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ECONOMIC IMPACTS OF THE CANADIAN SOFTWOOD LUMBER DISPUTE ON U.S. INDUSTRIES

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE, TOURISM, AND ECONOMIC DEVELOPMENT

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

FEBRUARY 14, 2006

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ECONOMIC IMPACTS OF THE CANADIAN SOFTWOOD LUMBER DISPUTE ON U.S. INDUSTRIES

TUESDAY, FEBRUARY 14, 2006

U.S. SENATE,
SUBCOMMITTEE ON TRADE, TOURISM, AND ECONOMIC DEVELOPMENT,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:35 p.m. in room SD–562, Dirksen Senate Office Building, Hon. Gordon H. Smith, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Ladies and gentlemen, we will call to order this hearing of the Senate Subcommittee on Trade, Tourism, and Economic Development.

We welcome you all, and we're anxious that this hearing be productive, that while we explore these differences between the United States and our neighbor, Canada, we can better understand what is dividing us. And I think all of us hope for a new beginning with Canada. This is—however, is an issue that has bedeviled people on both sides of the border. And a desire to have greater understanding and perhaps open up opportunities for further dialogue is the motive behind this hearing.

So, today's hearing is going to examine the economic impacts of the Canadian softwood lumber dispute on the competitiveness and the survival of the American forest-products sector.

I thank all of our witnesses for rearranging their schedules to appear before the Subcommittee. A special welcome to Oregonians Steve Swanson and Bill Kluting. You may be away from home on Valentine's Day, and that is not what we would have wished, but Washington, D.C., is a fitting place to celebrate the 147th anniversary of Oregon's entry into the United States. We almost were in Canada, but they worked that out; so, maybe we can work out lumber, too.

My State of Oregon is home to some of the most productive timberland in the world. And timber continues to play an integral role in Oregon's economy. In the last 20 years, changes in Federal forest management have forced dramatic changes in Oregon and elsewhere. Hundreds of mills were closed, and more than 35,000 forest-products jobs were lost in the Pacific Northwest. But sur-

viving mills invested in new technology, and they diversified their products, and they expanded their timber sources. Our lumber mills are now some of the most efficient in the world, yet they are still closing at an alarming rate. Seventy-nine mills have permanently closed in the U.S. since the year 2000 alone, more than twice as many as have in Canada.

This phenomenon surprises me, given the fact that the United States has been experiencing an unprecedented housing boom. In fact, Department of Commerce statistics show that total U.S. housing construction in 2005 was at its second-highest level ever. But Canadian lumber imports are also at an all-time high, topping 18 billion board feet, or one-third of the U.S. market.

While I recognize the importance to consumers of an affordable supply of lumber, that privilege neither outweighs nor is incompatible with trade laws of this country. Ultimately, trade laws and trade agreements are to the advantage of American consumers, but free trade assumes fair competition. Neither appears to be fully intact in the North American lumber market.

This debate has lasted more than 20 years, and we have two options before us. We can continue along a path of patchwork of tariffs and quotas, or we can seek to resolve the differences in our lumber systems. We can continue to act as two countries with two markets, or we can proceed as one continent with a shared market that abides by the same market rules.

I realize that this dispute has strained relations with our neighbor to the north, and that is most unfortunate. I deeply value our relationship with Canada, which Churchill described once as the lynchpin of the English-speaking world. We share security and our democratic interests on this continent and throughout the world. Canada and the United States also have a very special economic relationship. Indeed, we essentially form one large common market.

For my part, I want to extend to the new Canadian Government my sincere hope of a renewed North American relationship. The prompt resumption of negotiations with the United States on the softwood issue can, and should, be the inaugural act of that new relationship. The faster we can resolve our differences, the sooner companies on both sides of the border can reassert themselves in the world market. If litigation is pursued at the expense of mutual settlement, however, I fear both countries and both economies will suffer. Mills on both sides of the border will continue to close, and other nations beyond this continent will gladly fill in the gap.

With respect to the U.S. Government, I want to point out that the Canadian lumber dispute is the largest trade case in our history. This Administration and this Senator are both strong proponents of free trade. However, my ability to continue supporting free-trade agreements rests upon confidence that U.S. industries are fully protected under U.S. trade law; by that, meaning that they and their competitors are playing by the same rules. I applaud our officials at Commerce and USTR for the time and the gray hairs they have invested in this case, and I very much look forward to their report.

So, with that, we will go to our first panel, which consists of the Honorable Frank Lavin, the Under Secretary for International

Trade, United States Department of Commerce. And he will be followed by the Honorable Susan Schwab, Deputy United States Trade Representative of the Office of the United States Trade Representative of Washington, D.C.

So, Frank, I understand you're going to have some additional witnesses.

STATEMENT OF FRANKLIN L. LAVIN, UNDER SECRETARY, INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE; ACCOMPANIED BY JAMES SPOONER, ASSISTANT SECRETARY, IMPORT ADMINISTRATION

Mr. LAVIN. Thank you, Chairman Smith, for inviting me today. I very much appreciate your comments. With your permission, I would like to invite Assistant Secretary David Spooner to join me at the panel, because he has the technical background on some of these issues.

Senator SMITH. Without objection.

Mr. LAVIN. Thank you, sir. And I'm grateful for USTR's participation here today.

We have a longer written statement for the record, but perhaps in the interest of time, I can just illustrate a few of the thoughts on how we're trying to approach this issue.

Let me talk about some of our general principles, and how we're approaching them, and then also some of the elements that have been part of the historical discussion of negotiations in recent years. But as we approach this dispute, in my view, we need to keep in mind five general principles.

First, as you said, Senator, Canada is a good friend and ally of the United States, our largest trading partner, and a partner in one of our oldest and most successful free-trade agreements. And the importance of this economic relationship is demonstrated by the fact that U.S. exports to Canada today equal U.S. exports to the entire world just 26 years ago, 1979.

Softwood lumber accounts for some 2 percent of that total trade. On the one hand, we don't think that should define our entire relationship with Canada, but we do view it as an important issue that merits resolution and can be resolved with good-faith efforts. We look forward to working with the new Canadian Government to find a solution.

My second point, is that we believe that the Canadian lumber industry is subsidized. Five times over the past 20 years, the Commerce Department has formally examined this question; and, each time, we have found that the Canadian lumber industry is, in fact, subsidized. Even as recently as the campaign of several weeks ago, Canadian officials acknowledged their government support for their lumber industry.

Third, these subsidies are not in anyone's interest. When governments start to interfere in market decisions, they can misallocate resources and limit opportunities for their citizens. So we don't perceive this issue as Washington versus Ottawa; the objective here is to help everybody move toward market economics.

Fourth point: the International Trade Administration will continue to aggressively uphold the law and defend against unfair trade. We make no apologies for defending American workers and

businesses against unfair trade practices, and we will continue to actively pursue those objectives.

Fifth—and, again, I think this is very much consistent with your theme, Mr. Chairman—a negotiated solution is in the best interest of the companies and workers in both Canada and the United States. A successful outcome will involve some compromises on both sides, but the mutual benefits of such an agreement is far greater than the costs and risks of ongoing litigation.

Let me, then, review some of the themes that came up in recent negotiations, and they might serve as guideposts to going forward. Again, I have five points.

The first element in the past negotiations has been a border measure, which would be imposed on the Canadian side of the border to manage the impact of Canadian lumber imports until market forces play a greater role in setting Canadian stumpage prices.

A second element was a prohibition against filing of more trade complaints during the life of the agreement.

Third would be the disposition of the now more than $4 billion in duty deposits.

Fourth would be some kind of formula through which the individual provinces, or Canada as a whole, could export to the United States free of the border measure.

And, finally, in our negotiations we've discussed free trade of all forest products between the United States and Canada.

And all of these factors need to be considered against a changing U.S. industry, which is going through consolidation and competitive pressures, even as it remains among the most productive in the world.

To sum up, the Administration is very much committed to bringing this dispute to a close. We pledge to work with our Canadian counterparts to find a solution that is fair to all parties and addresses the concerns of both producers and consumers. This is not the place to speculate on the specifics of such a solution, but these negotiations, we feel, should take place in the spirit of accommodation. And it's important to note that was the spirit through which we were able to resolve similarly vexing disputes regarding textiles from China and cement from Mexico.

So, thank you, again, for giving me the opportunity to testify, and we appreciate the chance to work with you on this, and I welcome your questions.

[The prepared statement of Mr. Lavin follows:]

PREPARED STATEMENT OF FRANKLIN L. LAVIN, UNDER SECRETARY, INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE; ACCOMPANIED BY JAMES SPOONER, ASSISTANT SECRETARY, IMPORT ADMINISTRATION

Thank you Chairman Smith, Senator Dorgan, and Members of the Subcommittee for inviting me to discuss the Administration's efforts to negotiate a settlement to the long-standing trade dispute regarding softwood lumber from Canada. I appreciate your dedication to this issue, and I further appreciate your giving me the opportunity to discuss the Administration's efforts in this regard. With me today from the Department of Commerce is David Spooner, the Assistant Secretary for Import Administration. I am also honored to be here with Deputy USTR Sue Schwab and USTR General Counsel Jim Mendenhall, with whom we have worked very closely on the softwood lumber issue.

Where We Are Today

Before I get into the specifics of the softwood lumber trade dispute with Canada, I would like to mention five general principles to keep in mind when considering this issue.

First, Canada is a good friend and ally of the United States, and our largest trading partner. One of our oldest and most successful free trade agreements is with Canada. The importance of our economic relationship is demonstrated by the fact that U.S. exports to Canada today equal total U.S. exports to the entire world in 1979. Softwood lumber only accounts for some 2 percent of total trade. Thus, this particular dispute should not define our relationship with Canada. However, we view it as an important issue that merits resolution, and that can be resolved by good faith efforts. We look forward to working with the new Canadian government to find a solution.

Second, we believe that the Canadian lumber industry is subsidized. Five times over the past 20 years, the Commerce Department has formally examined this question, and each time we found the Canadian lumber industry to be subsidized. Canadian officials acknowledge that support for their lumber industry took place even as recently as their campaign several weeks ago.

Third, these subsidies are not in anyone's interest. When interfering in market decisions, governments misallocate their own money and limit opportunity for their citizens. Let's not perceive this issue as Washington versus Ottawa. The objective is to help everyone move toward market economics.

Fourth, the International Trade Administration will continue to aggressively uphold the law and vigorously defend against unfair trade laws before every judicial forum. We make no apologies for defending American workers and businesses against unfair trade practices, and we will continue to actively pursue those objectives.

Fifth, a negotiated solution is in the best interest of companies and workers in both Canada and the United States. A successful outcome will involve some compromises on both sides, but the mutual benefits of an agreement are far greater than the costs and risks of the ongoing litigation. We also believe that allowing workers and industry on each side of the border to compete in a fair environment will bring the most benefits to consumers. In addition, free trade in lumber products should include the ability to compete and trade in all forest products.

History of Softwood Lumber Dispute

A brief history of the softwood lumber dispute is in order to give context to the complexity of this dispute and to review how we have attempted to resolve it in the past. I will first outline our past administrative proceedings regarding softwood lumber from Canada and their resulting bilateral agreements, and then summarize the current cases, the accompanying litigation, and our recent efforts to date to reach a negotiated solution.

Commerce initiated the first softwood lumber countervailing duty (CVD) investigation in 1982 in response to a petition filed by the U.S. industry. However, the Department determined that the investigated programs bestowed *de minimis* subsidies and issued a negative determination finding no countervailable subsidies. This case is the only one in which no subsidies were found.

Commerce initiated a second CVD investigation of softwood lumber from Canada in 1986, again in response to a petition from the domestic industry. Although Commerce issued an affirmative preliminary determination, that proceeding ultimately settled without the issuance of a final determination. In December 1986, the United States and the Government of Canada signed a Memorandum of Understanding (MOU), which required Canada to impose an export tax on softwood lumber exports to the United States. In October 1991, Canada terminated the MOU.

Commerce self-initiated its third CVD investigation of softwood lumber products from Canada in 1991. The Department issued its affirmative final determination in 1992. Commerce's determination was ultimately rescinded in connection with litigation under NAFTA.

In 1996, the United States and Canada signed the Softwood Lumber Agreement (SLA). Under the terms of the SLA, Canada agreed to limit exports of softwood lumber to the United States, and in return exports up to a certain level entered the United States tax-free for a five-year period. Exports above this level were subject to an export tax. The SLA expired in April 2001.

Most Recent Cases

The day after the expiration of the SLA, the U.S. industry filed its third petition alleging that Canada unfairly subsidizes softwood lumber. The U.S. industry additionally filed a petition alleging that Canadian producers were dumping softwood

lumber into the U.S. market at less than fair market value. Commerce subsequently initiated its fourth CVD investigation and its first antidumping duty (AD) investigation in 2001.

In the CVD investigation, the Department found a subsidy rate of 18.79 percent for Canadian softwood lumber. Canada challenged this result before panels constituted under both the NAFTA and the WTO. The United States was generally successful in defending its determination at the WTO. As a consequence of the NAFTA litigation, however, Commerce has issued five remand determinations. The subsidy rate has decreased with each remand, ultimately becoming *de minimis* in the last remand submitted on November 22, 2005.

Although we did not agree with the Panel's rationale, consistent with our NAFTA obligations, we complied with the Panel's instructions. If the NAFTA Panel ultimately affirms Commerce's fifth remand determination, the United States will decide whether to request review by an Extraordinary Challenge Committee (ECC). No decisions have yet been made on whether to pursue review by an ECC, but all options will be considered.

The softwood lumber AD investigation, which resulted in an order being issued in May 2002, has likewise been challenged in both the NAFTA and the WTO. The NAFTA Panel remanded the case a third time to Commerce in June 2005. The Panel found that Commerce was required by law not to use "zeroing" in the context of the comparison methodology used in that particular investigation. Last July, Commerce subsequently filed its remand with the Panel, revising its calculations in a manner consistent with the Panel's analysis. Commerce is currently awaiting the NAFTA Panel's decision on this latest remand determination.

In the WTO dispute, the United States has been generally successful. However, the WTO Appellate Body determined that Commerce's "zeroing" methodology, as applied in the investigation, was inconsistent with the United States' international obligations. Commerce accordingly modified its methodology. A new WTO compliance panel is now considering that determination, and we are awaiting the interim decision.

Latest Negotiations

The Coalition for Fair Lumber Imports Executive Committee, which represents more than 200 forest product companies throughout the United States, is the petitioner in the current AD and CVD investigations. Consumer trade groups such as the Alliance of American Consumers for Affordable Homes, the National Home Builders Association, and others oppose the orders. Recognizing the needs of both these groups is crucial as we continue to work toward an agreement that is beneficial for all parties, and addresses the concerns of both producers and consumers. However, this concern cannot detract from the need for a negotiated solution that effectively addresses the Canadian lumber industry's unfair subsidization.

Since June 2002, Commerce and USTR have engaged in discussions with Canadian government officials and U.S. and Canadian industry representatives in an effort to identify a durable, long-term solution to the dispute. Both sides have made proposals for different types of interim agreements; however, further discussions will be necessary to reach an agreement. A major issue is the disposition of the more than $4 billion in deposits collected by the United States since 2002 and whether any portion of it would be returned to Canada.

In mid-July 2005, U.S. and Canadian industry representatives and government officials met to discuss the possibility of reaching a negotiated settlement based on the imposition of an export tax by Canada. The United States, with U.S. industry support, suggested several new approaches. However, the Canadian government was unable to reciprocate at that time and has not done so at this point.

While formal negotiations have been at a standstill since July 2005, it is our hope that serious discussions will resume soon. In recent negotiations, several components of a possible agreement guided the discussions. The first was a border measure, imposed on the Canadian side of the border, to manage the impact of Canadian lumber imports until market forces play a greater role in setting Canadian stumpage prices. A second was a prohibition against the filing of more trade complaints during the life of the agreement. A third involved the disposition of the more than $4 billion in duty deposits currently being held by U.S. Customs and Border Protection. In addition, some formula would need to be developed through which individual provinces (or Canada as a whole) could export to the United States free of the border measure (for example if they went to truly market-based pricing of government timber). Finally, a possible aspect of an agreement would be to identify and eliminate other obstacles (besides subsidized timber and corresponding border measures) to free and open trade of all forest products between the United States and Canada.

Our negotiations are complex because management of forestry resources in Canada falls under provincial jurisdiction. Thus, any agreement will need the consent of all relevant provinces. The Federal Government is constitutionally responsible for foreign policy (including international trade negotiations), which adds a complex intergovernmental component to resource-related negotiations.

The softwood lumber negotiations must also take into consideration the environmental and economic political diversity among Canadian provinces and provincial forest products industries. Only six of Canada's 10 provincial forest management regimes (Ontario, Quebec, British Colombia, Alberta, Manitoba, and Saskatchewan) are currently at issue in the Softwood Lumber dispute, and many differences exist among them. Nonetheless, U.S. negotiators are limited in their ability to enter into international agreements with sub-national governments, thus eliminating the option of purely regional or province-specific solutions.

The Changing U.S. Industry

In considering how to approach achieving a long-term durable solution, we need to take into account certain significant industry developments. Two of the most important developments are the recent changes in industry structure, and the transfer of forestland from forest products companies to Real Estate Investment Trusts (REITs).

Our American lumber workers and industry are among the most competitive in the world. Like many other sectors of our economy, the industry has been going through consolidation since the early 1980s that have further increased its efficiency. Independent of the trade issue, we are likely to see additional consolidation and strong competitive pressures in this industry through the near term. Currently, the 10 largest companies account for nearly 40 percent of North American production. There have been two significant recent mergers. One involved Koch Industries purchasing Georgia-Pacific, a large U.S. producer. The other involved Canada's largest forest products company, Canfor, purchasing New South Company, a significant U.S. producer.

Further, in fall 2005, International Paper (IP) announced that it was considering selling off a significant portion of its 6 million acres of forestland. IP is the second largest private landowner in the United States.

The transfer of forestland to REITs has become increasingly common. From 1998 to 2004, about 25 million acres of timberlands changed hands, from forest products companies to other types of ownership. Roughly one-half of this land has gone to REITs or a similar entity called Timber Investment Management Organizations (TIMOs). John Hancock Timber Resources Group and Grantham Mayo are prime examples of major TIMOs—i.e., investment firms, pension funds and insurance-based companies that are looking for long-term assets. Plum Creek, a major U.S. producer, member of the Coalition, and the largest private landowner in the United States is now a REIT.

These developments will impact the U.S. approach to a long-term solution. Previously, forest product companies used logs from their own forestland. Now, these same producers are purchasing a larger portion of their log supply from the new forestland owners (i.e., REITS and TIMOS) changing the market dynamics around supply and demand of logs, and requiring us to explore new areas in our negotiations.

