannot be adequately explained by intergovernmentalism.

In the Nordic countries conflict, the French government approached the European Commission regarding what it considered to be dumping by Nordic lumber companies. This was actually an obligation under the EEC-EFTA agreement. The French government had to notify the Commission because signatories to the agreement were required to do so if they wanted to invoke the Safeguard Clause and undertake measures to counter disruption caused by one of the agreement partners in its lumber sector (DG Enterprise official, private communication May 6, 2004). In its notification to the Commission, the French government proposed to implement import control measures and submitted to the Commission a list of Nordic wood products it intended to limit. There is little doubt that the French government undertook these steps to address concerns from the French lumber industry. This was a classical example of national actors acting in response to domestic demands. As the conflict progressed, the French government also met with the Finnish government to discuss the issues. This suggests some consideration was paid to maintain good interstate relations, a motivation that is also predicted by intergovernmentalism.

Interestingly, the Swedish government, as the other national actor that should be front and centre in this dispute, was strangely absent from the picture.<sup>13</sup> Sweden's lumber exports to France was as sizeable as those from Finland, and the charges against it were no less than those to Finland, as it was generally believed that both countries were consciously managing competitive devaluations of their currency to remain competitive in the market (DG Enterprise official, private communication, May 6, 2004). Despite these reasons, there were no indications that the Swedish government interacted with the Commission or the French government in an attempt to resolve the conflict or clear its name. This inaction seems to defy the predictions of intergovernmentalism.

Industry officials attribute the Swedish government's lack of involvement in the dispute to the fact that lumber is not a high-priority industry for the government, despite the fact that

---

<sup>13</sup>Recall that Norway was exonerated soon after the conflict began because its lumber exports to France were a lot smaller than those compared to Finland and Sweden, and it had a depreciating currency.

lumber is an economically significant sector in Sweden. Two officials at the Swedish Forest Industries Federation pointed out that domestically, the steel and concrete sectors competed with the wood industry for support from the Swedish government, and the former has had more success in than the latter for the attention of the government (private communication, May 12, 2004; May 14, 2004). In addition, devaluation of the Swedish krona benefited all exporting industries in Sweden, and as one of the Swedish Forest Industries Federation officials aptly concluded, one couldn't simply call up the Swedish Prime Minister to stop the devaluation policy of the government (private communication, May 12, 2004). Given the lumber industry's low status in the eyes of the Swedish government, as well as the fact that devaluation of the Swedish krona was a macroscopic economic policy, it made sense that the Swedish government would not be very proactive in managing the conflict. One can therefore explain the Swedish government's lack of activity in the Nordic countries conflict by attributing it to its interests in maintaining a competitive economy overall rather than resolving what it considered to be a small conflict.

The situation in the German conflict was similar. The issue that sparked the German conflict concerned state aid provided to the company KNT. In total, KNT received an investment aid from the regional government in the *Länder* of Mecklenburg-Western Pomerania, investment premiums from the German federal government, and a soft loan from the *Länder*. The intent of the aid was obvious: both governments were eager to support the economic growth of Northern Germany immediately after its accession in the EU. These grants, especially the participation of a regional government in the aid scheme, hint of a strong flavour of domestic interests. After the conflict erupted, the German federal government was asked by the Commission to supply information that pertained to the state aid. The Swedish government, after fielding requests from its domestic industry, broached the issue in its bilateral trade talks with Germany. However, this seemed to be its only attempt in resolving the dispute, and in the grand scheme of things, neither government played a large role in the conflict. Besides the German and Swedish governments, no other national actors were involved.

As to the Eastern European conflict, an official at DG Enterprise attributed the Slovak export restrictions and Polish import restrictions to the respective governments' desire to assist the domestic building sector and build the country's economics (DG Enterprise official, private communication, May 6, 2004). An official at DG Trade noted that in the Polish

case, there might have been a level of impropriety linked to personal economic benefits (private communication, May 10, 2004). These motivations all satisfied intergovernmentalism's prediction of national actions defined by economics or domestic demands. However, as observed in the other European conflicts, there was a general lack of response from the Slovak and Polish governments, and national representation on behalf of the complainants was non-existent.

In all three European cases, it was observed that while intergovernmentalism provided an adequate account in the motivations of the national actors that did get involved in the conflicts, it failed to answer two main developments. First, it cannot explain the lack of activity on the part of national governments that value the lumber industry as an important sector in its domestic economy. Second, the absence of national actors in the conflict left a vacuum that created opportunities for non-national actors to take centre-stage in resolving the conflict. This was not a development that could be foreseen by intergovernmentalism.

### **4.3.3 Motivations for Accessing Subnational Processes**

All the cases studied saw a commonality: actors involved in trade conflicts accessed varied and multiple means to advance their interests. Often times, processes occur outside the purviews of national and supranational levels. This is the primary reason why neofunctionalism and intergovernmentalism, both of which only focus on one level of actors and processes, cannot provide an adequate and satisfactory account of all developments in the cases. Multi-level governance differs from these two theories by accommodating for multiple processes and actors at myriad levels. This subsection explores processes at the one level that neofunctionalism and intergovernmentalism miss: the subnational level.

The North American cases saw much activity at the subnational level. In Lumber II, for example, CLFI was approached by the Government of B.C. in Lumber II. After realising that there existed a solution that would accommodate both parties' interests, it readily agreed to an alliance. The deal for a Canadian export tax on softwood in Canada was struck because it satisfied the CFLI's demand to raise the price of Canadian lumber and B.C.'s complaint that it is "not getting a good enough return from the industry" (Whiteley, 1987, p. F1). Lumber III, in particular, was famous for the number of cross-border interactions and alliance formation. The Maritime Lumber Bureau, for example, wrote to the CFLI to

request an exemption from investigation. One also observes an alliance between the Government of B.C. and the Washington State Governor to pressure the ITA to drop the log export restriction. The U.S. National Lumber and Building Material Dealers Association and the U.S. National Association of Home Builders connected with Canadian industry and government representatives to demonstrate support from U.S. consumers. On the other side of the fence, the CFLI sought support from Canadian environmental groups such as the Western Canada Wilderness Committee and B.C. Sierra Club. The support from Canadian actors served to strengthen the CFLI's position with the U.S. federal government, and it accentuated a fissure on the Canadian side and forced the Canadian government to answer to additional allegations of environment irresponsibility, both of which were meant to further pressure the Canadian federal government to settle the conflict in the CFLI's favour. These cross-border associations demonstrated subnational actors' willingness to use whatever means necessary to advance their interests. Unlike intergovernmentalism, multi-level governance can account for these actors' attempts to influence entities other than their own federal governments or supranational bodies. The inter-connectedness of these groups demonstrates what multi-level governance predicted, namely, that political arenas, rather than nested within states, are interconnected and can transcend national boundaries.

Subnational actors have also demonstrated that they are willing to take unilateral actions that would shield themselves from future allegations. In Lumber IV, the B.C. government announced, independent of other provinces, that it was undertaking major forest policy changes that would make its lumber market more transparent and market-oriented, and one that would encourage a more competitive industry. It has already begun an implementation process. This was partly motivated by its dissatisfaction with the dispute resolution approach at the supranational and national level. Litigation at the supranational level sees long and expensive processes and outcomes that are ultimately determined by U.S. laws. In addition, litigation cannot prevent future recurrence of the dispute. The negotiation approach is likewise viewed as imperfect, as past negotiated settlements have been expensive and have restricted the lumber industry's and the provincial governments' freedom. The B.C. government's move to implement individual policy changes that would exempt it from the countervailing duty marks a bolder provincial government that is willing to bypass the processes at the national and supranational levels to get to the finish line first. This is again consistent with the predictions of multi-level governance, which sees a subnational

actor participating in problem definition activities by proposing the solution that can best advance its interests.

