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OVERSIGHT OF THE UNITED STATES-CANADA FREE TRADE AGREEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

April 7, 1989

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OVERSIGHT OF THE UNITED STATES-CANADA FREE TRADE AGREEMENT

FRIDAY, APRIL 7, 1989

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:30 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Also present: Senators Moynihan, Baucus, Daschle, Packwood, Danforth, Chafee and Symms.

[The press release announcing the hearing follows:]

[Press Release No. H-8, February 7, 1989]

FINANCE SUBCOMMITTEE ON TRADE TO HOLD HEARINGS ON BILATERAL TRADE AGREEMENTS AND OVERSIGHT OF THE U.S.-CANADA FTA

Washington, D.C.—Senator Max Baucus (D., Montana), Chairman, announced today the Subcommittee on International Trade will hold a hearing to examine the possibility of future bilateral trade agreements. The hearing will examine the relationship between bilateral trade agreements and the General Agreement on Tariffs and Trade, and the potential for bilateral arrangements to address U.S. trade problems.

Senator Baucus said, "The U.S.-Canada Free Trade Agreement (FTA) demonstrates that we can conclude bilateral trade agreements with our most important trading partners. With the prospects for meaningful progress in the GATT Round uncertain, we must take a hard look at our alternatives."

The hearing is scheduled for *Monday, March 13, 1989 at 9:30 a.m.* in room SD-215 of the Dirksen Senate Office Building.

A second subcommittee hearing, to be held on *Friday, April 7, 1989, at 9:30 a.m.* in the same room, will examine ongoing trade disputes between the U.S. and Canada. These disputes include the memorandum of understanding on Softwood Lumber, the dispute over plywood standards, and the disputes over Canadian subsidies to natural resource based industries. The potential for the U.S.-Canada FTA to address these problems through dispute settlement procedures and ongoing negotiations will be discussed.

Senator Baucus said, "The U.S.-Canada FTA has ushered in a new era in U.S.-Canada trade relations. But many ongoing trade disputes must still be addressed."

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN OF THE SUBCOMMITTEE

Senator BAUCUS. The hearing will come to order. Many members of this committee took justifiable pride in implementing legislation for the United States-Canadian Free Trade Agreement, more commonly known as the FTA.

The United States-Canada bilateral trade relationship is one of the most important in the world. More than $160 billion worth of

goods are traded between the United States and Canada every year and the United States trades more with the province of Ontario than it does with the entire nation of Japan.

And although the FTA had its weaknesses, it generally strengthened the bilateral trade relationship between our two countries. The FTA eliminated, for example, tariffs over the next ten years and eliminated a variety of trade barriers. But it was only the first step.

As the witnesses at today's hearing will make clear, there is more to be done. We must continue to work for limits on subsidies and settle a number of outstanding disputes. And, unfortunately, it will not all be smooth sailing.

I am particularly concerned over Canadian efforts to scrap the softwood lumber Memorandum of Understanding, known as the MOU. The MOU was concluded on December 30, 1986, just two years ago. It obligates Canada to impose a 15 percent export tax on the shipments of Canadian lumber to the United States. In return, the U.S. suspended a 15 percent countervailing duty it had imposed on the Canadian lumber exports to offset the Canadian subsidies.

Since the original agreement, the Province of British Columbia agreed to eliminate most of the subsidies in return for being exempted from the export tax. And also subsequently the MOU was specifically grandfathered into the FTA.

The softwood lumber MOU was strongly supported by a number of members of this committee, including Senator Packwood, Senator Symms, Senator Pryor and myself. And the agreement to end Canadian subsidies has been an overwhelming success. It has offset Canadian subsidies and put the United States and the Canadian lumber industries on an equal footing. Sixty thousand new jobs have been created in the United States lumber industry. And with the subsidized competition gone, the lumber business has become more profitable.

Unfortunately, since the very day it was concluded, there has been some grousing about the MOU in Canada. Last year British Columbia was not fully enforcing the MOU and the problem was eventually resolved through consultations.

But even more serious problems have arisen. The Canadian government is apparently under great political pressure from industries in Canada to scrap the MOU. The Canadian Forest Minister, Mr. David Oberle, has stated that finding the way to cancel the MOU is one of his top priorities. And on a recent visit to the United States, the Canadian Trade Minister, John Crosbie, reported raised the subject of abandoning the MOU with our USTR, Carla Hills. She quite properly refused.

But if the MOU is ever opened for a renegotiation, the topic should be improving enforcement of provisions of that MOU. If Canada unilaterally moves to abandon the MOU, I will ask the Administration to use its authority under Section 301 to immediately retaliate against Canada. Canada has made an agreement and should be willing to live up to it.

A second serious allegation that will be raised by today's witnesses includes customs fraud related to the MOU. The allegation involves lumber from Alberta and Ontario, being shipped to the United States through British Columbia to avoid paying the export

tax. I have been told that this fraud may involve millions of dollars in lumber ships.

I have already asked the U.S. Customs Service to investigate these claims and prosecute any violations to the full extent of the law. This kind of cheating undermines the MOU and depresses the U.S. lumber market with subsidized lumber. It cannot be tolerated.

The FTA does not grant Canada a license to subsidize and it does not grant Canada a license to ignore the MOU. The United States and Canada are friends. Our political and our trade relationship is generally quite strong, though we do have some problems which should not be swept under the rug because in the end, that would only make problems worse.

It is important that both countries uphold the provisions and the spirit of the Free Trade Agreement, including the Memorandum of Understanding.

I would like now to turn to our ranking member of the committee, Senator Packwood.

OPENING STATEMENT OF THE HON. BOB PACKWOOD, A U.S. SENATOR FROM OREGON

Senator PACKWOOD. Thank you, Mr. Chairman.

Let me follow on with what the Chairman said. I was a part of the 1986 Memorandum of Understanding Agreement. Both the United States and Canada understood what we meant in 1986. What we meant is that we were going to compete on an equal footing. Their lumber mills were going to pay roughly the same for timber that our lumber mills paid and we would compete with each other in each other's markets, if we chose, on that basis of equality.

And this committee and this Congress is not going to tolerate any efforts to end run the agreement by attempting to ship timber through British Columbia from other Provinces. Two, on plywood in the Canadian Free Trade Agreement, it was a very clear intent as to what we meant when we signed the agreement. The tariffs on plywood would not come off until Canada and the United States had a common standard for plywood.

At the moment, Canada has a different standard. It claims that our plywood will not stand up in Canadian winters. Now this is the same plywood we are using in the Alaska pipeline; it clearly stands up in Alaska winters. And we think that the Canadian standard was intended to keep the Canadian plywood market safe for Canadian plywood and keep out American imports.

So in the Canadian Free Trade Agreement we simply said that the tariffs that now exist on plywood—and there are tariffs on plywood coming in from Canada to the United States and tariffs on plywood going in to Canada from the United States, those tariffs would stay in effect until a common standard was agreed upon, so that American and Canadian plywood would meet the same standards and could be sold in either country.

As far as I am concerned, until that agreement is met, the tariffs will not come off and we will continue the present situation.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Following our early bird rule, the next Senator to arrive was Senator Symms.

OPENING STATEMENT OF HON. STEVEN D. SYMMS, A U.S. SENATOR FROM IDAHO

Senator SYMMS. Thank you very much, Mr. Chairman. I'll be very brief.

Mr. Chairman, you made many remarks that I agree with, as did Senator Packwood. I, was very much involved in this issue, and I was also in a very hotly contested re-election effort where we involved President Reagan in order to obtain a commitment from the Administration that this Memorandum of Understanding would be lived up to. I withheld my support from the Canadian Free Trade Agreement until that was accomplished.

Mr. Chairman, I want to add my support to the statements made by yourself and Senator Packwood, because the problem is, you know, a Canadian problem. The Canadian Revenue Department must solve it. It is a simple matter of fairness as to whether or not this is going to be a successful agreement between our two countries. I believe it is unfair to British Columbia and the Maritime Provinces for softwood lumber from Alberta and other Provinces to be smuggled into the United States without paying appropriate taxes. It is unfair to us, and it is unfair to them. We need to send a concise message to our friends north of the border. This must be corrected immediately in order that the Free Trade Agreement will be the success that many of us want it to be.

Mr. Chairman, I would ask unanimous consent that the remainder of my remarks be put in the record as though stated. I thank you very much for the opportunity to speak at this hearing and hope that a solution is reached soon.

Senator BAUCUS. Without objection, your statement will be included.

[The prepared statement of Senator Symms appears in the appendix.]

Senator BAUCUS. Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman.

I think we had better put this thing in perspective. The Canadian Free Trade Agreement went into effect in January. As I understand, that this hearing today is an oversight over the whole agreement and I did not realize—certainly the material that I got did not show—it was necessarily going to concentrate on the Memorandum of Understanding dealing with plywood or whatever it is. Let us remember that Canada and the U.S. are the largest trading partners in the world.

And out of all this agreement, I am sure we can find this or that that has gone wrong and I am sure the Canadians can find it likewise. I think we have to enter this agreement. We invented it. Thank goodness. I am all for it. I think we all supported it here. We must remember that it has barely gone into effect. There are mechanisms in the agreement to resolve the disputes.

We look forward to hearing from Mr. Bolten in connection to how the Administration is approaching that. But I just hope we keep our rhetoric down a little bit here on these subjects and try to reach an amicable conclusion, realizing again, as I said, the thing has barely gone into effect.

When you have in effect such a very radical agreement as this is, I do not think that we have—the world has—seen anything like this before. There are obviously going to be contentious points. The way to resolve them is with good will and a recognition that problems are going to arise and that they can be settled in the spirit that the whole agreement was entered into. Nobody pushed us into this. We went into it because we wanted it. We felt it was good for the U.S. and the Canadians felt it was good for Canada. I think it is good for both parties.

So I look forward to the discussion and the testimony by the witnesses, but I hope everybody on the committee will not have hardened hearts.

Senator SYMMS. We are a kinder and gentler Nation.

Senator CHAFEE. Yes. We are a kinder, gentler Nation. [Laughter.]

[The prepared statement of Senator Chafee appears in the appendix.]

Senator BAUCUS. Senator Danforth.

OPENING STATEMENT OF HON. JOHN D. DANFORTH, A U.S. SENATOR FROM MISSOURI

Senator DANFORTH. Mr. Chairman, thank you for scheduling the hearing. I regret that I have a conflict which I cannot avoid in the Commerce Committee, but I am happy to be here to make just one point.

I am sorry I will not be able to ask the question of Mr. Bolten and the rest of the witnesses. So I want to ask it now in the hopes that somebody will address it.

One of the biggest problems that I perceived with the U.S.-Canada Free Trade Agreement was that it represented essentially a step backward in our fight against Canadian subsidies. It abandoned the judicial review process under U.S. law in favor of bi-national panels. I was very wary about that and the effect that it might have on U.S. industries that had been seriously affected by a really pervasive system of Canadian subsidies.

For example, the lead industry is very important in our State. Other people have different interests, but in our State it is lead. We account for more than 90 percent of the primary lead production in the United States.

In any event, part of the deal was to set up these bi-national panels. But part of the tradeoff for that was the establishment of a working group that would try to deal with the problem of subsidies and create greater disciplines for the future. Now I want to know what is being done on this issue.

Senator Chafee said, well, we can bide our time. I do not agree with that. I just do not agree with that. I see in this the typical approach of making an agreement, feeling euphoric about it, believing that whatever we have given up is going to be made up by

some future arrangement and then nothing happens. I am concerned that nothing is happening with respect to this working group. I am concerned that nothing is going to be done with respect to subsidies. I am concerned that we are going to be left holding the bag.

That is what I want to press USTR on. Are they moving on this? Are they helping, for example, our lead industry, or is there lead in their pants? So that is my question and I will not listen to the answer, but—[Laughter.]

Senator DANFORTH. —but I will be informed of the answer.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Our first panel is Mr. Josh Bolten, who is General Counsel to the USTR and Mr. Sam Banks, the Assistant Commissioner for Inspection and Control. Gentlemen, why don't you begin.

Mr. Bolten, why don't you begin.

STATEMENT OF JOSHUA BOLTEN, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE, WASHINGTON, DC, ACCOMPANIED BY AMBASSADOR PETER MURPHY

Mr. BOLTEN. Thank you, Mr. Chairman.

I am honored to have the opportunity to appear today on behalf of USTR and Ambassador Hills to testify about implementation of the U.S.-Canada Free Trade Agreement.

Before Senator Danforth leaves, I just want to assure him that there is no lead in these pants and that we will address his concerns. I hope we will have an opportunity, if not in this hearing, elsewhere, to respond to your questions.

I know from firsthand experience the crucial role that this committee played in bringing the agreement into existence. I am talking about not only the implementing legislation, which was very much a product of this committee; but also about the impetus for the whole agreement in the first place, the legislation that made the negotiations possible, the general prodding and molding throughout negotiation of the Free Trade Agreement.

If you look at what the Reagan Administration and this Congress achieved in the FTA, there is a lot to be proud of. The world's two largest trading partners have agreed to phase out practically all tariffs within ten years, many sooner, some are already gone. There will be the elimination of many quotas. There will be an end to a number of discriminatory practices against U.S. exports, including wines and spirits. There will be liberalization of financial services markets and a number of other markets as well.

We hope and expect that there will be a synergistic relationship between this agreement and the Uruguay round process of multilateral negotiations, with one serving as an example and impetus for the other.

The Reagan Administration and the 100th Congress have left it to the Bush Administration and this 101st Congress to achieve successful implementation of the agreement. How are we doing so far?

As noted by many Members here today, it has only been in effect three months so it is a little hard to say. So far, however, we think

it is doing very well. I think our Canadian counterparts would agree with that assessment.

Two months ago President Bush visited Canada, his first foreign travel. He was accompanied by Ambassador Hills. The trip underscored the importance of the U.S.-Canada relationship cemented in the FTA. Last month, on March 13th, Canadian Trade Minister Crosbie returned the visit. He and Ambassador Hills jointly chaired the first meeting of the Canada-U.S Trade Commission—the central oversight body of the FTA. The Commission has responsibility for overseeing implementation of the agreement for dispute settlement and for further negotiation and elaboration of the agreement.

At the March 13 meeting, the Commission established several working groups to facilitate implementation of the agreement. Much of the work is technical, particularly in such areas as agricultural standards. But that is the important grist of the trade mill. In response to one of the most welcome developments in this infant implementation period, the Commission also established a tariff working group. It is gratifying that on both sides of the border, many industries are seeking accelerated tariff eliminations. On our side, we have received over 200 requests from the private sector covering about 1,500 products for the acceleration of the tariff eliminations.

We have a mechanism to review such industry requests, which includes seeking ITC and private sector advice and providing for Congressional consultation. Where we can agree with the Canadians on mutually advantageous tariff reduction acceleration, which are not sensitive on either side of the border, the working group provides a golden opportunity to expand the benefits of the FTA.

As Senator Danforth pointed out, of appropriately keen interest to this committee is the working group that has now been established under Chapter 19 of the FTA dealing with subsidies. As I said, no lead here. This working group is underway.

That group's task of addressing subsidies and creating disciplines over subsidies is both enormously difficult and important. It will hold its first meeting at a staff level at the end of this month. We will be consulting very closely with this committee in particular on the work of the subsidies group because of the important role that this committee's views, particularly those of the chairman and Senator Danforth, played in formulating the relevant portions of the agreement and implementing legislation.

Let me also mention the select panel on auto trade, whose 15 distinguished U.S. members were announced yesterday by Ambassador Hills and Secretary Mossbacher. The broad mandate of the panel is to investigate ways to improve the competitiveness of North American auto producers. Within that broad mandate, Secretary Mossbacher and Ambassador Hills will ask the panel to examine the matters which the committee helped set out in the statement of administrative action, including the necessary North American content needed to qualify for duty-free treatment.

In a sense, the panel and all the working groups I have described are part of a broader dispute settlement network. They are a rational form for addressing our inevitable disagreements. They are a

venue in which we can prevent our disagreements from becoming actual disputes.

Let me add a word about the formal dispute settlement mechanisms that were set out in the FTA. There are two basic ones—Chapter 19 dealing with dumping and countervail cases; Chapter 18 dealing with almost everything else.

They are described in my prepared testimony, Mr. Chairman, which has been submitted for the record. I will not go into detail here, other than to say that no panels have formally been formed under either one. However, two dealing with dumping cases in the United States will be underway shortly under Chapter 19.

Mr. Chairman, the attention that is reflected in some of the disputes that have been mentioned here this morning are a natural part of a major trading relationship. Let me simply say to the committee that we do not view the FTA as an imperative to compromise on U.S. positions. On the contrary, we view the agreement as an opportunity to give full voice to our rights, just as I know the Canadians do on their side.

The important part is, we have a cooperative mechanism in place to deal with whatever frictions the world's largest and growing trading relationship necessarily entails.

I will be happy to respond to your questions at the appropriate time.

Senator BAUCUS. Thank you, Mr. Bolten.

[The prepared statement of Mr. Bolten appears in the appendix.]

Senator BAUCUS. Mr. Banks, you are next. Mr. Sam Banks.

STATEMENT OF SAM BANKS, ASSISTANT COMMISSIONER FOR INSPECTION AND CONTROL, U.S. CUSTOMS SERVICE, WASHINGTON, DC, ACCOMPANIED BY MS. LYNN GORDON, ASSISTANT COMMISSIONER FOR COMMERCIAL OPERATIONS, U.S. CUSTOMS SERVICE, WASHINGTON, DC

Mr. BANKS. Thank you, Mr. Chairman.

On behalf of the Customs Service and Commissioner Von Raab, I appreciate the opportunity to be here. With me today is Lynn Gordon, the Assistant Commissioner for Commercial Operations, as well.

I would like to briefly discuss concerns that have been raised on developments of our operations—Customs Operations—on the northern border, and the implementation of the Canadian Free Trade Agreement. As you know, the Customs Service has two primary missions, which at times can operate in opposing directions.

On one hand, Customs is responsible for the interdiction of contraband and illicit narcotics entering this country and for enforcing the trade laws of the United States. On the other hand, we are responsible for ensuring the facilitation of passengers and international merchandise arriving in the United States. This challenge to meet and properly balance these objectives is made more difficult with the increasing volumes of traffic and the increasing complexities of international trade and travel.

We are addressing these channels primarily through automation. One of the key components of automation that will affect the northern border is our automated—in our automated commercial

system, is our cargo selectivity system, in which in essence we decide which merchandise is going to be subject to examination and which merchandise will be allowed to pass through without a high degree of inspection.

On the northern border this system has consisted of two basic procedures. The first is called Line Release which was developed with extensive input from the trade groups and permits us to quickly identify certain low-risk cargo through bar code technology. These shipments, which our prior research has demonstrated to pose little enforcement or regulatory risk are routinely released from our primary inspection points with a simple wanding across a bar code and a quick check of the computer. It is within seconds that these shipments can move.

For all other shipments, we have our automated border selectivity program which we expect to implement later this year along the northern border. That enables us to quickly assess the risk associated with any given shipment and to determine the appropriate level of examination based on specific entry information. Electronic links with customs brokers, along with the availability of entry information prior to the arrival of the shipment, will enable us to make those decisions quickly and expeditiously and accurately.

To further enhance our automation efforts, we have recently established an operational procedure involving 27 commercial centers that have been designated along the northern border where the majority of commercial processing takes place. These 27 locations have facilities which are fully staffed, currently utilize line release procedures, and will soon be equipped with all the necessary tools, including our selectivity system, that will enable us to provide efficient and uniform processing.

In addition to the commercial centers we have permit ports which primarily handle low-risk shipments that can be handled on a very simplified basis. These enhancements in both the automation and the operating practices will enable us to meet the challenges arising from the Canadian Free Trade Agreement which was implemented on January 2 of this year.

Under the Free Trade Agreement, tariffs on merchandise originating in the U.S. or Canada will be progressively eliminated in staged reductions by 1998.

In light of the extensive impact of the FTA, Customs created a working group early in 1988 to cooperate with our Canadian counterparts on the development of the implementation procedures, to specifically and clearly define rules of origin, and to establish joint documentation controls. In addition, we went out jointly to do training seminars to our field personnel and the trade community. We issued regulations prior to the implementation of the agreement as well.

We feel as a result of these initiatives, the Free Trade Agreement has been implemented fairly smoothly and without disrupting commercial traffic across our northern border.

As you know, Mr. Chairman, this bilateral agreement with Canada creates the world's largest free-trade area and we may see the growth of U.S.-Canadian trade exceed the 36 percent increase in volume which has occurred since 1983.

In conclusion, I would like to reiterate that the Customs Service is committed to taking whatever steps are necessary to achieve our goals of facilitating the movement of legitimate cargo between the U.S. and Canada while effectively enforcing our narcotics and international trade laws.

Mr. Chairman, I appreciate this opportunity and I would be happy to respond to any questions you may have.

Senator BAUCUS. Thank you, Mr. Banks.

[The prepared statement of Mr. Banks appears in the appendix.]

Senator BAUCUS. Mr. Bolten, as you know, there are strong pressures in Canada to revise, if not eliminate, the MOU. Could you give me the Administration's position with respect to those efforts?