Next Steps

The Administration remains committed to bringing this dispute to a close. We pledge to work with our Canadian counterparts to find a solution that is fair to all parties, and addresses the concerns of both producers and consumers. A deal can be reached. This is not the place for me to speculate on the specifics of such a negotiated solution, but I can say that these negotiations should take place with a spirit of accommodation, avoiding rhetoric and public posturing. Hopefully, now we have the opportunity to do so. It is important to note that it was in this spirit that we were able to resolve similarly vexing disputes regarding textiles from China and cement from Mexico.

Thank you for giving me this opportunity to testify on this important topic. I appreciate your support for our efforts and welcome your questions.

Senator SMITH. Frank, it's fact that our Commerce Department has found a 19—or a subsidy valued at a 19 percent duty, and that that's been reflected in the duties we've had. Why haven't we been able to convince the NAFTA board of that fact?

Mr. LAVIN. You're correct, Mr. Chairman. We have some methodological differences. And we——

Senator SMITH. Is it just an accounting difference? Does it really net out, or is it truly a subsidy?

Mr. LAVIN. No, we believe it is a—it is really a subsidy, and we don't think that it's—I think it's through the process of accounting, but I wouldn't minimize the differences. We think that the NAFTA panel doesn't allow us to add up the profit margin, or counts the profit margin against a different base number than we do. We believe our methodology more accurately reflects market dynamics.

Senator SMITH. I understand that recently you lowered the—our calculation from 19 to 9 percent. Why did—why was that done?

Mr. LAVIN. That is correct, Senator. Well, we have something like 300 annual reviews. And, in fact, it's highly unusual when the prices don't move around a bit. There are exchange-rate differences, there are differences in market conditions, and sometimes randomness plays a role. So, it is no surprise that there has been that kind of a shift. The only point I would offer, though, which some people have asked in regard to that question, is, please don't overdraw conclusions from that kind of a shift. It doesn't mean there's a trend, it doesn't mean the next iteration will be lower still. The numbers very well could go the other way.

Senator SMITH. I understand that in the very vigorous Canadian campaign for prime minister, that the new prime minister promised additional subsidies to Canadian mills that would be paid for by the return of the duties withheld by the United States. Is that correct?

Mr. LAVIN. Well, I know that this issue came up in the course of the campaign, Mr. Chairman, but I couldn't reference precisely what comments were made. I would simply take it in this spirit, that I think as we get into the talks with our colleagues, we need to do so on the basis of friendship and in a spirit of cooperation. Sometimes in the course of campaigns, rhetoric can become involved, and——

Senator SMITH. You mean that happens there, too?

[Laughter.]

Senator SMITH. Well, but, I mean, do you—how would these—an additional $4 billion be provided to Canadian mills in subsidies?

Mr. LAVIN. Well, in our view, the ultimate disposition of that $4 billion is part of an overall negotiated settlement. And, indeed, that could very well factor into direct support for the industry. And certainly there have been cases in the past in the United States where we have an issue involving a certain sector, and we'll allocate funds to help with adjustment or provide support for those sectors.

So, I don't think it is, in principle, objectionable, but I think what we have to do is make sure that is part of a broad, comprehensive settlement.

Senator SMITH. But you would admit that if they add another 3 billion on top of the subsidies you already calculate, that's not going in the right direction toward a settlement.

Mr. LAVIN. Absolutely correct.

Senator SMITH. And you're holding firm on that.

Mr. LAVIN. Absolutely, Senator.

Senator SMITH. Mr. Spooner, David, do you have any additions to Secretary Lavin's?

Mr. SPOONER. Thank you, Mr. Senator, but, frankly, I don't. I would just reiterate that we believe that the best outcome is a long-term, durable, negotiated solution.

Senator SMITH. Haven't there been a number in the past?

Mr. SPOONER. There have been, yes.

Senator SMITH. And they've expired? How many, exactly, have there been over the last 20 years of dispute over this issue?

Mr. SPOONER. Oh, I hope I'm correct, but I believe there have been two prior negotiations.

Senator SMITH. Two prior ones. And did they add stability to the market in ways that both sides benefited?

Mr. SPOONER. I probably don't have as many gray hairs as I should, but I believe so, yes. I should say, Mr. Senator, I appreciate this issue well. As you may know, I worked for Congressman Bob Smith of Eastern Oregon for several years, and it was an issue that was important to the office.

Senator SMITH. Well, thank you very much.

Let me turn next to our—to the Honorable Susan Schwab, Deputy United States Trade Representative.

Thank you, Susan, for being here.

STATEMENT OF SUSAN SCHWAB, DEPUTY UNITED STATES TRADE REPRESENTATIVE; ACCOMPANIED BY JAMES MENDENHALL, GENERAL COUNSEL

Ms. SCHWAB. Thank you. With your permission, if I might invite the USTR general counsel, Jim Mendenhall, to join me.

Senator SMITH. Jim, come on up.

Ms. SCHWAB. Jim is the veteran of a number of these negotiations, and I thought it would be very useful to have him with us today.

Mr. Chairman, thank you very much for this opportunity to be here today to discuss the Canadian softwood lumber issue. As you know, this is an issue, a problem that has been with us for several decades, as you noted. And, before going into some of the details—and I note that Frank Lavin has included a fair amount in his testimony—I do think it's also worth stepping back and putting the dispute into context, in terms of our broader bilateral relationship with Canada.

The United States and Canada today enjoy the largest bilateral trading relationship in the world. Canada is the largest export market that we have, and in 2005 U.S. exports to Canada totaled over $210 billion. Softwood lumber is a very significant part of the dialogue between the United States and Canada over trade issues; in fact, it comprises only 2 percent of our overall bilateral trade.

As you are well aware, the United States and Canada have been involved in disputes over cross-border trade in softwood lumber for, as you noted, several decades. The current disagreement began when the 1996 Softwood Lumber Agreement expired in 2001. And after the United States industry filed antidumping countervailing duty petitions, and the ITC found that they were threatened with material injury by virtue of dumped and subsidized imports of softwood lumber from Canada, the Department of Commerce insti-

tuted antidumping and countervailing duty orders against those imports.

Since then, we've had more than two dozen additional strands of litigation, two dozen cases filed by the Government of Canada and Canadian lumber producers through the North American Free Trade Agreement, through the World Trade Organization, and through the U.S. Court of International Trade. So, we have this very large volume of litigation, much of which is ongoing, none of which appears to be resolving the problem. And so, we have stressed to our Canadian counterparts that there is no reason to believe that litigation is a solution. A negotiated solution over the long haul is really the right approach.

Now, I should make clear that, while we have reached out to the Canadian Government to seek to resolve—to settle these cases, we will continue to enforce our trade remedy laws rigorously to ensure that U.S. industry is able to compete fairly. And we will defend any U.S. agency determination if and when they are challenged. And that's true whether we're facing one piece of litigation or two dozen. And, in addition, the United States does take its international agreements very seriously and will continue to comply with NAFTA and WTO decisions.

As I mentioned, our strong preference is for a negotiated solution. Frank Lavin articulated some of the elements of that, the three principal ones being market-oriented reforms in Canada affecting their Provincial forestry practices, interim border measures that Canada could impose to stabilize the market, pending completion of the reforms, and then the disposition of the more than $4 billion in cash deposits currently being held by the U.S. Customs and Border Protection.

We have been close to reaching agreements from time to time over the last several years, but there has been no agreement yet reached. Again, we believe a negotiated solution is the best way to go.

Ambassador Portman recently spoke with David Emerson, the new Trade Minister in Canada, letting him know that we are looking forward to working with the Government in Canada, and indicating our willingness to sit down at any point to continue such talks and enter into negotiations. We will continue to consult with the various elements of U.S. industry—producers and importers, alike, the stakeholders in this agreement—to try to bring some stability and, we hope, a negotiated agreement, at some point, that will be satisfactory to both U.S. interests and Canadian interests.

I would appreciate it if I could submit the full statement for the record.

Senator SMITH. We'll include that.

[The prepared statement of Ms. Schwab follows:]

PREPARED STATEMENT OF SUSAN SCHWAB, DEPUTY UNITED STATES TRADE REPRESENTATIVE; ACCOMPANIED BY JAMES MENDENHALL, GENERAL COUNSEL

Thank you Mr. Chairman, Senator Dorgan, and Members of the Subcommittee for providing me the opportunity to discuss the Canadian softwood lumber issue. I appreciate your interest in this matter, as well as the strong leadership you and other Members of this Subcommittee have shown on this issue, and I welcome the opportunity to brief you today on the Administration's interest in negotiating a mutually agreed solution to this dispute. As you know, the softwood lumber issue has a long

history, but before I delve into some of the details, I'd like to step back for a moment and put this dispute in the context of our broader bilateral trading relationship with Canada.

Today, the United States and Canada enjoy the largest bilateral trading relationship in the world. Canada is the largest export market for U.S. goods. In 2005, U.S. goods exports to Canada were $211.4 billion, while U.S. goods imports from Canada were $287.9 billion. Softwood lumber, while a major issue, comprises some 2 percent of our total bilateral trade with Canada.

As you are well aware, the United States and Canada have been involved in the dispute over cross-border trade in softwood lumber for decades. The current disagreement began when the 1996 Softwood Lumber Agreement expired in 2001, and the U.S. industry subsequently filed antidumping and countervailing duty petitions. In 2002, the U.S. International Trade Commission found that the domestic industry was threatened with material injury by reason of dumped and subsidized imports of softwood lumber from Canada, and the U.S. Department of Commerce instituted antidumping and countervailing duty orders on imports of Canadian softwood lumber. Subsequently, the Government of Canada and Canadian lumber producers filed approximately two dozen cases challenging the orders in various fora, including under the North American Free Trade Agreement, at the World Trade Organization, and in the U.S. Court of International Trade.

Despite this large volume of litigation, much of which is still ongoing, the current dispute continues into its sixth year. Throughout the dispute, we repeatedly have stressed to our Canadian counterparts that, given the long history of this disagreement, there is little reason to believe that the current round of cases will resolve the matter once and for all, regardless of how the process plays out. Without a negotiated solution, chances are high that the dispute will continue.

In this regard, let me make clear longstanding U.S. policy regarding dispute settlement cases: the United States will continue to enforce our trade remedy laws vigorously to ensure that U.S. industry is able to compete fairly and will mount strong defenses of U.S. agency determinations if and when they are challenged. This is true whether we are facing one challenge or two dozen. Let me also make clear, however, that the United States takes its international agreement obligations seriously, and will continue to comply with the NAFTA and WTO.

As previously mentioned, however, our strong preference is to get off the litigation track and reach a negotiated resolution. As you know, the two sides have been talking, off and on, since the current cycle of cases began in order to try to find such a resolution. Discussions have focused on three main areas: market-oriented reforms to Canadian provincial forestry practices, interim measures that Canada could impose to stabilize the market pending completion of reforms, and the disposition of the more than $4 billion in cash deposits currently being held by U.S. Customs and Border Protection. While we have been close to reaching an agreement on more than one occasion, as of yet no deal has been reached. Nevertheless, the Administration believes that reaching a negotiated solution to this dispute is possible, and indeed, the only way to a lasting solution that will create a stable, fair, and open lumber market in North America.

Ambassador Portman already has spoken with David Emerson, Canada's new Trade Minister, informing him that we look forward to working with the new government in Canada, and indicating our willingness to sit down and begin discussions at any time. We believe that it will help the progress of such discussions if no new issues, such as the granting of additional subsidies, emerge. We pledge to continue to consult with the relevant stakeholders—producing and consuming industries alike—throughout the process. The Administration remains committed to a negotiated solution that will end this dispute, and we look forward to working with our Canadian counterparts in order to do so.

Senator SMITH. Susan, how would you describe negotiations now? Are they on, off, close, far apart? I mean, is it—I know it's early in this new government, but is there—you're reaching out a hand—is there a hand back?

Ms. SCHWAB. Mr. Chairman——

Senator SMITH. Or a backhand?

[Laughter.]

Ms. SCHWAB. Mr. Chairman, there are currently no negotiations going on. There have been talks on and off over the last several years. Sometime there were points where we thought we were clos-

ing in on an agreement, and we never did. So, at the present time, there are no negotiations. I think the current—the new Canadian Government is in the process of sorting itself out. And we hope they will reach back, at some point.

Senator SMITH. If negotiations remain off, have you ruled out any other tools that may be at your disposal, such as an investigation into Canada's log export ban or a changed-circumstances review?

Ms. SCHWAB. Mr. Chairman, rather than commenting on any specific plan of action or option, I think it's safe to say that, given the seriousness of this issue, and the complexity, we would not want to rule out any option.

Senator SMITH. And, Frank, have you ruled out extraordinary—an extraordinary challenge to the latest NAFTA panel decision on subsidy determinations?

Mr. LAVIN. No, sir, we have not ruled that out. We can't really respond until we get the remand back from the NAFTA panel, and then I think we have 30 days, plus some administrative time, to make a response. But our options are open.

Senator SMITH. Jim Mendenhall, did you have anything you wanted to add to——

Mr. MENDENHALL. I think the issues have been laid out very well by my three colleagues on the panel, so I have nothing more to add right now, thank you.

Senator SMITH. Well, thank you very much, our first panel. We appreciate, very much, your engagement in this issue.

I would just say, as a observation, I can only imagine how hot an issue this is for Canadians. I simply say to them, my friends, my neighbors, you ought to see how hot it is in Oregon. This is—we're simply trying to work out an understanding of how we account for costs in ways that are fair to both sides. My mills can compete against other mills. They can't compete against the Canadian Government. It's just that simple. And it isn't right for either side of the border to simply surrender a major industry. And when you're from the Pacific Northwest, a major industry has been, is now, and will always be, necessarily, timber. And we may never get it exactly the same, but we've got to get closer than we are right now to having a sustainable relationship.

We thank you for being here.

Ms. SCHWAB. Thank you, Mr. Chairman.

Mr. LAVIN. Thank you, Senator.

Senator SMITH. We'll call forward, now, our second panel. Steve Swanson is the President of The Swanson Group, Inc., and Chairman of the Coalition for Fair Lumber Imports. And he is from Glendale, Oregon. Bill Kluting is the legislative representative of the Western Council of Industrial Workers, United Brotherhood of Carpenters, Portland, Oregon. And Barry Rutenberg, who is a member of the board of directors of the National Association of Homebuilders, and President of Rutenberg Homes, Gainesville, Florida.

We're glad you're here, Mr. Rutenberg. We know that there is another side to this lumber issue, other than those who make their living from the woods; it's also builders like you who need those

lumber products, and Americans who want affordable housing. So, thank you.

Steve, why don't we start with you?

STATEMENT OF STEVE SWANSON, PRESIDENT, THE SWANSON GROUP

Mr. SWANSON. Mr. Chairman, I'd like to thank you for holding the hearing on the longstanding problem of subsidized and dumped Canadian softwood lumber imports.

My name is Steve Swanson, and I am the President of The Swanson Group, a family owned lumber company employing over 1,000 workers with our operations in Glendale, Roseburg, Glide, and Noti, Oregon.

Mr. Chairman, you'll be hearing testimony today that seeks to obscure the problems brought on by subsidized Canadian lumber. The facts are simple. One, Canada provides billions of dollars in annual subsidies to its lumber industry. Two, the subsidies have had a devastating impact on thousands of U.S. workers and their communities, and is threatening millions of private timberland owners. Three, Canadian lumber subsidies and dumping practices must be subject to the U.S. trade laws until Canada reforms its timber market and engages in fair trade.

I am testifying on behalf of the Coalition for Fair Lumber Imports, an alliance of U.S. sawmills supported by millions of private landowners and organized labor, in this effort to end the subsidies and dumping of Canadian lumber exports in the United States. Environmental organizations are, likewise, pressing for an end to the unfair Canadian practices.

Mr. Chairman, every administration since the Reagan Administration has found that Canada subsidizes its softwood lumber production, and the subsidized imports injure, or threaten to injure, U.S. sawmills and millworkers. The current Bush Administration has also found that Canadian companies dump softwood lumber into the U.S. market. That is, the Canadian producers are selling into the U.S. market at unfairly low prices. The World Trade Organization has generally agreed with the United States in this dispute.

Canadian interests, themselves, have acknowledged that their provincially managed system of subsidized timber is designed to maximize full employment in Canadian mills. In return for building sawmills and maintaining mill employment in Canada, the Canadian Provincial governments, which own 95 percent of the timberland in Canada, provide Canadian lumber companies with a guaranteed supply of timber into the indefinite future.

Crucially, Canadian lumber companies generally need not bid for timber as they would in a market. Rather, they pay set fees to the Provincial governments that represent a fraction of the value of the timber. The Canadian mills are thus assured of a steady supply of timber at below market prices. This system meets its goal of maximizing employment while exporting their unemployment to U.S. mills, particularly in weak economic periods.

Senator SMITH. Steve, could you give, briefly, what would be the comparison, in the stumpage, of a U.S. purchaser versus a Canadian?

Mr. SWANSON. In the U.S., a similar quality Douglas fir log is about $439 per thousand board feet. The same log in Canada is about $113 per thousand board feet.

Senator SMITH. That's what we're talking about, just so everybody understands. That's the difference.

Mr. SWANSON. It's a huge difference.

It is hard to overstate the competitive benefit that Canadian lumber companies enjoy through artificially low timber pricing. My company is typical, in that the unharvested trees account for around 60 percent of lumber production costs. Recent studies, including one from Canada, have confirmed that the United States has the most efficient sawmills in North America, but we cannot, and should not, be expected to compete with companies that are getting up to a 75 percent discount on the single-largest cost component of producing lumber.

Senator SMITH. Is there any reason, Steve—I'm sorry to interrupt—is there any reason to believe that, as a percentage of total cost, that raw product cost is any different in Canada than the U.S.?

Mr. SWANSON. It's a much, much smaller part of total cost in Canada——

Senator SMITH. Obviously.

Mr. SWANSON.—than it is in the U.S.

Senator SMITH. Yes. But, I mean, otherwise, your numbers would be——

Mr. SWANSON. Our mills are very competitive. Our costs of production, as demonstrated by studies that have been produced in recent months, show that western Oregon, in particular, has some of the most efficient mills in the world.

Senator SMITH. So, my—the point I want—I'm trying to drive home is, it isn't a lack of technology of Oregon mills or Maine mills. You can compete, in terms of technological efficiency, with any Canadian mill?

Mr. SWANSON. Absolutely. Our mills are state-of-the-art. They have the same—in fact, in many cases, they have the exact same equipment that is in those mills in Canada.

Senator SMITH. And you're telling me, as a pea producer, if I could buy my peas at 75 percent less than I do now, I could probably make money.

Mr. SWANSON. You certainly could.

Senator SMITH. OK, thank you.

Mr. SWANSON. If 60 percent of my costs were reduced by 75 percent, I could make a lot of money, as well.

I'm a little off pace here, so I'll back up a minute.