In terms of the European cases, the most prominent dispute resolution process occurred during the Nordic countries conflict. Industry representatives from France and the Nordic countries used the European Organisation of Sawmilling Industry (EOS) as a meeting point to discuss their issues related to the alleged dumping of wood into France. According to an official at the Swedish Forest Industries Federation, these meetings, which occurred several times over period of about a year, were often contentious, especially during times when kronas devaluated (private communication, May 12, 2004). At one point, the EOS even threatened to impose import restrictions on the Nordic products because sawmills elsewhere were hurting too much. Despite the acrimony involved, discussions between the trade associations were eventually credited as the means through which the conflict was resolved. An official from the European Confederation of Woodworking Industries (CEI-Bois) concurred that most trade issues are settled at the industry level (private communication, May 6, 2004). The only exception is when an issue concerns industry on a European scale, in which case CEI-Bois would apply pressure on the Commission.

Evidence for subnational processes was scant in the Germany conflict and Eastern European. This should not be regarded as lethargy on the part of subnational actors. In fact, subnational actors were the ones that brought both complaints to the Commission. Instead, the subnational actors put the onus of resolving the conflict in the hands of the Commission. In the German case, the Commission finally concluded that the state aid did not contravene aid schemes previously approved by the Commission. In the Eastern European case, the Commission decided to wait until the accession of Slovak Republic and Poland to continue pursuing the issues. In both cases, the subnational actors' hands were tied.

## **Chapter 5**

### **Conclusion**

In an attempt to decipher ingredients of a successful integration framework, a long-standing trade dispute in North America was compared with three trade conflicts in the lumber sector in Europe. It was found that subnational actors were most likely to initiate and escalate trade conflicts between integration partners, and a significant factor in the prevention, mitigation and resolution of trade conflicts was the availability of multiple dispute resolution processes at and across different levels. Given these observations, it was concluded that multi-level governance is most capable of explaining the outcomes of the case studies. These concluding remarks recapitulate the key findings and highlight their implications.

Subnational actors were found to be the most crucial players in conflicts. This is particularly true for industry groups, who were the instigators for all conflicts examined. This group of subnational actors have been very successful in raising the profile of their concerns to develop them into international trade conflicts. It is not surprising that industry groups were found to be the primary instigators; after all, they were the actors that were most invested in trade. Most industry actors were domestically represented by regional or national industry associations such as the Canadian Softwood Lumber Committee, the Free Trade Lumber Council, the Coalition for Fair Lumber Imports (CFLI) (and its various incarnations), and the Swedish Forest Industries Federation. In the North American cases, provincial and territorial governments were also found to be important subnational actors because they were the major owners of forest lands in Canada and they had jurisdictions over natural resource policies within their provinces or territories.

In all cases, subnational actors have attempted to enhance their legitimacy by establish-

ing transnational liaisons, but North American and European subnational actors differed in their approach. North American subnational actors tended to form ad-hoc, informal cross-border alliances to bolster their memberships. Some prominent examples include the short-lived alliance formed between the CFLI and the Government of British Columbia (B.C.) in Lumber II; the association between the U.S.-based National Lumber and Building Materials Dealers Association, the U.S.-based National Association of Home Builders, the American Consumers for Affordable Homes, the Canadian lumber industry, the Canadian federal government, and Canadian provincial and territorial governments; and the affiliation between the CFLI, Canadian environmental groups, and First Nations in Canada. Cross-border industry alliances were also established by virtue of transnational companies such as Weyerhaeuser and International Paper. By contrast, European subnational actors favoured more formal transnational industry organisations over ad-hoc alliances. Examples of transnational industry organisations include the European Organisation of the Sawmilling Industry (EOS) and the European Confederation of Woodworking Industries (CEI-Bois), both of which represented national lumber associations in different countries.

Given that subnational actors were the primary actors in sparking and intensifying conflicts, the key to the prevention, mitigation, and resolution of dispute resolution must lie in its ability to address subnational actors' concerns. In this respect, the availability of multiple dispute resolution processes was identified as an important factor in contributing to successful dispute resolution if no one channel is dominantly effective. For example, in the Germany and Eastern European cases, the Commission was expected to be successful (or imminently so) in resolving the dispute. Consequently, appeals beside those to the Commission were not observed. By contrast, in cases where no process is dramatically more effective than others, it was observed that subnational actors preferred to access multiple dispute resolution avenues instead of relying on one channel only. The Canadian lumber industry was most skilful in accessing multiple dispute resolution channels. It indiscriminately appealed to actors and processes at the national, supranational, and subnational levels. In both Lumber III and IV, it lobbied the Canadian federal, provincial, and territorial governments, requested for the establishment of Canada-U.S. Free Trade Agreement (FTA) or North American Free Trade Agreement (NAFTA) binational review panels, and negotiated with U.S. subnational actors. In the Nordic countries conflict, the Swedish lumber industry was active in negotiating with subnational actors at the industry level and appealing to the

European Commission at the same time. It also lobbied the Swedish government and succeeded, at least in the German case, in persuading the government to include its concerns on bilateral trade talks with the German government. Likewise, the French lumber industry accessed multiple channels by appealing to its national government and negotiating with Nordic lumber industry groups at the EOS.

That said, subnational actors were not always active at all levels. The lack of engagement was generally found to be a function of barriers that prevented them from fully participating, not a result of their unwillingness to get involved. In the U.S. lumber industry's case, it had enough political influence to stir the U.S. federal government to respond to their concerns, but it was afforded fewer opportunities to make its case before supranational bodies. For example, it could only request for an Extraordinary Challenge Committee to review a binational review panel's decision *through* the U.S. Trade Representative. Yet, despite difficulties such as this, the U.S. industry demonstrated its keenness in participating in all available dispute resolution channels by appearing before all binational review panel hearings. The Swedish lumber sector would arguably have been more proactive on the national arena had the lumber sector been an important industry in the eyes of the Swedish government. Officials at the Swedish Forest Industries Federation mentioned that they are currently developing strategies to lobby for more government support and endorsement. Transnational industry organisations such as CEI-Bois did interact with national governments, but they rarely accessed national dispute resolution avenues. This is because, as representatives of multi-national lumber associations, their authority rests at the supranational scale, not at the domestic level. In addition, since they are funded by multi-national lumber associations, they should accordingly focus on issues that affect members in multiple countries. As such, transnational industry organisations have generally directed their efforts at the supranational level because that arena is more appropriate for their mandate and their effectiveness is better utilised at that level.