Mr. BOLTEN. Mr. Chairman, you correctly mentioned that Minister Crosbie has raised that with Ambassador Hills. Ambassador Hills' response was that as far as we are concerned the MOU is in place and will stay in place. And, completely in accordance with your remarks, if there is any amendment to be done to the MOU, it is to improve enforcement of it.

Senator BAUCUS. So you made it absolutely clear that the MOU is there. It is incorporated in; it is grandfathered into the FTA, and as far as the Administration is concerned, it should be adhered to by both sides?

Mr. BOLTEN. That is correct, Mr. Chairman, and there is an explicit provision in the FTA agreement itself with which you are well familiar because you and Senator Packwood and others had so much to do with it, that says that the FTA does not affect the MOU. The MOU is in place and enforceable on its own merits.

Senator BAUCUS. Is the Administration prepared to commence a Section 301 action if Canada does not live up to the MOU? That is, if the 15 percent tariffs are not in place and if Canada gives us subsidize—more of its production. Is the Administration prepared to commence a 301 action?

Mr. BOLTEN. Mr. Chairman, we are prepared to take appropriate action. The committee and the trade laws have given us the right tools. One of the tools is Section 301. I cannot commit that the Administration will necessarily undertake a 301 case at a specific time, but the Administration is committed to taking appropriate action if there is a violation of the MOU, and 301 is one of our tools.

Senator BAUCUS. With respect to the plywood agreement, could you give me the Administration's position there? That is, Canada to some degree seems to imply that the United States should reduce its tariffs first and then maybe Canada will change its standards and move from prescriptive standards to perhaps performance standards. What is the Administration's position with respect to those efforts?

Mr. BOLTEN. Again, Mr. Chairman, our position is dictated by the FTA, the implementing legislation, and the statement of administrative action provision, which Senator Packwood, you, and others on this committee had so much to do with putting in place. The position is that, until we develop common performance standards for plywood, as far as we are concerned, those tariffs are not to come down.

Senator BAUCUS. Mr. Banks, you undoubtedly know of the allegations that American Softwood Lumber Company has made concerning the application of the Memorandum of Understanding in Canada. That is, on one hand, apparently shipments from other Provinces other than British Columbia, perhaps from Alberta and Ontario, either go through British Columbia or some British Columbia lumber is placed on top of stacks of lumber that is then shipped to the United States. The allegation is, there is just outright customs fraud here.

In addition, you've heard the allegation that the change in the forms of revenue that Canada has adopted makes it virtually impossible to determine the origin of the lumber or whether the lumber is from Ontario or the British Columbia or Alberta, wherever it is. It makes it very, very difficult to determine whether, in fact, a province or company is living up to the terms of the agreement.

Could you tell us what Customs is doing in that regard, in looking at those allegations?

Ms. Gordon. We certainly do appreciate your bringing these allegations to our attention, Mr. Chairman. We have been very concerned about these things. Customs primary role in this effort is to check the export licenses that are issued by the Canadian government and that is one of the things that we look for.

Now we have stepped up our enforcement efforts in that area so that starting in June we made it a condition of release of the cargo that the export certificate was present. So we find in almost every case the export certificates are available now. But in terms of the potential falsification of the export licenses, it is something that we are now looking into.

In fact, this week and next we have a team along the northern border. It is a joint team with Commerce and Customs and they are looking at five ports of entry to see if they can determine what kinds of problems are arising. So we are in the process of trying to verify that.

Senator BAUCUS. What about the forms? Is the change in forms a detriment in your view to enforcement?

Ms. GORDON. The forms do make it very difficult to enforce this because the forms do not list the Provinces. And without knowing the Provinces, it is very difficult to tell whether the export tax was paid.

Senator BAUCUS. Have you communicated your concerns to Canada?

Ms. GORDON. Yes. We have been working very closely with the Commerce Department and they have been working with Canada on this issue.

Senator BAUCUS. And what has been the result? What has come out of all of this?

Ms. GORDON. Well right now there are a lot of discussions on it. I do not think there is anything specifically that has been resolved at this point. But they are having active discussions.

Senator BAUCUS. Back to the potential Customs fraud. Do you have the manpower, do you have the personnel, do you have the resources, to determine adequately whether or not there are Customs violations here?

Ms. GORDON. I think that would be a very difficult thing for us to do because, of course, this is the—the Canadians are the ones who are issuing the licenses. And I know that the licenses are not serially numbered. It would be very difficult for Customs to do that.

One of the other things we are always concerned about when we attempt to do border searches is the possibility that we will stop the traffic flow along the border as well. So the physical limitations of the facilities along the border in addition to the forms and the need to move traffic does make it difficult for us to do.

Senator BAUCUS. It sounds like it is a tough job to do.

Ms. GORDON. A very tough job.

Senator BAUCUS. Okay. Thank you.

Senator Packwood.

Senator. PACKWOOD. Mr. Bolten, in January the Canadians said that they were going to take the plywood dispute to the bi-national panel. But as yet, they have not requested the formation of a panel. Assuming they do not, what happens to the existing tariffs that are now there?

Mr. BOLTEN. They remain in place, Senator.

Senator. PACKWOOD. So in essence, there would be no change from the status quo. It would be as it is now, as it was when the Free Trade Agreement was signed?

Mr. BOLTEN. That is correct.

Senator. PACKWOOD. Okay. Now, under the implementing legislation, as you will recall, a bi-national technical group was directed to try to develop common plywood standards for North America. What is the status of that group? What can we expect?

Mr. BOLTEN. I am not sure what we can expect. My understanding is that they have been meeting; they are making some progress. Following your suggestion, Senator, special technical experts on both sides of the border were set to work on common performance standards. Our hope is that we will not need to come to the point where we have a confrontation over whether the tariffs ought to come down. But rather, we get to the point where we do agree on common performance standards and we can ship our perfectly acceptable plywood into Canada as we do everywhere else.

Senator. PACKWOOD. Thank you, Mr. Chairman. I have no more questions.

Senator BAUCUS. Thank you.

Senator Chafee.

Senator CHAFEE. Mr. Bolten, am I not correct in saying that long before we got into a Canadian Free Trade Agreement, there were disputes with Canada on various matters. The Memorandum of Understanding arose out of the softwood lumber dispute. Am I correct in that?

Mr. BOLTEN. That is correct, Senator.

Senator CHAFEE. Well, I just want to say, Mr. Chairman, because there are disputes, I do not think we ought to zero in on the Free Trade Agreement. These things were around long before the Free Trade Agreement ever came along and we are not going to expect the Free Trade Agreement to eliminate every bit of friction. I hope that this hearing is not looked on as a system of beating up on the Free Trade Agreement.

What I hear from my constituents is approval of the agreement, indeed, a desire to move ahead faster on the scheduled elimination of particular duties that exist. And I understand from listening to your testimony you are encountering that very fact from different segments of our economy. Is that not true, in different industries?

Mr. BOLTEN. Very much so, Senator. Your constituents and probably the constituents of almost every other member of the committee, have written to us at USTR seeking accelerated tariff eliminations. We have had a response to our requests far greater than we expected.

As I mentioned, we have had over 200 requests come in covering around 2,000 products. That is just on our side. The Canadians, I understand, have had roughly the same magnitude on theirs.

Senator CHAFEE. It seems to me that we have got to recognize that in this mammoth trading partnership that exists, inevitably there will be disputes. How can we get down to a more esoteric complaint than you note on page 6? Dismiss the dumping cases on raspberries, but let us move on to replacement parts for bituminous pavers. Now is that quite separate from a replacement for a concrete paver, I suppose?

I mean, we are really getting the specialized little situations that are arising. I am tossing you some softballs here, Mr. Bolten. I want you to knock them right up into the fourth level of the bleachers. [Laughter.]

Mr. BOLTEN. Senator, I——

Senator CHAFEE. And I have not even gotten to the yellow light. Proceed, Mr. Bolten.

Mr. BOLTEN. Senator, I appreciate the softballs at the start of baseball season here.

I have researched the issue of bituminous pavers and have discovered that what we are talking about here is parts that would be replacements for pavers that are bituminous. [Laughter.]

Mr. BOLTEN. That is distinct from concrete pavers. In what respect, I won't go into detail because I do not want to hit your yellow light. But it is——

Senator CHAFEE. Well, we have time to go. Keep going. You will not get many opportunities if I look at the line up here. [Laughter.]

Mr. BOLTEN. Senator, on a serious note, this dumping case is certainly a matter of concern to the industry involved. We think we have a good dispute settlement mechanism in place. Within the next week or so on that case, and on the raspberries case, we will be appointing panelists to hear an appeal from the ruling made by the Commerce Department. We are, frankly, very much looking forward to the first run at seeing how this new dispute settlement mechanism works.

Senator CHAFEE. I think that it would be helpful to quell any opposition or distress over situations that might arise, is to get these panels appointed as soon as possible, under either Chapter 8—well, I guess under Chapter 19 you have some to go.

But the point I want to leave on the record, Mr. Chairman, is that, first of all there were plenty of disputes long before we ever got into the FTA. And secondly, there are going to continue to be disputes when you have a mammoth trading agreement such as we have. I think the thing to date has worked out remarkably well as

evidence by the fact that so many are moving for acceleration on the schedules.

I just hope that we will leave this hearing today in an upbeat note and not a querulous one over some disputes here or there as inevitably will arise.

Senator BAUCUS. Thank you, Senator.

Senator Moynihan.

Senator CHAFEE. I have a little time left on my light. [Laughter.]

If I might, I think the mere fact that only one, two, three, four, five, and Senator Symms, six out of twenty members of the committee have shown up, and it is those who are distressed who show up normally—occasionally you will get a favorable voice, such as you are hearing now—but it is those who have complaints.

I do not know whether Senator Moynihan has a complaint. He is normally a very gracious individual. But that is indicating—the mere—the slight attendance indicates that there must be satisfaction. No appearance indicates no gripe in most situations on hearings such as this.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Senator Moynihan.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Oh, Mr. Chairman, now that the thought presents itself, I do have a complaint which is—[Laughter.]

I think our neighbors in Ontario have a complaint, which is that I do not think the Peace Bridge is big enough anymore for the largest free trade area in the country and we really have got to expand our facilities on both sides—in Ontario and in the Buffalo, the Niagara region—just because so much more trade is coming along.

On the other hand, I do not think I have a complaint if it turns out that the Canadians are dumping raspberries on us. It sounds kind of pleasant with spring time. [Laughter.]

Mr. Bolten, during the Canadian election, an issue arose which is a very legitimate concern on that side of the border, would the Canadian social services—ever be deemed by our side to be a subsidy somehow? And I think the clear answer is no. It would be against the GATT, it would be against our own provisions.

And another consideration which is that while the Canadians have perhaps more universal provisions than we do, in the main, our social security and social insurance benefits are higher than theirs. And so the argument would work both ways. If this committee had ever thought that say, well just plain disability benefits, for example, might be charged as a subsidy by Canada against the United States, that Free Trade Agreement would not have come out of this committee.

But could I hear from you sir on that? I do not think we have had in testimony before the committee a statement from an American official that, of course, social insurance benefits are not subject to dispute under the Free Trade Agreement.

Mr. BOLTEN. Senator, we have had a statement from an American official. You wrote very effectively on that issue in an op-ed

piece that appeared in both Canadian and I think some American publications.

Senator MOYNIHAN. I did, but I am not sure I am an official on it. You, sir, are an official.

Would you agree with the position that was set forth in that oped?

Mr. BOLTEN. Yes, sir; we do agree with that position.

Senator MOYNIHAN. Say it on television. [Laughter.]

Mr. BOLTEN. I now say so on television, Senator Moynihan, that it is the Administration's position that social services regimes are not affected by the FTA, that our countervailing duty laws remain in place on both sides of the border as they now are. And that, for most purposes, social services are not countervailable subsidies under the GATT.

Senator MOYNIHAN. And you acknowledge perhaps—you do not have to—that our provisions are very considerable—I mean, there is a kind of a thought out there in sort of the nordic world that, you know, we do not have things like that in this country. That we do not allow health insurance or unemployment benefits and things like that. But we do.

Can I ask you, too, would you just help us—describe the mechanism by which American firms have applied for, and Canadian firms have applied for, accelerating the reductions in tariffs. This speaks of an agreement that has hit the ground running, that has a lot of dynamism to it. What is on the mind of the manufacturers that come to you in this regard?

Mr. BOLTEN. Senator and Mr. Chairman, I was so anxious to get the lead out that I neglected to mention at the outset that I am accompanied.

Senator MOYNIHAN. Ambassador Murphy.

Mr. BOLTEN. As Senator Moynihan acknowledged, by Ambassador Murphy who bears a lot of the credit for this agreement. If I may, Senator, I will ask Ambassador Murphy to fill you in on the process of applying for accelerated tariff reductions.

Senator MOYNIHAN. Sure.

Ambassador MURPHY. Well, I also think it is rather remarkable that we have received such a substantial amount of input from the private sector. Very clearly, they believe that the Free Trade Agreement is here and they want to see what they can do to expand the benefits.

From our standpoint, we have received a large number of petitions for accelerated duty elimination. We will be sending a list of the products involved to the ITC and they are going to provide advice on the probable economic effects of accelerating the duty eliminations. We also are going to consult with members of Congress and the private sector. In addition there are negotiations planned with the Canadians in the late summer. Following the submission of reports to Congress there is a 60-day layover period after which time the President may exercise his tariff proclamation authority. I would think that, as early as possible, hopefully by January 1 of next year, we will implement these agreed changes to our respective tariff schedules.

That is a considerable accomplishment.

Senator MOYNIHAN. Ambassador, would you—you would agree, I think, that the evidence that the agreement is working and the more people see of it the more they like it. In fact, they are asking for it to work even faster than you agreed to originally.

Ambassador MURPHY. Yes. I think it is rather encouraging. I mean, we have been through the tariff aspect for quite some time and we are even getting inputs from certain steel people, certain textile people, a lot of different people are involved.

Senator MOYNIHAN. Thank you.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Senator Daschle.

OPENING STATEMENT OF HON. THOMAS A. DASCHLE, A U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Thank you, Mr. Chairman.

I had a fear that we would walk out of this room in total euphoria. I guess I want to come back to a problem that some of us have that was not properly addressed in the Free Trade Agreement. And I can appreciate Senator Chafee's general admonishment to those of us who have some concerns. I supported the Free Trade Agreement and still do.

I think that in concept it is something that holds great promise for our country and commerce. But there is a problem with regard to agriculture. Whether it is working or not, has yet to be determined. I had a lot of my colleagues in agriculture here in the Senate who expressed grave concern and who are now saying, I told you so. The ink is hardly dry, and they are telling us, I told you so.

I think they are watching perhaps even closer than some of us with regard to the progress we are making in negotiation on agricultural subsidy. There are two areas in particular that are causing great immediate concern. One is in wheat and the other is in pork products. I will not address wheat, but I will address pork.

We have seen a dramatic increase in the level of processed pork. And while it may not be raspberries, it is a very valuable product for those of us in the northern plains. You have seen the concern expressed, I am sure. You know that since 1985 we have seen an increase by more than 30 percent. You know, perhaps, that the range of loss is somewhere between $400 million and $1 billion.

The question I have initially is, what is the Administration's position with regard to subsidized pork products under the auspices of the trade agreement and what are we going to do about it?

Mr. BOLTEN. Senator Daschle, there has been, as I am sure you are aware, a countervailing duty petition filed on pork products from Canada. There is already in place a separate countervailing duty order, which is at this moment resulting in assessment of countervailing duties on hogs coming from Canada.

Senator DASCHLE. But the ITC—Excuse me, Mr. Bolten.

Mr. BOLTEN. Sure.

Senator DASCHLE. Maybe you can correct me. My understanding is, the ITC ruled three to two in favor of the duty. We have not yet

seen an Administration position on it. Perhaps you can clarify the Administration position with regard to that ruling.

Mr. BOLTEN. Senator, with regard to the recent ruling of the ITC of injury on pork?

Senator DASCHLE. Right.

Mr. BOLTEN. Senator Daschle, the Administration does not normally take positions on what is in effect in an administrative, adjudicatory ruling.

Senator DASCHLE. The Commerce Department is not going to take a position?

Mr. BOLTEN. No, the Commerce Department will itself have to rule ultimately on whether or not there is a countervailable subsidy involved.

Senator DASCHLE. That is correct. That is what I am asking.

Mr. BOLTEN. I see. Senator, I cannot give you an answer now. I am not sure, even if a Commerce Department official were sitting here, he could tell you at this moment what the ruling will be, other than to commit that the law will be followed—that if there is a countervailable subsidy there, the Commerce Department will find it. And if there is a final injury ruling by the ITC, an additional countervailing duty will be imposed on pork products from Canada.

I note that the Commerce Department's preliminary determination, which I gather is what you are asking about, is due on May 1.

Senator DASCHLE. May 1?

Mr. BOLTEN. Yes, sir.

Senator DASCHLE. Do you share the same concern that some of us might have in agriculture that an incident like this, especially the trend that this may indicate with regard to agriculture, is counter to what would be the good faith on both sides with regard to subsidies and with regard, ultimately, to their elimination called for in the pretrade agreement?

Mr. BOLTEN. We do share the concern, about the need for greater discipline over subsidies Senator. That is why we are working so hard and very anxious to get, not just bilateral agreement for elimination of trade-distorting agricultural subsidies, but multilateral agreement in the Uruguay round, which is at this very moment under way in Geneva.

Senator DASCHLE. Well I think this is the first big test. I really believe that since the passage of the Free Trade Agreement the rules have changed and obviously we are looking for some sign of good faith on both sides. I do not want to give those who opposed the Free Trade Agreement another softball of sorts—an opportunity to say, I told you so. And this will be it.

If we do not address this as effectively as we can as a country, my feeling is, you are going to see an overwhelming sentiment in opposition to this which will cause all kinds of very perplexing problems later on, co plicating many other issues. And so, it is really one that we will be watching with great care and I hope we handle it appropriately.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Mr. Bolten, could you describe the process or the procedure that an aggrieved party might follow under the subsidy monitoring pro-

vision in the Canadian Free Trade Agreement, whether it is a nonferrous metals industry, or whether it is hogs and porks, or whether it is softwood lumber, or whatever it might be. Could you just describe that process very generally, please?

Mr. BOLTEN. Certainly, Senator. I take it you are referring to the Baucus/Danforth provision that was——

Senator BAUCUS. That is the provision. [Laughter.]

Mr. BOLTEN. The Baucus/Danforth provision, which was included in the FTA implementing legislation.

Senator BAUCUS. Right.

Mr. BOLTEN. Under that procedure, the U.S. Trade Representative's Office has 90 days to decide whether to identify a petitioning industry, based on a reasonable likelihood that the industry may face increased competition from subsidized imports as a result of the FTA and a deterioration of its competitive position before we can develop rules and disciplines over subsidies. The 90-day period allows us to review a petition and to gather the facts.

If we make an affirmation determination—that is, if we identify an industry, whether it be lead, or zinc, or whatever, under the Baucus/Danforth provision—then there are obligations that flow from that either to conduct a Section 305 investigation under the Trade Act of 1974 or to request the President to request the International Trade Commission to conduct a Section 332 investigation.

Senator BAUCUS. Could you, for the record, just outline that in just a little bit more detail. There are many in various industries affected who are a little bit uncertain as to what the process and steps should be. If, for the record, you could itemize that process it would make a big difference.

Senator DASCHLE. Senator, you are referring to the petition procedure for getting this process started?

Senator BAUCUS. The petition procedure. Yes, the petition procedure.

Mr. BOLTEN. Let me, if I may——

Senator BAUCUS. Not orally now, but just for the record if you could.

Mr. BOLTEN. I see. We would be delighted to provide that for the record.

Senator BAUCUS. Thank you.

[The information appears in the appendix.]

Mr. BOLTEN. I understand there is a petition that has come in from some of the basic metal industries. We will be looking at the petition and will be consulting with you and your office about it.

Senator BAUCUS. Okay, thanks.

Mr. Banks, turning to an even more parochial matter, there is a port in the northern part of Montana called Ruesville, which I am sure you are aware of. The long and the short of it is, we have asked that that port be kept open on a 24-hour basis. As you know, the Customs has apparently said it does not want to do so. There are various reasons why Customs views that the port should not be kept open on a 24-hour basis. Let me just tell you why I think it should.

Number one, Canada now keeps its side of the border open on a 24-hour basis. It seems to me if Canada feels it is important from Canada's point of view, we Americans should do the same.

Second, the Customs Service has kept a port open in an adjoining State, in Idaho, where the traffic is one half on a 24-hour basis what it is in Ruesville on less than a 24-hour basis. It seems to me obviously if there is only half as much traffic just a few miles away, that we could certainly open up another port that has much more traffic.

Third, it seems to me if we have a problem in monitoring softwood lumber coming down from Canada we should probably have the port open and personnel there so we can determine whether the lumber coming down is properly certified or not.

In fact, this is so important to people up in my part of the world—up in northwest United States—that if the Customs Department does not voluntarily move to open up that service on a 24-hour basis, I have no alternative but to place an amendment in the authorizing budget of the Custom Service requiring that it be open.

I hope we do have to do that and I hope the Customs Service on its own can keep that open on a 24-hour basis.