Timber values across Canada, on average, are 70 percent less than comparable values in the free-market economy that exists in the United States. As I said earlier, a given quality Douglas fir costs about $439 per thousand board feet in the United States and $113 immediately across the border in Canada. There's only one explanation: because Canadian Provincial governments are setting prices at an artificially low level to subsidize lumber production and employment.

Subsidized and dumped lumber imports are devastating to U.S. mills and millworkers, particularly during periods of weak mar-

kets. Canadian market penetration increases when the market is weak, which, of course, is exactly what is intended. Canadian mills can simply maintain, or even increase, their exports to the United States to maintain high production and full employment, despite lower demand. During such downturns in the economy, U.S. mills suffer the consequences—mill curtailments and even shutdowns—of combined lower demand with increased subsidized imports from Canada. To put it bluntly, U.S. mills respond to lumber prices, Canadian mills do not, because they benefit from subsidies.

It is a tragedy that this long, festering trade dispute has not been resolved. This issue would disappear the day that Canada made reasonable, transparent, and enforceable commitments to end their unfair trade practices and allow open and competitive markets for timber and logs. Canada simply refuses to do so, because it is addicted to subsidies and can't break the habit.

Rather than confront the problem, Canada instead has chosen to abuse the NAFTA dispute settlement process by appealing all of our government's decisions to NAFTA panels. Because these panels have routinely exceeded their authority, disregarded U.S. legal requirements, and have directed U.S. agencies to make specific findings to insulate the Canadian unfair practices from the requirements of U.S. trade laws, that has forced us to bring our case that the NAFTA panel system is unconstitutional.

Mr. Chairman, we believe that Chapter 19 denies U.S. citizens their constitutionally protected rights to fair and impartial judicial review of disputes involving them and their private property. NAFTA panelists, one-half of whom are foreign nationals, are interpreting and enforcing U.S. law. If the interpretation and enforcement of our trade laws can be outsourced to these unaccountable tribunals, similar systems can be created to apply to other statutory frameworks. In short, the NAFTA panel system is rife with conflicts, accountable to no one, and is repeatedly telling the United States, a sovereign nation, how to interpret its own laws.

Mr. Chairman, the U.S. lumber industry continues to support resolving this dispute through negotiations. We are hopeful that a new government in Canada will provide an opportunity to negotiate a permanent solution to the problem. However, until Canada stops engaging in unfair trade practices, we will continue our fight to have the U.S. trade laws fully enforced against subsidized and dumped Canadian lumber imports that continue to threaten the livelihood of our workers and their communities.

[The prepared statement of Mr. Swanson follows:]

PREPARED STATEMENT OF STEVE SWANSON, PRESIDENT, THE SWANSON GROUP

Mr. Chairman and Members of the Committee, I would like to thank you for holding this hearing on the longstanding problem of subsidized and dumped Canadian softwood lumber imports. My name is Steve Swanson and I am the head of The Swanson Group, a family owned lumber company employing over 1,000 workers with operations in Glendale, Roseburg, Glide and Noti, Oregon.

Mr. Chairman. you will be hearing testimony today that seeks to obscure the problems brought on by subsidized Canadian lumber. The facts are simple. (1) Canada provides billions of dollars in annual subsidies to its lumber industry; (2) the subsidies have had a devastating impact on thousands of U.S. workers and their communities, and is threatening millions of private timberland owners; (3) Canadian lumber subsidies and dumping practices must be subject to the U.S. trade laws until Canada reforms its timber market and engages in fair trade.

I am testifying on behalf of the Coalition for Fair Lumber Imports, an alliance of U.S. sawmills supported by millions of private landowners and organized labor in its effort to end the subsidies and dumping of Canadian lumber exports to the United States. Environmental organizations are likewise pressing for an end to the unfair Canadian practices.

Mr. Chairman, every Administration since the Reagan Administration has found that Canada subsidizes its softwood lumber production and that subsidized imports injure or threaten to injure U.S. sawmills and mill workers. The current Bush Administration has also found that Canadian companies "dump" softwood lumber into the U.S. market—that is, the Canadian producers are selling into the U.S. market at unfairly low prices. The World Trade Organization has generally agreed with the United States in this dispute.

Canadian interests themselves have acknowledged that their provincially managed system of subsidizing timber is designed to maximize full employment in Canadian mills. In return for building sawmills and maintaining mill employment in Canada, the Canadian provincial governments, which own 95 percent of the timberland in Canada, provide Canadian lumber companies with a guaranteed supply of timber into the indefinite future. Crucially, Canadian lumber companies generally need not bid for the timber, as they would in a market. Rather, they pay set fees to the provincial governments that represent a fraction of the value of the timber. The Canadian mills are thus assured of a steady supply of timber at below-market prices. This system meets its goal of maximizing employment, while exporting unemployment to U.S. mills, particularly in weak economic periods.

It is hard to overstate the competitive benefit that Canadian lumber companies enjoy through artificially low timber pricing. My company is typical in that the unharvested trees account for around 60 percent of lumber production costs. Recent studies, including one from Canada, have confirmed that the United States has the most efficient sawmills in North America, but we cannot, and should not, be expected to compete with companies that are getting up to a 75 percent discount on the single largest cost component in producing lumber.

Timber values across Canada on average are 70 percent less than the comparable values in the free market economy that exists in the United States. Why would a Douglas fir tree of a given quality cost U.S. $439 per thousand board feet in the United States and U.S. $113 per thousand board feet immediately across the border in Canada? There is only one explanation—because the Canadian provincial government is setting prices at an artificially low level to subsidize lumber production and employment.

Subsidized and dumped lumber imports are devastating to U.S. mills and mill workers, particularly during periods of weak markets. Canadian market penetration increases when the market is weak which, of course, is exactly what is intended. Canadian mills can simply maintain or even increase their exports to the United States to maintain high production and full employment despite lower demand. During downturns in the economy, U.S. mills suffer the consequences—mill curtailments and even shutdowns—of combined lower demand with increased subsidized imports from Canada. To put it bluntly, U.S. mills respond to changes in lumber prices: Canadian mills do not—because they benefit from subsidies.

It is a tragedy that this long festering trade dispute has not been resolved. This issue would disappear the day that Canada made reasonable. transparent and enforceable commitments to end their unfair trade practices and allow open and competitive markets for timber and logs. Canada simply refuses to do so because it is addicted to subsidies and has been unable to break the habit.

Rather than confront the problem, Canada instead has chosen to abuse the NAFTA dispute settlement process by appealing all of our government's decisions to NAFTA panels. But these panels have routinely exceeded their authority, disregarded U.S. legal requirements, and have directed U.S. agencies to make specific findings to insulate the Canadian unfair practices from the requirements of U.S. trade laws.

That has forced us to bring our case that the NAFTA panel system is unconstitutional. Mr. Chairman, we believe that Chapter 19 denies U.S. citizens their constitutionally protected rights to fair and impartial judicial review of disputes involving them and their private property. NAFTA panelists, one half of whom are foreign nationals, are interpreting and enforcing U.S. law. If the interpretation and enforcement of our trade laws can be outsourced to these unaccountable tribunals, similar systems can be created to apply to other statutory frameworks. In short, the NAFTA panel system is rife with conflicts of interest, accountable to no one, and is repeatedly telling the United States, a sovereign nation, how to interpret its own laws.

Mr. Chairman, the U.S. lumber industry continues to support resolving this dispute through negotiations. We are hopeful that the new government in Canada will provide an opportunity to negotiate a permanent solution to the problem.

However, until Canada stops engaging in unfair trade practices, we will continue our fight to have the U.S. trade laws fully enforced against subsidized and dumped Canadian lumber imports that continue to threaten the livelihood of our workers and their communities. Thank you Mr. Chairman, I am happy to answer any questions you may have.

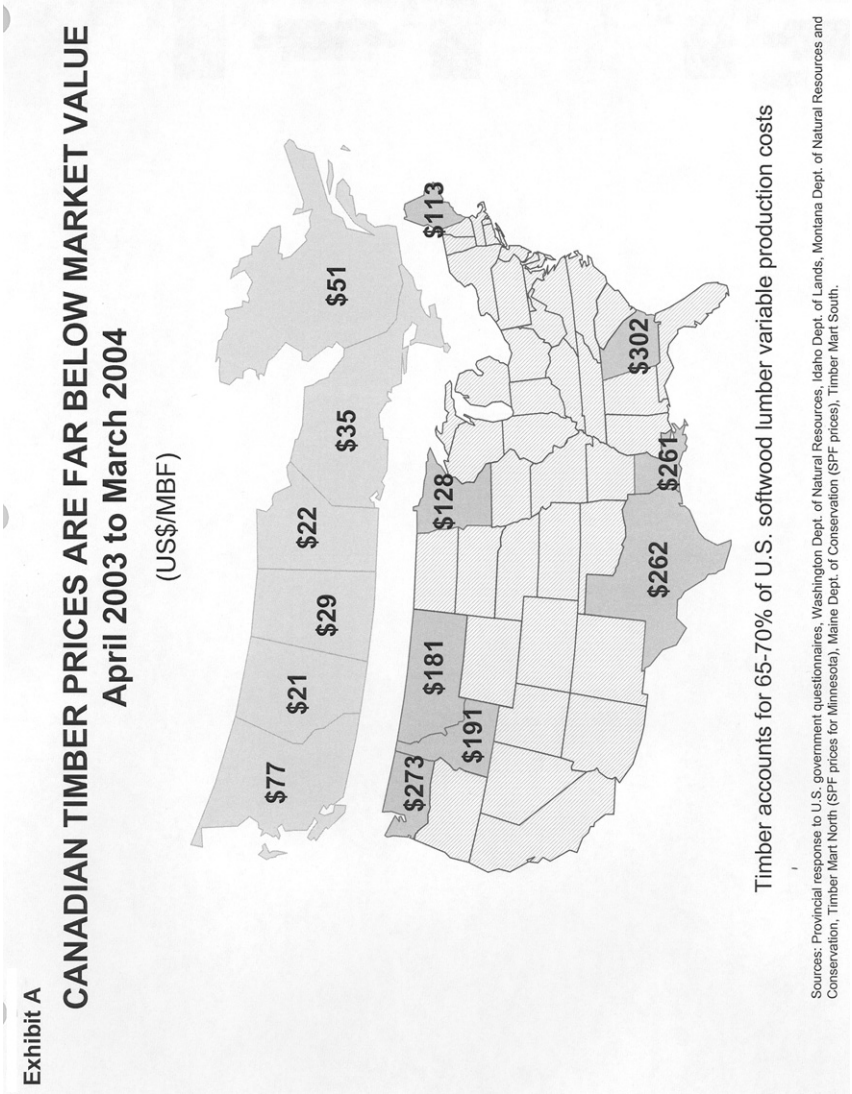


Exhibit B

Canadian Share of North American Production Has Increased During Periods of Market Softness

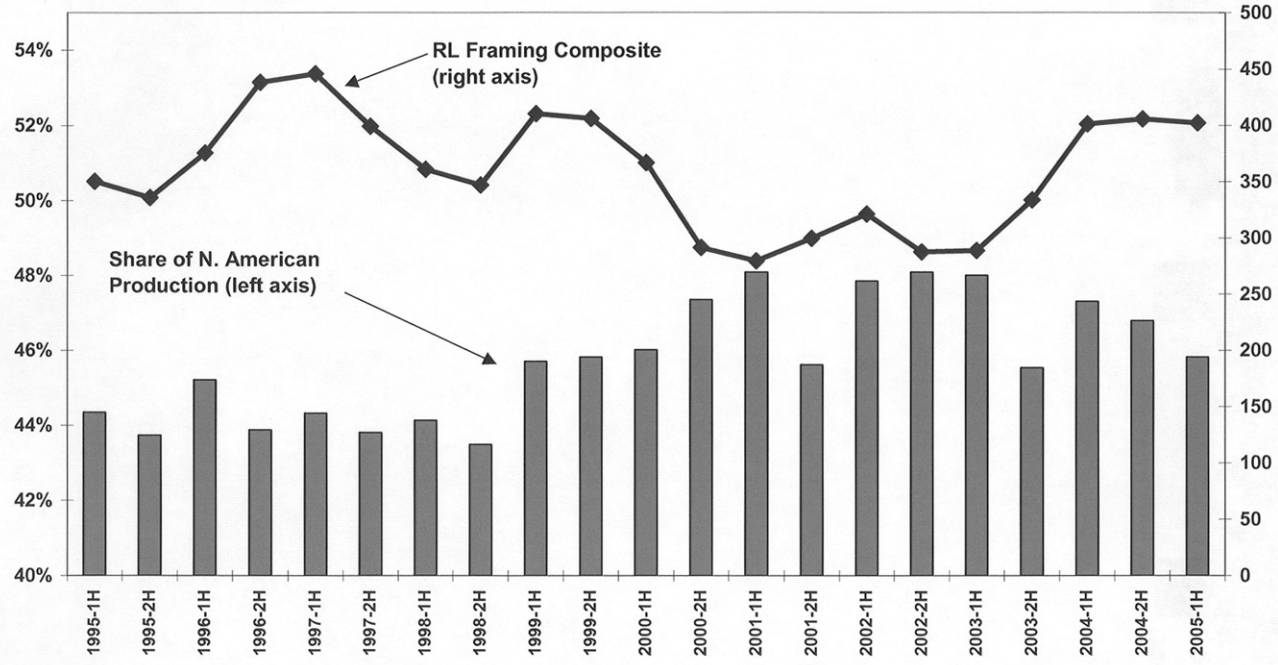
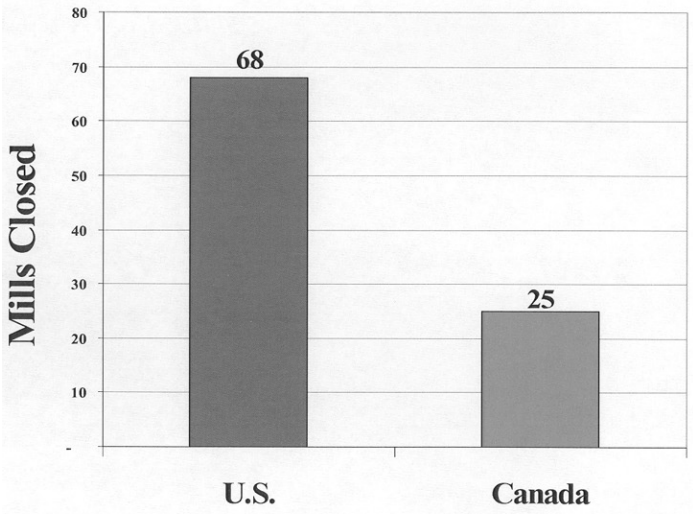
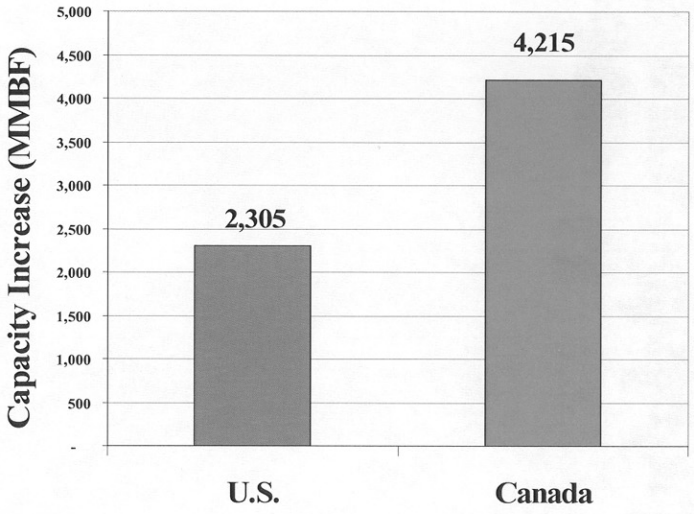


Exhibit C

Mill Closures in the U.S. Have Exceeded Those in Canada
Canadian Capacity Has Increased More Than in the U.S.



Source: Random Lengths, 2000 - 2005



Source: WWPA Lumber Track, Oct. 2002 & Aug. 2005

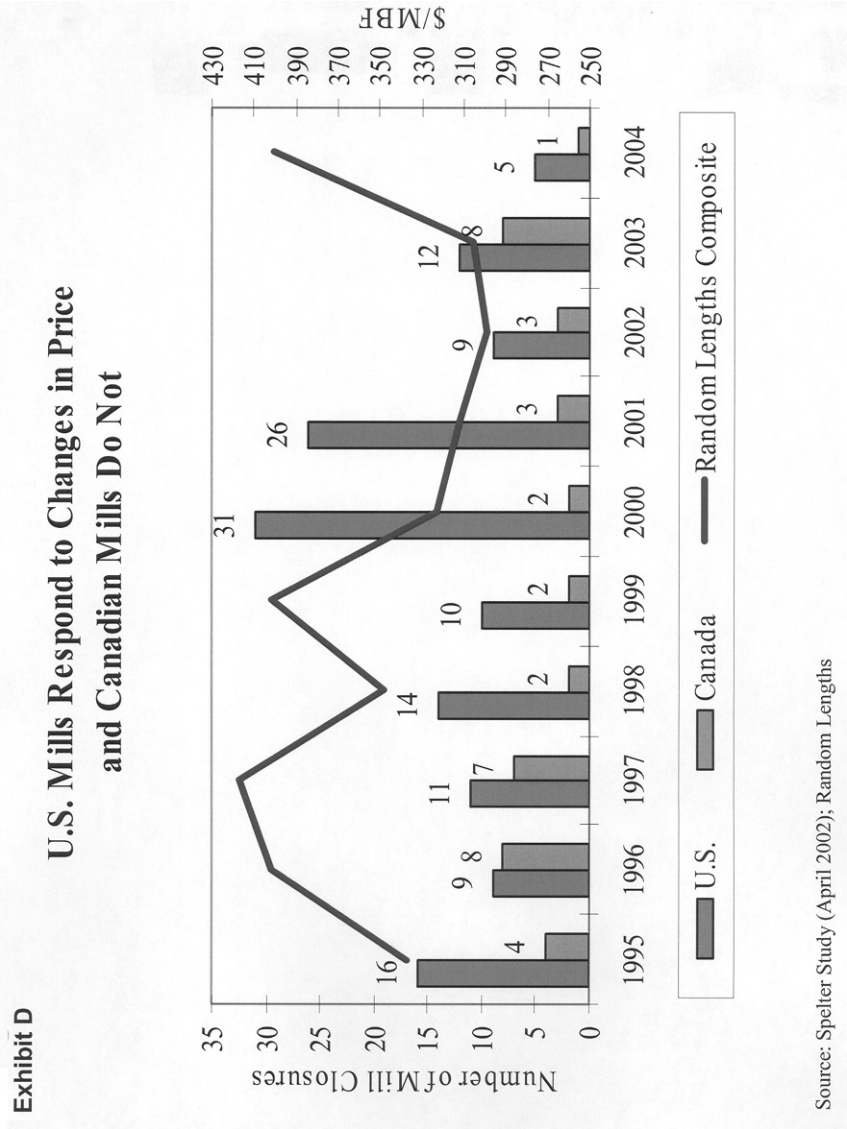


EXHIBIT E

NAFTA Chapter 19 Dispute System is Unconstitutional

The binational panel review system established by Chapter 19 of the North American Free Trade Agreement ("NAFTA") deprived the U.S. lumber industry of its right to a fair and impartial hearing in its trade dispute with Canada. The panel violated U.S. law (which it was required to follow) in a number of respects, including: (i) ignoring the mandatory "substantial evidence" standard of review, under which the agency's determinations must be upheld if there is substantial evidence in the record that supports the agency's conclusions, and (ii) preventing the U.S. International Trade Commission from re-opening the evidentiary record on remand, a decision firmly committed to the discretion of the agency under U.S. law. The NAFTA extraordinary challenge committee ("ECC") that reviewed the panel's deci-

sion confirmed that the panel violated U.S. law in at least one respect but failed to correct the panel's errors. In addition, the panel included a panelist whom the U.S. Government asked be removed for an apparent conflict of interest, and who consistently and publicly demonstrated an apparent bias against the industry. The ECC likewise failed to correct this error.