It may seem counterintuitive that subnational actors would prefer multiple dispute resolution processes, given the perception that processes can compete with each other and annul the other's efforts in resolving the dispute. This was in fact the sentiment expressed by U.S. senators, who feared that Canadian actors would forgo its negotiation efforts should supranational bodies issue decisions favourable to Canada. Canadian actors were in turn worried that successes at the supranational front would be undermined by the U.S. lumber

industry's constitutional challenge of supranational bodies. However, despite these concerns, subnational actors continued to access multiple dispute resolution processes. This is likely because the benefits of having multiple options to resolve conflicts outweighed the concerns over counter productivity. The advantage of is obvious: if actors failed to resolve conflicts through one channel, they could use other avenues to seek resolutions. Access to processes at the supranational and subnational levels, for example, was important to the Swedish lumber industry because it did not have enough political clout to mobilise the Swedish government. In the North American cases, the Canadian lumber industry pursued litigation at the supranational level, lobbied at the Canadian national level, and rallied at the U.S. subnational levels because it recognised that none of the strategy is adequate by itself. Litigation can provide temporary relief, but it offers conflict parties less influence on the outcome and is less likely to produce a durable solution. On the other hand, relying on the interstate negotiations can provide a durable solution, but limited bargaining power on the part of Canadian actors means that they were at the mercy of powerful U.S. domestic actors. Lobbying subnational actors on the other side of the border can strengthen its case in the U.S., but the U.S. subnational groups were nowhere as politically powerful as the U.S. lumber industry. Hence, by pursuing a multi-track approach, the Canadian lumber industry could help the Canadian federal government gain leverage at the negotiation table, and if negotiations fail, it would at least have the safety net of litigation.

Returning to the topic of benefits derived from the availability of multiple processes, it was found that the access to informal and formal dispute resolution processes was especially important in attempts to prevent the eruption of conflicts in North America. This was likely because of the lengthy waits associated with supranational dispute resolution processes. Canadian actors have to wait until the U.S. Department of Commerce has issued a determination before they can initiate supranational dispute resolution processes. In the case of the Canada-U.S. Free Trade Agreement and the North American Free Trade Agreement, request for the establishment of binational review panels was further delayed until after the issuance of *final* determinations. Consequently, Canadian actors, eager to prevent a conflict from escalating, often negotiated with U.S. actors before they accessed the formal processes at the supranational level. Sometimes they even engaged in negotiations before the U.S. lumber industry's petitions for countervailing duties were filed. The situation for European actors was different, where there was little evidence that actors proactively tried

to resolve a conflict before it became a more serious dispute. This was likely because supranational dispute resolution processes provided a formal and an informal route. Conflict parties were not compelled to engage with each other because they could count on the Commission to assume shuttle diplomacy.

One may argue that multiple processes are inefficient, as conflict parties' resources can be dispersed over a plethora of dispute resolution avenues. On the contrary, the availability of dispute resolution choices allows actors with varying means to participate in shaping the conflict outcome. In particular, avenues such as litigation can be prohibitively expensive, but the provision of alternatives such as negotiations and good office of an intermediary means that actors that are less financially endowed can still have access to dispute resolution processes. For example, representatives of trade associations said that they could not afford the expenses associated with bringing a trade conflict before the Court of First Instance. However, they were not denied appeals to the supranational level because they could access the less costly option of bringing their concerns to the European Commission. Indeed, the Commission was active in all three European cases studied, whereas the Court of First Instance was only appealed to once. By contrast, none of the supranational bodies involved in the North American cases provided intermediaries. Hence, appeals to North American supranational level were limited to legal challenges, and all actors that accessed this processes at this level incurred significant costs on obtaining legal counsels.

In the researcher's opinion, multi-level governance is most capable of explaining the outcomes of the case studies. Unlike neofunctionalism and intergovernmentalism, both of which predict decision-making power concentrated at one level, multi-level governance can account for the importance of actors at different and multiple levels. By acknowledging that decisions are made at different levels at different times, multi-level governance can accommodate for the shift of resolution venue in the Canada-U.S. softwood lumber dispute from the U.S. quasi-judicial system in Lumber I to interstate negotiations between the federal governments in Lumbers II and III. More importantly, only multi-level governance can account for the pursuit of subnational dispute resolution processes, including industry-to-industry negotiations, formation of alliances between subnational actors such as the Government of B.C. and the CFLI, and the Government of B.C.'s unilateral decision to amend its timber policy so as to shield the province from future U.S. trade actions.

Indeed, the straight-jacket accounts of intergovernmentalism and neofunctionalism could

only provide a limited view of the entire picture. Intergovernmentalism confines the study of subnational actors to the national level and interstate bargaining, even though the case studies demonstrate that many subnational actors are not content to rely on their national governments to advocate for their interests. In neither the German nor Eastern European cases did interstate bargaining occur. Yet in three of the four softwood lumber cases, one saw the importance of interstate bargaining, which destroys neofunctionalism's argument that the supranational level is the only arena where decisions are made.

The reality is that actors have demonstrated a preference for accessing multiple dispute resolution processes at multiple levels. Only multi-level governance can rationalise why, of the two resolved European disputes, one was resolved at the subnational level while the other was resolved at the supranational level. It can also explain why the Canadian federal government chose to pursue a two-track strategy instead of relying solely on litigation or negotiation alone. Most importantly, only multi-level governance can account for subnational actors' use of subnational dispute resolution processes. Processes at this level were important, as they were credited for resolving the Nordic countries conflict and contributing to resolutions for *Lumbers II* and *III*.

In short, it was observed that integration is not a panacea for the eradication of trade conflicts. Even in the case of the European Union, where various degrees and frameworks of integration have been experimented for the past fifty-odd years, trade conflicts continue to exist. That said, expectations abound that economic integration would facilitate smoother trade. To realise those expectations, an integration framework should have dispute resolution provisions for managing trade relationships between integration partners so that obstacles to trade can be prevented or overcome easily without significant disruption to the transaction of goods and services. Having found that subnational actors are most likely of actors at all levels to initiate and escalate trade conflicts between integration partners, it is clear that any resolution that does not address their concerns would not be long-lasting. Hence, it is important for policy makers and conflict resolution experts to involve subnational actors in the crafting of the resolution. It was found that multiple dispute resolution processes at and across levels can best solicit maximum participation from subnational actors. A successful integration environment should therefore provide myriad accessible dispute resolution avenues.

The findings in this paper raise three questions for North American policy makers. First,

would transnational industry organisations assist in the resolution of conflicts between integration partners? Second, would more cross-border investments reduce the chances for conflicts? Third, would automaticity result in a more efficient or effective resolution of trade conflicts?

In the researcher's opinion, transnational industry associations are not suitable entities in all situations. Transnational industry organisations, by virtue of their multi-national membership, are most legitimate and effective when they are lobbying supranational actors and speaking for members in multiple nations. However, in the North American context, where there are no empowered supranational actors and where the conflicts are binational, the extent of their benefits would not be fully realised. In fact, the resources that would be put into such organisations may be excessive, especially since the delays and stalemates that can plague transnational industry organisations are difficult to avoid. For these reasons, ad-hoc, informal associations are more suitable for North America because their formation can be tailored to the circumstances and specific needs of the time.