Mr. BANKS. Mr. Chairman, we appreciate the comments that you have made and the concerns that you raised, and you have transmitted a number of letters to us from the public and from industry in that area. I guess our concern is an allocation of resources. Currently we are overstaffed. We are at 102 percent of strength with our inspectional staff which means that next year actually we have to have fewer inspectors around the United States than we have today. It would be very difficult to go further into the hole in that regard.

The other thing, I guess, that I want to say to you is, our rationale for not wanting to proceed with opening it 24 hours a days is because we have very serious delays of an hour and more on the southern border at this point. We are seriously concerned about those traffic delays.

I guess if you had to ask us from a national perspective on the priorities of which situation would be address first, I think the delays where we have people in extremely long lines and we have people that have even—I mean, there was a recent incident where some people died as a result of carbon monoxide getting into the back of a pickup in some of the delays.

So, we are not treating your request lightly. I want you to fully understand that. I will take your concerns back to the Commissioner again and discuss it with him. I guess our position at this point is, we still —if you asked our official position, it is would be, no, we would not like to extend the hours.

Senator BAUCUS. Well I urge you to follow the admonition and discretions of our part of valor.

Mr. BANKS. Yes, sir.

Senator BAUCUS. Because if you do not do it, we are going to have to put it in the amendment. It is just that simple. It is that clear.

Mr. BANKS. Yes, sir.

Senator BAUCUS. I would like to say to Senator Chafee, too, I think all of us on the committee support the Free Trade Agreement. I know I support the Canadian Free Trade Agreement.

The purpose of this hearing, frankly, is to help make it work. It is important, I think, at the beginning of the implementation of the

Free Trade Agreement to have this oversight hearing to look at various problems that would naturally arise in any agreement, to make sure that the integrity of the process is maintained so that the agreement does have the requisite integrity and respect and that it is a good agreement, and that we nip any problems that are occurring in the bud, so they do not become swept under the rug and after months or many years then blow up to something that is very, very monumental.

So I think, frankly, we are in agreement. It is a good agreement. I support the agreement. But we want to make sure it works.

Senator CHAFEE. Yes, Mr. Chairman. I appreciate that and I know that you have supported it. My only point is, that problems that are arising are not unique to this agreement. We had differences involving pork, for example, long before we ever got into a Free Trade Agreement.

So I think that when we look at difficulties that might arise, I do not think we can say they are attributable to the Free Trade Agreement. They are attributable to a mammoth relationship in which inevitably there are going to be contentious points.

Could I just add one thing, if I might, Mr. Chairman?

I am extremely interested—maybe Ambassador Murphy could help me with this later on. GATT, of course, does not deal with services. In this agreement we are getting into banking, insurance, copyrights, software, a whole host of areas that in the Uruguay Round of GATT we hopefully will also be able to resolve.

My question—not a question now—but I would be interested at some point, when you feel you have a good enough handle on it, if you could come by Ambassador Murphy and tell me how these are working out. It will give us a clue as to perhaps what will occur, what might be achievable under GATT pursuant to the Uruguay Round because they are areas that previously we have not ventured into in our, either bilateral or multilateral agreements.

Senator PACKWOOD. Just for the explanation of Senator Chafee, there is a new issue that has come up on plywood since the Free Trade Agreement. Prior to the Free Trade Agreement, Canada still had this different standard and did not want to let our plywood in. We had a tariff on their plywood; they had a tariff on ours. During the Free Trade Agreement, it was the U.S. position that a common standard be agreed upon and the tariffs would go off, once the standard was implemented. The American plywood manufacturer said, that's fine.

The Canadians contend that wasn't quite the agreement. The Canadians are contending that the agreement said, we will take a look at the standards again, and if we look at them and decide we still like them, that satisfies the agreement. After the Canadians reviewed our standards, a situation developed where Canadian plywood can, come into our country without a tariff but U.S. plywood cannot go into their country because we do not meet their standards.

That is not the understanding that we had of the agreement and that is the emphatic point that we are trying to make.

Thank you.

Senator BAUCUS. Thank you all very much for testimony this morning.

Mr. BOLTEN. Thank you, Mr. Chairman.

Mr. BANKS. Thank you, Mr. Chairman.

Senator BAUCUS. Our next panel consists of Mr. Stanley Dennison, who is Chairman for the Coalition for Fair Lumber Imports from Atlanta, Georgia. Mr. Laurance Broderick, who is President of Rivendell Forest Products, and Mr. Robert G. Anderson, the Director of Market Research and Economic Services for the American Plywood Association in Tacoma, Washington.

Senator PACKWOOD. Mr. Bolten, could I see you in the hallway just a minute. I want to ask you about one other thing. I want to come back and hear the next panel, but I'll see you out here right now.

Mr. BOLTEN. Yes, sir.

Senator BAUCUS. Gentlemen, we are happy that you are here. We look forward to your testimony because we know it will be a very important part of this hearing.

Mr. Dennison, why don't you proceed first.

STATEMENT OF STANLEY S. DENNISON, CHAIRMAN, COALITION FOR FAIR LUMBER IMPORTS, ATLANTA, GA

Mr. DENNISON. Thank you. Mr. Chairman and Members of the Committee, my name is Stan Dennison. I am Chairman of the Coalition for Fair Lumber Imports.

Senator BAUCUS. Mr. Dennison, these microphones do not work very well. You have to pull them very close to you so we can all hear you.

Mr. DENNISON. Is this satisfactory?

Senator BAUCUS. That is great. Thank you.

Mr. DENNISON. Let me begin by thanking you for the opportunity to appear today to discuss the continuing need for strict adherence to the Softwood Lumber Memorandum of Understanding. There is a danger that as time goes on, especially with the adoption of the Free Trade Agreement, we could forget the serious injury which subsidized Canadian lumber caused the U.S. lumber industry and the reason why the MOU is needed. That is why this hearing is so important to us.

To appreciate the need for the softwood lumber MOU, I think that it is necessary to review the circumstances that resulted in its adoption. For years subsidized Canadian lumber severely injured the U.S. lumber industry. From 1977 to the mid-1980s, over 600 U.S. lumber mills were forced to close. Tens of thousands of lumber mill employees were thrown out of work. Hundreds of mill communities were devastated.

After the 1982 recession prices remained at recession lows despite record demand. It was universally agreed that the problem was overproduction. The source of that overproduction was Canada. While hundreds of U.S. mills closed, 85 Canadian mills opened and Canadian production increased by 30 percent. Canadian lumber took an ever-increasing share of the U.S. market, reaching one-third in 1985, while it had averaged just over 20 percent from 1970 through 1976.

Canadian firms were able to do this because they were subsidized—pure and simple. While U.S. mills buy timber competitively,

Canadian mills were given government timber at below-market prices—a fraction of the cost of virtually identical timber just across the border. Various Canadian sources from the Prime Minister of British Columbia to an Ontario Royal Commission concluded that Canadian mills did not pay fair prices for timber.

In 1986, facing disaster, despite record demand, the Coalition for Fair Lumber Imports on behalf of the U.S. industry filed a countervailing duty case against subsidized lumber.

In June of 1986, the International Trade Commission preliminarily found that subsidized Canadian lumber imports were the cause of serious injury to the U.S. lumber industry. In October the Commerce Department preliminarily found that Canadian timber fees gave Canadian mills a 15 percent subsidy.

Rather than allowing the United States to collect the subsidy offset, Canada sought to settle the case by imposing a 15 percent export tax on Canadian lumber. The U.S. industry agreed to this settlement, dismissing its countervailing duty case on the basis of a commitment for strict enforcement of the Memorandum of Understanding.

Recognizing the importance of the MOU to the U.S. industry and the people and communities which depend upon it, and recognizing that Canadian subsidies justified a countervailing duty, President Reagan made a formal determination that any breach of the MOU would violate Section 301 of the Trade Act of 1974. The President committed that if a breach occurred, he would "take action, including the imposition of an increase in the tariff on softwood lumber imported from Canada to offset" any breach. Further, the MOU was exempted from the U.S.-Canada Free Trade Agreement to ensure its strict enforcement.

The MOU has been one of the great successes of U.S. trade policy. Since the adoption of the MOU, Canada's penetration in the U.S. lumber market has fallen. U.S. lumber production and employment has increased. That success, however, can only be maintained as long as the MOU is strictly enforced.

Since its adoption, the Canadian industry has sought the elimination of the MOU. This request is now being entertained by some in the Canadian government. The new Canadian Minister of Forest, Frank Oberle, has repeated indicated an interest in the elimination of the MOU. Two Canadian provincial forest ministers, Parker from British Columbia and Kerio from Ontario, have called for elimination of the MOU.

Thus, the U.S. industry is deeply concerned that the Canadian government will try to undermine the MOU. Canada may request to eliminate the MOU, or the Administration may be put to the test by a serious breach of the MOU. Canada may claim that, as British Columbia (the province responsible for two-thirds of Canadian production) has increased its timber fees to offset the export tax, the MOU is no longer needed.

Nothing is further from the truth. If the MOU were eliminated, we could expect a return to the huge volumes of subsidized lumber which drove hundreds of U.S. mills out of business. Without the MOU, British Columbia could decrease its timber fees as rapidly as it increased them, increasing production of subsidized lumber in

British Columbia. Simply, without the MOU, we would be right back where we were in 1985, facing subsidies and industry disaster.

Senator BAUCUS. Thank you very much, Mr. Dennison.

[The prepared statement of Mr. Dennison appears in the appendix.]

Senator BAUCUS. The next witness is Mr. Broderick.

STATEMENT OF LAURANCE G. BRODERICK, PRESIDENT, RIVENDELL FOREST PRODUCTS, LTD., AND ACTING CHAIRMAN, ALLIANCE FOR ENFORCEMENT OF THE CANADIAN LUMBER EXPORT TAX, ENGLEWOOD, CO

Mr. BRODERICK. Chairman Baucus, Members of the Committee, I am Larry Broderick, President of Rivendell Forest Products, Ltd. of Englewood Colorado. We are lumber wholesalers and importers of significant quantities of Canadian softwood lumber. I am also Acting Chairman of the recently formed Alliance for Enforcement of the Canadian Lumber Export Tax.

Although we are a separate organization, we have been working closely with the Coalition in an attempt to stop what appears to be widespread evasion of the 15 percent Canadian lumber export tax. I believe in unrestricted free trade and was personally opposed to the countervailing duty and the MOU and as importers of Canadian lumber, so was our company.

However, the agreement was adopted and the tax subsequently implemented. As a result, we have a new set of rules and laws by which we must conduct our business affairs. I am here today to discuss a problem that is undoing, illegally, but effectively, all that the MOU has achieved. The problem is widespread export tax evasion by Canadian and U.S. companies who export softwood lumber to the United States. This problem is worsening as more and more businessmen, faced with competitors who have found illegal methods of avoiding the tax, must themselves choose between tax evasion and extinction. Many are choosing tax evasion.

There are a number of schemes being used to avoid the tax. Here are some of them: Softwood lumber is subject to the tax. It is being misclassified as hardwood lumber, which is not subject to the tax. All manner of short, narrow softwood lumber is being misclassified as fencing, which is not subject to the tax. High grade lumber from provinces which are subject to the tax is being misclassified as low grade lumber from the same provinces. There is still a tax, but it will be as little as one-third as much as is legally required.

And the one that is going on most rampantly now is the fourth: Softwood lumber from British Columbia is not subject to the tax because of increased stumpage rates). Softwood lumber from most other provinces is subject to the tax. Tax evaders simply report lumber from other provinces as having been produced in British Columbia and thereby avoid the tax.

The Alliance has recently uncovered an egregious example of export tax evasion. I am submitting copies of affidavits and photographs supporting affidavits which memorialize this transaction. As these documents indicate, a Pennsylvania lumber yard center ordered a truck load of Western Spruce/Pine/Fir lumber from Green Forest Lumber, Ltd., of Toronto, Ontario, an exporter of Ca-

nadian lumber. Green Forest then shipped the Pennsylvania customer a truck load containing 13 bundles of lumber. Some of the bundles were as ordered, that is Western SPA, and others consisted of Ontario lumber. But at least three bundles consisted of lumber that had obviously been repackaged so that it appeared to be of British Columbia origin even though it was mostly of Ontario origin. The misimpression was caused by the fact that only the top layer of lumber in each bundle was of B.C. origin.

How would this happen? We do not know for a fact exactly how this happened but with the facts we do have, logic suggests the following:

Green Forest buys a quantity of Western SPF 2"x8"x2' lumber produced by Northwood Pulp and Timber, of Houston, British Columbia, and has it shipped to the Green Forest reload facility in Fort Erie, Ontario. Green Forest also buys a quantity of Eastern SPF 2"x8"x12' lumber produced by a sawmill which it controls, Chapleau Forest Products, Chapleau, Ontario, and has it shipped to the same Green Forest Lumber reload facility in Fort Erie, Ontario. Green Forest then removes the paper packaging from the bundles, breaks the steel bands, and then repackages a single bundle with 19 layers (114 pieces) of Ontario SPF on the bottom of the bundle, and one layer 6 pieces of Western SPF from British Columbia on the top. The bundle is then either repackaged with either Northwood paper or Green Forest paper in preparation for shipment to a customer. Green Forest then ships it to a customer in Pennsylvania, classifies the lumber as having been produced in British Columbia, as it crosses the border, and thereby avoids the export tax.

Of course the only lumber visible to any inspector who goes to the trouble to remove the paper packaging as it crosses the border, but does not break the steel bands, is the top layer of B.C. lumber not subject to the tax. The Department of Commerce has been notified of this situation and they are attempting to find export tax notices indicating whether the tax was paid on this particular shipment. We expect this notice to show that the shipment was fraudulently characterized in the notice as tax-exempt B.C. lumber.

Interestingly, Canadian export tax notice forms do not require province of origin, nor do they require an indication as to what portion of the shipment is taxable. This data appears only on a monthly aggregate of the exporter's monthly return. As a result, it is now impossible—repeat, impossible—for a customs agent on either side of the border to determine whether a given shipment is fraudulently being passed off as tax-exempt lumber. This makes enforcement very difficult. The only way to catch a tax evader is to do a full-blown audit of all of the company's activity, including beginning inventories, ending inventories, origin of all purchases, destination of all shipments, et cetera. Commerce is aware of this problem and has told us they are attempting to remedy it.

Mr. Chairman, fundamental fairness requires that the MOU be enforced fully and uniformly. This cheating is an intolerable burden on Canadian and U.S. companies who seek to abide by the law. We have raised this issue with Commerce and Customs officials. We have urged them to alert Revenue Canada to insist that the problem be remedied.

But let's face it, enforcement in this case is first the responsibility of the Canadian government and Revenue Canada. They have the means and the ability to stop this fraud. The question is whether they are willing to do so. If they are not, the United States must. The Canadian government must redesign export notice forms; the U.S. Customs people must redesign its Customs documents; Customs must step up inspections. Shipments with incomplete notices must be turned back at the border. Shipments accompanied by false notices should be seized, and if Canada takes no action the perpetrators should be prosecuted under U.S. law. We ask this committee to encourage the Department of Commerce and U.S. Customs to continue and increase their efforts to ensure strict enforcement of the lumber MOU.

This subject will likely get a good deal of publicity at least in the forest products industry. Everybody in the industry is watching, especially the cheaters, and those who may cheat. If nothing is done soon, everyone will cheat.

Thank you.

Senator BAUCUS. Thank you, Mr. Broderick, for the excellent statement.

[The prepared statement of Mr. Broderick appears in the appendix.]

Senator BAUCUS. Mr. Anderson.

STATEMENT OF ROBERT G. ANDERSON, DIRECTOR, MARKET RESEARCH AND ECONOMIC SERVICES, AMERICAN PLYWOOD ASSOCIATION, TACOMA, WA

Mr. ANDERSON. Thank you, Chairman Baucus and Members of the Committee. I am Bob Anderson, Director of Market Research and Economic Services for the American Plywood Association.

We appreciate the opportunity to meet before this committee to discuss some of the hazards that could face the industry in the event that——

Senator BAUCUS. Mr. Anderson, could you bring that microphone a little closer to you.

Mr. ANDERSON. It is not coming through.

Senator BAUCUS. It will if you bring it closer. Thank you.

Mr. ANDERSON. Now that I am off track, do I get an extra two seconds?

Senator BAUCUS. Start over again.

Mr. ANDERSON. I appreciate the opportunity talk before the committee to express the views of the plywood industry related to the Free Trade Agreement and the various subagreements that are underway. I appreciated listening to the testimony earlier today and I understand from that that Senator Packwood and you, Senator Baucus, both have a pretty good understanding as far as we are concerned of the direction that we should be going. I do appreciate that.

Actually, what the risks are—We, of course, face the hazard of job loss, mill closures and this sort of thing, in the domestic market in the event that the tariffs are reduced without a common standard.

The second, of course, is the fact that throughout these negotiations, the Canadians have consistently based their decisions on the plywood standards on a marketing basis, rather than on a technical basis. This has a tremendous impact in our international marketing efforts as well as our domestic efforts.

The third factor is the fact that the unreasonable nontariff restrictions that the Canadians have for decades maintained against U.S. plywood. They discouraged the improved timber utilization methods that the United States industry has pioneered. We just do not want to go back to a less efficient utilization of our very valuable timber resource.

There is very little trade in plywood between the United States and Canada at the present time. The 20 percent tariff on Canadian plywood entering the United States, and a 15 percent tariff for plywood going to Canada is only one part of it. Canada has for many years maintained a substantial monitor of barriers to the entrance of D-grade veneer into Canada and southern pine plywood has also been excluded by the Canadian standards.

These products represent fully 80 percent of our industry's production. Unlike the U.S. standards, the Canadian standards are specification based. The product must have certain physical characteristics.

In short, by reference to the Canadian plywood standard, Canada's national building code dictates that plywood with knotholes greater than 50mm cannot be used in Canadian construction. There is no empirical performance data that suggests that our plywood is not suitable for its intended applications. In addition, plywood made from southern pine has been excluded under the Canadian law which bans the use of nonindigenous wood in construction products. That is a provision that is obviously inserted for protectionist purposes.

I would like to make it perfectly clear that U.S. plywood with D-grade veneer and southern pine veneer is fully suitable in Canada for its intended use. Prescriptive Canadian plywood standards are arbitrary, capricious and designed expressly to shield the Canadian plywood industry from U.S. competition. There is no performance data indicating that the U.S. product is any less fit for its intended purpose than the plywood which complies with the Canadian standard.

If Canadian plywood is superior, surely Canadian builders would be free to choose in a true Free Market Agreement. U.S. plywood has been accepted in every country of the world where applications have been filed. That is, except Canada. Moreover, experience with U.S. plywood in 75 million homes over the past 40 plus years is sound testimony that our products perform admirably. Plywood with D-grade veneer has withstood climatic extremes from Alaska to Scandinavia to the Caribbean without difficulty. In short, the evidence is overwhelming that Canada, as a marketing ploy, has erected an arbitrary nontariff barrier to the entry of U.S. plywood products.

By refusing to seriously evaluate U.S. plywood, Canada has breached the Free Trade Agreement. Now Canada seems unwilling to make a serious effort to reach mutually acceptable standards

through the binational, technical process established in the FTA negotiations.

Instead, it seems to be seeking to bypass the entire issue through a political resolution—without resolution of the standards issue. They have announced the intention to seek tariff reductions without a standards resolution through the FTA's dispute settlement procedure.

The current plywood technical discussions are in progress and the industry has every reason to believe that performance testing will substantiate our confidence in the U.S. product if the Canadians will agree to full panel performance testing, such as proposed, rather than attempting to limit testing to the spurious search for localized delamination around knotholes. The U.S. industry will be able to demonstrate its ability to compete successfully with Canadian plywood if the test is done in full panel testing on the terms that have been set out in the agreements.

Opening our market without an access to Canada on the same basis would obviously be a mistake and we would like very much for the committee to understand our concern that the direction the Canadians appear to be going now tends to give us some pause in whether or not they are really anxious to make any common standards. We will appreciate the committee to be steadfast in its efforts to hold the tariffs in place until the common standard has been achieved, or at least until U.S. plywood is accepted in Canada for Canadian construction.

Thank you.

[The prepared statement of Mr. Anderson appears in the appendix.]

Senator BAUCUS. Thank you, gentlemen.

I would first like to nail down your view, particularly Mr. Broderick and Mr. Dennison, that in your view the Memorandum of Understanding is a good agreement. That it works. That is, if both sides live up to the terms of the agreement, it is a good agreement.

Mr. DENNISON. It is a good agreement. It is fair. It is not as much as we wanted or could prove, but it is a good agreement and if both sides will live up to it in honesty and fairness—and I am shocked at what the Canadians are doing—it will work.

Senator BAUCUS. Second, are you satisfied with the Administration's resistance to entreaties from Canada to renegotiate or dilute the agreement?

Mr. DENNISON As of today, yes, Senator, I am. The Commerce Department and USTR's office have been very cognizant of this and have gone to Canada with a meeting about every three months, or more often if necessary, to get into these little things.

You know, it bothers me when somebody says, well the little things do not matter; let us look at the big things. Well, most marriages broke up over little things turning into big ones.