Claims

The NAFTA panel system on its face and as it has been applied in proceedings regarding unfair Canadian lumber imports violates the U.S. Constitution on several grounds. The claims set forth in the lumber industry's September 13 complaint submitted to the Court of Appeals for the D.C. Circuit are summarized below.

- **Denial of judicial review.** The system precludes judicial review of decisions rendered by binational panels. The panels adjudicate the propriety of agency determinations made by the U.S. International Trade Commission and the U.S. Commerce Department. The authority of these panels to conclusively adjudicate U.S. law without review by U.S. courts violates Article III of the Constitution.
- **Due process requires that litigants receive a fair and impartial hearing.**
  - —Canadian binational panelists and ECC members are selected by a party—the Canadian or U.S. Government—the interests of which they are charged with adjudicating. Due process requires that litigants have their claims decided by neutral adjudicators.
  - —While binational panels are required to apply U.S. law to the disputes they consider, the vague standard for "appellate" review—to prevail, a decision must threaten the integrity of the NAFTA system—results in admitted errors in the application of U.S. law by panels going uncorrected. Not one ECC has ever reversed a panel decision.
  - —There is not an adequate method by which to remove a biased panelist. The United States asked for removal of a panelist for an apparent conflict of interest. Canada refused to give its consent, which is required by the system.
- **Although acting as officers of the United States, serving in a judicial or adjudicatory capacity, binational panelists and ECC members have not been appointed by the President, confirmed by the Senate or otherwise placed in office in conformity with the Constitution's "Appointments Clause."**
- **The Constitution requires that the President administer the laws enacted by the Congress.** Panels are exercising executive power in reviewing decisions made by the Commerce Department and the International Trade Commission. To that extent, the responsibility of the Executive Branch is being transferred to binational panels in violation of Article I, Section 8 of the Constitution.
- **Under the Constitution, the Congress may not delegate authority wholly outside of the government.** By authorizing panels to make determinations about countervailing duty and anti-dumping decisions, the Congress has improperly delegated application of U.S. law to private parties, some of whom are agents of a foreign sovereign.
- **The statutes implementing the binational panel review system grant the President the power to "accept, as a whole," the decision of a binational panel or ECC in the event that the implementation of the decisions made by these bodies is deemed unconstitutional by a U.S. court.** By attempting to vest in the President the authority to override the findings of the judicial branch by effectuating legal determinations otherwise deemed unconstitutional, this provision circumvents both the authority of the judiciary branch, in violation of separation of power, and the law-making process mandated by Article I, Section 7.
- **The binational panel review system deprived the U.S. lumber industry of its right to a fair and impartial hearing in its trade dispute with Canada.** The panel included a conflicted panelist who consistently and publicly demonstrated bias toward the Coalition, in contravention of the Coalition's due process rights. Again, the ECC that reviewed the actions taken by the panel failed to correct this error by upholding the panel's decision despite the participation of a conflicted panelist.

The U.S. courts should take immediate action to correct the defects in the panel system and assure that a fair result is achieved in the Canadian softwood lumber subsidy case and in all cases involving unfair trade practices involving imports from Canada and Mexico.

Senator SMITH. Steve, you referenced that the way the NAFTA tribunal calculates a subsidy is different than the way that WTO has determined those subsidies.

Mr. SWANSON. That's correct. In almost all cases, the WTO has sided with the U.S. Government on the same issues.

Senator SMITH. Looking at the same facts.

Mr. SWANSON. That's correct.

Senator SMITH. If you'll let me break in one more time, Senator Snowe has a statement, and we'd be happy to let her go now.

STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Well, thank you. Sorry to interrupt the process. I just want to commend you, Mr. Chairman, for focusing attention on this critical issue, both to our respective states and to our country. This has been a longstanding dispute with the Canadians, as Mr. Swanson's already indicated, for the last 20 years. I know I've been part of that effort, even during—hate to admit it, in some ways—the Reagan Administration. It goes back that far. But that's how long this dispute has been underway without resolution. And I can only hope that there is—with a new government in Canada, and we renew our interest and reinvigorate our interest on the part of our government officials, from whom you've heard in the first panel—I'm sorry I wasn't here to get their testimony—but we clearly do have to reinvest and refocus our energy, our initiatives, and jumpstarting negotiations with Canada.

Where we stand today is unacceptable. And it's undeniable the impact it's having on my industries in the State of Maine, certainly yours in Oregon, and other parts of the country. And we have to resolve the question, these disparities that are having a far-reaching impact on our jobs and the paper industry, as illustrated by the map that you have shown here today, which I think is illustrative of the disparities and the subsidizations that exist. We know that. I mean, they're artificially set and controlled, far different from the market here in the United States, where they go to competitive auction.

So, we clearly have to resolve this question. And, frankly, I think that our persistence has been outmatched by the Canadians over the last 2 decades; hence, we continue to have this problem that's undermining our very vital industry. It's not fair.

And I agree with you about the binational panel under NAFTA. That is unacceptable, in terms of overriding the judicial review of antidumping and countervailing duties and the whole procedure. There are our procedures. They are recognized under our law. And they're basically overriding and asserting their views in place of ours. And, even as you mentioned, Mr. Chairman, the WTO looked at these questions very differently.

So, I think that also is an issue that we have to address when it comes to that process under NAFTA, because it's obviously circumventing the procedures that are very much a part of our trade laws, and very much part of our judicial review, and it should be here, and should remain here, and not be overridden by outside interests in unaccountable panels.

So, I want to thank you, Mr. Chairman——

Senator SMITH. Thank you, Senator.

Senator SNOWE.—for your efforts and your support and your leadership.

Thank you.

Senator SMITH. Thank you very much, Senator Snowe.

And, Senator Burns, I don't know if you have a statement you want—we've had our first panel, and this is the second panel.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Mr. Chairman, thank you very much. I want to apologize for being late. I don't shift gears too fast. When you go from Medicare Part D to softwood lumber, and then you've got a softheaded Senator, that's not a—that's probably a lethal combination.

I would just ask that my statement be put in the record, Mr. Chairman——

Senator SMITH. Without objection.

Senator BURNS.—and that we just go ahead and allow this panel to finish their testimony.

Thank you.

Senator SMITH. Very good.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

I thank the Chairman of this Subcommittee and I thank our witnesses for being here today to address this very important issue. The lumber industry in Montana has faced a very serious and unfair trade dispute from our neighbors to the north for many years now. The result of Canadian subsidized lumber has crippled the lumber industry in Montana, and has led to dire consequences for many Montana workers. In the United States alone, 79 lumber mills in the United States have had to close their doors since the year 2000, resulting in the loss of thousands of jobs. At least 400 of those jobs have been in Montana. Now, Mr. Chairman, 400 jobs may not seem like a lot, but in Montana, 400 jobs is a devastating loss to a small community because these 400 jobs do not affect just the families of these workers. It begins a domino effect and once that domino effect is in motion, it is very hard to turn back. The loss of these jobs impacts local economies; laid-off families have less to spend on basic goods and services which forces local businesses to shut their doors and in turn, lay off workers, driving up the unemployment rate. This is an unacceptable result, Mr. Chairman. The men and women of Montana's lumber industry who abide by the rules and compete without the assistance of subsidies should not be subjected to competition in an unequal trading market.

Mr. Chairman, I am deeply concerned and troubled by the continued subsidy of Canadian lumber that is in turn dumped on our markets. In October 2005, a World Trade Organization panel report concluded that "dumped and subsidized imports of softwood lumber from Canada threatened to materially injure the U.S. industry." Mr. Chairman, this is a correctable problem and it needs to be corrected now.

Montana families and businesses cannot be expected to compete on a market that is subsidized so largely that it drives out legitimate competition. I look forward to hearing from our witnesses and discussing their ideas about how we can compel the Canadians to sell lumber on our market at the actual market value instead of a fraction of that price. I am confident that together, we can bring not only relief, but most importantly, we can bring fair and honest competition to the lumber industry not only in our Nation, but for the hard working folks of Montana's lumberyards and mills.

I applaud those who have worked to find a solution to this troubling problem, and I would like to thank Undersecretary Lavin for his honest communication with me on this issue. In light of the pending constitutional challenge to NAFTA's dispute resolution process known as Chapter 19, this hearing is especially timely, and I look forward to hearing the testimony today.

Senator SMITH. We'll next turn to Bill Kluting, again, with the Western Council of Industrial Workers, Portland, Oregon.

Thank you, Bill, for being here.

STATEMENT OF BILL KLUTING, LEGISLATIVE REPRESENTATIVE, WESTERN COUNCIL OF INDUSTRIAL WORKERS

Mr. KLUTING. Thank you. And good afternoon, Mr. Chairman and Committee.

My name is Bill Kluting, and I live in Monmouth, Oregon. I am the legislative representative for the Western Council of Industrial Workers. It's affiliated with the United Brotherhood of Carpenters.

Our council represents more than 10,000 workers in the lumber and wood-products industry in Oregon, Washington, Montana, Idaho, and Northern California.

My mill closed in June of 2000, due, in large measure, to Canadian lumber imports. I had 39 years in this plant. After the closure, I was appointed the peer advisor for our displaced workers. And there were 190 people in our plant, at that time. And I continue doing that line of work, up to today.

I know, firsthand, sir, the devastating impact of plant closures and worker dislocations that have—caused by subsidized Canadian lumber imports, even with the antidumping duties in place.

I'd first like to talk to you about the magnitude of mill closure problems in the Northwest's sawmilling industry.

Since the softwood lumber agreement expired, March 31, 2001, there's been 52 softwood mill closures in Oregon, Washington, Montana, Northern California, and Idaho. These closures put almost 5,000 millworkers out of work. Now, this doesn't count the other 5,000 that were directly affected by these mills closing, so we're talking right at 10,000 workers from these mills.

There's usually several factors that come into play when decisions are made to close a mill: log supply, not adapting to new technology, changing market demands, and, of course, the pressure of subsidized Canadian imports. We firmly believe the imports from Canada, which make up one-third of our total U.S. lumber market, was a significant contributor to all these 52 shutdowns.

All these mills asked for, and 90 percent received, NAFTA Trade Act benefits. They were certified. And one of the main concrete reasons why you have to be certified for Trade Act is the problems of import or export. And, again, 90 percent of these mills qualified for Trade Act benefits.

There is a good reason for dislocated workers to apply for NAFTA Trade Act—adjustment, retraining assistance, unemployment benefits are extended 2 years to get through training.

Since over 90 percent of these sawmill closures qualified for NAFTA—and, again, the concrete reason, the determining factor, was imports from Canada—in many rural Northwest towns, the mill was the only source of employment. We have a lot of small towns in Oregon. A laid-off millworker often has to start all over.

The council's research indicates that the average laid-off millworker takes between 10 and 12 years to regain their prior rate of pay. Pension and healthcare benefits at the new job are usually nonexistent or simply inadequate.

In 5 years, I have worked with over 2,000 displaced workers, and I can show you the heartaches and headaches of these people. For an example, in our plant we had—our electricians, of course, moved on. They weren't held up much. They lost their seniority. But the rest of the people were really hurt. When you spend 10, 20, 30, 40 years in a plant, and all of a sudden you're out the door, the hardest thing to do is to go into a classroom and learn a new trade.

Another problem is, if the mill isn't closed at a certain time—a lot of your good courses, a lot of your retraining, starts in the fall term—if that's a course you want to take, and it's a month late, you have to sit out a whole cycle. Your unemployment starts the day that you're—you are certified as a Trade Act. So, you—you're losing your unemployment. On the other end, you have to finish your school, maybe 6 months of school, on your own, with no unemployment benefit.

In Dallas, we had—our electricians moved on, five went to work in the State—guards, security system; ten went into the public bus transportation; we barely got to 30 people that automatically found work. We had a total of 60 people signed up for school. Ten of them dropped out in a matter of weeks. They just couldn't stand the stress of a classroom. Three of our members took computer, and they wound up with pretty decent jobs with the State of Oregon. Machine-shop welding courses worked out for a couple of people. And diesel mechanics worked out for a couple of people. Of this group of 190, only 32 found comparable wages right off the bat. Only 32.

So, what happened to the remaining displaced workers? I know of 50 now that are working for less than $9 an hour. That's all they could find. And if you're over 55 years old, it's hard to find anything. We had some apply for—finally apply for disability Social Security, and they finally got it. Nine. We have—of course, more are on Social Security, but way before they wanted to apply. Way before.

These are some of the heavy costs borne by victims. I could go on and on, but I'll skip along.

Our union would recommend more integration between economic development departments and dislocated worker retraining programs. We have to figure out a better policy for our displaced workers. It is a good program; it just needs a little bit of fine-tuning.

In closing, I would put forth a recommendation from our union that this recommendation could help save our remaining lumber mill jobs in our United States. We urge the Congress and the President to put their full weight behind an effort to negotiate a fair and lasting resolve to the U.S./Canadian softwood lumber wars. We would support a top-level envoy being appointed by President Bush and Prime Minister Harper to negotiate an enduring softwood lumber agreement. These envoys should be given the power to negotiate a binding agreement, and be given a date for completing such. We would like to see September 2006.

These special envoys would have the power to place limits on Canadian imports, especially when demand, slash, prices in the U.S. are low. This is when we get hurt the worst. They should also be directed to phase in a market-based stumpage fee system in Canada to eliminate the Canadian subsidy, over time.

And, importantly, these high-level envoys should be given wide discretion over the use and dispersal of the $5 billion collected by the U.S. Customs since 2002 for countervailing and antidumping duties imposed on Canada's lumber exporters.

Again, thank you for this opportunity to testify on this issue that is so very important to our members and to our Northwest communities. And I will try to answer any questions.

[The prepared statement of Mr. Kluting follows:]

PREPARED STATEMENT OF BILL KLUTING, LEGISLATIVE REPRESENTATIVE, WESTERN COUNCIL OF INDUSTRIAL WORKERS

My name is Bill Kluting and I live in Monmouth, OR. I am the Legislative Representative for the Western Council of Industrial Workers which is affiliated with the United Brotherhood of Carpenters. Our Council represents more than 10,000 workers in the lumber and wood products industry in Oregon, Washington, Montana, Idaho and Northern California.

I am, in fact, an example of a forest products worker who lost his job when my mill closed in 2000 due, in large measure, to Canadian lumber imports. When the Dallas, OR mill closed I had thirty-nine years in the plant as an electrician. After the closure I was selected to serve as a peer counselor to work with state retraining agencies and educational institutions to help these 190 workers obtain retraining, unemployment benefits and assist them in job search activities. I have continued working in this capacity for other dislocated worker groups for the last five years.

I know, first hand, the devastating impacts of plant closures and worker dislocations that have been caused by subsidized Canadian lumber imports—even with countervailing and anti-dumping duties put in place by the U.S. Commerce Department and International Trade Commission.

I would first like to talk about the magnitude of the mill closure problem in the northwest sawmilling industry.

We examined mill closures over the five-year period from 2001 through 2005 because this period coincides with the time span that we've been without a bilateral trade agreement on softwood lumber. The Softwood Lumber Agreement expired March 31, 2001.

During this five-year period there's been fifty-two softwood sawmill closures in Oregon, Washington, Montana, Northern California and Idaho. These closures put 4,723 workers out of work.

A breakdown by state for this five-year period

State	Sawmill Closures	Workers Impacted
Oregon	13	845
Washington	15	1,203
Montana	4	350
Northern California	15	1,775
Idaho	15	550

Source: *Mill Closure Data,* Paul Ehinger & Associates, Consultants to the Forest Products Industry, Eugene, OR.

The reasons behind sawmill closures are never simple and straightforward. There are usually several causative factors that come into play when decisions are made to close a mill. These include the availability of log supply, the mills efficiency (technology), changing market demands and, of course, the pressures of subsidized Canadian imports which depresses lumber prices. We firmly believe, however, that Canadian lumber imports, which makes up just over one-third of the total U.S. lumber market, was a significant contributor to all of these fifty-two shutdowns. However, in an effort to draw a closer cause and effect linkage between Canadian lumber imports and U.S. northwest sawmill closures, we surveyed data published by the Department of Labor, Employment & Training Administration, showing which mills qualified for NAFTA Trade Adjustment Act (TAA) training and job search assistance. This is a program set up exclusively for workers who are negatively impacted by trade policy's under NAFTA. In other words, it applies to trade situations involving Canada, Mexico and the U.S.

When an application is submitted for TAA benefits the Labor Department conducts an investigation to determine whether imports (or exports) were a significant

factor contributing to the closure. Under DOL criteria imports/exports do not have to be the *sole* factor causing the shutdown. Trade related issues must, however, be demonstrated in a concrete fashion and must represent a "significant factor" in the closure. The DOL process for "certifying" dislocated workers for TAA or NAFTA benefits is rigorous. Investigators interview actual customers of the subject plant to determine if customers have shifted purchases away from the plant under investigation and increased purchases of imported products. If this shift can be demonstrated the plant is certified as having been impacted by trade and, thus, eligible for TAA or NAFTA supplemental benefits.

There is good reason for dislocated worker groups to apply for TAA/NAFTA certification. Adjustment and retraining assistance is greatly enhanced with a trade impact certification. Unemployment benefits are extended for persons in training and the allowance for training goes from $5,000 per person to $12,000. For these reasons application for TAA/NAFTA certification is made for many plant closure situations, especially when they are represented by a union like ours.

Our survey of certified TAA petitions issued from 2001 through 2005, due to customers purchasing increased quantities of Canadian imported lumber, shows that forty-nine plants qualified for TAA benefits. This certainly demonstrates a strong cause and effect relationship between sawmill closures in the five northwest states and the import of subsidized Canadian lumber during the last five years.