As noted in Weyerhaeuser's case, cross-border investments can reduce a company's propensity to spark or intensify a trade conflict. However, the downfall of relying on cross-border investments is, as apparent from the International Paper's stance on the softwood lumber dispute, that the finite number of stumpage rights cannot be distributed to every international company that wants access to Canadian public forest lands. It would be absurd for the Canadian governments to guarantee all large forest companies stumpage rights, but they can, of course, alter the system to foster cross-border investments. However, prior to implementing such changes, Canadian governments need to determine what their long-term goals are. For example, an environment that encourages cross-border investments may disfavour smaller, local companies. Care must be taken that large companies are not appeased at the expense of smaller companies that have so far served the provincial forestry industry well. In addition, this strategy does not resolve what most North American interviewees consider to be the main issue at stake, namely, the Canadian lumber industry's share of the American softwood market. U.S. forest landowners would continue the dispute as long as they viewed the import of Canadian softwood lumber to be a threat to their market and sale prices.

The introduction of automaticity in the supranational dispute resolution process is not a cure-all either. At issue is not so much the delays that a party can impose on the process as

much as the high costs involved. Litigation and lengthy waits for a supranational opinion on countervailing duty or anti-dumping determination are both expensive. Lengthy waits also provide the U.S. industry with an advantage because until a supranational body issues its decision, the price of Canadian softwood is increased by the countervailing duty and anti-dumping rates set by the U.S. government. More importantly, without a supranational actor enabled with the appropriate authority and power, an automatic process can deprive national governments the ability to intervene and subnational actors alternatives and recourse to supranational decisions they deem to be unfair.

Drawing on the lessons of the European case studies, one finds that a more promising policy option is to create an enabled supranational actor. Similar to the European Commission, a North American supranational actor should have institutional permanency, be tasked to uphold the interests of North America as a whole, and be the primary interlocutor with actors at all levels. The advantages of centralising dispute resolution processes in such an actor include, but are not limited to, the built expertise and experience for managing trade conflicts; the efficiency of having a central depository of information; the organisational memory for managing conflicts and interstate relations; and the ability to govern interstate relationship on a rules-based system. All of these factors increase the likelihood of reduced transaction costs of policy co-ordination among integration members (Marks, Hooghe and Blank, 1996). Obviously, the extent of the power that should be devolved to such a supranational actor and its exact makeup need to be determined. No such attempt is made here as it is beyond the scope of this paper to set out such detailed recommendations. These are matters that require further research and consultations with citizens and their national governments, and they will be left in the hands of future researchers.

# Appendix A

## List of Abbreviations

The tables below provide a list of abbreviations.

Name	Type
ACAH	American Consumers for Affordable Homes
B.C.	British Columbia
BCLTC	British Columbia Lumber Trade Council
CE Mark	Conformité Européene
CEI-Bois	European Confederation of Woodworking Industries
CFCLI	Coalition for Fair Canadian Lumber Imports
CFLI	Coalition for Fair Lumber Imports
COFI	Council of Forest Industries
CSLC	Canadian Softwood Lumber Committee
DG	Directorate-General
DOC	Department of Commerce
EC	European Community
ECC	Extraordinary Challenge Committee
EFTA	European Free Trade Association
EOS	European Organisation of Sawmilling Industry
EU	European Union

Table A.1: List of abbreviations from A-E.

Name	Type
FTA	Free Trade Agreement
FTLC	Free Trade Lumber Council
GATT	General Agreement on Tariffs and Trade
KNT	Klausner Nordic Timber GmbH & Co. KG
ITA	Interantional Trade Administration
ITC	International Trade Commission
MOU	Memorandum of Understanding
NAFTA	North American Free Trade Agreement
NAHB	National Association of Home Builders
NIFM	Northwest Independent Forest Manufacturers
NLBMDA	National Lumber and Building Materials Dealers Association
SLA	Softwood Lumber Agreement
U.S.	United States
WTO	World Trade Organization

Table A.2: List of abbreviations from F to W.

## Appendix B

### Organisation Description

Some basic information about the organisations mentioned in this study is provided in Tables B.1 to B.4. This includes the level (supranational, national or regional/local) at which it operates, as well as a brief description of its purpose and/or activities.

Name	Type	Description
American Consumers for Affordable Homes (ACAH)	Subnational (U.S.)	An ad hoc alliance of U.S. lumber users and consumers that claims to represent more than 95 per cent of U.S. softwood lumber consumption.
British Columbia Ministry of Forests	Subnational (Canada)	The main agency of the province of British Columbia responsible for the stewardship of the province's forestland.
British Columbia Lumber Trade Council (BCLTC)	Subnational (Canada)	Represents the interests of B.C. companies in the softwood lumber dispute.
Canadian Softwood Lumber Committee (CSLC)	National (Canada)	Represented lumber manufacturing associations from across Canada.

Table B.1: Description of North American actors mentioned in this study.

Name	Type	Description
Coalition for Fair Canadian Lumber Imports (CFCLI)	Subnational (U.S.)	Represented lumber companies in the U.S.
Coalition for Fair Lumber Imports (CFLI)	Subnational (U.S.)	A reincarnation of CFCLI; represents lumber companies in the U.S.
Council of Forest Industries (COFI)	Subnational (Canada)	Represents lumber companies in the interior of BC.
Department of Commerce (DOC)	National (U.S.)	A U.S. federal agency that encourages economic growth to benefit American industries, workers and consumers; enhancing technological leadership and environmental stewardship, and advocating market growth strategies.
Extraordinary Challenge Committee (ECC)	Supranational	A body that can be established under the Canada-U.S. Free Trade Agreement (FTA) or the North American Free Trade Agreement (NAFTA) to review a FTA or NAFTA binational review panel's decision.
Free Trade Agreement (FTA) Binational Review Panel	Supranational	A body that can review anti-dumping or countervailing duty final decisions by a signatory state.
Free Trade Lumber Council (FTLC)	Subnational (Canada)	A pan-Canadian organisation that aimed to maintain Canadian lumber industry's free access to the U.S. world market.
General Agreement on Tariffs and Trade Dispute Resolution (GATT) Panel	Supranational	A body that can be established under the General Agreement on Tariffs and Trade to resolve disputes over a signatory state's anti-dumping and countervailing decisions.

Table B.2: Description of North American actors mentioned in this study.

Interantional Trade Administration (ITA)	National (U.S.)	An arm of the Department of Commerce, it is reponsible for commercial service, trade development, market access and compliance, and import administration.
International Trade Commission (ITC)	National (U.S.)	An independent, nonpartisan, quasi-judicial federal agency that provides trade expertise to both the legislative and executive branches of government, determines the impact of imports on U.S. industries, and directs actions against certain unfair trade practices.
National Association of Home Builders (NAHB)	Subnational (U.S.)	A trade association that helps promote the policies that make housing a national priority.
National Lumber and Building Materials Dealers Association (NLBMDA)	Subnational (U.S.)	An organisation that aims to promote the success of America's lumber and building material dealers.
North American Free Trade Agreement Binational Review Panel	Supranational	A body that can review anti-dumping or countervailing duty final decisions by a signatory state.
Northwest Independent Forest Manufacturers (NIFM)	Subnational (U.S.)	A small association of independent sawmillers in the United States Pacific Northwest.
World Trade Organisation (WTO) Dispute Resolution Panel	Supranational	A body that can be established under the World Trade Organisation Agreements to resolve disputes over a signatory state's anti-cumping and countervailing decisions.

Table B.3: Description of North American organisations mentioned in this study.