Senator BAUCUS. Okay. Mr. Broderick——

Mr. DENNISON. Including mine.

Senator BAUCUS. As I understand it, too, your general view is that some Canadian producers and perhaps some provinces are now beginning to end run or subvert or undermine their provisions of the agreement through changing the revenue forms so it is difficult to know the province of origin, through reclassifying and

avoiding the proper classification and also different labeling designations, or, as you say, placing B.C. softwood on the top of a bundle.

Could you give us some sense, based upon your experience in the industry and what you know, of how widespread and extensive this might be? Is this an isolated case of two or three, or do you think it is becoming quite pervasive? Your best guess.

Mr. BRODERICK. Well, I mean, that is a difficult question because we do not have any actual numbers. I can tell you this, that we run into it in the marketplace every day. Gross margins in our industry are 4 to 5 percent. And when a guy has a 15 percent headstart on you, you know it in the market pretty fast.

How widespread is it? I would estimate, on the basis of what I hear and see in the marketplace, that as much as 10 percent of the lumber crossing the border could be evading the tax.

Senator BAUCUS. How much would that be? Ten percent of what? Any value——

Mr. BRODERICK. Well, 10 percent of the wood—I think that we are looking at about 20 billion feet that comes across the border annually, so it would be a couple billion feet of lumber a year.

Senator BAUCUS. Can you convert that to dollars?

Mr. BRODERICK. If we are taking in $3 billion, approximately, worth of softwood lumber imports from Canada annually, 10 percent of that would be $300 million, maybe.

Senator BAUCUS. Do you notice an effect on softwood lumber prices?

Mr. BRODERICK. Lumber is a commodity market so it is constantly fluctuating up and down as a result of forces of supply and demand so it is really hard to feel that. But anybody who trades the market would have to acknowledge the fact that if this is going on—and I am here to say that it is—it has to force prices lower. It has to.

It definitely—When we are facing wood in the marketplace priced 10 to 12 percent below us, the customers are buying it a lot cheaper than they can buy it from us and it therefore has to have a depressing effect.

Senator BAUCUS. Are the effects felt nationwide or are they felt localized? That is, in only certain parts of the country.

Mr. BRODERICK. They are felt nationwide, unevenly though. In other words, certain sectors of the industry, like wholesalers like us will be hurt more so than wholesalers who trade in domestic species only. But if the market price of lumber is forced lower anywhere in the country then that is one less truckload of lumber that is bought, say, for example, from the Pacific Northwest of this country and that brings down their price infinitesimally, but it does have that impact.

So British Columbia producers are being hurt very badly. Wholesalers on both sides of the border are being hurt. But every producer in the United States is also being hurt as a result of these lower prices.

Senator BAUCUS. What about the actions of the Customs Department thus far? What is your sense of that? Do they have the resources to determine what is or is not going on here or are they responding in a way that you find satisfactory? Why don't you just

basically tell us, based upon your experience, your estimate of the government's response thus far to these allegations.

Mr. BRODERICK. We have been talking to Customs officials for two years, as well as Commerce officials and Revenue Canada officials about this. And until we had the absolute proof that I brought to this committee, which I talked about earlier, we did not get a whole lot of attention, frankly. In the last month or so we have gotten a lot more attention out of Commerce and Customs and they assure us that they are going to go after this thing aggressively.

But I have to say that the U.S. Customs and Commerce Department really do not have the tools to enforce this law. This is a Canadian responsibility. It is a Canadian export tax. Revenue Canada is supposed to collect the tax and they are supposed to enforce the law. It is not being done. I do not know why it is not being done. I do not know why they have not responded to our conversations with them in the past.

What I do know is this, the Custom document that exists now that crosses the border with the truckload of lumber makes it absolutely impossible for anybody at the gateway to compare the piece of paper with the truckload of lumber and prove anything. All it has to say is, "this is a truckload of lumber". I mean, "this is a truckload of lumber".

It does not say what province it came from. It does not say what percentage of the value of the lumber on that truck is subject to the tax. So there is nothing that a Customs official can do at the border, nothing.

At the end of the month when you file your tax return, it is a one-sheet piece of paper that says I brought this much lumber into the country in the month of March. This percentage of it was from B.C., no tax; this much was Ontario, 15 percent tax on that value. Then you send in your check. You do not even have to attach copies of the export notices forms that came across the border with your truck. You do not even have to prepare a list of those shipments across the border to attach to the return.

There is just no way to enforce the law with the current documents.

Senator BAUCUS. What is the reaction of Customs and Commerce when you point that out, that there is no way to enforce it from our side of the border?

Mr. BRODERICK. Frustration, I guess. I think that—I honestly believe that the Customs officials on this side of the border and Commerce Department people were not aware that these were the documents that the Canadians were using on these export notices and that they were set up this way.

In talking with Commerce and Customs, I think now they agree there is nothing they can do unless the forms are changed in some way, but that is my view.

Senator BAUCUS. Do you know what we are doing to change the forms?

Mr. BRODERICK. Do I know?

Senator BAUCUS. Yes.

Mr. BRODERICK. No.

Senator BAUCUS. Has anyone told you? Customs——

Mr. BRODERICK. Nothing yet, other than that they are going to look at it aggressively.

Senator BAUCUS. Thank you.

Senator Packwood.

Senator PACKWOOD. Mr. Anderson, let me ask you to repeat what I think I heard you say. In every country where the American Plywood Association has offered our plywood for sale it has met their standards. Cold countries, hot countries, medium countries.

Mr. ANDERSON. Every country where we have made application for the acceptance of our construction-type plywood had accepted our plywood, based on the way it is currently made.

Senator PACKWOOD. Including countries that have climates as cold as Canada and as hot as Canada?

Mr. ANDERSON. Absolutely.

Senator PACKWOOD. It is accepted every place else but Canada?

Mr. ANDERSON. Canada is the only country that has not accepted it.

Senator PACKWOOD. That was exactly my understanding also and it shows the folie of the standard that Canada is using. It is clearly a market ploy, not a standard ploy and they are hoping that there may be a small enough market that American mills simply will not change their manufacturing standard or set up a separate standard just to get into the Canadian market.

Mr. ANDERSON. It is very obvious.

Senator PACKWOOD. And as far as I am concerned the tariffs are going to stay on, and I do not like tariffs. I would be happy to take them off. But I am not going to have Canadian timber coming into this country under zero tariff and they say, fine, you can come into our country on a zero tariff if you meet our standards, but if you do not meet our standards, you cannot come in. You might as well have a 10,000 percent tariff in that case.

That is not going to happen as far as I am concerned. We are going to stop it. It will not be allowed. It is utterly unfair.

Mr. ANDERSON. Thank you, Senator. Our industry will be very, very gratified to hear that statement. I sincerely appreciate it.

Senator PACKWOOD. Well, don't—I understated my position. [Laughter.]

Now, Mr. Dennison, let me ask you another question. It is one which Senator Baucus and I both have an interest. That is, generally timber supply in this country—It is not a subject directly of this hearing. Let me ask you this: In the United States, is there enough timber supply to meet the need?

Mr. DENNISON. If there were perfect situations in the laws and the rules and regulations, yes, there is. But there is not perfect situations and never will be.

Senator PACKWOOD. What do you mean there is not perfect situations?

Mr. DENNISON. As I told you, the Willamette Forest is 75 percent closed down through a court order, where a great deal of timber should be coming from.

Senator PACKWOOD. Well, let me rephrase it another way.

Over the years we have been importing anyplace from 20 to 30 percent Canadian lumber in this country—softwood lumber.

Mr. DENNISON. Yes.

Senator PACKWOOD. If there is an adequate supply of softwood lumber in this country, why are we importing Canadian lumber?

Mr. DENNISON. Well, I do not believe we will ever see the day, Senator, when we get from under the rules and regulations that we do not consider good forestry practices necessarily; but nonetheless they are there. And as long as they are there, we can use in this country approximately 15 to 20 percent of Canadian lumber.

Senator PACKWOOD. And, of course, Canada makes it very difficult to export raw logs out of Canada?

Mr. DENNISON. Impossible most of the time.

Senator PACKWOOD. I do not know, Mr. Chairman, if you saw the change that British Columbia made on the export tax the other day. They used to have an export tax in British Columbia that was 40 percent of the difference between the domestic price and the export price. So if the domestic price was $300 a thousand and the export price was $400, there was a 40 percent tax on the $100. They have raised it to 100 percent, which pretty much is a disincentive to export anything if you are going to pay 100 percent tax on the difference.

The story indicated that this will put greater pressure on the markets in the United States for the export of logs. I do not need to say what that means to Montana, Idaho, Oregon, Washington, California, let alone any of the wholesale lumber dealers or retail lumber dealers around the country. The price of lumber is going to go up if we are going to export raw logs out when we do not have enough logs to take care of our supply; and then we are going to turn around and import Canadian lumber because they are not going to export a stick of logs when there is 100 percent tax on the difference in price. How can we conceivably justify continuing to export raw logs overseas?

Mr. DENNISON. Well, when you do not manufacture the product, the raw material in any way, you are giving away jobs. It is pure and simple.

Senator PACKWOOD. Well, you cannot manufacture the raw product. You have to grow it.

Mr. DENNISON. No, I mean when you do not manufacture the raw log into something else. You are just giving away your timber. It distresses me personally—and I am not talking for the Coalition—that in the Pacific RIM we have conditions where there is no duty on raw logs. Every time it is manufactured a little bit more, it gets more and more duty until finally there is no way you can get the product in there. That concerns me very much, but that is a personal statement, Senator, that is not the Coalition's statement.

Senator PACKWOOD. No, I understand.

Senator Symms asked to express his apologies. You know, he dislocated his shoulder skiing sometime ago and he had to go down for a treatment. He wanted to stay for the rest of this panel but could not and he expresses his apologies.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, gentlemen, very much. You have provided a lot of information here which I think is going to be very helpful to remedy a very bad situation.

Thank you very much. We appreciate it.

Our final panel consists of Mr. Robert Muth, Vice President of the Government and Public Affairs, ASARCO Incorporated; Don Herzog, President of the Montana Pork Producers Council on behalf of the National Pork Producers Council; and a Mr. Winston Wilson, President of the U.S. Wheat Associates.

Thank you very much, gentlemen, for appearing today. Mr. Muth, why don't you proceed first.

STATEMENT OF ROBERT J. MUTH, VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, ASARCO INC., NEW YORK, N.Y., ACCOMPANIED BY KENNETH R. BUTTON, VICE PRESIDENT, ECONOMIC CONSULTING SERVICES, INC., ALSO ACCOMPANIED BY HARVEY APPLEBAUM, OF THE LAW FIRM OF COVINGTON & BURLING

Mr. MUTH. Thank you, Mr. Chairman.

First of all, let me say we are very grateful for the opportunity to testify this morning. My name is Bob Muth. I am Vice President of ASARCO Incorporated and President of the Non-Ferrous Metals Producers Committee, a committee which represents the interests of U.S. miners and producers of copper, lead and zinc.

We have submitted a written statement, and rather than my reading it, sir, if I could simply ask that it be admitted as part of the record and I will then limit my remarks to a few pertinent comments.

[The prepared statement of Mr. Muth appears in the appendix.]

Mr. MUTH. In addition, Mr. Chairman, we have this week filed with the U.S. Trade Representative a petition for identification under Section 409(b) of the U.S.-Canada Free Trade Agreement Implementation Act. That is better known as the Baucus/Danforth provision. The petition itself is only 14 pages and I would ask that it, too, be made a part of this record.

Senator BAUCUS. It will be included.

[The information appears in the appendix.]

Mr. MUTH. Thank you, sir.

The appendices to the petition were fairly bulky. I will leave a copy with the committee and you may do with it as you see fit in terms of including or not including it in your record.

In the few minutes I have, Mr. Chairman, I would like to comment first on the state of the U.S. non-ferrous industry, then on some recent goings on in the subsidy programs that seem to be creating a privately-owned but publicly financed non-ferrous metals industry in Canada, and then say a few words about what we hope to accomplish through our filing of our 409 petition.

The U.S. industry was compelled during the 1970s, Mr. Chairman, to borrow and to spend vast sums of money to finance the modernization and pollution control of our smelting and refining plants. We carried much of that debt with us into the 1980s and into the worst economic times that this industry has ever seen. Times have been good in the industry in the last year or two but we remember vividly the bad times of the mid-1980s when metal prices stated in constant dollars reached levels lower than they had been during the Great Depression.

Those tough times forced some tough decisions. Plants and mines were closed and costs were cut to levels that had seemed unattainable to us. The part of the industry that did survive, today is cost competitive on a world basis. Moreover, in recent years, the last two years, demand for our metals picked up and through the end of 1988 demand was very strong. Both the U.S. and the Free World saw a record consumption of copper, lead and zinc in 1988. This tells us that our products are not out of date and that we remain a vital part of America's industrial economy.

Now in the past two months demand and prices have declined. Whether this is a temporary lull or the early signs of a return to difficult times is as yet unclear.

In Canada, meanwhile, the subsidies to our competitors have proceeded a pace since we have last talked. Most recently it was announced that Hudson Bay Mining and Smelting Company will be handed $130 million (Canadian) to rebuild its smelting operations at Flin Flon, Manitoba. The province of Manitoba will put up a third, the Federal government will put up a third, and the Federal government will lend the company a third so that it, too, can make a contribution. That third will be repaid if metal prices are remunerative; otherwise, it will not.

In short, Mr. Chairman, nothing much seems to have changed among our competitors north of the border.

With the subsidy programs continuing, it seemed to us that this was the right time to file our petition under Section 409. Before he left, Senator Danforth commented on not wanting to be left holding the bag. From our point of view, Section 409 offers us perhaps the best opportunity to avoid being in that position. In filing the petition, we were particularly mindful that Section 409 contemplates the possible use of Section 301 of the Trade Act to address Canadian subsidy practices. This is of particular importance to us because the injury likely to occur to the U.S. industry as a result of overproduction by subsidized plants is not always traceable to particular imports, the kind of thing reachable under the countervailing duty statutes.

But rather, the injury can flow from excess production during times of weak demand, leading to worldwide oversupplies which depress the world price and hence the prices that we could obtain for our metal. Then, too there is a threat of preemptive buying of raw materials that also arises in the subsidy context and which Section 301 is much better able to reach.

I see that my time is up, sir. I will terminate quickly. I do want to mention one development that has come along as something of a surprise to us since the Act went into effect. If we can believe our customers, during these times of short metal supply, some have been told by certain Canadian suppliers that supplies to U.S. customers were being reduced because of the continuation of our tariffs.

Now I point out, of course, that the tariffs never seemed to be a problem before. But now that there is a prospect that tariffs can be more rapidly reduced, it appears that some market leverage is being used to line up American buyer support for more rapidly lowering those duties.

It is our hope that through the filing of our Section 409 petition it will become clear that the schedule of duty reduction will remain fixed, that will not be subject to acceleration. Then conditions in the marketplace can go back to a more normal one.

Thank you very much, Mr. Chairman.

Senator BAUCUS. Thank you, Mr. Muth. That was very good.

Mr. Herzog.

STATEMENT OF DON HERZOG, PRESIDENT, MONTANA PORK PRODUCERS COUNCIL, TESTIFYING ON BEHALF OF NATIONAL PORK PRODUCERS COUNCIL, RAPELJE, MT

Mr. HERZOG. Mr. Chairman, am I about the right distance from the mike so that everyone can hear me?

Senator BAUCUS. Yes, just bring it close, Don.

Mr. HERZOG. All right.

Senator BAUCUS. Great. Thank you.

Mr. HERZOG. I am a pork producer; I am from Montana. I am here today representing the National Pork Producers Council on an issue that is of great concern to us. The National Pork Producers Council consists of 100,000 pork producers and represents 90 percent of the production of pork here in the United States.

As pork producers, we are very concerned about the Omnibus Trade legislation and the Canadian Free Trade Agreement. I am not going to read my testimony here today, you have a copy of that. I will hit the high points and handle it that way.

The Free Trade Agreement does hit the issue of tariffs. It does not address the issue of subsidies and that is the concern of the pork producers. Canadian pork producers have the potential of 28 different subsidies on their product and this makes it difficult for us to compete. We think we are very efficient producers of pork and given the opportunity, we can produce more pork than we are right now. We are not a pork deficit country; we can definitely produce enough for our domestic market.

In 1988 Canadian producers received an average subsidy of about $14 to $15 per head, U.S. dollars. For me as an individual that would mean a $70,000 check coming to me as a producer and that would be very nice. That is basically what the Canadian producer of my size receives from his government.

Canada has been increasing its exports to the United States of pork. Around 30 percent of the present production in Canada is targeted for export and 90 percent of that is coming to the United States. This has resulted, as near as we can tell, in a depression of our market to the tune of $700 million annually—1988 in the United States. This is a significant amount because we are a $10 billion industry total.

Historically, the trade of pork and pork products between Canada and the U.S. is about ten years old. It used to be that Canada actually was a net importer of pork until the Canadian government started to subsidize production. I think that you have copies of a graph—if you do not, we will see that you get them—and it indicates that for a period from 1978 until 1988, over that period of time, Canadian imports have increased from 100 million pounds to the present 629 million pounds. That is a total of live

hogs and pork product. When we talk pork product, we are talking chilled and that type of product, not processed further.

The export by Canada of pork product to the United States, we think as pork producers, is a very clear issue—That pork product and live hogs are a single continuous line of production. The ITC evidently does not see it quite as clearly as we do. The preliminary vote on this matter was 3 to 2 in favor of a countervailing duty on pork product. The present countervailing duty strictly covers live hogs.

The first ruling on this matter, I think, was in 1985 and strictly covered live hogs. They did not recognize the continuous line of production. So evidently there is some lack of understanding on this issue.

In the case of pork product, fresh product, coming into the United States, 90 percent of that value is involved with the live hog.

There is another thing that bothers us, in the aftermath of the Free Trade Agreement, the standards for inspecting pork product coming into the United States have been loosened. And essentially, they are operating under the umbrella of USDA inspection which American consumers have come to know and trust, while in fact this product is minimally inspected.

While they have a subsidy of $14 per head at the present time, we have a countervailing duty of $4 per head. Again, it is tough to compete with that kind of situation. As pork product comes into the United States from Canada, the ripple effect of the subsidies go far beyond pork producers alone. It affects truckers, packers, feed processors, grain producers, stockyards and ultimately the entire economy. The ripple effect of this goes out a long ways. Pork production is big business in the United States.

I do not hesitate to say that over a long period of time having to compete with subsidized production will eventually mean less—fewer pork producers in the United States and as a result, a smaller industry. This means jobs to United States citizens.

My time is up so I will make my remarks very brief here. We have had a drought in 1988. Most pork producers are also grain farmers and it has been tough. If you are not a grain farmer, you are still buying feed for the hogs. Our costs are high. We are in a present period of low market prices and we certainly do not mind fair trade. But let us make sure that it is fair trade and not just free trade. There is a difference there. Let us make sure that free trade is fair trade and that is not the case right now. We are having to compete against subsidized production.

Again, I want to thank you, Senator Baucus and the rest of the committee, for the opportunity to come here this morning and speak to you on this issue that is of vital importance to the pork industry here in the United States.

Thank you.

Senator BAUCUS. Thank you very much, Don. That was a very good statement.

[The prepared statement of Mr. Herzog appears in the appendix.]

Senator BAUCUS. The next witness is Mr. Winston Wilson.

Mr. Wilson.

STATEMENT OF WINSTON L. WILSON, PRESIDENT, U.S. WHEAT ASSOCIATES, INC., WASHINGTON, DC

Mr. WILSON. Thank you, Mr. Chairman.

I am Winston Wilson. I am President of U.S. Wheat Associates, which is wheat market development organization representing wheat farmers in the U.S. and wheat markets around the world.

First of all, I would like to applaud the committee for having these hearings. I think it is very important as the U.S.-Canadian Trade Agreement begins to be implemented that Congress continue to have oversight over this new program and watch it as it develops because I think it would be very easy for things to go awry very early if the Senate does not continue to observe what is going on.

Due to unfavorable weather conditions this year, Canadian wheat production was down almost 40 percent from the previous year. Their total exports were then reduced by almost 12 million metric tons or to approximately 50 percent of the previous year. Yet at this same time, Canadian wheat exports to the United States are up almost 90,000 tons from last year with four months remaining in the marketing year. The U.S. has been a growing export market for Canada since 1980. This year we are already accounting for a little over 3 percent of the Canadian export market, which makes us their tenth largest customer. Just eight years ago, the U.S. was less than 1 percent of the total—one-half of 1 percent of Canadian wheat exports. From 1984 to 1987 imports grew very dramatically. In 1987 they were more than 414,000 tons.

Imports of Durum wheat from Canada have grown particularly in the past three years. From 1983 to 1986, imports of Durum for Canada were almost negligible. This year, of the 340,900 tons of wheat export to the United States, 156,000 or 46 percent have been Durum wheat. Last year Durum exports represented 55 percent of the total Canadian wheat export to the United States. And while Canadian exports to the U.S. are small relative to U.S. production and consumption, the trend is definitely upwards.