Over ninety percent of sawmill closures qualified for NAFTA Trade Adjustment Act assistance because Canadian lumber imports were determined to be a significant factor in the closure.

And these figures actually understate the real impacts because TAA benefits only go to manufacturing plants. In the forest products industry loggers, truck drivers, maintenance workers, log scalers and others not considered "manufacturing" employees are not eligible for TAA. As a consequence, those workers wouldn't be counted in this estimate of workers impacted by Canadian lumber imports. We estimate, conservatively, that the real impact is at least two times the 4,723 workers identified in the 52 plant closures.

In many rural, northwest towns the mill is the only source of employment. A laid-off mill worker often has to start all over again. The Council's research indicates that for the average laid off mill worker, it will take between ten and twelve years to regain their prior rate of pay. Pension and health care benefits at the new job are usually non-existent or simply inadequate.

To help illustrate the difficulties and the suffering that accompany these shutdowns I'll give you some statistics and experiences from my plant. These are typical and representative of what we see in every mill closure.

As I said, there were 190 workers dislocated when the Dallas, OR plant closed. The crew qualified for the extended training and unemployment benefits under TAA because Canadian imports contributed significantly to the closure.

As you would expect, the more skilled people in the maintenance department had little problem finding new jobs. All ten of our electricians, for example, found comparable work in their trade. They did not use any of the training/education benefits available under TAA.

Five members landed jobs as guards at the nearby state penitentiary at comparable wages and benefits. They were fortunate in that the prison system was hiring at the time.

Ten workers are now driving municipal buses in Salem, OR which is fourteen miles from their homes in Dallas. Here again, their wage and benefit package is comparable to what they were receiving at the mill before the shutdown.

We worked very hard to enroll people in job training classes. TAA supports two years of training. It is extremely difficult to persuade former millworkers to take education classes because a large block of them lack the fundamental education background to do well in job training classes. A total of sixty took a variety of training and education courses. We actually consider this to be a high ratio of enrollment.

Three members took a computer/data base recording course and then went to work for the state government in office jobs.

Two took a machine shop/welding course and are currently employed in a local machine shop.

Two of the five workers who completed a diesel mechanic's course found jobs with local trucking firms.

Adding up these various success stories it turns out that thirty-two workers found new jobs that paid something close to the $14.00 per hour average (higher for electricians) they were receiving when the mill closed. This represents just 17 percent of the total 190 workers who lost their jobs.

So what happened to the remaining 158 workers? I know of 50 who are now working at jobs paying $9.00 per hour or less with no health care and no pension. They are doing jobs like custodial work, farm/nursery work and working in small grocery stores.

Eight workers went on Social Security disability after looking for work for two years. These people were between the ages of 56 and 62 and their bodies showed the wear and tear that comes with many years in the wood products industry.

These are very heavy costs borne by the real victims of mill closures—the workers and their families. Regretfully, the retraining assistance helps a few but it is not an adequate answer to unfair trade that causes such massive unemployment. There are inevitable gaps and flaws in the retraining programs that cause them to fail people in real need.

I would like to tell you about Ken Smith. He was 52 when the mill closed. Ken did an assessment of job opportunities and learned that several cities/counties needed qualified fire code inspectors for new and existing buildings. Ken was one and a half years into the two-year training program for fire code inspectors when he hurt his back. After his back healed he had to wait several months before the portion of training he missed was being offered again. As a consequence, his unemployment benefits were exhausted. He struggled financially and went into debt to complete the course. Tragically, state and local revenues were plummeting when Ken finally completed the course and became certified and, as a consequence, they were laying off fire code inspectors not hiring new ones. Ken, fortunately, was hired as a bus driver in Salem.

This helps to illustrate some of the severe problems inherent in retraining programs. The harsh reality is they don't help very many people.

Our union would recommend more integration between economic development departments and dislocated worker retraining programs to insure that the skill training matches emerging jobs and skill needs. In addition, these TAA programs need to be expanded and allowed more flexibility to meet the practical needs of workers.

In closing I would put forth a recommendation from our union.

We urge the Congress and the President to put their full weight behind an effort to negotiate a fair and lasting resolve to the U.S.-Canadian softwood lumber wars. We would support a top level envoy being appointed by President Bush and Prime Minister Harper to negotiate an enduring softwood lumber agreement. These envoys should be given the power to negotiate a binding agreement and be given a date certain for completing it, perhaps September 2006. These special envoys would have the power to place limits on Canadian imports, especially when demand/prices in the U.S. are low. They should also be directed to phase in a market-based stumpage fee system in Canada so as to eliminate the Canadian subsidy over time. And, importantly, these high level envoys should be given wide discretion over the use and disbursal of the $5 billion collected by U.S. Customs since 2002 for countervailing and anti-dumping duties imposed on Canadian lumber exporters.

Thank you for this opportunity to testify on an issue that is so very important to our members and to our northwest communities.

Senator SMITH. Thank you very much, Bill.

And, Barry Rutenberg, we want our family-wage mill jobs and a fair marketplace for them, and we want affordable housing. Can you thread that needle?

STATEMENT OF BARRY RUTENBERG, MEMBER, BOARD OF DIRECTORS, NATIONAL ASSOCIATION OF HOME BUILDERS; PRESIDENT, RUTENBERG HOMES

Mr. RUTENBERG. Mr. Chairman, that's a—the question of the day, isn't it?

[Laughter.]

Mr. RUTENBERG. And what I'd like to do first is to read the prepared statement.

Senator SMITH. Sure.

Mr. RUTENBERG. Then perhaps we could go to that.

Chairman Smith, Senator Snowe, Senator Burns, I'm pleased to share with you today the views of the 225,000 members of NAHB, the National Association of Home Builders, on the Canadian

softwood lumber trade dispute and its economic impacts. I thank you for the opportunity to appear before this Subcommittee today.

My name is Barry Rutenberg. I'm President of Barry Rutenberg Homes, a homebuilding business in Gainesville, Florida. In 2000, I served as a President of Florida Home Builders Association, and currently sit on the executive committee and the board of directors for NAHB.

Mr. Chairman, as you know, countervailing and antidumping duties on Canadian softwood lumber imported into the U.S. are currently being collected at a rate of approximately 10 percent, down from 27 percent. This duty acts as a tax on American homebuyers and homeowners seeking to make improvements to their homes, hurts housing affordability, and prevents hundreds of thousands of families from qualifying for a home mortgage. Consequently, NAHB vigorously opposes lumber quotas, export taxes, and tariffs.

The homebuilding and remodeling industries account for over two-thirds of all lumber consumption in the U.S. Canada is a source of more than a third of the lumber used in U.S. homebuilding, and lumber counts for a larger share of the cost of a home than any other material. Lumber price increases, accordingly, have a direct effect on the cost of housing.

The current duties that are fully reflected in the price of lumber would raise a cost of a home by approximately $1,000. I think it's a higher number. But, according to the Census Bureau, if there is a $1,000 increase, then it will price approximately 300,000 families out of mortgage eligibility.

The simple and critical fact is that the homebuilders can not meet the need for new homes and improvements to existing homes without lumber imports from Canada. Due to the current limits on the supply of U.S. timber, which you're more than familiar with—timber which is similar to the Canadian spruce pine fir, SPF—and the unsuitability of some of the timber available in the rest of the U.S. for wall framing, border restrictions on Canadian softwood lumber only serve to raise the cost of a home for U.S. consumers.

Importantly, lumber trade restraints do little or nothing to increase the use of domestically produced lumber in home construction. Builders use different types of lumber for different purposes within the same home, and the type of lumber used for framing walls is in short supply in the U.S., due to logging and other restrictions. We must import this type of lumber from Canada. Therefore, lumber trade restraints serve to tax American consumers, because the very product subject to the duties must be imported in sufficient quantities, since suitable substitutes do not exist domestically.

I would not use American southern yellow pine, the most common available domestic lumber species, for framing walls in the homes I build unless there was a very significant discount relative to the SPF. A builder's preference for a spruce pine fir in framing is based on the better performance you will get. It produces walls that will remain straight. Southern yellow pine, on the other hand, will warp and twist. Builders do use southern yellow pine in applications that call for treated lumber, including outdoor applications, including the plates that contact the concrete foundations of homes, and headers that are not engineered wood products. The trusses

that I use are also almost 100 percent southern yellow pine, because it satisfies the requirements for truss engineering.

The principal competitive threat to the use of southern yellow pine lumber comes not from imports, but from engineered wood products, such as wood I-joists and composite materials, which offer improved performance, easier installation, and reduced reliance upon old growth.

Mr. Chairman, since the imposition of duties following the expiration of the Softwood Lumber Agreement in 2001, there has been an ongoing attempt to find a negotiated agreement to the end of the current dispute that would inevitably result in quotas or an export tax. Congress should insist that the interests of all U.S. stakeholders, not just the U.S./Canadian lumber producers, are included in lumber policy discussions, especially considering that American workers in lumber-dependent jobs outnumber workers in lumber-producing industries by more than 25 to one.

Instead of negotiating additional and further trade restraints, NAHB urges the U.S. Administration to adhere to its international obligations under NAFTA, and implement those decisions which have invalidated the lumber duties. The U.S. has committed itself to binding dispute settlement procedures and agreed to refund illegally collected border taxes under NAFTA. If we, in the U.S., expect our trading partners to abide by their international obligations, we should expect nothing less from ourselves.

NAFTA panels have repeatedly ruled that the U.S. lumber producers are not threatened with injury by Canadian lumber imports. Importantly, these decisions have been unanimous, and a five-member NAFTA panel included three Americans named to the panel by the United States Trade Representative. In the most recent unanimous ruling, the U.S. lost its appeal of the case before a NAFTA Extraordinary Challenge Committee in August of 2005. This should have resulted in a revocation of the duties and a return of the approximately $5 billion that has been collected to date. Despite this, the duties continue to be collected, and American consumers,—the consumers continue to pay the price.

In conclusion, Mr. Chairman, Members of the Committee, lumber trade restraints act as a hidden tax on American consumers, hurt affordable housing, and prevent hundreds of thousands from qualifying for a home mortgage. These duties do little or nothing to increase the use of U.S.-produced lumber in home construction, since different types of lumber are used for different purposes in the same house.

NAHB thanks you for your attention to this important matter, and I'd be happy to take any of the questions you might have.

[The prepared statement of Mr. Rutenberg follows:]

PREPARED STATEMENT OF BARRY RUTENBERG, MEMBER, BOARD OF DIRECTORS, NATIONAL ASSOCIATION OF HOME BUILDERS; PRESIDENT, RUTENBERG HOMES

Good afternoon Mr. Chairman and Members of the Subcommittee. My name is Barry Rutenberg. I am President of Barry Rutenberg Homes, a home building business in Gainesville, Florida. In 2000, I served as the President of the Florida Home Builders Association and currently sit on the Executive Committee and Board of Directors for the National Association of Home Builders (NAHB). I appreciate the opportunity to appear today on behalf of the 225,000 member firms of NAHB and their more than 8 million employees in all fifty states.

Mr. Chairman, NAHB represents firms involved in home building, remodeling, multifamily construction, property management, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB's members are citizens of the communities in which they build. They seek to support the economy while providing shelter and jobs; partner to preserve important historical, cultural and natural resources; and protect the environment, all while creating and developing our Nation's communities.

Housing continues to be one of the leading sectors in our Nation's economy, with home sales and housing production providing strong direct support to both the Gross Domestic Product (GDP) and the job market. Integral to the construction of affordable homes is the industry's need for access to a stable and reliable supply of softwood lumber to meet our Nation's growing housing needs.

Mr. Chairman, the Subcommittee's attention to the issue of Canadian softwood lumber trade is crucial at this time. As you know, countervailing and anti-dumping duties on Canadian softwood lumber imported into the U.S. are currently being collected at a rate of approximately 10 percent, down from a recent high of 27 percent. This duty acts as a tax on American home buyers and home owners seeking to make improvements to their homes, hurts housing affordability, and prevents many families from qualifying for a mortgage.

The simple and critical fact is that the U.S. home building industry can not meet the need for new homes and improvements to existing homes without lumber imports from Canada. Due to current limits on the supply of U.S. timber similar to Canadian Spruce Pine Fir (SPF), and the unsuitability for wall framing of much of the timber available in the rest of the U.S., border restrictions on Canadian lumber only serve to act as a hidden tax on American consumers.

Lumber trade barriers increase costs, increase inflation, place U.S. manufacturers of value-added wood products at a competitive disadvantage, and have a negative effect on productivity. NAHB believes that barriers to lumber imports impose an unreasonable burden on U.S. home buyers, and on the industries that depend on adequate, affordable supplies of lumber to provide the housing, home improvements, and other vital goods and services that the Nation needs. U.S. Government policy with regard to this issue should reflect the interests of consumers and the overall economy, not just U.S. timber owners and lumber producers.

Let me be clear: NAHB vigorously opposes barriers to free trade in lumber. We do however support free trade policies that fully reflect the interests of consumers and downstream industries.

Lumber in Housing

The importance of a sufficient and stable supply of softwood lumber for the home building industry can not be overstated. The home building and remodeling industries account for over two-thirds of all of the lumber consumption in the U.S. Canada is the source of more than a third of the lumber used in U.S. home building. And, lumber accounts for a larger share of the cost of a home than any of the other materials used by home builders. Additionally, lumber's share of a new home's cost is generally greater for lower cost homes designed for home buyers with low or moderate income than for high end luxury homes, meaning that lumber price increases fall disproportionately on less affluent families.

While this issue is of the utmost importance to home buyers, home builders and subcontractors, there are also many other U.S. businesses that use softwood lumber, such as manufacturers of trusses, cabinets, pallets, box springs, and furniture, as well as lumber wholesalers and retailers. Together with home builders these heavily lumber-dependent industries employ more than 5 million American workers. Roughly another one million more workers are self-employed as independent contractors and business proprietors in the home building industry. Millions more are employed in housing-related businesses such as real estate and mortgage finance. By contrast, the number of logging and sawmill jobs is less than 200,000. Overall, American workers in lumber-dependent jobs outnumber workers in lumber-producing industries by more than 25 to 1.

Additionally, the economic impact of home building extends itself deep into the economy of the U.S. Building a new home requires workers, skilled and semi-skilled. New homes require building materials, some produced locally and some produced at regional or national factories. New homes need appliances and carpets and cabinets and windows and literally thousands of large and small products that must be produced in order to complete the home. Homes are painted and landscaped and furnished and windows are covered. Building and selling a home requires professional services, such as surveyors, architects, attorneys, real estate brokers, bankers and insurance companies. All of this economic activity spreads itself across the local economy, the national economy and into a myriad of different industries.

It is little surprise then that home building has led the national economic recovery over the past five years and helped reverse employment declines. However, the record levels of construction have contributed to large increases in the cost of building materials. During the past two years while the producer price index for all goods increased by 4 percent, the price of materials used in home building increased by 14 percent. Along with higher land costs and other factors, this has pushed up the price of new homes.

Many aspiring home buyers, especially those with lower incomes or first time home buyers are just on the edge of being able to qualify for a mortgage and make the required payments. Even a small change in house prices or interest rates can determine whether they can buy a home. This is one critical area where softwood lumber duties and trade restraints have had a direct impact on the ability of Americans to achieve the dream of home ownership. Additionally, the recent hurricanes that ravaged the southeast have resulted in the destruction or significant degradation of literally hundreds of thousands of homes. The current duties—or the potential for future trade restraints through a negotiated agreement with Canada—serve to act as a tax on many first time home buyers or the thousands of families in the southeast who will be rebuilding their lives and homes.

Effects of Lumber Price Increases

Lumber price increases have a direct effect on the cost of housing. The current duties, if fully reflected in the price of lumber, would raise the cost of a home by approximately $1,000. An increase of that amount is estimated to eliminate around 300,000 people from mortgage eligibility in this country according to the census bureau.

NAHB and its builder members across the country are working with Congress, the Department of Housing and Urban Development (HUD), and other state and local agencies to break down the barriers to home ownership. These current duties, and past managed trade agreements like the 1996–2001 Canada/U.S. Softwood Lumber Agreement (SLA), only work to frustrate and undermine the efforts of our industry and others who are working to improve housing affordability across the country.

Lumber price increases also have an effect on the men and women who make their livelihood building the American dream. Home builders are generally entrepreneurial small business people. Eighty-seven percent of home builders build fewer than 25 homes a year and 72 percent build fewer than ten homes a year. Smaller builders have less of a capacity to absorb unanticipated changes in costs, such as those brought about by lumber price increases and volatility.

Different Species, Different Uses

The current lumber duties and any potential negotiated settlement that would result in quotas or an export tax; do little or nothing to increase the use of U.S. lumber in home construction. Builders use different types of lumber for different purposes in the same home, and the type of lumber used for framing a house is in short supply in the U.S. due to logging and other restrictions. As a result, the home building industry must import a third of the lumber it uses. Ultimately, lumber trade restraints only serve to penalize and tax American consumers since the very product subject to the restraints must be imported since sufficient quantities of suitable substitutes do not exist domestically.

I can tell you first-hand that the types of lumber imported from Canada are significantly different from much of the lumber produced in the U.S. Builders use different lumber species for different structural uses in home construction. Home builders select different types of lumber for use in the same house based on different performance features. Builders know what will work best in each application involved in building a home.

Builders require lumber that is dimensionally stable and easy to nail, such as spruce, for studs, top plate, and subfascia work in framing the structure of the home. The origin of the lumber is not as much a concern as whether the product has the design values we need and meets our quality standards. However, Canadian Spruce Pine Fir (SPF) satisfies that requirement, both in terms of design value and quality.

I could not use American southern yellow pine (SYP) for framing walls in the homes I build, even if it cost half as much as SPF. A builder's preference for SPF in framing is based on the better performance you will get from SPF: it produces walls that will remain straight. SYP, on the other hand, will warp and twist. If Canadian SPF were not available for use in wall framing, many builders would consider using steel in its place in framing applications. I know my customers—and

home buyers generally—would not be satisfied with the result if I were to use SYP for many framing applications.

Builders do use SYP in applications that call for treated lumber, including outdoor applications, plates that contact the concrete foundation of the homes, and headers that are not engineered wood products. The trusses that I use are also made of almost 100 percent SYP because SYP satisfies the requirements for truss engineering.

The principal competitive threat to the use of southern yellow pine lumber, the most common domestic lumber species, comes *not* from imports but from engineered wood products such as wood I-joists and composite materials, which offer improved performance, easier installation, and reduced reliance on old-growth timber.