Name	Type	Description
Enterprise Directorate-General (DG)	Supranational	Responsible for measures to enhance the competitiveness of European enterprises and to help create an environment in which firms can thrive.
European Commission	Supranational	The politically independent institution that proposes for the European Union legislation, policies and programmes of action, and it is responsible for implementing the decisions of Parliament and the Council.
European Confederation of Woodworking Industries (CEI-Bois)	Subnational (pan-Europe)	The main body that represents and defends the interests of the European woodworking industries by attempting to influence EU policy-making.
European Organisation of Sawmilling Industry (EOS)	Subnational (pan-Europe)	A pan-European lumber organisation that represents national lumber associations.
Klausner Nordic Timber GmbH & Co. KG (KNT)	Subnational (Austria)	An Austrian wood-processing firm with investment in Northern Germany.
SOLVIT	National (Sweden)	An arms' length Swedish government organisation that provides Swedish businesses with an informal way to remove trade barriers.
Swedish Forest Industries Federation	Subnational (Sweden)	The trade and employers' federation for the pulp, paper and wood mechanical industries. It is involved, in association with its member companies, in Swedish and European industrial policy, market issues on wood mechanical products, and employer issues.
Trade Directorate-General (DG)	Supranational	Responsible for implementing the external trade policy of the European Union.

Table B.4: Description of European organisations mentioned in this study.

# Appendix C

## Methodology

The research conducted for this paper consisted of two phases. The first phase involved learning about the major integration theories. This was achieved by conducting a literature review of books and journal articles. The result of this review, as well as the literature accessed, is provided in Chapter 2.

The second phase of the research involved collecting information on the case studies. The research method follows a multiple case study analysis. The first set of cases revolved around the Canada-U.S. softwood lumber dispute. Background information on the dispute was first gathered from primary documents, such as official news release from the Canadian and provincial governments, as well as secondary sources, including newspapers and academic journals. The information collected was then supplemented by in-person or telephone interviews with representatives of key stakeholders. The organisations that were approached and the numbers of interviews conducted for each included:

- Department of International Trade, Government of Canada (1 in-person interview);
- Ministry of Forests, Government of British Columbia (2 in-person interviews);
- Ministère des Ressources naturelles et de la Faune, Gouvernement du Québec (1 e-mail exchange);
- British Columbia Lumber Trade Council (1 in-person interview); and
- American Consumers for Affordable Housing (1 telephone interview).

The organisations listed in Appendix B were identified during the background information gathering stage. Officials from these organisations were approached in one of three ways: through e-mail or phone requests made to the organisation, through the researcher's contacts, or through other interviewees. An attempt was made to obtain perspectives from different stakeholders to obtain a more balanced view, but requests made to the U.S. lumber industry were not answered. In total, information was collected from a total of five North American officials in six separate occasions from February 9, 2004 to July 20, 2004.

The second set of cases involved conflicts in the lumber sector in Europe. The objective was to compare the dispute resolution mechanisms set out in the Canada-U.S. integration framework with those established in Europe. Information was to be gathered by conducting in-person interviews with officials. Prior to the research trip, an attempt was made to identify some major conflicts in the lumber sector through a search on the internet and in print in the library. Unfortunately, this search did not uncover any trade disputes of similar magnitude in the European lumber sector in recent history. The researcher then set out to map out the key organisations involved in the lumber sector in Europe with the intention of seeking information that would allow for an understanding of why lumber trade worked much better in Europe than in North America. It was found that the lumber industry in Sweden was one of the biggest in Europe. Subsequent research identified the key Swedish organisations in the lumber sector, most of which had headquarters in Stockholm. Since preliminary research showed that one of the major differences between the European Customs Union and the North America Free Trade Area is the existence, or, in the latter case, the non-existence, of enabled supranational institutions, particular attention was paid to the policy and regulatory impact of supranational institutions in shaping and resolving conflicts. For this reason, Brussels was identified as the other research stop because the European Commission, as well as some lumber organisations, was stationed there. These organisations were contacted through e-mail while the researcher was still in Canada. A few organisations accepted interview requests, and more interviews were secured through interviewees' referrals and connections after the researcher has arrived in Europe.

Over a two-week period from May 3 to May 17, 2004, a total of fifteen interviews were conducted. In-person interviews were conducted with officials from the following organisations in Brussels:

- Confederation of European Paper Industries, which is a non-profit-making organisa-

tion that represents approximately 1,000 pulp, paper and board-producing companies in EU member countries; (1 interview with 1 official)

- European Confederation Woodworking Industries, which is the main body representing the European woodworking industries; (1 interview with 1 official)
- European Commission, including:
  - Directorate-General (DG) Development, which is tasked to enhance the development policies in all developing countries worldwide; (1 interview with 1 official)
  - DG Enterprise, which is responsible for measures to enhance the competitiveness of European enterprises; (2 interviews with 2 officials)
  - DG Taxation and Customs Union, which is responsible for maintaining and defending the Customs Union and to ensure the uniform application of the nomenclature and origin rules; (1 interview with 1 official) and
  - DG Trade, which conducts the European Union's common trade policy; (1 interview with 1 official)
- Finnish Forest Industries Federation, which is a trade organisation for Finnish forest companies that manufacture paper and wood products in Finland and abroad (2 interviews with 2 officials).

In Stockholm, interviews were conducted with officials from the following organisations:

- Swedish Forest Industries Federation, which is the trade and employers' federation for the pulp, paper and wood mechanical industries; (3 interviews with 3 officials)
- Federation of Swedish Farmers, which is an interest and business organisation for all those who own or work farm and forest land, and for their jointly owned companies in the Swedish agricultural co-operative movement; (1 interview with 1 official)
- Swedish Board of Trade, which is a governmental agency and the central administrative body in Sweden that deals with foreign trade and trade policy; (1 interview with 1 official)

- Setra Group, which is Sweden's largest and Europe's fourth largest company in the timber industry (1 interview with 1 official).

In all North American and European interviews, all but two were conducted in-person. One was conducted by phone, and another was conducted by a questionnaire received through e-mail. After receiving the verbal consent to an interview, each interviewee was presented with a package that contained a cover letter, a consent form that detailed the scope and voluntary nature of the interview process, and a list of questions that set the themes for discussion. The packages for the North American interviewees were modified from those for the European interviewees to suit the context. A sample of the information contained in these packages is provided below. The messages in the consent form were repeated again at the beginning of each in-person or phone interview. After an interview, each interviewee was asked to provide documents or literature that would provide more information on lumber trade conflicts, lumber trade, or their organisations. Each interviewee was also asked to provide names and contact information for other persons that may shed more light on lumber trade and trade disputes in Europe after each interview.

Note that the interviewees' names are withheld to protect their anonymity. They are only referred to throughout the paper as officials representing their respective organisations.

## C.1 Cover Letter

Cecilia Lei  
School of Public Administration  
University of Victoria  
PO Box 1700 STN CSC  
Victoria BC V8W 2Y2

April 16, 2004

Dear Sir/Madam:

My name is Cecilia Lei. I am a graduate student at the School of Public Administration at the University of Victoria in British Columbia, Canada.

I have received a grant from the Jean Monnet Chair at the University to conduct research for my thesis titled *Dispute Resolution Processes in Lumber Trade: A Comparative Study of Canada-U.S. and European Integration*. My project involves an examination of dispute resolution mechanisms in lumber trade between Sweden and other European Union member countries and between Canada and the United States. I hope to gain from this study insight into effective ways for resolving or managing trade conflicts and, more generally, the similarities and differences between EU integration and Canada-U.S. integration.