However, we feel it is worth noting that exports of Canadian Durum to the United States are growing very significantly. Since Durum wheat is a very specialized crop with limited production and utilization, imports of Durum from Canada represent 10 to 12 percent of total U.S. domestic demand. At the same time, U.S. carryover stocks are estimated to be equal to an entire year's domestic consumption in the U.S. If the current trend continues, it is possible that U.S. Durum producers could experience significant injury from Canadian imports while exports to Canada are still prohibited under the terms of the U.S.-Canadian Trade Agreement.

Canada, as you know, has an import licensing system and they have yet to lift the requirements of the licensing system while the U.S. only has tariffs, which are by the way coming down on an annual basis.

We point this out because we believe that it is possible that significant injury could occur to U.S. Durum producers in the next few years. The Durum consumption of the United States is going up and our production will be going up to meet that need. We feel that it is unfair if the increase in the market is taken up by the

Canadians while we have no opportunity to take any advantage of the Canadian markets.

We are also concerned because it is very difficult to find out specifics of trade—prices, shipping arrangements, where it went and where it came from, in terms of imports from Canada. We are not sure of the current impact of the subsidized freight rates in Canada under the Crows Nest Agreement. The FTA did require the Canadians to give up Crows Nest subsidized freight rates on shipments moving west, but they did not affect shipments moving east. Most of the Durum would be moving east because that is where the processing centers in the U.S. are located.

There are also various other subsidies that we think need to be looked at because there have been significant changes since the agreement was signed several months ago. We are, at this point, actively considering requesting STR to look into imports into the United States from Canada and perhaps to have the ITC to monitor these imports in regard to price and subsidization.

But we will probably look at Durum first because we think this is rapidly becoming a serious matter of concern. We think that it is time that another look be taken at Canadian subsidies. As I said, there have been changes and we want to see how this is affecting U.S. wheat producers in general, but particularly Durum producers.

Thank you very much.

Senator BAUCUS. Thank you, Mr. Wilson.

[The prepared statement of Mr. Wilson appears in the appendix.]

Senator BAUCUS. Mr. Muth.

Mr. MUTH. Yes, sir.

Senator BAUCUS. I was a little alarmed to learn that since the FTA agreement, and at least since the negotiations that there are new additional examples of Canadian subsidies to smelters in Canada. You mentioned, I guess, the Hudson Company.

Mr. MUTH. Hudson Bay.

Senator BAUCUS. The Hudson Bay Company and about $130 million worth——

Mr. MUTH. That is correct.

Senator BAUCUS. It is divided three ways between the province, the Federal government and what is called a "loan."

Mr. MUTH. Right.

Senator BAUCUS. But it is——

Mr. MUTH. It is hard to know whether it is a three-way or a two-way.

Senator BAUCUS. Are there other examples or other indications that there may be other kinds of subsidies of this kind to other smelters in Canada, that you are aware of?

Mr. MUTH. Well, another example, somewhat less dramatic, the facilities at Trail, where you will recall a year or so ago about $130 million was put into the lead smelter by the governments. We now understand that there are negotiations to refurbish the zinc smelter. And there negotiations seem to be centering on elimination of certain taxes and charges that are presently levied by the government on the company as a quid pro quo for the investment.

Senator BAUCUS. What I find alarming, frankly, is that under the agreement the tariffs are scheduled to come down but, as I under-

stand it, there is no, binding provision on the part of Canada to reduce its subsidies. Although there is another provision in the agreement that basically says if subsidies are not reduced, the U.S. Government has the option of not allowing the tariffs to come down.

I guess I am comparing it with the plywood situation, where there is an agreement with the Canadian plywood producers that the tariffs would come down only if there are changes in the standards. That is, there is a quid pro quo. There does not seem to be the same quid pro quo written into the FTA with respect to the smelting industry. I wonder if that gives you additional concern and if that is another reason why it is very important that the action, if any is taken, on our side should be a 301 action?

Mr. MUTH. Yes, sir. I agree with what you are saying. We did not fare quite as well in the agreement. The simple fact is that we are subject under the terms of the agreement to a schedule of reducing tariffs while we have been able to gain nothing whatsoever in terms of a commitment on subsidies.

So, yes, that does give us concern, and yes we are going to do what we can to prevent any further acceleration of tariff reductions, which would simply be adding insult to injury.

Senator BAUCUS. But the 301 is probably the better remedy. Is that right?

Mr. MUTH. We see the 301 as the better remedy. We understand the general reluctance to use 301 in cases involving a subsidy because of the general idea that countervailing duties are what you should do. Unfortunately, in a commodity industry such as ours, the countervailing duty law just simply does not provide very much help. And for the reasons you indicate, as well as others, the 301 is a far more useful approach.

Senator BAUCUS. Don, could you outline to me examples of some of the subsidies that either the Federal government or provinces give to Canadian hog producers or pork production? You mentioned that it amounts to about $14 a head now, I guess, in hog subsidies. Could you give me an example of some of the kinds of subsidies that you run up against in Canada?

I think it would be interesting to a lot of Americans to learn about some of this. Because, you know, it is so different from what we do. Could you just give us, some examples of the ones that bubble up, that are the most egregious from your point of view?

Mr. HERZOG. Sure. You have to remember, or realize, that Canada is trying to encourage pork production in its western provinces. With that in mind, you understand some of the things that they are doing. For example, they subsidize the construction of pork processing facilities. In other words, packing plants. They are encouraging that. They are subsidizing the transportation. They are subsidizing the—The subsidy I referred to earlier was strictly to the producer themselves. These other are in addition.

Some of them are not directly to the producer but they are a part of the pork industry as you referred to a minute ago—the subsidies to packing plants, not only in construction but in tax breaks over a period of time, low cost or no cost type loans. Those are all a part of the whole program to encourage pork production. The

transportation—I am not sure—I cannot give you figures on that, but we can research that and find out exactly what the figures are.

I do not have the information with me today, but we can certainly get it to you on exactly what they are.

Senator BAUCUS. You said that Canada was once the net importer of pork. How long ago was that?

Mr. HERZOG. Ten to fifteen years ago.

Senator BAUCUS. And how much does Canada now export in hogs and pork?

Mr. HERZOG. Between pork and pork products and live hogs, 629 million pounds annually. That is 1988.

Senator BAUCUS. That is one year, okay.

Mr. HERZOG. There has been a significant change in the mix since the countervailing duty. The countervailing duty is on live hogs. So the live hogs part of it has kind of tapered off, but it did not take them too long to find out, we have to kill these hogs, send pork product, because there is no countervailing duty on that so that part has increased.

Senator BAUCUS. That is a good point. You mentioned in your testimony that the ITC ruled only 3 to 2 that pork imports are subsidized and there is an injury that comes to pork as well as the hogs.

I am going to send with other members of this committee, another letter to the ITC reminding them that when we changed the law we intended the pork and hog industry to be the same industry for the purposes of ITC and Commerce determination of subsidy, just to help nail that down even more. It is clear that that was the intent of the Congress and I want to make sure that all members of the ITC fully understand that intent.

Mr. HERZOG. Thank you.

Senator BAUCUS. My question to you, Mr. Wilson, is could you give me an idea of some of the changes you have seen since the FTA? You have mentioned that there have been a few changes, what are some of those? That is, changes which apparently indicate additional Canadian subsidy, aiding the wheat production in Canada.

Mr. WILSON. Well, we, of course, can see a regular change in the freight rate which is available to Canadian producers. This, say, a year ago was in the area of $1.00 a bushel for westbound export shipments. They did agree not to do that to the U.S.—use that rate for shipments to the United States going westbound, but eastbound is still okay. We do not know precisely what those are today, but they were in the neighborhood of $1.00 a bushel across the border from Minot, North Dakota, to the west coast. The U.S. producer at that time was paying something like $1.30 a bushel and the Canadian producer was paying about $0.25 per bushel. So it is a significant export subsidy and we are assuming that eastbound is similar.

In other areas, because prices have been somewhat lower a [illegible] that the Canadian crop was very

that the U.S. in the case of wheat got as good a deal as we gave, we would like to see those things looked at again.

Senator BAUCUS. Well, you are right; there are a lot of inequities in that agreement. For example, you pointed out, Thunder Bay was not covered in the Crows Nest provisions of that agreement.

Mr. WILSON. I think, unfortunately, we were under discussion about 6 o'clock and unfortunately they did not have the time to spend on it that they should have.

Senator BAUCUS. Are you at all concerned, if the industry brings an action say on behalf of Durum, that the Canadians will respond with some kind of immure kind of allegation about our Disaster Assistance Programs—you know that subsidize American wheat producers. I am just curious what your thinking is along those lines.

Mr. WILSON. Well, that is basically as I understand it, the logic of why the Canadians were not required to lift their import licensing system when the agreement went into effect because of the inequities between the U.S. and the Canadian subsidies. But our point is, I believe those inequities are much less than they were the last time that they were examined and that a serious look ought to be taken at that. Either the U.S. should not be lowering tariffs or the Canadians probably should be lifting their licensing requirements because tariffs really are not the issue as far as us shipping wheat to Canada.

The fact is we cannot get it in, period.

Senator BAUCUS. Well all of you have been very helpful here. I think this hearing has been very helpful to certainly this member of the Senate and I know to the committee, and I suspect also to the relevant agencies.

We all want to make this Canadian Free Trade Agreement work and I think there will be several hearings like this one to help make sure that it works affectively and according to the intent of at least this committee, as it ratified that agreement.

I encourage you to keep up what you are doing and continue to keep us well informed. That will greatly enhance the success of the agreement. It will make more sense to us as well as the Canadians.

Thank you very much and the hearing is adjourned.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

APPENDIX

ALPHABETICAL LISTING AND MATERIAL SUBMITTED

PREPARED STATEMENT OF ROBERT G. ANDERSON

THE CONGRESS SHOULD CONTINUE TO SUPPORT PLYWOOD PROVISIONS IN THE FTA IMPLEMENTING LEGISLATION

Canada's prescriptive plywood standards are an unfair nontariff barrier to U.S. plywood that, if permitted to stand, could severely injure the U.S. plywood industry.

U.S. plywood manufacturing is an efficient industry employing approximately thirty thousand employees directly. The regional economy of many small communities is dependent upon our industry. Jobs in these communities are in jeopardy if Canada has access to the U.S. plywood market while access to the Canadian market for U.S. plywood is unfairly blocked.

There is, at present, relatively little plywood trade between the United States and Canada, in part due to high tariffs on the entry of plywood into each country. In addition, Canada has maintained nontariff barriers that unfairly prevent the entry of 80% of U.S. plywood. While the United States has adopted performance standards—based on the strength and durability of plywood—Canadian standards specify that plywood must have certain physical characteristics. These prescriptive Canadian standards flatly prohibit panels with D-grade veneer and Southern pine plywood for use in construction, despite the demonstrated performance of U.S. plywood in its intended applications the world over.

The FTA envisions the removal of plywood tariffs over a ten year period. The U.S. plywood industry does not object, *provided access is granted* to Canadian construction markets for C-D grade plywood, the most common and widely used U.S. construction plywood grade. According to the FTA sideletter agreement on plywood, the Canadian Mortgage and Housing Corporation was to "evaluate" C-D plywood for its intended use. Approval by CMHC would have opened only 10% of the Canadian market to C-D grade plywood. Rather than evaluate CO grade plywood, however, CMHC stated the obvious, that U.S. C-D grade plywood does not meet the prescriptive Canadian plywood standard, and thus cannot be used. CMHC thereby breached the FTA.

In response to Canada's breach, Congress, in the FTA implementing legislation, prohibited plywood tariff reductions until the President certifies that common performance standards have been adopted and are implemented in the respective building codes.

Unfortunately, Canada appears to be seeking reduction in U.S. plywood tariffs before the standards issue is resolved. For the United States to accede would be an economic disaster for the U.S. industry; it would make a shambles of international plywood market development and undermine recent advances in efficient timber utilization.

The APA and the plywood industry ask that the Committee remain steadfast in its support of the FTA implementing legislation— U.S. plywood tariffs must remain in place until common plywood performance standards are implemented by both countries.

Chairman Baucus, members of the Committee, I am Robert G. Anderson, Director of Market Research and Economic Services of the American Plywood Association. Our organization represents the interests of producers of approximately 75 percent of the softwood plywood manufactured in the United States. Today our industry consists of 67 companies employing directly approximately 30,000 workers in 141 plants located in 19 states. The vast majority of the U.S. plywood firms are small business-

es, essential to small communities and to regional economies across the West and South. Our importance economically is not just by virtue of the approximately 30,000 people our plywood producers employ, but also through the thousands of others who are secondarily employed in industry-related activities such as logging and trucking.

Thank you for this opportunity to appear before the Subcommittee on International Trade and to discuss the continuing hazards unfair Canadian plywood standards and the Free Trade Agreement pose to the U.S. plywood industry and the small communities where our businesses are located.

Those hazards, as I will outline shortly, are many and profound. First, thousands of jobs in dozens of communities are at risk.

Second, Canada's position—which throughout lengthy negotiations has been consistently based on marketing rather than technical or quality concerns threatens serious damage to the U.S. plywood industry's long-range international marketing program.

Third, the unreasonable nontariff restrictions that Canada has for decades maintained against U.S. plywood discourage the improved timber utilization methods that the U.S. industry has pioneered and led. These efforts represent an investment of many millions of dollars by the U.S. industry. They contribute tangibly to more efficient use of our timber resource and more cost-effective construction products for the consumer domestically and worldwide.

BACKGROUND

There is now relatively little plywood trade between the United States and Canada. Besides the 20 percent tariff imposed on the entry of Canadian plywood into the United States and the 15 percent tariff imposed on U.S. plywood entering Canada, Canada has for many years maintained substantial nontariff barriers to the entry of panels using D-grade veneers and Southern pine for construction purposes. This represents a ban on 80 percent of U.S. plywood production.

Unlike U.S. plywood standards, which are performance-based, Canadian standards specify that plywood must have certain physical characteristics. These prescriptive Canadian standards flatly prohibit panels with D-grade veneer and Southern pine plywood for use in construction, despite their demonstrated suitability for this use the world over.

In short, by reference Canada's National Building Code dictates that plywood with knotholes greater than 50 mm cannot be used. But there is no empirical performance data suggesting our plywood is not suitable in its intended applications. In addition, plywood made from Southern pine has been excluded under Canadian law which bans the use of nonindigenous wood species in construction plywood—a provision clearly inserted for protectionist purposes and entirely unrelated to structural performance.

The FTA envisions the removal of all plywood tariffs between the United States and Canada over a ten-year period. Under a sideletter to the FTA, the United States agreed to begin lowering its tariffs once the Canada Mortgage and Housing Corporation (CMHC) evaluated plywood using D-grade veneer for use in CMHC housing. In exchange for access to the 10 percent of the Canadian construction plywood market controlled by CMHC, the United States was ready to open its plywood market to the Canadians completely.

If CMHC disapproved our C-D plywood after a performance evaluation, an impartial panel of experts would convene to review the CMHC evaluation for objectivity and technical accuracy.

Rather than objectively evaluate plywood with D-grade veneer, however, CMHC violated the Agreement by summarily rejecting it, stating simply that U.S. plywood did not meet the existing Canadian standard, a well-known fact. Needless to say, this is not what the Agreement intended. As then-Ambassador Yeutter stated emphatically, the CMHC maneuver, by failing to evaluate U.S. plywood for its adequacy for its intended use, was "definitely violative of the Free Trade Agreement." As a result, Congress mandated in the FTA's implementing legislation that plywood tariffs not be lowered until common plywood performance standards are adopted in Canada and the United States.

SUITABLE FOR INTENDED USE

I would like to make it perfectly clear that U.S. plywood with D-grade veneer and Southern pine veneer is fully suitable in Canada for its intended use. Prescriptive Canadian plywood standards that prohibit it are arbitrary, capricious and designed expressly to shield the Canadian plywood industry from U.S. competition. There is

no performance data indicating that the U.S. product is any less fit for its intended purpose than the Canadian plywood which complies with the standard. If Canadian plywood is superior, surely Canadian builders would be free to choose it in a true Free Trade Agreement. All we ask is that the issue be decided in the marketplace. We know what the outcome would be if Canada's consumers were free to choose. There would be a ready market for our well-proven, sturdy and economical panels.

U.S. plywood has been accepted in every country of the world where applications have been filed—except Canada. Moreover, experience with U.S. plywood in 75 million homes over the past 40+ years is sound testimony that our products perform admirably. Plywood with D-grade veneer has withstood climatic extremes from Alaska to Scandinavia to the Caribbean without perceptible difficulty. In short, the evidence is overwhelming that Canada—as a marketing ploy—has erected an arbitrary nontariff barrier to the entry of U.S. plywood products.

By refusing to seriously evaluate U.S. plywood, Canada has breached the Free Trade Agreement. Now, Canada seems unwilling to make a serious effort to reach standards through the BiNational Technical process established by the Agreement after adoption of FTA's implementing legislation. Instead, it is seeking to bypass the entire issue through a political resolution of the standards inequity—an inequity against the United States which Canada inaccurately portrays by suggesting that the United States has failed to live up to the Agreement.

RECENT EVENTS

Based on *Canada's* breach and the mandate of the implementing legislation, the United States properly refused to begin reducing plywood tariffs on January 1, 1989. In response, Canada not only retained their tariff, but claimed that tariff reductions must begin despite CMHC's breach, and requested negotiations between the U.S. Department of Commerce and Canadian External Affairs to resolve the tariff dispute.

When these negotiations proved unsuccessful, Canada referred the issue to the FTA Commission for resolution in accordance with Article 1805. The Commission convened for the first time on March 13. If, as expected, the Commission is unable to resolve the dispute, Canada is likely to refer the matter to a dispute settlement panel.

Last month, in a letter to the Chairman of the House of Representatives Forestry 2000 Task Force, Ambassador Hills stated:

Our position has been that, in the absence of an "evaluation" of relevant Canadian standards which could be reviewed, the process envisioned in the exchange of letters (the FTA sideletter agreement on plywood) could not apply. Our position remains firm, and I am confident that we would prevail in any dispute settlement process on this issue.

In fact, the proper Canadian remedy, if they are, indeed, entitled to one, is spelled out in Article 2008. It states simply: "Should the United States of America delay implementation of these tariff concessions, Canada may delay implementation of its concessions..."

Canada has already acted to retain its tariff, thus maintaining status quo pending resolution of the underlying standards barrier.

Although Canada has delayed its plywood tariff reductions it is, nonetheless, seeking, through political means, what amounts to unilateral tariff reduction by the United States. If Canada is successful in getting a dispute panel response that would force U.S. tariff reductions, its market will still be closed because of its discriminatory standards. The U.S. industry cannot afford that.

WHAT'S AT STAKE

(1) *Economic Impact.*— A one-way traffic in plywood trade favoring Canada would have devastating short- and long-term impacts on the U.S. plywood industry and dependent communities nationwide. Any agreement short of full acceptance of U.S. plywood in Canada and preferably, harmonized performance standards—would unfairly expose our producers to irreparable harm.

Assuming that only the current 300 million square feet of excess Canadian plywood capacity were to be sent to the United States, we estimate that more than $125 million in revenue would be lost to the U.S. industry—with no comparable Canadian market penetration by U.S. plywood manufacturers. While mills in the United States would face closures and curtailments, the Canadian industry would have the incentive to increase investment and employment. With unhindered access to both markets, a substantial Canadian industry expansion would be feasible—and inevitable. U.S. producers do not fear Canadian competition in an open market. They just want free trade to be fair trade in both directions.

(2) International Markets.— Failure of the United States and Canada to develop common performance standards resolving the problem would have repercussions far beyond our bilateral trade. If both the U.S. and Canadian plywood industries are to realize the vast undeveloped potential of the international markets, they need to break free from the time-consuming dispute over minor differences in panel grades and species. These differences confuse the overseas consumer and take energy away from market development.

The inability to agree on a common performance-based standard for the panel products of the two countries has particularly negative ramifications in the fast-growing European market, where both industries have made a substantial investment. The emergence of a larger and more closely knit European Community in 1992 lends new urgency to the development of common U.S.-Canadian plywood standards encouraging maximum producer efficiency and placing competition where it rightly belongs—in the marketplace.

(3) Resource Utilization.—It is also important to understand that the Canadian prescriptive plywood standards discourage sound timber utilization. In the United States, as it should be in Canada, timber is a valuable resource, both economically and environmentally. For these reasons, U.S. producers utilize as much of a log as is reasonably possible. This allows the U.S. industry to continue to supply high-quality products while minimizing the harvest levels necessary to supply our wood products needs.

To maximize timber utilization in the production of plywood, timber is processed as it comes from the forest. Logs with larger branches (and thus larger knots) are not rejected as they would be in the Canadian system. Further, even more of the individual log can be utilized under the U.S. performance standard system. This ability to make use of a greater part of the harvested timber results in increases in the size and type of growth characteristics such as knotholes, the nontariff barrier at issue.

If a larger knothole were to affect adversely the performance of plywood in its intended use, it would be reasonable to limit knothole size. In fact, U.S. practices for over 40 years have limited the allowable size of knotholes. But the more stringent Canadian standard is not necessary to guarantee performance in typical applications. The worldwide acceptance of U.S. plywood and its nearly half century of successful use testify to this.