Negotiations

Since the imposition of duties following the expiration of the SLA in 2001, there have been a number of attempts to find a negotiated agreement to end the current dispute. These negotiations have been viewed as an alternative to the ongoing litigation at the World Trade Organization (WTO) and North American Free Trade Agreement (NAFTA) panels. Proposed settlements have also provided for the money collected from the duties to be distributed in one manner or another and the duties themselves replaced with either a quota or an export tax. NAHB continues to oppose the imposition of a new quota or an export tax, and remains very concerned and frustrated that these negotiations have not included the interests of home builders or any other U.S. lumber consumers.

Congress should insist that the interests of all U.S. stakeholders—not just U.S. and Canadian lumber producers—are included in lumber policy discussions. Specifically, the interests of homebuyers, home builders, and other U.S. consumers and downstream industries should be recognized and represented in negotiations, litigation, and policy formulation regarding Canadian lumber just as much as the interests of U.S. and Canadian lumber mills are. Sadly, this has not been the case.

NAHB has been opposed to the idea of a negotiated settlement that involves quotas or export taxes for a number of reasons. Lumber agreements like the SLA allow lumber producers in the two countries to restrict supply and raise prices. In addition to raising prices, supply constraints contribute to volatility in lumber prices, which also hurts housing affordability. Ironically, the SLA ultimately imposed little or no penalty on Canadian lumber producers, but very large penalties on U.S. consumers, and in fact transferred billions of dollars from U.S. homebuyers to U.S. and Canadian lumber mills, and even to Canadian provincial governments.

As well as raising prices, the SLA and other quantitative restrictions make the price of lumber more volatile. Price volatility represents substantial risk for home builders, lumber dealers, and other businesses that produce or use lumber. New homes are typically sold for fixed prices before construction begins, and before materials are purchased. Swings in lumber prices can wipe out any expected profit from the sale of a home.

In addition to the possibility that negotiations could result in the imposition of a new quota, export taxes have also been discussed as a way of replacing the duties under a negotiated agreement. NAHB also opposes the institution of such a tax on American consumers. NAHB cannot support a tax that would be levied on U.S. consumers, collected at the border, and given over to Canadian provinces.

Instead of negotiating additional and further trade restraints, NAHB urges the U.S. Administration to adhere to its international obligations under NAFTA and implement those decisions which have invalidated the lumber duties. The U.S. signed NAFTA because of the benefit this agreement provides to consumers and producers alike. The U.S. has committed itself to binding dispute settlement procedures, and agreed to refund illegally collected border taxes under NAFTA. And in cases to date—except for this current lumber dispute—the U.S. has done just that. If we in the U.S. expect our trading partners to abide by their international obligations, we should expect nothing less from ourselves.

NAFTA panels have repeatedly ruled that U.S. lumber producers are not threatened with injury by Canadian lumber imports, reversing the U.S. International Trade Commission (ITC) decision that paved the way for the current duties to be instituted in 2001. Importantly, these decisions have been unanimous—and the five-member NAFTA panel included three Americans named to the panel by the United States Trade Representative (USTR). In another unanimous ruling, the U.S. lost its appeal of this case before a three judge NAFTA Extraordinary Challenge Committee in August of 2005 that included an American judge. This should have resulted in a revocation of the duties and a return of the approximately $5 billion that has been collected to date. Despite this, the duties continue to be collected, and American consumers are paying the price.

NAHB calls on Congress to urge the Bush Administration to adhere to its international agreements under NAFTA and implement decisions that have invalidated these onerous lumber duties.

Conclusion

While housing continues to be one of the leading sectors in our economy, providing strong direct support to both GDP and the job market, the home building industry is also about providing American families with the dream of home ownership, and the safety, satisfaction, and economic security that provides. NAHB and our housing industry allies continue to work with HUD, Congress and others to make this dream as affordable and accessible as possible.

Lumber trade restraints, whether in the form of duties, quotas, or export taxes, only serve to undermine the gains made in housing affordability in this country, especially for those with lower incomes who are affected disproportionately by increases in lumber costs, and those rebuilding after last year's natural disasters.

The current lumber duties and any potential negotiated settlement that would result in quotas or an export tax; do little or nothing to increase the use of U.S. lumber in home construction. Builders use different types of lumber for different purposes in the same home, and the type of lumber used for framing a house is in short supply in the U.S. due to logging and other restrictions. As a result, the home building industry must import a third of the lumber it uses. Ultimately, lumber trade restraints only serve to penalize and tax American consumers since the very product subject to the restraints must be imported since sufficient quantities of suitable substitutes do not exist domestically.

Mr. Chairman, I thank you for holding this hearing to focus the attention of Congress on the impact that these duties, and lumber trade restraints generally, have on housing affordability, and the various lumber consuming industries in the U.S. NAHB will continue to urge the Bush Administration and Congress to adopt and follow free trade policies, and to fully consider the impacts and effects of lumber trade restraints on American consumers.

I thank you again, and would be happy to answer any question you might have.

Senator SMITH. Barry, thank you very much for your testimony. Clearly, the perspective of the homebuilders is one that all three of us value. They're our friends, too.

I guess the point I want to make with a hypothetical is so you'll understand why we also have to fight for timber workers and our mills. Let's say, in Gainesville, Florida—I assume you build a lot of houses.

Mr. RUTENBERG. And we have timber production facilities.

Senator SMITH. And let's assume that one of your competitors is a Canadian who has come down here and started a homebuilding business, which I assume they're entitled to do. Let's assume further that all of the timber they use in their houses, the Canadian Government rebates to them all the cost of that. Would you want us to be concerned about that?

Mr. RUTENBERG. I think that, given the scenario that you painted, the normal person would be concerned. But I'm not sure I agree with your scenario. And I might——

Senator SMITH. It may not be perfect, but I'm just simply trying to make the point that I'm a pea processor. If I got my peas for free, boy, I'd make money. But if my competitor gets them for free, I'm out of business.

Mr. RUTENBERG. The American homebuilding industry is a very fragmented industry. Currently, about 72 percent of our members build ten homes or less; 87 percent of the builders in this country build 25 homes or less. I fall into that category. You're seeing tremendous consolidation going on at this time. I mean, we're seeing nationals become much more aggressive. D.R. Horton now is up to 50,000 homes a year, trying for 100,000 by 2010. That's, like, more than 10 percent of the total national market. We're seeing major

changes in our industry. And we're seeing major changes in industries across this country. It's——

Senator SMITH. I guess my—and I appreciate that. Nothing keeps you up at night quite like vigorous competition. But if there were an element of unfairness in the marketplace you described for homebuilders, I assume you would be very alarmed by that.

Mr. RUTENBERG. We are. And I've been involved in this for—not as long as you have, but I've been involved in this issue since 1994. And I understand that the first tariff was imposed by the First Continental Congress. It was a 5 percent tariff on the import of Canadian lumber. I mean, we've been at this for some period of time.

We read about—I read about—reports from the American Government saying that we have subsidies of our own. I've seen—I have American homebuilders—I have one from Vermont, who's a friend of mine, who says they export logs to a Canadian mill, then it comes in with a tariff on it. We see some of the Provinces that are purely on market-driven basis in the Maritimes, where they're still subject to the quotas. This has become a complicated issue. It needs serious study.

But we still come back to the points of—let me pose a different question to you, if I might—is, we have seen, in the last several years, the import of European lumber, go from seven-tenths of a percent to 5.7 percent in, like, the last 5 years or so. How are the Europeans bringing in structural lumber to the U.S.? I mean, it has to be more expensive to put it on a boat, take it across the ocean, then put it onto a train and take it to a lumberyard that it is——

Senator SMITH. Maybe they're subsidizing.

Mr. RUTENBERG.—to bring it in. And, as far as—I have not heard that allegation yet.

Senator SMITH. I don't know whether that's true. I just—but I know their labor costs are higher than ours.

Mr. RUTENBERG. I think what I'm trying to do is to say two separate things. What I am really, really pleased with is that we're having a chance to say something on behalf of consumers. I want to compliment you for letting us do this.

Senator SMITH. Sure.

Mr. RUTENBERG. It's huge, and it's big, and we've been trying for years. I was invited to the White House Conference in 1995 when the SLA was negotiated, flew in from the West Coast and was told, with my invitation in hand, that I was no longer welcome. So, being welcome to speak here is just great.

Senator SMITH. You are welcome. And I don't mean to be argumentative. But I—and I think there's—there is some good news in all of this. Notwithstanding these duties, we're in a housing boom. And I guess my experience in a free market is, when you have an expanding market, the demand's greater than the supply, that any cost of those duties wouldn't necessarily be passed on to the consumer when it comes time to sell the house. Isn't that a fair——

Mr. RUTENBERG. The duties are passed on, in one form or the other, over time. I mean, in a short term, that may not be true, because when I contract for a house—if you bought a house from me, if I was that lucky, then, a year from now, I would deliver it,

but the price would be your—if, in month three, I got a different tariff, then I would have to eat that.

Senator SMITH. Yes.

Mr. RUTENBERG. May I eat—may I read one or two lines from——

Senator SMITH. Sure.

Mr. RUTENBERG.—*The Wall Street Journal* this morning?

Senator SMITH. Of course.

Mr. RUTENBERG. There's an article on page A2, in the third paragraph, on "KB Home Orders Decline as Housing Could Be Cooling." "'There are signs that consumer demand in the U.S. residential housing at current prices is softening,' Los Angeles-based KB Homes said in its annual report filed with the Securities and Exchange Commission."

This is something—your point is well made about how the boom of the housing industry—and even in this year, where there's a forecast of a decline, it's only still forecast to be the second or third best year in history. But we are still seeing edges of it. I lost a major house 2 months ago, or 3 months ago, that was ready to go in the ground, and it didn't appraise out in the price, because the materials were higher. And it—and I'm not picking on lumber. It was, like, cement and other things, as well. And we are starting to see resistance. And that customer canceled the contract. And we're starting to see this, where we hadn't seen it before, the dynamics in the market. Certainly this is not crying poor, because we're in a great housing market——

Senator SMITH. Yes.

Mr. RUTENBERG.—but we are seeing the dynamics on the edges changing.

Senator SMITH. Well, I think, to your point, I mean, this is a good time for homebuilders, it's a good time for mills in America, but you're—I hope everybody remembers, the factors we're talking about here will really start to hurt in—to consumers and also to millworkers, when this market heads south. And I've never seen a market go north that doesn't eventually come south.

Mr. RUTENBERG. One of the things that was—that would be true. And one of the things that I saw that was really interesting, especially during the SLA, where—and now, when we have the antidumping—the antidumping provisions of the current agreement motivate a Canadian firm to increase their production so they can go at—as high a level as they can, because if they do more, then their cost is coming down. Therefore, they are less likely to have an antidumping penalty on them. We have an agreement in place that encourages the Canadian companies to produce at higher levels. And there are some things that are very unnatural about having quotas and export taxes and stuff, and we get unintended consequences in the market.

I look forward to the solution that you asked for and suggested, where we can take care of the workers in the Northwest and other parts of the millworkers, that we can take care of the American consumers, and we can have something that is perceived as being fair.

Senator SMITH. Well, thank you. You've helped measurably in this hearing.

Senator Snowe?

Senator SNOWE. Thank you, Mr. Chairman.

Just to follow up. But you don't deny that the Canadian Government is subsidizing their softwood lumber.

Mr. RUTENBERG. I'm neither denying it or alleging it. I think that my basic point in being here would be two things. One would be to point out that the consumers are paying, and that we're concerned with affordability, and that we need different species. My first love would be to have more domestic wood from Oregon and Maine coming to my jobsites in Florida. That would be just terrific if we could arrange it, and I would look forward to working with you on trying to do that. I'd rather see the jobs here. I'd rather see it coming from our country. And I'd—and you have the kind of materials that we need.

Senator SMITH. There's a guy next to you that can help you with that order.

Mr. RUTENBERG. Perfect.

[Laughter.]

Senator SNOWE. And we'll find—fix you up with Maine, too.

Let me—well, first—second, on the question of what contributes to rising home prices, how much do you factor in for the lumber prices as a percentage of overall cost in new homes? I mean, how much does that factor in? You say it's an array of items, obviously, that can contribute to the rising cost of homes.

Mr. RUTENBERG. In my typical home, I'm spending—and I'm doing concrete slabs on grade, so I don't have a wood floor structure, and I'm building single stories—I'm spending $30,000, at a minimum, for my framing component. I then have cabinets, and I have interior trim, so my wood component in a house is probably about $45,000. And that's on a house that might be 450. So, it's 10 percent, on my personal home. I do not know the national numbers.

Senator SNOWE. I think—to Mr. Swanson, would you care to address that, as well? I know you've mentioned it in your testimony.

Mr. SWANSON. I would like to address that. The facts are, lumber is not causing housing-cost increase. Lumber accounts for a very small portion of the cost of a home, 2.1 percent, on the average home. And that's falling. It's been as high as 4.5 percent in the last decade. It's just not a problem.

Lumber prices are not unusually high. In nominal terms, about the same level as when I started in the business in 1977. And they were actually lower in 2005 than in 6 of the prior 12 years. It's just not a fact that lumber is part of the problem.

In fact, if you'll look at the net income of the top ten homebuilders in the U.S. in 2004, their profits were $6 billion. And that's an increase, on average, of 43 percent over 2003. So, it's not the high price of lumber that is causing the high price of a home.

And that—and may I also address the issue of species? Every specie of lumber that is produced in Canada is also produced in the U.S. Over 50 percent of lumber produced in the U.S. is exactly the same specie as in Canada. Southern yellow pine is used in framing. It certainly sells. It's a price issue. But it is used.

And as to other competitive and alternative products, more than 90 percent of all the walls in the U.S. are wood.

Senator SNOWE. Thank you. And I appreciate that. And, also, with respect to the border mills that you were referring to about your friend in Vermont, that's one of the areas that we are going to be addressing in that question, because—clearly unfair that—live in the borders, send their materials, and have to come back.

Mr. RUTENBERG. Would you care for any kind of response, or would you like me to be quiet?

[Laughter.]

Senator SNOWE. Well, I'd like to move on to a response to—aren't those facts?

Mr. RUTENBERG. Just two points. I could do it in about 10 seconds.

Senator SNOWE. OK.

Mr. RUTENBERG. OK?

Senator SNOWE. We're ready.

Mr. RUTENBERG. One is, I very much respect the coalition and independent producers, but I would be glad to give you a contract anytime for 2.1 percent, if you could do my framing lumber for that. And the national builders, I think you'll find that a lot of their profits right now are being generated by land development and land sales, because we've gotten a lot of restrictions on where you can build and develop, and they've been able to ride that crest, and they're—if you look at the numbers, the builders with land are making a lot more money than the builders without land.

Senator SNOWE. Well, I guess the bottom line is here, though, we're dealing with a very serious problem that has persisted over the last 2 decades. There is——

Mr. RUTENBERG. Absolutely.

Senator SNOWE.—there is a wrong that needs to be righted, in the final analysis. And the question is how best we can accomplish that and looking for new avenues in negotiating a permanent settlement. To me, I just don't understand why the Canadians would consent to ultimately negotiating this and—so they would have a permanent resolution to this question, rather than having an intractable problem that's persisted over the last 2 decades. And, as I said, I was part of that during the Reagan Administration. I've been here since that time. And we have reached no resolution on the question. I mean, it's ebbed and flowed, and we're at a point now where we really have—hopefully, have another opportunity of some kind to work this out with the new government, but it clearly does require some persistence on the part of our Government.

Mr. Swanson, what do you think's the best approach for our officials, our Government officials, from the USTR and from the Commerce Department? What do you think should be done? Should there be an envoy, as been recommended, for example, to negotiate a permanent settlement, if that's possible and mutually agreeable?

Mr. SWANSON. Well, first and foremost, these agencies need to assess a duty that fully offsets the Canadian subsidies.

Senator SNOWE. Go back up to the 18 or 19 percent, or whatever.

Mr. SWANSON. There is plenty of evidence to suggest that it should be even higher than that. That would be first and foremost. A negotiated solution is the right answer, and we stand ready to continue re-engaging negotiations. We just need to have a level playing field.

All we're asking for is to let the markets decide where the lumber should be produced, not the governments.

Senator SNOWE. Thank you very much.

Thank you, Mr. Chairman.

Senator SMITH. Senator Burns?

Senator BURNS. Thank you very much.

Is there a—countercyclical duty in effect now? Have we ever used it in softwood lumber?

Mr. SWANSON. I'm not——

Senator BURNS.—with Canada?

Mr. SWANSON. I'm not aware of what a countercyclical duty——

Senator BURNS. Well——

Mr. SWANSON.—is, sir.

Senator BURNS. I'll tell you what, we had an agreement with Australia one time in the beef business—OK?—that whenever beef prices were good here, we could allow more of their imports to come in, which sort of had a leveling effect. And then—but if we had an oversupply, why, then that—we'd—they would cut back. That seemed to work out, and that—and we worked that out among—in the beef industry among—and in private parties. That was not worked out as far as the government was concerned. The government had a hand in it, but it was more of an agreement between producers. And has that ever been—has that ever been tried with—and would it work in the softwood lumber business, between here and Canada?

Mr. SWANSON. Yes, I believe it would, in the context of what you're discussing there. What the industry needs is protection on the bottom end of the market, as lumber prices drop and housing—as housing demand drops, because their cost structure is so much lower due to the subsidized effect, they continue to operate at the expense of U.S. mills. And we shut down.

What we're asking for is for a system in place where Canadian lumber companies react to the market the same way that U.S. companies do. In fact, the framework that you have alluded to has been discussed before, in terms of something that might work on the low end of the market.

Senator BURNS. Mr. Rutenberg, is that—does that make sense to you?

Mr. RUTENBERG. There was a—what you would call countercyclical——

Senator BURNS. Uh-huh.

Mr. RUTENBERG.—component to the softwood lumber agreement.

Senator BURNS. Yes.

Mr. RUTENBERG. It was not statistically significant, and it didn't do very well, but there was one in there, if you wanted to go back and look at it, its performance. I think that—and I do not mean to sound like a broken record, but NAHB is really just trying to get back to the market. I think that one of my personal regrets is I've not had a chance to talk to Mr. Swanson outside of being at the table here. And this is not the most conducive to good chats. And we do—I respect what you know. I have some disagreements with your numbers. And I'm not going to try and hash them out here, because it would be nonproductive. And so, I think that our first choice would be not to have that. And I think that, from a per-

sonal viewpoint, I've always wondered of how do you get from a kind of negotiated settlement to a nonnegotiated market and—without having further objections thrown up? I mean, how does that exit ramp really work? And I've never seen it work. And I've never seen a good blueprint for it that couldn't be—we've gotten really good at coming up with new ideas of why we have problems. And so, it would have to be really wrapped tight. And that's why I'm still for just free market.

Senator BURNS. Well, I—it seemed to work at the time, and then they stepped in, and they ceased to do that.