As part of the research, I am contacting a number of stakeholders to gain an understanding on:

- The operations of lumber trade in an integrated environment; and
- Issues involved in disagreements or conflicts concerning trade in an integrated framework.

I am interested in obtaining from you information relevant to your organisation. Participation in this study involves a face-to-face interview, which is not expected to take more than an hour. I have included on page (-) some themes for discussion during the interview. If

you have additional comments after the interview, you may contact me by phone at (-), or by e-mail at (-).

As a student at the University of Victoria, I am bound by its ethical guidelines for research involving human participants. On page 1, you will see a Participant Consent Form, which provides details of this voluntary participation. You do not have to sign or return the Consent Form. If you decide to participate, your completed Questionnaire will be deemed an indication of your informed consent. If you would like more information on the ethical guidelines, please visit <http://www.research.uvic.ca/ethics/ethicsmain.htm>.

Meanwhile, please do not hesitate to contact me at (-) should you have any questions or concerns regarding this study.

Yours sincerely,

Cecilia Lei  
B.Sc., M.Sc., MPA Candidate  
Encl.

## **C.2 Participant Consent Form**

You are being invited to participate in a study entitled *Dispute Resolution Processes in Lumber Trade: A Comparative Study of Canada-U.S. and European Integration* being conducted by Cecilia Lei. Cecilia is a graduate student in the School of Public Administration at the University of Victoria and you may contact her if you have further questions. She may be reached by phone at (-) or by e-mail at (-).

As a graduate student, Cecilia is required to conduct research as part of the requirements for a degree in the Master of Public Administration. It is being conducted under the supervision of Dr. Emmanuel Brunet-Jailly. You may contact him at (-).

This research project examines dispute resolution mechanisms in lumber trade between European Union member countries and between Canada and the United States. The purpose is to gain insight into effective ways for resolving or managing trade disputes and, more generally, the similarities and differences between EU integration and Canada-U.S. integration. You are being asked to participate in this study to present your organisation's perspective on conflicts involving lumber trade. If you agree to voluntarily participate in this research, you will be asked to answer the following Questionnaire. Your input will assist Cecilia in determining innovative and sustainable options to resolve or manage conflicts over trade.

There are no known or anticipated risks to you by participating in this research. Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study, your data will not be included and it will be noted that your organisation chose not to participate. If you wish, you may choose to answer certain questions only.

In terms of protecting your confidentiality, the information you provide will be wholly attributed to your organisation unless you explicitly indicate in writing otherwise. Neither the final report nor the presentation will include identifying information or raw data. Your confidentiality and the confidentiality of the data will be protected by sharing the information

you provide in summary form only, without names associated, and will be destroyed immediately after the final report is presented. However, you should be aware that the summary may identify which organisation provided the information, unless you request otherwise explicitly in writing.

It is anticipated that the results of this study will be shared with some of the participants, such as Canadian government departments, as well as the University of Victoria. The report may also be published or presented at scholarly meetings.

In addition to being able to contact the researcher and the supervisor at the above phone numbers, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Associate Vice-President of Research at the University of Victoria (-).

## **C.3 Interview Questions for European Officials**

### **C.3.1 Interview - Introduction**

This research project examines dispute resolution mechanisms in lumber trade between Sweden and other European Union member countries and between Canada and the United States. The purpose is to gain insight into effective ways for resolving or managing trade disputes and, more generally, the similarities and differences between EU integration and Canada-U.S. integration. You are being asked to participate in this study to present your organisation's perspective on conflicts involving lumber trade.

The interview has 3 general themes:

- Section A contains general questions on lumber trade within the EU.
- Section B contains specific questions on a lumber trade disagreement within the EU. Depending on your organisation, the questions in Section B may or may not apply to you.
- Section C allows you to comment on issues not touched on in this interview.

This interview is estimated to take less than 1 hour to complete.

### **C.3.2 Section A: General**

1. To what extent is EU internal trade in the lumber sector working well among EU member countries? (1 is very badly, 10 is extremely well.) What are the main reasons for this?
2. Regarding internal trade in the lumber sector...
  - (a) What are the issues that cause conflicts or disagreements?
  - (b) Are there other issues that may cause (but have not yet caused) conflicts or disagreements?
3. What are the typical steps your organisation follows to resolve a conflict or disagreement over internal trade?

4. Regarding Sweden's lumber trade within the EU...
  - (a) Please name the actors involved from the most powerful to the least powerful.
  - (b) What are the sources of the actors' power?
5. At what levels are conflicts or disagreements over lumber trade more likely to occur? (Examples include, but are not limited to, member state to member state, company to company, company to member state etc.)
6. Regarding the lumber sector in the EU...
  - (a) How well integrated is it? (1 is not very integrated, 10 is extremely integrated.)
  - (b) What are the reasons for this degree of integration?
7. Regarding integration in the lumber sector...
  - (a) It is important because it advances national interests. (True or false?)
  - (b) Transferring power to the supranational level is the best way for domestic actors to influence policy. (True or false?)
8. Rate the following actors in terms of their influence in pushing for integration in the lumber sector in the EU: (1 is the least influential, 5 is the most influential.)
  - (a) Nation state governments;
  - (b) Domestic actors;
  - (c) Supranational institutions;
  - (d) Regional or local actors;
  - (e) Other (please specify).
9. To what extent are lumber companies transnational within the boundaries of the EU?
10. To what extent is lumber policy harmonised among member states in the EU?
11. In what way is the nature of ownership (i.e., public or private) different among the major lumber-producing EU members?

12. How different are the EU market shares of the major suppliers of lumber?
13. What are the obstacles to preventing conflicts in the lumber trade in the EU?
14. Regarding disagreements<sup>1</sup> that arose between two EU members concerning trade in lumber...
  - (a) Do you recall any incidences of disagreements?
  - (b) How many incidences of disagreements can you recall?

### **C.3.3 Section B: Interview Themes: Specific**

1. When did it happen?
2. What organisations were involved?
3. Why did the dispute, conflict or disagreement arise?
4. What process(es) did the disputants follow to resolve the dispute or conflict?
5. What was the resolution?
6. Regarding the resolution...
  - (a) Was it durable (i.e. did the dispute or conflict resurface)?
  - (b) Why or why not?
7. Regarding your organisation...
  - (a) Was it involved in the disagreement?
  - (b) In what way?

---

<sup>1</sup>A disagreement refers to a difference in opinion that causes discomfort or stress. It may be a conflict or outright dispute.

### **C.3.4 Section C: Interview Themes: Additional Comments**

1. Do you have any other comments?
2. Can you provide me with names and contact information of persons with whom I should speak regarding this project?
3. Can you provide me with any written documents on issues that relate to this matter?