To meet the Canadian standards, not only would U.S. producers be required to ignore the lessons of years of using performance standards to assure adequate performance, but they would lose the ability to maximize timber utilization and provide the public with the most economical building product. In terms of timber, conforming to the Canadian standard would require as much as 12 percent more timber volume for the same volume of structural panels.

WHAT CAN BE DONE

The current plywood technical discussions are in progress, and the industry has every reason to believe performance testing will substantiate our confidence in the U.S. product. If Canada will agree to full-panel performance testing as proposed—instead of attempting to limit testing to the spurious search for localized delamination around knotholes—the U.S. industry will be able to demonstrate its ability to compete successfully with Canadian plywood producers on equal terms. Opening our market without similar access to the Canadian market would be a mistake that the United States will pay for in lost jobs, lost plywood industry revenues, lost potential overseas markets, and lost momentum in the development of improved resource utilization practices. As Ambassador Hills has stated, the U.S. position vis-a-vis plywood and the FTA is a strong one, likely to prevail in dispute resolution. Now the American Plywood Association asks that this Committee remain steadfast in its support of the FTA implementing legislation—legislation this Committee was instrumental in enacting. This commitment should again be communicated to the Administration. We must assure that the U.S. and Canadian industries compete on a level playing field.

PREPARED STATEMENT OF SAMUEL H. BANKS

Mr. Chairman: My name is Samuel Banks, and I am the Assistant Commissioner for the Office of Inspection and Control. Thank you for this opportunity to address your concerns with respect to Customs operations on the Northern Border and the implementation of the Canadian Free Trade Agreement.

As you know, the mission of the Customs Service is built upon two major efforts which operate in opposing directions. On one hand, Customs is responsible for interdicting attempts to smuggle illegal narcotics and other contraband across our borders, and for ensuring that imported cargo is in compliance with U.S. laws and regulations. On the other hand, we have an obligation to importers to ensure that their shipments are processed through Customs in the most expeditious manner possible and with the least inconvenience. The ever-increasing volume of international trade, along with a relatively constant level of Customs resources, continues to challenge the Customs Service to develop more effective and innovative methods of achieving an acceptable balance between these two competing goals.

Customs is currently addressing this challenge through the concept of automated cargo selectivity, which is a key component of the Customs Automated Commercial System (ACS). Under this concept, we are able to devote our available inspectional resources to performing a greater number of more intensive examinations of high-risk cargo while rapidly releasing low-risk shipments. On the Northern Border, this system consists of two basic procedures:

1. The Line Release System, which was developed with extensive input from trade groups, permits us to quickly identify certain low-risk cargo through bar-code technology. These shipments, which our prior research has demonstrated to pose little enforcement or regulatory risk, are routinely released from our primary inspection points.

2. For all other shipments, the Automated Border Selectivity Program, which we expect to implement later this year, will enable us to quickly assess current risks associated with a given entry and determine the appropriate level of examination based upon specific entry information. Electronic links with automated Customs brokers, along with the availability of entry information prior to arrival of the shipment, will provide us with the capability to make this judgment rapidly and accurately.

To further enhance our cargo processing procedures, we have established 27 commercial centers along the Northern Border, where the majority of commercial processing will take place. These facilities are fully staffed, currently utilize line release procedures, and will soon be equipped with all the necessary tools (including Automated Selectivity hardware) which will enable us to provide efficient and uniform entry processing. In addition, for certain routine, low-risk shipments which have traditionally arrived at a crossing which has not been designated as a commercial center, the local District Director may authorize the continued entry at that port on a permit basis.

The Canadian Free Trade Agreement (FTA), which was implemented on January 2nd of this year, will significantly affect our commercial activities on the Northern Border. Under the FTA, tariffs on merchandise originating in the U.S. or Canada will be progressively eliminated in staged reductions by 1998.

In light of the extensive impact of the FTA, customs created a working group early in 1988 to work with our Canadian counterparts on the development of implementation procedures, specific and clearly defined rules of origin, and joint documentation controls. In addition, we were able to provide useful training seminars to our field personnel and the trade community, and we were able to issue interim regulations prior to the January 2nd, 1989 implementation date. As a result of these timely efforts, the FTA was implemented in a very smooth and productive manner.

As you know, Mr. Chairman, this bilateral agreement with Canada creates the world's largest free-trade area, and we may see the growth of U.S.-Canada trade exceed the 36% increase in volume which has occurred since 1983. In many ways, the FTA is the most far-reaching trade agreement ever concluded in terms of reducing trade barriers in tariffs, investments, services, agriculture and business travel.

In conclusion, I would like to reiterate that the Customs Service is committed to taking whatever steps are necessary to achieve our goals of facilitating the movement of legitimate cargo between the U.S. and Canada while effectively enforcing our narcotics and international trade laws.

Mr. Chairman, I appreciate the opportunity to present this statement, and I would be glad to respond to any questions you may have.

PREPARED STATEMENT OF JOSHUA BOLTEN

Mr. Chairman and members of the Committee, I am pleased to testify before you today on the implementation of the U.S.-Canada Free Trade Agreement, or FTA. I believe this is the first time the Administration has testified on the FTA since its entry into force on January 1, 1989.

This Committee is quite familiar with the agreement due to the important role which the Committee played in crafting the implementing legislation last year. I recall Mr. Chairman the cooperative manner in which this Committee worked with the Reagan Administration in developing that legislation; it demonstrates how the responsible use of the fast-track procedures can be used successfully to implement trade agreements. This Administration will continue that cooperative approach.

Mr. Chairman, I think that both sides believe that the implementation of the U.S.-Canada Free Trade Agreement is moving forward well and in a balanced fashion. As you are aware, following the signing of the implementing legislation by President Reagan, there was a hard-fought debate in Canada over the agreement. A national election was held in which the trade agreement was the central issue, and Prime Minister Mulroney has now succeeded in his effort to gain parliamentary approval of the agreement.

The U.S.-Canada trade relationship is the world's largest. Over $160 billion of goods and services are traded annually. The U.S. exports more to Canada each year than it does to either Japan or the European Community. As an indication of the importance of our relationship with Canada, President Bush conducted the first foreign trip of his Presidency to Canada in January. In order to emphasize the importance of Canada as a trading partner, Ambassador Hills accompanied the President on that trip.

The U.S.-Canada Free Trade Agreement is an ambitious undertaking, liberalizing what is already the world's largest bilateral commercial relationship. Tariffs are being phased out, with many having already been eliminated on January first of this year. Many quotas are disappearing, discriminatory practices against U.S. wines and spirits are coming down, and financial services practices have been liberalized. These are just examples of what is covered by the agreement. It is premature to pass judgment on implementation of the Agreement, less than four months after its entry into force, but at this point there remains every reason for optimism.

Though much was achieved, inevitably neither country obtained all it sought in the FTA. Recognizing this, the agreement established a number of important mechanisms for addressing unresolved or future trade problems.

The central oversight body for the FTA is the Canada-U.S. Trade Commission, chaired jointly by Ambassador Hills and the Canadian Minister of International Trade, John Crosbie. Under the FTA, the Commission has responsibility for dispute settlement, and for overseeing implementation and further negotiation and elaboration of the agreement. For both sides, FTA-created institutions should help manage and resolve disputes and provide a forum for negotiating further, mutually advantageous liberalization of the bilateral economic relationship.

The Commission held its first meeting on March 13. It was a constructive and successful meeting. While each side has reservations about some practices of the other, we and the Canadians are very pleased with the way the agreement is functioning. The Commission established a number of working groups to consider ways to further facilitate implementation of the agreement. Much of the work of these groups will be quite technical, such as the groups examining agricultural standards, customs administration and rules of origin. But those issues are extremely important in facilitating trade.

The Commission also created a tariff group in response to one of the most welcome development in the implementation period. It is gratifying that, on both sides of the border, some industries are seeking an *acceleration* of the scheduled elimination of particular duties, for example by reducing the period for elimination of a duty from ten years to five years. Our implementing legislation provides a process for implementing agreed acceleration of elimination of particular duties, after examination by the International Trade Commission and consultation with the private sector and Congress.

The tariff group established by the Commission will facilitate mutual consideration of these requests for accelerated duty elimination. Where industries on both sides favor acceleration of a particular duty, this group should enable agreement to be achieved rapidly. The group of course can also help weed out quickly cases involving products that are very sensitive for one side or the other. Let me assure you that our intent is to use this authority for mutually advantageous reduction of duties, not for a wholesale renegotiation of the tariffs or an exchange of sensitive duty reductions.

Another group which I know is of particular interest to you and many other members of the Committee is the Working Group established under Chapter Nineteen of the Agreement, dealing with subsidies and unfair pricing. The Commission agreed that the group will meet at the technical level this month and begin the information-gathering and organizational work that will be essential for its success.

The Commerce department will lead the U.S. side of that group. The task of the group is difficult, since many of the issues have enormous domestic sensitivity for one or both sides. Issues such as electric utilities and nonferrous metals are thorny examples of matters this group should address. We will honor our commitments in the Statement of Administrative Action that this Committee approved, including our pledge to consult with you as work proceeds.

Another group that warrants mention here is the Select Panel on automotive trade. Unlike the other groups I have mentioned, all of whose members are government officials, the auto panel is made up of distinguished leaders from the private sector of both countries. Ambassador Hills and Secretary Mossbacher jointly appointed fifteen members, and Minister Crosbie has also appointed fifteen members from the Canadian private sector. This group has a broad mandate to look at ways to assess the state of the U.S. and Canadian automotive industry, look at ways to improve its competitiveness both in the North American market and in the rest of the world. Within that broad mandate, Secretary Mossbacher and Ambassador Hills will ask the select panel to examine the matters set out in our Statement of Administrative Action, such as an increase of the U.S. and Canadian content requirement in the rule of origin for FTA automotive products,

As you know, Mr. Chairman, the Agreement provides two basic dispute settlement mechanisms: chapter nineteen, which provides for review by binational panels of national countervailing and antidumping final determinations, in place of review by national courts; and chapter eighteen, which provides for binational panel review of disputes arising under provisions of the FTA other than chapter nineteen or financial services. To date, no panels have been formed under either chapter eighteen or nineteen. However, two panels are now in the process of being established under chapter nineteen, to review determinations in separate U.S. dumping cases on raspberries and replacement parts for bituminous pavers. The U.S. members of the panels will be chosen by USTR from the roster of individuals which USTR submitted in preliminary form to the Finance Committee last January, and appointed finally at the end of March.

Chapter Nineteen panels are established automatically at the request of persons who otherwise would have a right to judicial review in U.S. and Canadian cases. The panel is rehired to apply the same law and the same standard of review as would a U.S. court in U.S. cases or a Canadian court in Canadian cases. Chapter Eighteen sets out procedures for resolving disputes about compliance with the provisions of the Free-Trade Agreement. In many ways, the procedures are similar to those of the GATT, but we think there are important improvements to make the process work faster and more effectively. Like the GATT process, the first step is try to resolve issues in bilateral consultations. If consultations do not produce a satisfactory solution, a panel will be formed at the request of either party. The panel will be composed of five non-governmental experts, two chosen by each side and the fifth chosen jointly. The composition of these panels is likely to vary from case to case, depending on the subject matter of the dispute.

Normally, it is expected that the resolution of a dispute will follow the recommendation of a dispute settlement panel under chapter eighteen. However, the parties can agree to an alternative mutually satisfactory solution. While the least desirable outcome, retaliation is the ultimate sanction if a party cannot or will not conform its practices or provide an alternative mutually satisfactory solution.

To date, we have consulted on several issues with Canada, both informally and formally under the FTA. We have concerns, for example, about alcoholic beverages and protection of copyrighted television programming; Canada has raised plywood and the definition of wool for tariff purposes. We also have issues of concern that are not currently FTA matters. Canadian fish export restrictions remain an unresolved GATT dispute; while softwood lumber issues are dealt with under the lumber Memorandum of Understanding, which is expressly outside the FTA. As you know, we are trying to deal creatively with the plywood issue, using a binational group of private sector experts of both countries to try to work out common performance standards.

Mr. Chairman, as much as we accomplished in the U.S.-Canada Free Trade Agreement, not all of our bilateral trade frictions were resolved. There are practices which both sides wish to see modified. And while we may hold different views on the preferred outcome of these issues, the important and common factor is that we wish to see them addressed in a fair and business-like manner, which does not allow sectoral irritants to balloon into major trade confrontations.

Mr. Chairman, let me return in conclusion to my original premise. Overall, we have a vast and excellent trading relationship with Canada. With a shared commit-

ment to the FTA and with continued hard work, the U.S. and Canada stand to improve further upon our already substantial and mutually beneficial relationship.

I would be pleased to respond to any questions you may have.

QUESTION FOR THE RECORD

What is the procedure for the identification of industries under 409(b) of the United States-Canada Free Trade Agreement?

Submission of Petition [409(b)(1)]

Under section 409(b)(1) of the United States Canada Free-Trade Agreement, any entity[1] that is representative of a U.S. industry may file a petition with USTR to be identified under this section if it has reason to believe that:

(1) as a result of the Agreement, the industry is likely to face increased competition from subsidized imports from Canada with which it directly competes (409(b)(1)(A)(i)]; and,

(2) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to Canada. [409(b)(1)(B)]

Identification of Industry [409(b)(2)]

Within 90 days of receiving a petition under section 409(b)(1), USTR shall decide, in consultation with the Secretary of Commerce, whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both

(1) increased competition from subsidized imports,[2] and,

(2) deterioration of its competitive position before rules and disciplines have been developed.

USTR Action After Industry Identification [409(b)(3)(4)]

At the request of an entity that is representative of the industry identified, USTR shall

(A) *Provide information or recommend an investigation under section 332.* [409(b)(3)]

At the request of the representative of an identified industry, the USTR shall

(1) compile and make available to the industry information under section 305 of the Trade Act of 1974 [409(b)(3)(A)],

(2) recommend to the President that the ITC be requested to investigate the industry under section 332 of the Tariff Act of 1930 [409(b)(3)(B)], or

(3) take both actions [409(b)(3)(C)].

Upon industry request (but no more than annually), USTR must update the information obtained under actions (1) (2), or (3), until an agreement on adequate rules and disciplines relating to government subsidies is reached.

(B) *Consider whether action is appropriate under section 301 of the Trade Act of 1974 or the countervailing duty law.* [409(b)(4)]

The USTR and the Secretary of Commerce shall review information obtained under subsection 409(b)(3) and consult with the identified industry to consider whether any action is appropriate

(1) under section 301 of the Trade Act of 1974 (including government self-initiation of an investigation under section 302(c) of the Act[3]), or

(2) under subtitle A of title VII of the Tariff Act of 1930 (including government self-initiation of an investigation under section 702(a) of that Act). [409(b)(4)(A)]

When considering whether to initiate a section 301 investigation, the USTR, after consultation with the Secretary of Commerce, shall

(1) seek the advice of the private sector advisory committees [409(b)(4)(B)(i)],

(2) consult with the Senate Committee on Finance and the House Committee on Ways and Means [409(b)(4)(B)(ii)],

(3) coordinate the interagency process [409(b)(4)(B)(iii)], and

(4) may ask the President to request advice from the ITC [409(b)(4)(B)(iv)].

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[1] An "entity" includes a trade association, firm certified or recognized union, or group of workers.

[2] Congress intended that USTR consider both Federal and provincial subsidies in Canada when determining whether the industry is likely to face increased competition from subsidized imports from Canada.

[3] Section 302(c) of the Trade Act of 1974 gives the USTR, when determining whether to initiate a 302 investigation, the discretion to determine whether action under section 301 would be effective in addressing the act, policy, or practice in question. 3

If a section 301 investigation is made and the President (following the investigation and the conclusion of any applicable dispute settlement proceedings under the FTA) determines to take action under section 301(a) of the Trade Act, the President shall give preference to actions that most directly affect the products that; benefit from governmental subsidies and were the subject of the investigation, unless the President otherwise determines that application of the action to other products would be more effective. [409(b)(4)(C)]

The decision on identification shall not prejudice the right of the industry to file a petition under any trade law, and shall not; affect or substitute for any process that follows such petition. [409(b)(5)]

PREPARED STATEMENT OF L.G. BRODERICK

EVASION OF THE CANADA SOFTWOOD LUMBER TAX MUST BE STOPPED

Exporters of Canadian softwood lumber subject to the export tax pursuant to the U.S.-Canada Softwood Lumber Memorandum of Understanding are increasingly finding ways to avoid paying the export tax. The cheating takes place in a number of ways:

- Taxable softwood is reported as non-taxable hardwood;
- Taxable types of softwood lumber are reported as non-taxable products such as fencing;
- Lumber from provinces subject to the tax is reported as B.C. lumber, which is not subject to the tax due to increases in B.C. timber fees;
- High-grade lumber is reported as being of lesser quality and therefore subject to less tax.

The Alliance for Enforcement of the Canadian Lumber Export Tax recently documented what it believes to be a clear case of tax evasion. A U.S. lumber yard ordered a shipment of Western softwood from an Ontario wholesaler. In the process of remanufacturing the lumber, the Pennsylvania yard noticed that although the top tier of lumber in some of the bundles was tax-exempt B.C. product, all of the rest of the lumber under the top tier was taxable Ontario product. These facts strongly suggest intentional tax evasion, as any border inspection would likely only check the top tier for province of origin.

The Commerce Department is aware of the problem and has promised to bring it to the attention of the agency responsible for enforcement of the export tax. But if Canada is unwilling to enforce the tax, the U.S. Customs Service must do so by beefing up border inspections, seizing falsely identified shipments, and prosecuting the shippers for Customs fraud. The Alliance urges the Members of this Committee to encourage Commerce and Customs to resolve this problem before honest companies like my own are driven out of business.

Chairman Baucus, Members of the Committee, I am Larry Broderick, President of Rivendell Forest Products, Ltd. of Englewood, Colorado. We are lumber wholesalers and importers of significant quantities of Canadian softwood lumber. I am also Acting Chairman of the recently formed Alliance for Enforcement of the Canadian Lumber Export Tax. We have been working closely with the Coalition for Fair Lumber Imports in an attempt to stop what appears to be widespread evasion of the 15 percent Canadian lumber export tax.

As you know, in 1986 the United States and Canada adopted the softwood lumber Memorandum of Understanding (MOU) which was designed to redress Canadian timber subsidies which were resulting in increasing volumes of Canadian lumber flooding into this country. The MOU replaced a duty on Canadian softwood lumber imports with a 15% Canadian Export Tax. Subsequently, the MOU was amended to allow British Columbia and the four Maritime Provinces to replace the export tax with increased timber fees (i. e., stumpage) to cover the 15% charge.

I believe in unrestricted free trade and was personally opposed to the countervailing duty and the MOU, and as importers of Canadian lumber, so was our company, Rivendell Forest Products. However, the agreement was adopted and the tax subsequently implemented. As a result, we have a new set of rules and laws by which we must conduct our business affairs.

I am here today to discuss a problem that is undoing, illegally but effectively, all that the MOU has achieved. The problem is widespread export tax evasion by Canadian and U.S. companies who export softwood lumber to the United States. This problem is worsening as more and more businessmen, faced with competitors who have found illegal methods of avoiding the tax, must themselves choose between tax

evasion and extinction. Many are choosing tax evasion. There are a number of schemes being used to avoid the tax. Here are some of them:

- Softwood lumber is subject to the tax. It is being misclassified as hardwood lumber, which is not subject to the tax.
- All manner of short, narrow softwood lumber is being misclassified as fencing, which is not subject to the tax.
- High grade lumber from provinces which are subject to the tax is being misclassified as low grade lumber from the same provinces. There is still a tax, but it will be as little as ⅓ as much as is legally required.
- Softwood lumber from British Columbia is not subject to the tax (because of increased stumpage rates). Softwood lumber from most other provinces is subject to the tax. Tax evaders simply report lumber from other provinces as having produced in British Columbia and thereby avoid the tax.

The Alliance has recently uncovered an egregious example of export tax evasion. I am submitting copies of affidavits and photographs which memorialize this transaction. As these documents indicate, a Pennsylvania lumber yard recently ordered a truckload of Western Spruce/Pine/Fir lumber from Green Forest Lumber, Ltd. (Green Forest), a Toronto, Ontario exporter of Canadian lumber. Green Forest then shipped the Pennsylvania customer a truckload containing 13 bundles of lumber. Some of the bundles were as ordered, and others consisted of Ontario lumber, but at least three bundles consisted of lumber that had obviously been repackaged so that it appeared to be of British Columbia origin even though it was mostly of Ontario origin. The misimpression was caused by the fact that only the top layer was of B.C. origin. More bundles could have been of this type, but they were processed before the problem was discovered.