Mr. RUTENBERG. But——

Senator BURNS. Some people claim that duties are responsible for increased lumber and house prices. We've heard it here today. But prices for structural wood panels, oriented strandboard, and plywood have increased more than lumber, even though they are not subject to duties. Do you have any idea how we can reconcile the sharp increases for these Canadian forest products with the fact that there are no duties on them?

Mr. RUTENBERG. The oriented strandboards has gone through quite a bit of volatility. And we have seen as much as a 50 percent drop in oriented strandboard in a 2-week time period, going down. I think one of the things that is true is that you have a lot of consolidation now in that industry. Louisiana Pacific, an American company, has at least 25 percent of that market. You're seeing consolidation where American companies have Canadian mills, and Canadian companies have American mills. It's more consolidated right now than the dimensional lumber, and it needs a different kind of analysis. It's difficult to extrapolate from one product to the other.

Senator BURNS. Well, I'm just wondering, because I'm in the same boat that a lot of us are in the Northwest and on the border. And we know, right now, where the subsidy comes in for Canada, because Canada, on public lands, doesn't charge stumpage. They just assign you, you go out there, and—now, you've got to build the roads, and there's some expense, as far as the logging is concerned, but no—but there is nothing—there is no charge for the stumpage. Where mills here—and "gypos" and companies, alike—pay for stumpage. And so, we know where the—we know where the problem is. It's how do we—how do we deal with that?

All of us like competition and market forces. And I being one of those. But whenever—we've got to—all got to be working out of the same rule book. That's the problem we run into.

Mr. RUTENBERG. And, if I might, NAHB would love to see your—see what's—love to see the cost of the stumpage on our side lowered. You know, we have policy to try and work on the roadless problem in the national forests to try and increase the availability of lumber and to lower the cost of the private lands that already have it.

Senator BURNS. You're preaching to the—you're preaching to the choir now. I know what all those problems are. Every one of them.

Mr. RUTENBERG. And so, I was going to ask—answer the Chairman's question—perhaps—that we'd love to work with whomever is appropriate, and work with a coalition on trying to lower the cost on our side. And that would—that, to me, would be the win-win-

win, if we could do that. And to whatever—we have standing policy on it, and I can pull out the policy book, and I can read it, but I don't want to take up too much of the Committee's time.

Mr. SWANSON. Well, unfortunately, I don't believe the over 10 million timberland owners in the country are looking to see their prices lowered.

Senator SMITH. I think it's important to point out the——

Senator BURNS. That's all I have, Mr. Chairman. And thanks for having this hearing today, because it's an issue. Every time we go into timber country, this is——

Senator SMITH. Issue number one.

Senator BURNS.—this is the number one issue.

Senator SMITH. Maybe the way to get the homebuilders and the timber guys together is to acknowledge that the Canadian Government does not believe they are providing a subsidy. I think we should say that on the record. That is their position, that I've been told by their representatives, that there is no subsidy. But perhaps you ought to be, under NAFTA, able to buy Canadian lumber at that stumpage rate. Would that solve everything, Steve?

Mr. SWANSON. A free and open market in logs would solve the problem.

Senator SMITH. So, I mean, if it's 65 percent reduced, you'd buy it up there, wouldn't you?

Mr. SWANSON. Absolutely.

Senator SMITH. Would—will they allow you to buy it at that rate?

Mr. SWANSON. They will not. You cannot bid on Provincial timber. And, in fact, there are severe restrictions on the export of private timber from Canada. It's ironic that——

Senator SMITH. It's fair to say that they would allow you to, if there were no subsidy.

Mr. SWANSON. Yes, you're probably right.

Senator SMITH. OK.

Mr. SWANSON. It's ironic that Barry talks about the Maine mills and the fact that they're buying—that the border mills in Canada are buying logs from the U.S., taking them to Canada, processing them, sending them back. We can't do that. We have mills on the Montana border that can't go into Canada and buy logs and bring them back.

Senator BURNS. That's right.

Mr. SWANSON. Yet the same mills in Canada come across and buy those same logs from the U.S.

Senator SMITH. We're joined by Senator Pryor, of Arkansas.

STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman. Again, thank you for this hearing.

I have a question, generally, for the panel. I'd love for you to keep your answers just to about a minute, because we only have a short time here. But—I may go ahead and start with you, and just work down—but what would you like to see in any final negotiated agreement between the U.S. and Canada? I would imagine there's a few things that you'd really like to see there. What would those be?

Mr. RUTENBERG. Probably what NAHB would like to see would be not to have quotas or export taxes or artificial constraints. And if we could get free access—what Mr. Swanson was talking about—I mean, when we believe in free trade, we believe in free trade. That isn't like free trade to help us or our consumers; it's free trade. And that's a principle that we have endorsed. And I have limits of what I can say up here without doing some consulting. It's like I'm one of 225,000 members, and I'm on the executive board, but I'm not disillusioned with my authority. And I think I can say that today, and then come back later.

Senator PRYOR. OK, great.

Mr. Swanson?

Mr. SWANSON. A negotiated settlement needs to have components that will level the playing field, that will create a situation where market forces are in effect on both sides of the border, so that when markets decline and demand declines, the Canadian companies shut down at the same rate that U.S. companies shut down at.

Senator PRYOR. OK.

Mr. SWANSON. There are many ways to make that happen.

Senator PRYOR. Right.

Mr. Kluting?

Mr. KLUTING. Senator Pryor, I'd like to see our American woodsworker, sawmill-worker given the same benefit that the worker in Canada gets, a fair chance at a fair job.

Senator PRYOR. OK. That's fair enough. Let me—those are good answers. Thank you for that.

Let me make this observation. Canada has just had an election, and they've changed government recently. Do you think, right now, there's a real chance of the two sides to resume meaningful negotiations, or are we beyond that point?

Mr. Swanson, I'll just pick on you, on that one.

Mr. SWANSON. Well, we are always ready and willing to enter into substantive discussions.

Senator PRYOR. Do you think there's a real chance of that happening with the change on government there, or——

Mr. SWANSON. I think that changing the government should be helpful, and that we are ready to negotiate.

Senator PRYOR. Yes. Do either of you other two have a thought on that, changing the government in Canada? Anybody?

Mr. RUTENBERG. You have the gentleman who's going to be international trade minister, who is international trade minister, was a liberal before he crossed the conservative policy. And he was the previous CEO of Canfor, which is a major Canadian firm. It gives

you some interesting perspective. You have some opportunities anytime you have a fresh table, and I would hope that perhaps our government would allow the consumers to participate in it if there were negotiations so that we could be a—we could be heard, as well, at the negotiating table.

Senator PRYOR. OK. Mr. Kluting—and, by the way, is it Kluting? Am I pronouncing——

Mr. KLUTING. Yes, that's fine, sir.

Senator PRYOR. Mr. Kluting, a moment ago you mentioned the American worker. And I really appreciate your doing that. I want to ask you about trade-adjustment assistance. What do you think Congress should do to fix any problems that you see with trade-adjustment assistance and make it a better program for displaced workers? What can we do to fix it?

Mr. KLUTING. Well, one good example I'll give you, it happened to one of my members there in Dallas. He was halfway through his retraining to be a fire-code inspector for city, county, state, whatever. And he hurt his back. He couldn't attend school. His unemployment stopped the minute he couldn't attend school. Now, he's lived through that part. He got through that part. He got well enough to back to school, but he had to wait a little bit for his—for the part of the class that he missed to open back up. I worked and worked with these schools, seeing if they could juggle stuff, but—anyway, he did get back into his class. His unemployment, the time period of 24 months had run out, so he received no checks again. Financially, he was bankrupt. He was broke. He barely lived through that.

Our economy in Oregon was so bad that when he did finally get certified, the cities and counties were laying off fire-code inspectors. He wound up driving a bus in Salem. It's just—if there were some little things that we could change with NAFTA—if we—the Trade Act—if we could sit down with these people and go over some of these things, it would really help.

Senator PRYOR. OK. Well, that's helpful, and we'll stay in touch.

I have one last question, Mr. Chairman. I know I'm almost out of time here. This is for Mr. Swanson. And I overheard your answer—I believe it was to Senator Snowe, a few moments ago, about—basically, as I understand what you're saying—not to mischaracterize what you said or to put words in your mouth, but, as I understood it, you said that, basically, lumber costs are not driving up building costs. Is that fair?

Mr. SWANSON. That's correct.

Senator PRYOR. And I guess what I don't—I don't know if I agree with you on that, just simply because I would think if you go back 5 years and look at what lumber cost is in—say, for example, a house, the same house now, 5 years later, I would think that lumber costs would be more. I don't know exactly what percentage more. And I think the builder would pass that cost on to the buyer. Is that not right?

Mr. SWANSON. That is incorrect. If you go back 5 years and looked at lumber prices, you'd find them to be at or near the same levels they are today.

Senator PRYOR. OK.

Mr. SWANSON. In fact, lumber prices today, in nominal terms, are very near where they were in 1977, when I first started in the business. Two-by-four standard and better was trading at just at $300 in 1977. Since I've been here for a week, I don't have the latest figures, but it's trading at about 325. And that's in——

Senator PRYOR. OK.

Mr. SWANSON.—that's in nominal terms, not even adjusted for inflation. So, lumber, as a percentage of the cost of a home, is falling, not rising.

Senator PRYOR. Mr. Rutenberg, do you agree with that?

Mr. RUTENBERG. The pricing has a lot of volatility over the last 10–20 years, and I think it depends where you picked your points. I think, in general, we—in my company—and I'm in Florida, so it's a little worse, because we have a lot of hurricane damage around, and you know—that's familiar, close enough to your area. We see—we're getting a inflation push from various building materials. And——

Senator PRYOR. Right. You have——

Mr. RUTENBERG.—framing is one of them.

Senator PRYOR.—you have a supply and demand problem down there, right?

Mr. RUTENBERG. Yes.

Senator PRYOR. You have a ton of demand, right?

Mr. RUTENBERG. We—well, not as much as New Orleans and Mississippi, but——

Senator PRYOR. Right. But you've been through that same thing——

Mr. RUTENBERG. We've been through that, with the hurricanes. And, relatively, the markets have calmed down much better than—Andrew was terrible with that one. And, unfortunately, we have gotten much better at hurricane recovery, and the markets have calmed down after those.

Senator PRYOR. OK.

Thank you, Mr. Chairman, that's all I have.

Senator SMITH. Thanks, Senator Pryor.

And, gentlemen, thank you for helping us today to illuminate this issue. You've added measurably to our understanding and to the Senate record, and we thank you for traveling this long way to be with us.

And, with that, we're adjourned.

[Whereupon, at 3:55 p.m., the hearing was adjourned.]

A P P E N D I X

CONSUMERS FOR WORLD TRADE
February 10, 2006

Hon. Gordon H. Smith
Chairman,
Senate Subcommittee on Trade, Tourism, and Economic Development,
Commerce, Science, and Transportation Committee,
Washington, DC.

RE: ECONOMIC IMPACT ON TRADE DISPUTE CONCERNING CERTAIN SOFTWOOD LUMBER FROM CANADA.

Dear Chairman Smith:

I am writing on behalf of Consumers for World Trade (CWT), to express our views on the issue of the economic impact of the current dispute between the United States and Canada over softwood lumber. By way of background, CWT is a national, non-profit, non-partisan organization, established in 1978 to promote the consumer interest in international trade and to enhance the public's awareness of the benefits of an open, multilateral trading system. CWT is the only consumer group in America whose sole mission is to educate, advocate and mobilize consumers to support trade opening legislation.

American consumers have absorbed almost $5 billion in antidumping and countervailing duties since the United States imposed these border taxes on Canadian softwood lumber imports back in 2001. While it is technically true that border taxes such as these are paid by importers, the sad fact of the matter is that these taxes are passed along to end-user consumers, as well as housing contractors and builders. The bottom line is that the dumping duties of 9.67 percent and countervailing duties of 19.2 percent imposed on Canadian softwood lumber products have increased new home prices by roughly $1,000.

While $1,000 may not seem much in relation to today's high home prices, this extra cost adversely impacts America's lowest income households—those struggling to qualify for a mortgage and make a down-payment on a new home. More to the point, an extra $1,000 in construction supplies seriously impacts those Americans hard-pressed to rebuild their homes in the aftermath of last summer's disastrous hurricanes. Homeowners looking to rebuild along the Gulf Coast already complain of both the high price of construction materials and a chronic scarcity of materials. Antidumping and countervailing duties on Canadian softwood lumber have certainly contributed to this situation.

CWT urges the Committee to recommend the repeal of Canadian softwood lumber antidumping and countervailing duties to help lower income Americans qualify for a mortgage and speed the recovery effort along the Gulf Coast. By repealing these duties, the U.S. will also honor its international obligation to one of its most important trading partners. A recent North American Free Trade panel ruled against the United State's continued antidumping and countervailing duty imposts on Canadian lumber citing inadequate evidence of threat of injury to the U.S. lumber industry. Despite this ruling, our government has insisted on levying these duties against Canadian lumber imports that punishes would-be home buyers and hurricane victims.

If you have any questions about CWT or its views on this issue, please feel free to contact me at (202) 293–2944 ext. 201. Thank you for this opportunity to submit written comments.

Sincerely,

ROBIN LANIER,
Executive Director.

PREPARED STATEMENT OF THE INTERNATIONAL SLEEP PRODUCTS ASSOCIATION

The U.S. mattress industry appreciates the opportunity to provide the following testimony to the Subcommittee regarding the impact of the U.S.-Canada softwood lumber dispute on U.S. mattress producers.

Established in 1915, the International Sleep Products Association is the trade association for mattress manufacturers and their component suppliers. Our members produce mattresses and mattress components in hundreds of manufacturing facilities located in nearly every state in the Union. According to the most recent statistics available from the U.S. Census Bureau, American mattress producers employ nearly 22,000 workers in making a safe product that consumers will find comfortable and affordable. In 2004, U.S. mattress producers shipped over 22 million mattresses and nearly 19 million box-springs, worth a combined $5.6 billion at wholesale.

The U.S. mattress industry uses wood components from Canada to make the internal frame for box-springs. Some of these components—which are known in the industry as "bed-frame components"—are subject to the antidumping and countervailing duties being collected on imports of softwood lumber from Canada. ISPA has been an active participant in the U.S.-Canada lumber dispute for many years, seeking to exempt these products from the lumber duties. ISPA is also a member of the ad hoc alliance of industries known as the American Consumers for Affordable Homes, a l7-member national organization that represents at least 95 percent of the domestic consumption of lumber in the United States.

Experience has shown that only certain types of wood from Canada have the qualities that mattress producers need to make box-springs. We require durable, narrow and thin components that can be easily stapled without splintering. The components we require must not warp, break, or squeak over the 10–20+ year useful life of our mattresses. We also need components that are safe for our workers to handle and staple.

We have found that only Canadian softwood species have the small knots, fine grain structure and light weight that satisfy these requirements. U.S. softwood species—with their coarser grain and larger knots—tend to splinter much more often during assembly and will warp or break more easily once the assembled box-spring is sold to consumers. The knots also can pose a safety hazard when workers accidentally hit them with a nail or staple gun when assembling the components into box-spring frames. In addition, U.S.-sourced softwood tends to be relatively heavier than Canadian softwood, making it more difficult to handle, thereby increasing the risk of back and other workplace injuries.

The wooden components we use are fully sawn, cut to length, dried and finished in Canada. They have a nominal thickness of 1 inch and range in length from 24 to 83 inches. By comparison, a 2×4 stud is usually 8 feet (96 inches) or more in length. As such, bed-frame components are entirely too thin, too narrow and too short to be used as substitutes for construction lumber.

When this case first began over four years ago, the mattress industry fought hard to exempt wooden bed-frame components from the softwood lumber dispute. In doing so, we emphasized the obvious dimensional differences between bed-frame components and building lumber, and the fact that U.S. wood is not a viable substitute for Canadian wood, the two products are not interchangeable and the products are sold through different channels of trade. We also offered to mark the products and accompanying invoices to reflect the fact that our products could be used only to make box-springs.

In response, the Commerce Department exempted from the duties those wooden bed-frame components that have radius-cut corners, which are used for the perimeter of the box-spring structure. Components with radius-cut corners account for approximately 40 percent of the wooden parts that mattress producers need to make a box-spring.

The Department also waived the lumber duties on the other bed-frame components if all of the components required to make a single box-spring were packaged and imported together as component "kit." But this waiver has proven to be commercially impractical. The cost of packing and shipping the wooden components required for individual box-springs outweighs the duties that could be saved under the kits exemption. Since U.S. softwood lumber cannot be used by the mattress industry, U.S. mattress producers have no alternative but to increase their costs by pay-

ing the tariff. This is a wasteful practice that hinders mattress producers' global competitiveness, while providing absolutely no benefit to U.S. lumber mills.

The mattress trade has recently endured a number of significant price increases as a result of strong global demand for steel and disruptions to the polyurethane foam market caused by the Gulf hurricanes this past year. We are fighting hard to remain competitive, but the tariffs we pay on our imports of wooden bed-frame components hurt. Our foreign competitors are not subject to these lumber duties. As a consequence, the duties threaten our existence and have the effect of exporting our business and jobs overseas.

The mattress industry urges the Bush Administration to abide by the rulings of various NAFTA bodies that have invalidated the lumber duties. We ask that the Commerce Department immediately cease collection of these duties on future entries of softwood lumber from Canada and that all duties posted to date be refunded.

At a minimum, we also request that all bed-frame components be exempted from the current duties, regardless of whether they are imported in the form of individually packaged kits or in bulk.

PREPARED STATEMENT OF AMERICAN CONSUMERS FOR AFFORDABLE HOMES

Participants of American Consumers for Affordable Homes

American Homeowners Grassroots Alliance
C.J. Hodder Lumber Company
Catamount Pellet Fuel Corporation
CHEP
Consumers for World Trade
Free Trade Lumber Council
Furniture Retailers of America
Home Depot
International Sleep Products Association
Manufactured Housing Association for Regulatory Reform
Manufactured Housing Institute
National Association of Home Builders
National Black Chamber of Commerce
National Lumber and Building Material Dealers Association
National Retail Federation
Retail Industry Leaders Association
United States Hispanic Contractors Association

On behalf of the American Consumers for Affordable Homes, we are pleased to submit the following statement for the hearing record. The American Consumers for Affordable Homes (ACAH) is an ad hoc group of 17 national organizations, that represents U.S. consumers in every congressional district and state throughout the country. A roster of organizations may be found on the cover of our statement. The mission of ACAH is to support trade policies that enhance affordable housing.

ACAH believes that there should be free trade in Softwood Lumber between the U.S. and Canada. We have learned that any level of trade restraint on lumber harms U.S. consumers and the national economy.