- (1992, September 12). Nordic currencies: In shock. *The Economist*, 324(7776), 82-83.
- Apsey, T.M. & Thomas, J.C. (1997). The lessons of the softwood lumber dispute: Politics, protectionism, and the panel process. Private communication.
- Baucus, M. (2004). NAFTA panel injury decision. Congressional record, Senate, October 5, 2004. Retrieved on February 9, 2004, from the THOMAS, legislative information on the internet Website: <http://thomas.loc.gov/cgi-bin/query/R?r108:FLD001:S60421>
- Berg, C. & Groöttheim. (1998). Monetary policy in Sweden since 1992. Bank for International Settlements, Policy Papers No.2.
- Boulding, K. E. (1963). Conflict and defense. New York: Harper & Row.
- Bown, C. (2003). On the economic success of GATT/WTO dispute settlement. *The Review of Economics and Statistics*, 86(3), 811-823.
- Bush, R. A. B. & Folger, J. (1994). Changing people, not just situations: A transformative view of conflict and mediation. In *The promise of mediation* (p. 81-95). San Francisco: Jossey-Bass.
- Canada-U.S. Free Trade Agreement. (1987). The Canada-U.S. Free Agreement. Ottawa: The Department of External Affairs.
- Cashore, B. (1997). Flights of the phoenix: Explaining the durability of the Canada-U.S. softwood lumber dispute. Orono: Canadian-American Public Policy.
- Chambliss, S. (2004). NAFTA panel injury decision. Congressional record, Senate, October 5, 2004. Retrieved on February 9, 2004, from the THOMAS, legislative information on the internet Website: <http://thomas.loc.gov/cgi-bin/query/R?r108:FLD001:S60421>
- Chicanot, J. & Sloan, G. (2003). The practice of mediation: Exploring attitude, process and skills. Victoria: ADR Education.
- Coalition for Fair Lumber Imports. (2003). NAFTA rules that Canada dumps lumber on U.S. market. Retrieved on February 1, 2003, from the Coalition for Fair Lumber Imports Website: [http://www.fairlumbercoalition.com/pressrm\\_releases.htm](http://www.fairlumbercoalition.com/pressrm_releases.htm).

Commission of the European Communities. (1993). "The challenge of enlargement: Commission opinion on Finland's application for membership." *Bulletin of the European Communities* Supplement 6/92.

Commission of the European Communities. (1996a). "On state aid for small and medium-sized enterprises." *Official Journal of the European Communities* C 213, 23 July.

Commission of the European Communities. (1996b). "Concerning the definition of small and medium-sized enterprises." *Official Journal of the European Communities* L 107, 30, April.

Commission of the European Communities. (2002a). *Consolidated version of the treaty establishing the European Community*. Brussels: Commission of the European Communities.

Commission of the European Communities. (2002b). "On the state aid implemented by Germany for Kalusner Nordic Timber GmbH & Bo. KG, Wismar, Mecklenburg-Western Pomerania." *Official Journal of the European Communities* L165, 15, January.

Commission of the European Communities. (2003). "On the state aid implemented by Germany for Klausner Nordic Timber GmbH & Co. KG, Mecklenburg-Western Pomerania." *Official Journal of the European Union* L 337, 23, December.

Confederation of Swedish Enterprise. (2004). Facts about Sweden's economy 2004 . Öster-  
våla: Confederation of Swedish Enterprise.

Council Regulation (EC) No. 994/98. (1998). "On the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal aid." *Official Journal of the European Communities* L 142, 7 May.

Cram, L. (1997). *Policy-making in the European Union: Conceptual lenses and the integration process*. London: Routledge.

Crapo, M. (2004). NAFTA panel injury decision. *Congressional Record*, Senate, October 5, 2004. Retrieved on February 9, 2004, from the THOMAS, legislative information on the internet Website: <http://thomas.loc.gov/cgi-bin/query/R?r108:FLD001:S60421>.

Davey, W. (2000). The WTO dispute settlement system. *Journal of International Economic Law*, 3(1), 15.

Dehousse, F., Ghémar, K. & Iotsova, T. (2000). In-depth analysis of trade and investment barriers in the pulp, paper and board sectors and in printing and publishing services: Final report. Centre d'Études Economiques et Institutionnelles - C.E.E.I.

Department of Foreign Affairs and International Trade. (September 18, 2002). Minister Pettigrew to Washington D.C. Retrieved on February 6, 2003, from the Department of Foreign Affairs and International Trade Website: [http://webapps.dfait-maeci.gc.caminpub/Publication.asp?FileSpec=/Min\\_Pub\\_Docs/105448.htm&bPrint=False&Year=&Language=E](http://webapps.dfait-maeci.gc.caminpub/Publication.asp?FileSpec=/Min_Pub_Docs/105448.htm&bPrint=False&Year=&Language=E).

Department of Foreign Affairs and International Trade. (December 23, 2002). Government of Canada announces support for Canadian softwood lumber associations. Retrieved on February 6, 2003, from the Department of Foreign Affairs and International Trade Website: [http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min\\_Pub\\_Docs/105811.htm&Language=E](http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/105811.htm&Language=E).

Department of Foreign Affairs and International Trade. (December 23, 2002). Ministers agreed to go back to U.S. on softwood lumber. Retrieved on February 6, 2003, from the Department of Foreign Affairs and International Trade Website: [http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?publication\\_id=381169&language=E](http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?publication_id=381169&language=E).

Dodge, D. (2003). Economic integration in North America. *International Journal*, 58(3), 418-430.

Doran, C.F. (1996). Trade dispute resolution 'on trial': Softwood lumber. *International Journal*, 51(4), 710-733.

Doran, C.F. & Naftali, T.J. (1987). U.S.-Canadian softwood lumber: Trade dispute negotiations. Washington: Johns Hopkins Foreign Policy Institute.

El-Agraa, A. M. (1989). The theory and measurement of international economic integration. Houndmills: MacMillan Press.

Extraordinary Challenge Committee. (1994). Certain softwood lumber products from Canada. ECC-94-1904-01USA.

Finnish Forest Research Institute. (2003). Forest Finland in brief 2003. Helsinki: Finnish Forest Research Institute.

Gagné, G. (2003). The Canada-US softwood lumber dispute: A test case for the development of international trade rules. *International Journal*, 58(3), 335-368.

Garton, B. & Duvall, J. (2002). The Canada-U.S. softwood lumber dispute: Is Canada stumped again? *The Canadian Business Law Journal*, 36(2), 201.

Gerlach, S. (1997). Monetary policy issues in the Nordic countries after 1992. Bank for International Settlements, Policy Papers No.2.

Haas, E. (1958). The uniting of Europe: Political, social and economic forces 1950-1957. Stanford: Stanford University Press.

Haas, E., Butterworth, R. & Nye, J. (1972). Conflict management by international organizations. Morristown: General Learning Press.

Hix, S. (1999). The political system of the European Union. New York: St. Martin's Press.

Hoberg, G. & Howe, P. (2000). Law, knowledge, and national interests in trade disputes: The case of softwood lumber. *Journal of World Trade*, 34(2), 109-130.

Hoffmann, S. (1966). Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe. *Daedalus*, 95(3), 892-908.

Hoffmann, S. (1982). Reflections on the nation-state in Western Europe Today. *Journal of Common Market Studies*, 21, 21-37.

Hooghe, L. & Marks, G. (2001). Multi-level governance and European integration. Lanham: Rowman & Littlefield.

International Paper. (2003). 2003 form 10-K annual report. Retrieved on March 1, 2005 from the International Paper Website: [http://investor.internationalpaper.com/ireye/ir\\_site.zhtml?ticker=IP&script=2100](http://investor.internationalpaper.com/ireye/ir_site.zhtml?ticker=IP&script=2100).

International Trade Association. (nd). Overview: About ITA. Retrieved on February 2, 2004, from the International Trade Administration Website: <http://www.ita.doc.gov/about.html>.