How would this happen? We do not know for a fact exactly how this happened but based on the facts we do have, logic suggests the following:

Green Forest buys a quantity of Western SPF 2" x 8" x 12' lumber produced by Northwood Pulp and Timber, Ltd. of Houston, B.C. and has it shipped to the Green Forest Lumber reload facility at Fort Erie, Ontario. Green Forest also buys a quantity of Eastern SPF 2" x 8" x 12' lumber produced by a sawmill which it controls, Chapleau Forest Products, Ltd. of Chapleau, Ontario, and has it shipped to the same Green Forest Lumber reload facility in Fort Erie, Ontario. Green Forest then removes the packaging from the bundles, breaks the steel bands, and repackages a single bundle with 19 layers (114 pieces) of Chapleau (Ontario) Eastern SPF on the bottom, and one layer (6 pieces) of Northwood (B.C.) Western SPF on the top. The bundle is repackaged with either Northwood paper or Green Forest paper in preparation for shipment to a customer. Green Forest then ships it to a customer in Pennsylvania, classifies the lumber as having been produced in British Columbia as it crosses the border, and thereby avoids the export tax.

Of course, the only lumber visible to any inspector who goes to the trouble to remove the paper packaging, but does not break the steel bands, is the top layer of Northwood Western SPF, produced in B.C. and not subject to the tax. The Department of Commerce has been notified of this situation and they are attempting to find export tax notices indicating whether the tax was paid on this particular shipment. We expect this notice to show that the shipment was fraudulently characterized in the notice as tax-exempt B.C. lumber.

Revenue Canada has recently modified the export notice form so that the exporter need no longer indicate what portion of the shipment is taxable; this data appears only as a monthly aggregate on the exporter's monthly return. As a result, it is now impossible for a customs agent to determine whether a given shipment is fraudulently being passed off as a tax-exempt lumber. This makes enforcement very difficult. The only way to catch a tax evader is to do a full-blown audit of all of a company's activity, including beginning inventories, ending inventories, the origin of all purchases, the destination of all shipments, etc. etc. Commerce is aware of this problem and has told us they are attempting to remedy it.

This cheating is unfair to U.S. producers, and it is especially unfair to all those U.S. importers and Canadian exporters who are abiding by the MOU. Not only are honest distributors losing sales to tax-evaded lumber, but this "subsidized" lumber artificially depresses the price of fairly traded lumber everywhere, and hurts all U.S. producers and some Canadian producers, especially those in B.C. While documented evidence other than the case discussed above is not available, our knowledge and day-to-day involvement in the marketplace, as well as conversations with other U.S. importers, U.S. producers, Canadian exporters and Canadian producers lead us to believe that these efforts to avoid the tax are widespread and they are increasing.

Mr. Chairman, fundamental fairness requires that the MOU be enforced fully and uniformly. This cheating is an intolerable burden to Canadian and U.S. companies

which seek to abide by the law. We have raised this issue with Department of Commerce officials and with the U.S. Customs Service. We have urged them to alert Revenue Canada and to insist that the problem be remedied.

Enforcement in this case is first the responsibility of the Canadian government and Revenue Canada. They have the means and ability to stop this fraud. The question is whether they are willing to do so. If they are not, the United States must. The U.S. Customs Service must step up inspections. Shipments with incomplete notices must be turned back at the border. Shipments accompanied by false notices should be seized and, if Canada takes no action, the perpetrators prosecuted under U.S. law. We ask this Committee to encourage the Department of Commerce and the U.S. Customs service to continue and increase their efforts to ensure the strict enforcement of the lumber MOU.

Mr. Chairman, the question of export tax evasion will likely be the subject of substantial publicity within the forest products industry on both sides of the border. If this problem is not addressed aggressively in the very near future and the violators go unpunished, the lesson they will learn is that they can get away with this fraud, and it will increase. Everyone will watch to see if the cheaters are stopped. If they are not, everyone will cheat.

AFFIDAVIT

I, Dave Brojack, being duly sworn, say:

1. I am the manager of Wm. Brojack Lumber Co., a lumber facility located in Olyphant, Pennsylvania. I have worked in the lumber business for 20 years.

2. On or about October 12, 1988, I placed a verbal order for a shipment of 13 bundles of 2" x 8" x 12' lumber ("the shipment") from Green Forest Lumber Limited ("Green Forest"), a lumber wholesaler located in Ontario. I requested that the shipment be of Western Spruce/Pine/Fir (Western SPF).

3. On October 13, 1988, I took delivery of the shipment. The invoice provided me by Green Forest in relation to the shipment is attached as Exhibit A. The lumber was placed in my yard.

4. The thirteen bundles in the shipment were wrapped in plastic bearing the markings of various companies, including Green Forest and Decker Lake Forest Products, Ltd. ("Decker Lake"). Decker Lake is a lumber manufacturer whose only sawmill, to the best of my knowledge, is located in British Columbia.

5. I began to use the bundles for remanufacturing. Upon opening one of the Green Forest bundles, I noticed that the top tier of lumber (6 pieces) was marked with the grade stamp "COFI," which is the abbreviation for the "Council of Forest Industries", an association of British Columbia lumber manufacturers, used only on lumber produced in British Columbia. The mill number on the grade stamp was #46, which indicated that these pieces of lumber were produced by Northwood Pulp & Timber, Ltd. in Houston, British Columbia.

6. All of the remaining lumber (114 pieces) in the bundle discussed in item 5, above, was marked with the grade stamp "OLMA" which is the abbreviation for the "Ontario Lumber Manufacturers Association", an association of Ontario lumber manufacturers. The mill number on the grade stamp on this lumber was #24, which indicates that it was produced by Chapleau Forest Products, Ltd. at their sawmill in Chapleau, Ontario, a mill which is owned or controlled by Green Forest.

7. At the time I discovered the mixed bundle discussed in items 5-6, above, six of the thirteen bundles in the shipment had been remanufactured. I inspected the remaining six bundles. I examined the grade stamps on this lumber and discovered that three of the bundles consisted of Western SPF and three of Eastern SPF, produced in Ontario.

8. On March 8, 1989, I sold four of the thirteen bundles to Rivendell Forest Products, Ltd. (Rivendell), a lumber wholesaler whose headquarters office is located in Englewood, Colorado. One of these was the mixed bundle referred to in items 5-6. The other three bundles were the Eastern SPF bundles referred to in item 7. The invoice and order acknowledgement for the sale are attached as Exhibits B and C. At the time of sale I informed Rivendell that although I had ordered Western SPF from Green Forest, I believed that the bundles I was selling Rivendell actually consisted primarily of lumber produced in Ontario.

9. On March 29, 1989, I loaded the four bundles onto a truck sent into my yard by Rivendell. At the time they left my yard, the bundles were packaged in the same manner as when they arrived at my yard, except that the paper from two of the bundles had been removed.

10. The foregoing facts are known by me to be true, of my own knowledge.

(Signature of Affiant)

Subscribed and sworn to before me this 30 day of March, 1989.

(Signature of Notary)

My Comm. Exp. 1-3-91

AFFIDAVIT

I, John H. Beecher, being duly sworn, say:

1. I am the owner and President of Lynn S. Chapel Lumber Co., a retail lumber yard located in Elmira, New York. I have been employed in the lumber business for 37 years.

2. On March 8, 1989, I purchased a shipment of four bundles of Western SPF 2" x 8" x 12' lumber ("the shipment") from Rivendell Forest Products, Ltd. (Rivendell), a wholesale lumber company headquartered in Englewood, Colorado.

3. Larry Broderick of Rivendell informed me at the time of purchase that, although the shipment appeared to be of Western SPF, he believed it might in fact consist primarily of Eastern SPF produced in Ontario.

4. On March 29, 1989, I took delivery of the shipment. Two of the bundles in the shipment arrived at my lumber yard wrapped in plastic bearing the markings of Green Forest Lumber, Ltd. ("Green Forest"). Two bundles were not wrapped.

5. At the time the lumber was being unloaded at my yard, I noticed that some of the lumber was Eastern SPF. Inasmuch as I had specifically ordered Western SPF, I called Broderick of Rivendell and asked him to send someone out to have a look at it.

6. Later that day, Rob Litke, a Rivendell employee, came to my lumber yard to have a look at the lumber. Subsequently, Doug Michaels and Lon Mattoon, photographers, arrived at approximately 3:00 P.M. The bundles were opened for the first time at my yard on that date, in the presence of myself, Michaels and Mattoon, who photographed the bundles as they were opened.

7. Upon opening one of the Green Forest bundles, I observed that the top tier of lumber (6 pieces) was marked with the grade stamp "COFI" which is the abbreviation for the "Council of Forest Industries", an association of British Columbia lumber manufacturers, used only on lumber produced in British Columbia. The mill number on this lumber was #46, indicating that these pieces of lumber were produced by Northwood Pulp and Timber, Ltd. at Houston, British Columbia.

8. The remaining pieces of lumber in the bundles (114 pieces) were marked with the grade stamp "OLMA", which is the abbreviation for the "Ontario Lumber Manufacturers Association", an association of Ontario lumber manufacturers. The mill number on the grade stamp on this lumber was #24, which indicates that it was produced by Chapleau, Ontario, a mill owned or controlled by Green Forest Lumber, Ltd.

9. We then opened the three remaining bundles. They all consisted of lumber with "OLMA" grade stamps with mill numbers 24 and 86, indicating that this lumber was produced at the Chapleau sawmill discussed in item 8 (mill #24), above, and by Green Forest at their remanufacturing facility in Windsor, Ontario (mill #86).

10. The videotape and photographs attached as Exhibits D and E were taken by Michaels and Mattoon at the time the bundles were opened. Based on my personal observation, they appear to reflect the actual packaging and condition of the shipment at the time.

11. The foregoing facts are known by me to be true, of my own knowledge.

John H Beuche
(Signature of Affiant)

Subscribed and sworn to before me this 29 day of March, 1989.

Charles D Evans
(Signature of Notary)
CHARLES D. EVANS
Notary Public, 04708585
Chautauqua County, State of New York
Commission expires March 30, 19
MAY 31, 1989

MAR 20 '89 11:26 RIVENDELL-FOREST-PRODUCTS-LTD.

INVOICE / FACTURE

GREEN FOREST LUMBER LIMITED

TORONTO, ONTARIO

BRQL02
1023

SOLD TO / VENDU A:
WM BROJACK LUMBER CO
R. D. # 1, BOX 482
OLYPHANT, PA 18447

SHIP TO / EXPÉDIEZ A:
WM BROJACK LUMBER CO
MONTDALE
PA.

DATE	OUR INVOICE NO.	CAR NO.	YOUR ORDER NO.		F.O.B.
89/10/13	05479	TRUCK	12871		DESTINATION

ROUTING / TERMS: BY TRUCK — DISC. OF 2.00 ... 10 DAYS ...

DESCRIPTION AND TALLY	QTY	PRICE	AMOUNT
ONE TRUCKLOAD			
(02) SPRUCE/PINE/FIR NO. 2 & BETTER, KD, S4S EE 1641 PCS	26256 BF'S	290.00	7614.24
2 X 8 12' 1641 PCS			
Prepaid Freight (2132.02)			

P A Y A B L E I N U . S . F U N D S

REMIT TO: G R E E N F O R E S T L U M B E R L I M I T E D
P . O . B O X 9 5 3 8 4
C H I C A G O , I L L I N O I S 6 0 6 9 4 / U . S .

DISCOUNT ALLOWED IF PAID WITHIN 10 DAYS / JOURS

INVOICE TOTAL / FACTURE: 7614.24

109.64
7504.60

ORDER IS COVERED BY BLANKET PURCHASE EXEMPTION CERTIFICATE
LA COMMANDE EST COUVERTE PAR UN CERTIFICAT D'EXEMPTION D'ACHAT
ISSUED ON / ÉMIS LE ... AT/A
VENDOR PERMIT NO. / NO. DE PERMIS DE VENDEUR

INTEREST AT ... % PER MONTH / INTÉRÊTS DE ... % PAR MOIS
CHARGED ON ALL OVERDUE ACCOUNTS / EST CHARGÉ SUR TOUTS COMPTES PASSÉS DU

IMPORTANT: NO CLAIMS ALLOWED UNLESS MADE WITHIN FIVE DAYS OF RECEIPT OF SHIPMENT BY REGISTERED LETTER OR WIRE. PAID FREIGHT BILL MUST ACCOMPANY REMITTANCE OR BE FORWARDED AS SOON AS POSSIBLE.
IMPORTANT: AUCUN RÉCLAMATION ACCEPTÉE À MOINS D'ÊTRE FAIT EN DEDANS DE CINQ JOURS SUIVANT L'EXPÉDITION ET PAR LETTRE ENREGISTRÉE OU CÂBLE. UN BILLET DE LIVRAISON PAYÉ DOIT ACCOMPAGNÉ LA REMISE OU L'ENVOYER LE PLUS TÔT POSSIBLE.

ORIGINAL INVOICE FACTURE ORIGINALE

MAR 20 '89 11:27 RIVENDELL-FOREST-PRODUCTS-LTD. P.3

NAME OF SHIPPER

ADDRESS GREEN FOREST LUMBER LIMITED
184 MERTON ST.
TORONTO, ONTARIO
M4S 3B6

ISSUED AT SHIPPER'S REQUEST

ADOPTED BY RAIL FREIGHT AND EXPRESS CARRIERS SUBJECT TO THE JURISDICTION OF THE CANADIAN TRANSPORT COMMISSION

SHIPPER'S REF. NO. 13-326

NAME OF CONSIGNEE INV. NO.
MR. BROJACK LUMBER
ADDRESS OF CONSIGNEE
MONTDALE
PA

BUYER (IF OTHER THAN CONSIGNEE)
ADDRESS

COUNTRY OF FINAL DESTINATION: U.S.A.

PREPAID
COLLECT

LOCAL CARRIER: 672764 ONTARIO LTD
FROM (LOCAL POINT OF LADING): FT ERIE
EXPORTING CARRIER: 672764 ONTARIO LTD
DATE SHIPPED: 10/12/88

DESTINATION:
ROUTE:
PROVINCE OR STATE OF:

QUANTITY STATED IN LBS. TONS GALS. YDS. F.B.M. ETC.

CURRENCY OF VALUE: USA

MARKS AND NUMBERS — NUMBER AND TYPE OF PACKAGES: DESCRIPTION OF GOODS

WEIGHT (SUBJECT TO CORRECTION): 45000 LBS

CUS. P.O. 12271 — 13 UNITS — 1254353

2 X 8 441/12' 1200/12'

RECEIVED 13 UNITS LUMBER SPRUCE

B.L. & S. SEAL NOS.

TARE — DUNNAGE — PERMIT NO. IF APPLICABLE

26,288

SPECIAL INSTRUCTIONS

WHERE REQUIRED BY THE TARIFF SHIPPER MUST COMPLETE

TOTAL NO. PKGS.	DIMENSIONS OF SHIPMENT	TOTAL CUBIC FEET	DIMENSIONAL WEIGHT	

NOTICE TO CARRIER

DELIVER CAR FOR UNLOADING FROM DOOR OR END SPECIFIED BY PLACARD

NOTE TO CARRIER: — FOR U.S. CUSTOMS CLEARANCE BY
GREEN FOREST LUMBER LIMITED
BUFFALO, N.Y. DETROIT, MICH.

AGENT PER [signature] SHIPPER PER [signature] OCT 13/88

11286.54

Wm. BROJACK LUMBER Co.
R.D. #1, BOX 482 • OLYPHANT, PA. 18447
Phone 717 586-2281

March 29 1989

Riverdell Forest Products
P.O. Box 3192 Englewood Colorado 80155

P.O. # 01766

4 units 2 x 8 x 12

4 D12 yest per unit

Tim Bailey
Chapell Lumber
3/29/89

MOORE BUSINESS FORMS, INC. L

Rivendell
RIVENDELL FOREST PRODUCTS, LTD.

BILL OF LADING

ORDER NUMBER	01-00766	
TYPE	TRUCK LOAD	

(HEREINAFTER REFERRED TO AS SHIPPER)

SOLD TO
LINN S. CHAPEL CO., INC.
ELMIRA, NY

CONSIGNED TO
CHAPEL LUMBER COMPANY
1040 CATON AVE.
ELMIRA, NY

CUSTOMER ORDER #
820

Received subject to the classifications and tariffs in effect on the date of the issue of the Bill of Lading, the property described above in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated above which said carrier (the word said destination. I on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of, said property over all or any portion of said route to destination and as to each party at any time interested in all or any said property, that every service to be performed hereunder shall be to all the bill of lading terms and conditions in the governing classification on the date of shipment.
Shipper hereby certifies that he is familiar with all the bill of lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns

TARP
NO TARP

DESCRIPTION	ORDERED TALLY UNITS	UNIT SIZE	ORDERED TALLY TOTAL PIECES	ACTUAL SHIPPED TALLY # OF UNITS	ACTUAL SHIPPED TALLY PIECES PER UNIT
2x08-12' #26BTR WSPF	4	120	480		

DATE SHIPPED 3/29/89

RECEIVED IN GOOD ORDER

DATE RECEIVED 3/29/89

SHIPPER RIVENDELL FOREST PRODUCTS, LTD.

SIGNATURE

CARRIER RIVENDELL TRANSPORTATION, INC.

SIGNATURE

3

COMBINATION SHORT FORM OF STRAIGHT BILL OF LADING - EXPRESS SHIPPING CONTRACT ADOPTED BY RAIL FREIGHT AND EXPRESS CARRIERS SUBJECT TO THE JURISDICTION OF THE CANADIAN TRANSPORT COMMISSION

SHIPPER

RIVENDELL FOREST PRODUCTS, LTD.
P.O. BOX 3192
ENGLEWOOD, COLORADO 80155

ISSUED AT SHIPPER'S REQUEST

SHIPPER'S NUMBER: 01-00766

SHIPPING DATE: 3/29/89

CARRIER'S NO.

CONSIGNEE AND ADDRESS

CHAPEL LUMBER COMPANY
1040 CATON AVENUE
ELMIRA, N.Y.

CUSTOMER ORDER # 820

[redacted]

POINT OF ORIGIN: OLYPHANT, PA.

[redacted]

NAME OF CARRIER: RIVENDELL

ROUTE

[redacted]

CAR INITIAL

CAR, TRAILER, CONTAINER NO

PIECES/PACKAGES	DESCRIPTION	WEIGHT	RATE
2X8 #2&BTR WSPF @ 120 pcs.	4/12'		

IF CHARGES ARE TO BE PREPAID WRITE OR STAMP HERE "TO BE PREPAID"

RECEIVED $ TO APPLY IN PREPAYMENT OF THE CHARGES ON THE PROPERTY DESCRIBED HEREON.

AGENT OR CASHIER

FOR CARRIER'S USE	CHARGES
ADVANCE AND/OR BEYOND	$
MISC	$
BASIC	$
PIECE	$
VALUE	$
TOTAL	$

SHIPPER SHOW AMOUNT OF C.O.D.

C	AMOUNT $		
O	FEE $	COLLECT	PREPAID
D	TOTAL $		

VALUATION

$1.10 Kg ($.50 or /50 lb) ☐ $2.20 Kg ($1.00 lb) ☐ $4.41 Kg ($2.00 lb) ☐

Special agreement between consignor & carrier advise here ▶

FOR MOTOR CARRIER SERVICE

Declared valuation - Maximum liability of $4.41 kg ($2.00/lb) calculated on the total weight of the shipment unless declared valuation states otherwise $

DECLARED VALUE OF SHIPMENT

$

NOTICE OF CLAIM

a) No carrier is liable for loss, damage or delay to any goods carried under the Bill of Lading unless notice thereof setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the originating carrier or the delivering carrier within sixty (60) days after the delivery of the goods, or, in the case of failure to make delivery, within nine (9) months from the date of shipment.
b) The final statement of the claim must be filed within nine (9) months from the date of shipment together with a copy of the paid freight bill.

RECEIVED IN APPARENT GOOD ORDER AND CONDITION

CONSIGNEE: L. Chapel Co.

PER: David H. [signature]

TOTAL NO PIECES/PKGS ▶

WHERE REQUIRED BY THE TARIFF SHIPPER MUST COMPLETE THE FOLLOWING

DIMENSIONS OF SHIPMENT	TOTAL CU FT	DIMENSIONAL WT	TOTAL WGT	NO XL PCS PKGS

NOTIFY **John V. Carr & Son** INC C. S. EMERY & COMPANY INC. FOR U S CUSTOMS CLEARANCE

SHIPPER PER

AGENT [signature]

PER

PERMANENT POST OFFICE ADDRESS OF SHIPPER

1

ORIGINAL - NOT NEGOTIABLE (THIS BILL OF LADING - EXPRESS SHIPPING CONTRACT IS TO BE SIGNED BY SHIPPER AND CARRIER)

PREPARED STATEMENT OF SENATOR JOHN H. CHAFEE

Thank you, Mr. Chairman, I continue to believe that this agreement is one of the greatest achievements in our quest for free trade between the U.S and the rest of the world. This agreement runs in total contrast to the protectionist fever prevalent throughout the world.

The foundation of any free trade agreement, however, must be fair trade. The implementing legislation we passed last year was carefully crafted by the Administration and the Congress to establish fair trade in this agreement. I believe the agreement with the implementing legislation will provide for fair trade in all areas of American commerce. No one sector of American commerce was sacrificed to make gains in other areas of commerce. The agreement will level the trading field for everyone involved on both the American and Canadian sides of the border.

While Canada is our biggest export market and the largest foreign market for our goods, it nevertheless has maintained very high tariffs in sectors of special interest to American exporters. In addition, Canada maintains a complex array of federal and provincial non-tariff trade barriers, of long serious concern to our exporters.