We applaud the Administration for attempting to reach a long-term durable solution for lumber trade between the U.S. and Canada and are pleased that the Countervailing Duty and Subsidy Offset Act ("Byrd Amendment") is being terminated. We are concerned, however, that duties continue to be collected (and paid by U.S. lumber consumers) in spite of recent binding decisions by the North American Free Trade Agreement Extraordinary Challenge Committee (NAFTA, ECC), which ruled *unanimously* that U.S. imposed duties are illegal and that duty deposits should be returned. The ECC decision is the last option under the NAFTA dispute settlement agreement and comes after repeated losses by the U.S. Commerce Department and the International Trade Commission in NAFTA panels.

U.S. consumers and lumber-dependent industries have continued to experience the harmful effect of these trade restrictions since 2001, and under the prior lumber duties involving quota and restraints of nearly two decades. The decisions on lumber tariffs have resulted in increased price volatility in the market and add more than $1,000 to the price of a new home. Based on U.S. Census data, this amount excludes as many as 300,000 U.S. households from mortgage eligibility.

ACAH opposes implementing tariffs and other potentially restrictive border measures such as quotas or taxes because they cause artificial price increases and volatile swings in the lumber market, which hurts housing affordability and U.S. pur-

chasers of lumber. These types of actions are simply a Federally imposed tax on consumers and housing. This is particularly acute in light of the need to rebuild in the Gulf region of the country as a result of Hurricanes Katrina and Rita.

We urge you and your colleagues on the Senate Commerce Committee to protect the interests of U.S. consumers and lumber-dependent industries that employ approximately 8 million workers by requesting that the Administration comply with NAFTA rulings now, and that the Administration find a long-term solution that does not harm U.S. lumber consumers and affordable housing. Moreover, it is imperative that the Administration exclude any provision that would impose a tax, quota, or other government-mandated cost increase on U.S. consumers in any future negotiations with Canada. The Committee should make clear to the Administration that U.S. consumers must not be treated worse than Canadian or U.S. lumber corporate interests in any negotiations.

Mr. Chairman, we thank you for this opportunity to submit a statement for your hearing record.

PREPARED STATEMENT OF THE RETAIL INDUSTRY LEADERS ASSOCIATION

The Retail Industry Leaders Association (RILA) welcomes the opportunity to submit written comments for the record on the economic impacts of the Canadian softwood lumber dispute on U.S. industries. RILA strongly believes that there should be an end to the current antidumping and counterveiling duty cases against imports of Canadian softwood lumber to make policy consistent with decisions at both the World Trade Organization and the North American Free Trade Agreement dispute panel.

The Retail Industry Leaders Association (RILA) is a trade association of the largest and fastest growing companies in the retail industry. Its member companies include over 400 retailers, product manufacturers, and service suppliers, which together account for over $1.4 trillion in annual sales. RILA members operate over 100,000 stores, manufacturing facilities and distribution centers, have facilities in all 50 states, and provide millions of jobs domestically and worldwide.

RILA is also a member of the Alliance of American Consumers for Affordable Homes (ACAH). ACAH is an ad-hoc alliance of 17 national organizations that represent more than 95 percent of U.S. domestic lumber consumption.

RILA's membership includes some of the country's largest home centers and lumber dealers. These companies purchase lumber from both imported and domestic suppliers, and is purchased based on a number of factors including price and consumer preference. Canadian softwood lumber, specifically Spruce Pine Fur, is significantly different in many respects from the southern yellow pine produced in the United States. Southern yellow pine warps and is not considered acceptable as a material for house framing. Canadian softwood lumber is far more preferable for home framing, while southern yellow pine is preferred for other uses in the same new houses including decks. Due to domestic timber harvesting restrictions, Spruce Pine Fur cannot be sourced in the United States to meet the demand of U.S. consumers.

The current antidumping and counterveiling duty cases have created marketplace volatility for the Canadian product resulting in an average increase of $1,000 in costs for every new home. The Census Bureau estimates that an increase in construction costs of this magnitude denies home ownership to as many as 300,000 low- and moderate-income American families.

As mentioned earlier, the North American Free Trade Agreement Extraordinary Challenge Committee (ECC) ruled *unanimously* on August 10, 2005, that the antidumping and counterveiling duty orders are illegal, should never have been imposed and that the duty deposits should be returned. The ECC decision is the last option under the NAFTA dispute settlement agreement and comes after repeated losses by the U.S. Commerce Department and the International Trade Commission in NAFTA panels. RILA urges the Administration to comply with these rulings and to end the current duties.

In addition to the ongoing cases, the United States continues to attempt to negotiate another "solution" to the alleged problem. If the United States and Canada want to have discussions over Canadian lumber policy, we have no objections. But, when every suggested "solution" includes a quota or an export tax on softwood lumber RILA has very strong objections. Any further discussion of lumber trade must include lumber consuming industries. While the legal proceedings do not give U.S. lumber consumers the same standing as domestic producers, the private conversations and consultations between governments must include the critical part of the industry, the lumber importers and consumers.

RILA urges the U.S. government to find a long-term solution to the lumber dispute that does not force U.S.-based lumber consumers to bear the cost of protectionism. If RILA can be of any assistance in ensuring a decisive vote against this damaging resolution, please contact Jonathan Gold, Vice President, Global Supply Chain Policy.

THE HOME DEPOT
FEBRUARY 10, 2006

Hon. Gordon H. Smith
Chairman,
Senate Subcommittee on Trade, Tourism, and Economic Development,
Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Chairman Smith:

Let me begin by commending you, Mr. Chairman, for holding this hearing on the very important issue of determining the economic impacts of the Canadian softwood lumber dispute on U.S. industries.

The dream of home ownership is alive and well in our Nation today. Over 340,000 Home Depot associates work hard everyday to ensure homeowners and future homeowners are provided the most innovative goods and best services available at reasonable prices so they can achieve that dream.

Higher costs have an impact. Any efforts to increase costs, specifically lumber costs, price many Americans out of the housing market. On the other hand, removing the tariffs on imported Canadian lumber would have a very positive impact on the housing market.

Home Depot selects the species of lumber that it carries in accordance with our customers' preferences and the requirements of the local building codes where our stores are located. For example, there is a strong preference for square edge spruce throughout most of the country. Southern yellow pine (SYP) is preferred for some applications, such as strength and support purposes—joists and trusses—and applications requiring treated lumber—such as posts, decking, railing, fencing and pickets. For those applications, customers buy almost exclusively SYP, with virtually no competition from Canadian species.

Spruce, pine and fir grown in the northern United States and Canada is used in completely different applications than domestic SYP. For interior and exterior framing applications, consumers prefer Spruce products. Spruce is the preferred species for framing because it is less susceptible to warping and twisting than SYP. It's also lighter and easier to work with and takes a nail better while still possessing the appropriate structural framing values. Spruce is also simply more attractive in appearance—a very important consideration for do-it-yourselfers.

As you can see, sales of Canadian lumber are not displacing sales of domestic lumber because the two types of lumber meet different needs. There is plenty of wood in the open market today. However, there is not plenty of our wood—the quality and species we need on a consistent basis. We require a steady stream of Canadian wood to provide that quality and consistent supply. When purchasing lumber we enter into long-term contacts and vendor managed inventory programs with leading suppliers to help protect endangered forests and to ensure that there will be timber for future generations.

The Home Depot first issued its Wood Purchasing Policy in 1999. At that time, the company pledged to give preference to wood that comes from forests managed in a responsible way and to eliminate wood purchases from endangered regions of the world.

Today, we sell less than 1 percent of all the wood cut worldwide with 94 percent of our wood products that we purchase being harvested from North American forests. The United States alone has gained 10 million acres of forest land since 1990. Also, less than 0.15 percent of our total wood comes from areas around the Brazilian Amazon Basin. In regions like these, we have partnered with environmental groups, governments and industry to educate and motivate the local communities to promote sustainable timber harvest.

Mr. Chairman, thank you for taking into account our view on this critically important issue.

Sincerely,

KENT KNUTSON,
Vice President, Government Relations.

PREPARED STATEMENT OF GENERATED TECHNOLOGIES (USA), LLC

On behalf of GENERATED TECHNOLOGIES (USA), LLC, (GENTEK), we are pleased to submit the following statement for the hearing record. The GENTEK group of four companies represents over 50 people who are engaged in the Canadian lumber trade and distribution in the U.S. The direction and primary mission of GENTEK is to support trade policies that enhance affordable housing.

GENTEK believes that there should be free trade in Softwood Lumber between the U.S. and Canada. We have learned that any level of trade restraint on lumber harms this company, U.S. consumers and the national economy.

We applaud the Administration for attempting to reach a long-term durable solution for lumber trade between the U.S. and Canada and are pleased that the Countervailing Duty and Subsidy Offset Act (Byrd Amendment) is being terminated. We are concerned, however, that tariffs continue to be collected (and paid by U.S. lumber consumers) in spite of recent binding decisions by the North American Free Trade Agreement Extraordinary Challenge Committee (NAFTA, ECC), which ruled *unanimously* that U.S. imposed duties are illegal and that duty deposits should be returned. The ECC decision is the last option under the NAFTA dispute settlement agreement and comes after repeated losses by the U.S. Commerce Department and the International Trade Commission in NAFTA panels.

U.S. consumers and lumber-dependent industries have continued to experience the harmful effect of these trade restrictions since 2001, and under the prior lumber duties, quota and restraints of *nearly two decades.* The decisions on lumber tariffs have resulted in increased price volatility in the market and add more than $1,000 to the price of a new home. Based on U.S. Census data, this amount excludes as many as 300,000 U.S. households from mortgage eligibility.

GENTEK opposes implementing tariffs and other potentially restrictive border measures such as quotas or taxes because they cause artificial price increases and volatile swings in the lumber market, which hurts housing affordability and U.S. purchasers of lumber. These types of actions are simply a Federally imposed tax on consumers and housing. This is particularly acute in light of the need to rebuild in the Gulf region of the country as a result of Hurricanes Katrina and Rita.

We urge you and your colleagues on the Senate Commerce Committee to protect the interests of U.S. consumers and lumber-dependent industries that employ approximately 5 million workers by requesting that the Administration comply with NAFTA rulings now, and that the Administration find a long-term solution that does not harm U.S. lumber consumers and affordable housing. Moreover, it is imperative that the Administration exclude any provision that would impose a tax, quota, or other government—mandated cost increase on U.S. consumers in any future negotiations with Canada. The Committee should make clear to the Administration that U.S. consumers must not be treated worse than Canadian or U.S. lumber corporate interests in any negotiations.

Our group of companies has already experienced business and job losses in Southern California and the closing of an Ocean Terminal that handled Canadian Lumber for the U.S. market for over 47 years.

Mr. Chairman, we thank you for this opportunity to submit a statement for your hearing record.

PREPARED STATEMENT OF THE AMERICAN HOMEOWNERS GRASSROOTS ALLIANCE (AHGA)

The American Homeowners Grassroots Alliance (AHGA), which serves the Nation's 75 million homeowners, applauds the Senate Commerce Committee for holding this hearing on softwood lumber trade with Canada. AHGA supports free trade and opposes tariffs and other restrictions that raise the price of homes and products used by homeowners and other consumers. A free trade policy is in the best long-term interest of the U.S. and other countries, and results in the greatest benefit to homeowners and other consumers in all countries. The fast changing world economy and expanding trade between nations will continue to shift competitive advantages from industry sectors in one country to those in another. The appropriate solution to the inevitable challenges of worker displacement and corporate profitability challenges that result is the extension of unemployment benefits and an expansion of trade adjustment assistance. AHGA supports strengthening trade adjustment assist-

ance programs; in particular by expanding funding for worker retraining so displaced workers can qualify for employment in growing industries.

AHGA is disappointed by the support of the U.S. Commerce Department for tariffs on softwood lumber from Canada that would impose an indirect tax averaging $1,000 on many new homes built in the U.S. and would substantially increase the cost of home additions and other remodeling projects. A current tax of approximately 10 percent is imposed on Canadian softwood lumber, a primary building component of new homes. These tariffs make homes less unaffordable, especially to the most vulnerable first time buyers who account for a substantial portion of the Nation's annual 1.6 million new home sales. The tax would price almost 300,000 families out of the market and would make home additions and other remodeling projects unaffordable for many more homeowners. It will add substantially to taxpayer contributions to the cost of rebuilding homes destroyed by Hurricane Katrina.

AHGA strongly opposes the tariffs. Those most affected will be first time new home homebuyers and those who would otherwise barely qualify for home ownership. Their purchases will be delayed until their earnings increase. In the meantime they will lose the opportunity to build equity in a home they could have owned. A recent trend toward increases in mortgage interest rates will also keep home ownership out of reach for many of them. While others will still be able to buy a home, many of them will be paying interest for 30 years on the $1,000 home price increase resulting from the tariff. The increase in cost for lumber in home additions and other remodeling projects would also increase substantially, and many of the Nation's 75 million homeowners would pay the price.

AHGA is opposed to the implementation of tariffs and other restrictive border measures because they deny the dream of home ownership to millions of Americans and because they will prolong the current recession. From an employment standpoint the tariffs could also contribute to layoffs in the construction industry and its suppliers. We urge Members of the Committee to ask the Administration to protect U.S. consumers and ask Ambassador Portman not to include, in any agreements with Canada, any provision that would impose a lumber-related tax, quota, or other government-mandated cost increase on U.S. consumers.

We urge Members of the Committee to resist pressure from large U.S. timber companies that support the lumber tariffs. Those companies currently receive large subsidies from the U.S. Government. While AHGA is sympathetic to potential job losses in that sector, the tariffs would only shift job losses to the home building and supply sector. They would also deny home ownership to many more Americans, raise ownership costs to many others, and undermine principals of free trade that benefit homeowners and other consumers.

The American Homeowners Grassroots Alliance (AHGA) is a national bipartisan advocacy organization representing the Nation's 75 million homeowners. AHGA believes that policies that encourage and protect home ownership are in our national best interest. Those policies encourage and sustain the maintenance of a strong and broad middle class, build a sense of community and responsibility, and facilitate investment in homes, which are the largest, most universal savings/equity-building vehicle for most Americans. AHGA's positions and more information about the organization are available at AmericanHomeowners.org. The American Homeowners Foundation's section of the website also contains free educational materials to help homeowners and future homeowners buy, sell, remodel, and finance their homes.

PREPARED STATEMENT OF THE NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION (NLBMDA)

The National Lumber and Building Material Dealers Association (NLBMDA), voice of America's building suppliers, is pleased to provide the following comments to the Subcommittee regarding the harmful impact of the current trade restrictions on Canadian softwood lumber to America's building supply industry.

NLBMDA represents 8,000 retail building material suppliers from every state in the U.S., who collectively employ over 500,000 workers. Our members supply nearly all the materials used in home construction and remodeling and primarily serve professional contractors. In 2004, retail building material suppliers combined for $300.5 billion in sales, representing steady growth since 2001. NLBMDA's membership collectively is the largest seller of both Canadian SPF and domestic SYP lumber in the U.S. As suppliers of the home building industry, our members have helped drive the industry sector that led our Nation's economic recovery. From 2001 through 2004, the home building sector was responsible for two of every five new jobs created. Only the oil industry has created more profit growth than the home building sector in the past 5 years. With interest rates now rising and economists predicting a slow-

down in home building activity, NLBMDA has renewed strong concerns about government intervention in the softwood lumber market.

For over two decades, building material suppliers have dealt with restrictions or import tariffs on softwood lumber from Canada. Due to limited access to domestic forests, the U.S. is unable to produce sufficient lumber domestically to meet the demands of our building industry. Over the past several years, we have had to import as much as 34 percent of the lumber needed for home building from Canada. The species of lumber imported from Canada, Spruce-Pine-Fir (SPF) differs substantially from the predominant domestic species, southern yellow pine (SYP), and the two are used for different applications in home building. SPF lumber is typically preferred for framing, while SYP is more often treated and used for decking, for example. Our members must have access to the quantities of *both* species of lumber demanded by their customers. If Canadian lumber continues to be artificially higher priced, or new trade restraints should further restrict the availability of SPF lumber, our members will have no choice but to look to other countries to meet the gap between domestic supply and demand.

Government intervention into the softwood lumber market has created tremendous volatility that threatens the ability of building material suppliers to compete and survive in today's market. The typical building supplier is a small, family-owned business with 40 employees and a profit margin of approximately three percent. Lumber represents roughly 45 percent of sales. Our members' customers need and demand pricing predictability in order to sell houses profitably, as the framing lumber package is the single biggest expense, after land, in building a house. Often, building material suppliers must extend price protection three to six months or longer in order to retain their customers. Trade restraints, whether by quotas or import taxes, create volatility that is impossible to predict and plan for. Building suppliers are accustomed to purchasing inventory according to seasonal market conditions or even anticipated shortages, such as those typical in hurricane season. Volatility introduced by government interventions, on the other hand, is impossible to predict with any degree of certainty. We have seen, in the past four years during which tariffs have been as high as 27 percent on Canadian softwood lumber, price fluctuations of 10 to 15 percent or more within a single week. Often these spikes followed rumors of a negotiated settlement, or another NAFTA or WTO ruling in the myriad of litigation filed in this dispute.

A small business with a modest profit margin is not able to absorb these dramatic price fluctuations, and our members are often forced to pass on at least a portion of the tariff to their customers, which are ultimately passed on to American consumers. The resulting increase in the price of a new home also has the disturbing result of pricing hundreds of thousands of would-be first-time homebuyers out of mortgage eligibility. In effect, the current softwood lumber tariffs are ultimately nothing more than a tax on American home ownership.

The issue is even more troubling in light of the massive rebuilding effort underway in the Gulf Coast. A steady supply of lumber will be required to rebuild the estimated 275,000 homes destroyed by last fall's devastating hurricanes. The U.S. recently negotiated an end to tariffs on Mexican cement to address this rebuilding need; we firmly believe that removing tariffs on Canadian softwood lumber should be the next step.

NLBMDA is highly concerned that duties continue to be collected despite a binding decision last August by the Extraordinary Challenge Committee (ECC) under the North American Free Trade Agreement (NAFTA) that found unanimously that the U.S. duties on Canadian softwood lumber are illegal. It is our understanding that NAFTA requires improperly collected duties to be returned following such a ruling, and we are troubled that American consumers continue to pay despite this decision. The U.S. has lost numerous others appeals before NAFTA panels in this case and yet to date has failed to implement the rulings and rescind the tariffs.

NLBMDA is a founding member of the American Consumers for Affordable Homes (ACAH), a 17-member coalition that represents approximately 95 percent of domestic lumber consumption. We have worked with over 100 members of Congress, from both sides of the aisle, to highlight the negative impact of this dispute on American consumers and urge the Administration to take into account the impact of trade restraints on lumber consuming industries, who collectively employ more than five million American workers.

NLBMDA respectfully calls on the Subcommittee to emphasize to the Department of Commerce and the Administration that American users of softwood lumber should not continue to bear the high costs of this trade dispute.

We thank Chairman Smith and the Subcommittee for the opportunity to submit these comments for the hearing record, and are available to answer any questions as needed.

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