International Trade Commission. (2004). United States International Trade Commission: About us. Retrieved on February 2, 2004, from the International Trade Commission Website: [http://www.usitc.gov/ext\\_relations/about\\_itc/index.htm](http://www.usitc.gov/ext_relations/about_itc/index.htm).

Iverson, K. (2001). Two decades of conflict over softwood lumber: What has been learned? Masters thesis, University of Victoria, Victoria, British Columbia, Canada.

Keohane, R. (1984). After hegemony: cooperation and discord in the world political economy. Princeton: Princeton University Press.

Lindberg, L. N. & Scheingold, S. A. (1970). Europe's would-be polity. Englewood Cliffs: Prentice-Hall.

Mach, H. (2001). The softwood lumber dispute. *Canada-United States Law Journal*, 27, 287-294.

Marks, G. (1998). Structural policy and multilevel governance in the EC. In G. Peters & F. K. M. van Nispen (Eds.), *Public policy instruments* p. 391-411. Northampton: Edward Elgar Publishing.

Marks, G., L. Hooghe & K. Blank. (1996). European integration from the 1980s: State-centric v multi-level governance. *Journal of Common Market Studies*, 34(3), 341-387.

Milner, H. (1995). Regional economic co-operation, global markets and domestic politics: A comparison of NAFTA and the Maastricht Treaty. *Journal of European Public Policy*, 2(3), 337-60.

Ministère des Affaires Étrangères. (1994). Point de press du 25 février 1994 - Déclarations du porte-parole. Retrieved on February 13, 2005, from the Ministère des Affaires Étrangère Website: <http://www.doc.diplomatie.fr/BASIS/epic/www/doc/SF>.

Ministère des Affaires Étrangères. (1995). Interview du ministre delegue aux affaires europeennes, M. Alain Lamassoure a la chaine de television Finlandaise TV1. Retrieved on February 13, 2005, from the Ministère des Affaires Étrangère Website: <http://www.doc.diplomatie.fr/BASIS/epic/www/doc/SF>.

Mitrany, D. (1975). *The functional theory of politics*. London: Martin Robertson & Company.

Moravcsik, A. (1998). *The choice for Europe: Social purpose and state power from Messina to Maastricht*. Ithaca: Cornell University Press.

Moravcsik, A. (1993). Preferences and power in the European Community: A liberal inter-governmentalist approach. *Journal of Common Market Studies*, 31(4), 473-524.

Natural Resources Canada. (2001). Statistics and facts on forestry. Retrieved on March 1, 2005, from the Natural Resources Canada Website: <http://www.nrcan.gc.ca/statistics/forestry/default.html>.

Natural Resources Canada. (2003). *The state of Canada's forests: 2002-2003*. Ottawa: Natural Resources Canada.

North American Free Trade Agreement. (1994). *North American Free Trade Agreement*. Retrieved on February 10, 2005, from the NAFTA Secretariat Website: [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?DetailID=173#An1901.2](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=173#An1901.2).

Office of the United States Trade Representative. (January 19, 2004). US wins key issues in WTO softwood lumber appeal. Retrieved on March 30, 2005, from the Office of the United States Trade Representative Website: [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2004/January/US\\_Wins\\_Key\\_Issues\\_in\\_WTO\\_Softwood\\_Lumber\\_Appeal.html?ht=](http://www.ustr.gov/Document_Library/Press_Releases/2004/January/US_Wins_Key_Issues_in_WTO_Softwood_Lumber_Appeal.html?ht=).

O'Neil, P. (1992, March 28). MPs off to U.S. to lobby for B.C. in softwood war. *The Vancouver Sun*, pp. A13.

Organisation for Economic Co-Operation and Development. (1995). *Regional integration and the multilateral trading system: Synergy and divergence*. Paris: Organisation for Economic Co-Operation and Development.

- Pastor, R. (2001). *Toward a North American community: Lessons from the old world for the new*. Washington: Institute for International Economics.
- Percy, M. & Yoder, C. (1987). *The softwood lumber dispute and Canada-US trade in natural resources*. Halifax: Institute for Research on Public Policy.
- Peterson, J. (2005). Statement by Jim Peterson from Davos, Switzerland. Retrieved on February 6, 2005, from the Canadian Department of Foreign Affairs and International Trade Website: [http://webapps.dfait-maeci.gc.ca/MinPub/Publication.asp?Language=E&publication\\_id=382098%20](http://webapps.dfait-maeci.gc.ca/MinPub/Publication.asp?Language=E&publication_id=382098%20).
- Rosamond, B. (2002). Introduction. In *Theories of European integration*. New York: St. Martin's Press.
- Smith, G. (2004). NAFTA panel injury decision. Congressional Record, Senate, October 5, 2004. Retrieved on February 9, 2004, from the THOMAS, legislative information on the internet Website: <http://thomas.loc.gov/cgi-bin/query/R?r108:FLD001:S60421>
- Smith, W., Miles, P., Vissage, J. & Pugh, S. (2004). *Forest resources of the United States, 2002*. St. Paul: Forest Service, U.S. Department of Agriculture.
- Stevenson, R. (1992, September 12). Financial nightmare rocks Sweden: Interest rates at 75 per cent, currency shaky and stock prices falling. *The Gazette*, p. D2.
- Swedish Forest Industries Federation. (2003). *The Swedish forest industries 2003: Facts and figures*. Stockholm: Swedish Forest Industries Federation.
- U.S. Department of Agriculture. (2001). U.S. forest facts and historical trends. FS-696-M. Retrieved on August 15, 2004, from the U.S. Department of Agriculture Website: <http://fia.fs.fed.us/library/ForestFactsMetric.pdf>.
- Verdun, A. (2002a). Introduction: European integration, theories and global change. In *The euro: European integration theory and economic and monetary union* (p. 1-6). Lanham: Rowman & Littlefield Publishers.

Verdun, A. (2002b). Merging neofunctionalism and intergovernmentalism. In *The euro: European integration theory and economic and monetary union* (p. 9-28). Lanham: Rowman & Littlefield Publishers.

Waddell, D. (2004). Address by Mr. Doug Waddell to National Lumber and Building Material Dealers Association, Washington, D.C., March 22, 2004. Retrieved on February 10, 2005, from the Canadian Embassy, Washington, D.C. Website: <http://www.canadianembassy.org/trade/040322-en.asp>.

Weyerhaeuser. (2003). 2003 investor guide. Retrieved on March 1, 2005, from the Weyerhaeuser Website: <http://www.weyerhaeuser.com/annualreport/investorguide/>.

Whiteley, D. (1987, April 9). Coalition chairman unaware of Kempf role. *The Vancouver Sun*, pp. F1.

Wolf, D. (2002). Neofunctionalism and intergovernmentalism amalgamated: The case of EMU. In *The euro: European integration theory and economic and monetary union*. Lanham: Rowman & Littlefield Publishers.

World Bank Group. (nd). Retrieved February 25, 2005, from World Development Indicator Database.

World Trade Organization. (nd). Dispute settlement: Statistics. Retrieved March 30, 2005, from the World Trade Organization Website: [http://www.wto.org/english/tratop\\_e/dispu\\_e/stats\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/stats_e.htm).

World Trade Organization. (2004). United States - Final Countervailing Duty Determinations with Respect to Certain Softwood Lumber from Canada. DS257.