This agreement, over the course of 10 years, will eliminate trade barriers across a broad range of goods and services, and when ratified, will increase the flow of goods between the U.S. and Canada. I continue to hope this agreement will increase trade between the U.S. and Canada and serve as an example to reinforce the idea of free and fair trade throughout the world.

If the Free Trade Agreement is all that I have said it is, then why are we here today? We are here to talk about several ongoing trade disputes between the U.S. and Canada, that were not resolved during the negotiations on the Free Trade Agreement.

I do not believe these disputes are unresolvable and I hope we will utilize the mechanisms of the Free Trade Agreement to thoroughly examine and resolve these disputes. It is absolutely necessary that we use the negotiation process in the FTA to develop resolutions for these disputes.

We implemented the FTA three months and one week ago today, which is not enough time to allow adequate examination of the dispute settlement mechanism in the Agreement. I look forward to hearing the testimony from Mr. Bolten, regarding, how we can best use the Agreement to address these ongoing disputes without taking some form of unilateral action.

It is my sincere hope that the Members of this Subcommittee and of the Congress will allow the Free Trade Agreement to be fully implemented before we try to undermine its effectiveness by working outside of the FTA to resolve trade disputes with Canada.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF STANLEY S. DENNISON

Mr. Chairman, and members of the Committee, my name is Stan Dennison, and I am Chairman of the Coalition for Fair Lumber Imports. Let me begin by thanking you for the opportunity to appear today to discuss the continuing need for strict adherence to the Softwood Lumber Memorandum of Understanding. There is a danger that as time goes on, especially with the adoption of the Free Trade Agreement, we could forget the serious injury which subsidized Canadian lumber caused the U.S. lumber industry and the reasons why the Memorandum of Understanding is vitally important. That is why this hearing, to consider the continuing need, despite the FTA, to enforce existing agreements like the MOU is so important.

To appreciate the need for the Softwood Lumber MOU, I think that it is necessary to review the circumstances that resulted in the adoption of the MOU.

For years, subsidized Canadian lumber severely injured the U.S. lumber industry. The U.S. lumber industry is one of the most efficient in the world. Nonetheless, from 1977 to the mid-1980s, over 600 U.S. lumber mills were forced to close. Tens of thousands of lumber mill employees were thrown out of work; hundreds of mill communities were devastated. Companies that did not close often suffered severe losses. After the 1982 recession, when lumber consumption hit new records, prices remained at recession lows. This divergence of demand and price was unprecedented.

It was universally agreed that the problem was overproduction. The source of that overproduction was Canada.

Between 1977 and 1985, Canadian production increased by 30% while U.S. production dropped by 4%. Eighty-five Canadian mills opened. Canadian lumber took an ever-increasing share of the U.S. market, reaching one-third in 1985 (while it had averaged just over 20% from 1970 through 1976).

Canadian lumber firms captured increasing shares of the U.S. market because they were subsidized. While U.S. mills buy timber competitively, Canadian mills were given government timber at below market prices. Canadian timber cost a fraction of virtually identical timber just across the border. Chart 1. Diverse Canadian sources, from the Prime Minister of British Columbia to an Ontario Royal Commission, concluded that Canadian mills did not pay fair prices for timber.

In 1986, facing disaster despite record demand, the Coalition for Fair Lumber Imports filed a countervailing duty case against subsidized Canadian lumber. That case was supported by the National Forest Products Association, the Western Wood Products Association, the Southern Forest Products Association, the Southeastern Lumber Manufacturers, the Northeastern Lumber Manufacturers, the Western Forest Industries Association, the Northwest Independent Forest Manufacturers, and dozens of individual companies, including Georgia-Pacific, International Paper, Potlatch and Temple-Inland.

In June of 1986, the International Trade Commission preliminarily found that subsidized Canadian lumber imports were the cause of serious injury to the U.S. lumber industry.

In October of 1986, the Commerce Department preliminarily found that Canadian timber fees gave Canadian mills a 15% subsidy. Rather than allowing the United States to collect the subsidy offset, Canada sought to settle the case by imposing a 15% export tax on Canadian lumber. The U.S. industry agreed to this settlement, dismissing its countervailing duty case, on the basis of commitments for strict enforcement of the Memorandum of Understanding (MOU).

Recognizing the importance of the MOU to the U.S. industry and the people and communities which depend upon it, and recognizing that Canadian subsidies fully justified a countervailing duty, President Reagan made a formal determination that any breach of the MOU would be a violation of Section 301 of the Trade Act of 1974. The President committed that if such a breach occurred, he would "take action (including the imposition of an increase in the tariff on softwood lumber imported from Canada) to offset" any breach. This commitment was necessary for the U.S. industry to withdraw its countervailing duty case.

Since then, various Members of Congress and the Administration have committed to strict enforcement of the MOU. In fact, the MOU is exempted from the U.S./Canada Free Trade Agreement to ensure its strict enforcement. These commitments are based upon a recognition of the MOU's importance to the continued well-being of the U.S. lumber industry. Without the MOU, imports of subsidized Canadian lumber would again increase.

It is especially important to understand that the MOU has been one of the great successes of U.S. trade policy. Since its adoption, the MOU has been instrumental in reducing Canada's penetration into the U.S. lumber market. Chart 2. As a result, U.S. lumber production and employment have increased. Chart 3. The relationship between lumber price and demand has been largely restored. The MOU has been a very successful agreement. That success, however, can only be maintained as long as the MOU is maintained and strictly enforced.

This is why the Coalition is here today. It is our responsibility to maintain the strict observance of the MOU to ensure that the U.S. industry is not once again faced with a flood of subsidized Canadian lumber and resulting mill closures. Yet without the MOU, this is certainly what would happen: Canadian timber fees, which have been substantially increased in some provinces to allow those provinces to offset the export tax, would fall to their previous, subsidized levels and imports of subsidized lumber would increase.

This is exactly what some members of the Canadian industry and the Canadian Government would like to see occur. They want the elimination of the MOU.

Since its adoption, the Canadian industry has sought the elimination of the MOU. Some mills refused to pay the export tax. Repeatedly, Canadian industry associations asked their governments for unilateral amendments to the MOU which would have undermined its effectiveness. Several serious breaches were remedied only through U.S. monitoring of the MOU. Today, the Canadian industry continues to seek termination of the MOU.

This request is now being entertained by some in the Canadian Government. On November 7, 1988, during the Canadian election campaign, Gerald St. Germain, then Minister of Forests for Canada, announced that the Mulroney Government, if returned to power, would seek to terminate the MOU through negotiations. Since then, the new Minister of Forests, Frank Oberle, has repeatedly indicated an interest in elimination of the MOU. Moreover, two Canadian provincial forest ministers, Parker from British Columbia and Kerio from Ontario, have called for elimination of the MOU.

Thus, the U.S. industry is deeply concerned that the Canadian government will try to undermine the MOU. The new U.S. Administration may receive requests to renegotiate the MOU, or the new Administration may be put to an early test by a flat breach of the MOU. Canada may claim that, as British Columbia (the province responsible for two-thirds of Canadian production) has increased its timber fees to offset the export tax, the MOU is no longer needed.

Nothing is further from the truth. If the MOU were eliminated, we could expect a return to the huge volumes of subsidized lumber which drove hundreds of U.S. mills out of business. Without the MOU, British Columbia could decrease its timber fees as rapidly as it increased them, increasing production of subsidized lumber in British Columbia. Simply, without the MOU, we would be right back to where we were in 1985, facing subsidies and industry disaster.

In addition to any wholesale attempts to renegotiate the MOU, another real danger to the U.S. lumber industry has arisen. Without strict enforcement of the MOU, the U.S. industry will also be susceptible to injury from subsidized imports. If Canadian producers are allowed to fraudulently avoid the MOU, we can expect that volumes of subsidized imports will again increase. Not only is such fraud fundamentally unfair to persons on both sides of the border that abide by the MOU, but it poses a danger of undermining the beneficial effects of the MOU to the U.S. industry.

Since its adoption, we have been aware of some efforts by various Canadian mills to avoid the effects of the MOU through various methods of tax evasion, classifying lumber as fencing or softwood as hardwood. These efforts are apparently increasing. Now, some Canadian firms are classifying Ontario and Alberta lumber, which are still subject to a 15% charge, as B.C. lumber, which is now exempt from the tax as a result of timber fee increases. I know that another witness here today is going to address some specific problems with enforcement and the problems which it poses for U.S. companies, but I would also like to emphasize this issue.

It is absolutely necessary that as lumber enters the United States, Customs ensures that, when appropriate, it is subject to the export tax. If Canadian mills consistently find a method to avoid a significant border check, subsidized lumber shipments will increase. In this regard, there are two serious problems.

First, it has come to our attention that Canada has changed the export tax notice form so that it is now impossible to determine from the export notice whether a particular shipment is subject to the export tax or from a province, such as British Columbia, which is exempt because of increased timber fees. We have brought this issue to the attention of the Department of Commerce, but would like to stress the critical importance of having export tax documentation that will allow for border enforcement of the MOU.

Second, once adequate documentation exists, Customs must periodically check enough shipments to ensure compliance with the MOU. Ideally, it is Revenue Canada's obligation to ensure enforcement of the MOU, but realistically, Customs must provide significant checks to ensure that fraudulent shipments of lumber do not enter the United States.

As I indicated earlier, I am sure that one of our other panelists will have more to say concerning this issue.

Senators, the United States must continue to enforce the MOU strictly. It should be made clear to Canada that:

—the MOU is an important international agreement,
—necessitated by Canadian subsidies,
—which were seriously injuring the U.S. industry, and
—the United States fully expects Canada to abide by it.

If this message is made clear, a potentially serious international trade conflict can be avoided.

If Canada breaches the MOU or seeks its elimination, the Administration, based upon President Reagan's commitment, must respond strictly. The MOU was necessary and fair when adopted. It is necessary and fair now. The MOU is critical to an important U.S. industry. A unilateral breach should be dealt with quickly and sternly.

Further, U.S. Customs and the Department of Commerce must increase enforcement efforts to guarantee that the MOU is enforced strictly and uniformly. Fraudulent avoidance of the MOU will only multiply if allowed to continue.

The U.S. Congress can work to ensure the maintenance of the MOU by expressing its concern for continued enforcement of the MOU to the new Administration and by helping the Coalition to work with the Department of Commerce and Customs Service to ensure the strict enforcement of the MOU.

Chart 1

U.S./Canadian Fees on Comparable Timber, 1985
($/MBF Log Scale Scribner)

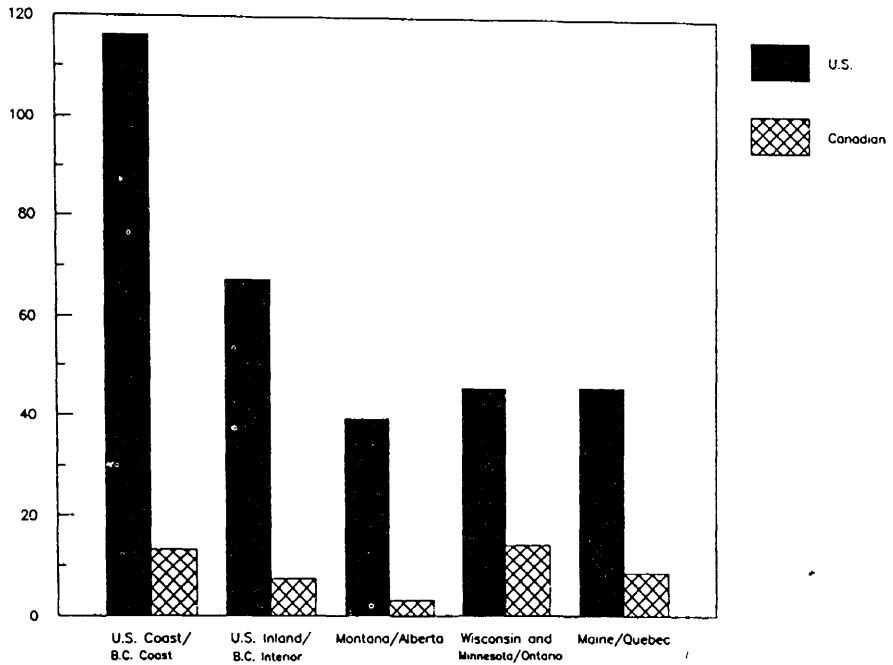


Chart 2

CANADIAN PENETRATION OF U.S. SOFTWOOD LUMBER MARKET

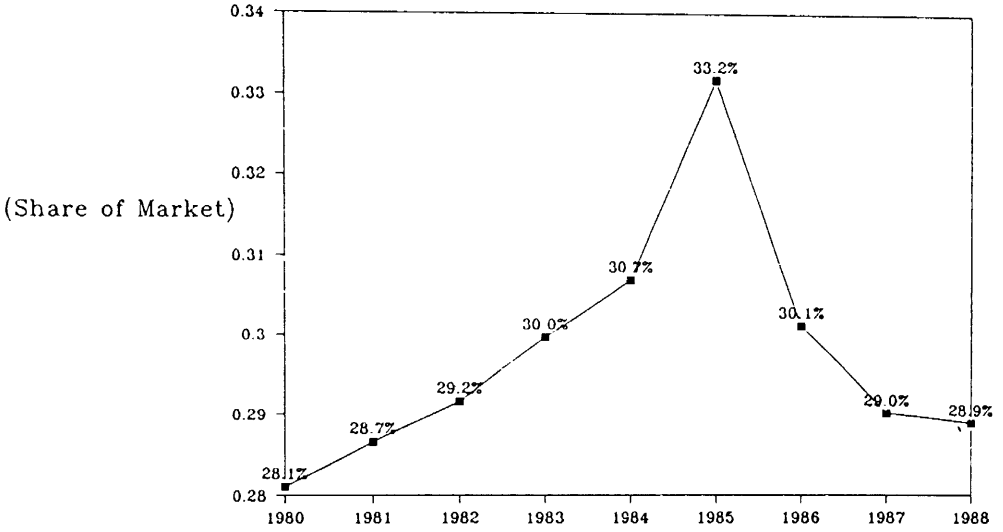
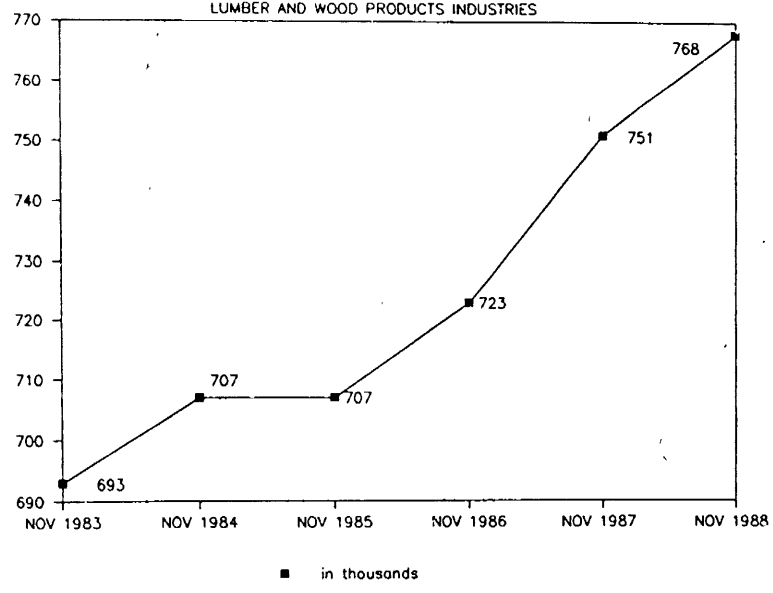


Chart 3

NUMBER OF EMPLOYEES



PREPARED STATEMENT OF DON HERZOG

Mr. Chairman and Members of the Trade Subcommittee:

As president of the Montana Pork Producers Council, I am pleased to have this opportunity to testify on the issue of trade with Canada. I am submitting this testimony on behalf of the National Pork Producers Council (NPPC). NPPC represents 100,000 pork producers and their families in 45 member states that are affiliated with the national organization. NPPC is the largest commodity dues-paying organization in the United States and accounts for more than 90 percent of the nation's commercial pork production.

As you well know, the U.S. pork producer is much concerned and much involved in trade issues with Canada. We took great interest in the Omnibus Trade and Competitiveness Act of 1988 and of course, the U.S.-Canada Free Trade Agreement.

While the U.S.-Canada Free Trade Agreement addresses the issue of eliminating tariffs between our two countries, it does not address the issue of Canadian subsidy programs. Canadian pork producers potentially have the benefit of 28 different Federal and provincial subsidies. It is our hope that we can phaseout or eliminate these programs that distort trade in pork across our borders.

Although we believe we are the most efficient producers of pork, we cannot compete with the Treasuries of other governments. In the third quarter of 1988, Canadian pork producers received subsidies of $23.53 (Canadian) per hog. In the fourth quarter of 1988, Canadian pork producers received subsidies of $37.08 (Canadian) per hog. I cannot begin to tell you how even a $10 per head subsidy would help U.S. pork producers in terms of selling more pork internationally.

Canada has targeted increasing amounts of their pork production for export. At present, around 30 percent of their domestic production is for the export market. And unfortunately, approximately 90 percent of their pork exports are destined for the United States. Canadian imports, have depressed U.S. prices, costing American pork producers approximately $700 million in 1988 alone. While the export of surplus Canadian pork has depressed prices of U.S. hog and pork product, it should also be understood that the U.S. market is one that the U.S. pork producers can more than adequately supply if given the chance.

U.S. pork producers do not have a price support program like Canada's nor do they ask for a program like Canada's National Tripartite Meat Stabilization Program. Under this program, Canadian pork producers receive net subsidies that constitute a guaranteed minimum return of 90 percent of the previous 5-year average margin over cash cost. We are not asking for subsidy programs--we are asking for fair treatment from our closest trading partner.

The history of significant pork trade between the U.S. and Canada goes back only a decade. In 1979, imports of Canadian pork products to the U.S. equalled 102 million pounds. Ten years later, there has been a 400 million pound increase in pork imports. These figures do not even take into account the volume of live hog imports which also grew dramatically during the period. 1979 marks the year when Canada began significant subsidy payments to its producers. Prior to that time, Canada had frequently been an importer of pork. After 1984, we obtained a countervailing duty (CVD) on live hogs, but not pork products. Canada responded by slaughtering their live hogs and sending their pork products across the border in record numbers. Imports of pork product have risen by more than 100 million pounds since 1985, to **519 million pounds* in 1988. Its obvious to us that countervailing duties must be imposed on pork products as well as hogs since they are produced through one "single continuous line of production," and because the Canadians will escape the discipline of the countervailing duty law if duties remain only on hogs.

However, the net effect of the Canadian subsidy programs on U.S. pork producers must be less clear than we anticipated. The recent 3 to 2 vote of the International Trade Commission (ITC) appears to demonstrate some lack of understanding of the amendment to last year's Omnibus Trade Bill. First of all, we find it troubling that the ITC could ignore the legislative history of the trade bill. Specifically, we are concerned about the weight to be given one segment of the domestic industry. It is clear that Congress intended for the ITC to exercise its authority to give greater weight to one group over another within an industry in proportion to their relative importance, if either group accounts for a significant portion of the total value of the processed product. *In the case of pork production, over 90 percent of the value of the end product comes from the raw product (i.e. the hog).*

Perhaps even more disconcerting, is the ITC's application of the test of "substantial coincidence of economic interest." The analysis discriminates against U.S. industries that are not vertically integrated. While there are a few vertically integrated agricultural industries in the United States, such integration is not the norm in

the pork industry. The ITC should give greater consideration to the high correlation of hog and pork prices and to the relatively limited value added by pork packers.

The U.S. pork industry is a diverse group of farmers and their families, small, medium and large. All act independent of direct government subsidies, but rely on their federal government to help against undue interferences, such as natural disasters or trade distorting practice of foreign competitors.

At the same time, we want to comment the Members of the Finance Committee for their great effort on the Trade Bill and the Free Trade Agreement. We are pleased that the 30-day quarantine (imposed by Canada because of a concern about pseudorabies) on hogs shipped to Canada will be resolved as a technical issue to accompany the Free Trade Agreement. Until this restriction on U.S. swine shipments is eliminated, American hogs continue to have to be fed at the U.S. border for the 30 days prior to being sent to a slaughter house. This requirement has essentially resulted in an embargo on shipment of market hogs to Canada.

But in the aftermath of the Free Trade Agreement, we have heard concerns about the new procedures for testing Canadian meat. The procedure essentially exempts Canadian meat from any serious residue sampling and testing. I believe that the Free Trade Agreement may have gone well beyond liberalizing agricultural trade by eliminating particular restrictions on the reinspection of meat products between our two countries.

While the free trade intent is well-founded, we may have gone too far in allowing the Canadians to ship subsidized products into the U.S. at will. The system of free trade can only work if the trade between our two countries is fair.

Unfortunately, the present trade situation is patently unfair. At a time when our countervailing duty is at 2.2 cents per pound (Canadian) or about $4 per head (U.S.) on Canadian hogs, the subsidies now being received by Canadian pork producers are in excess of $37 (Canadian) per head. I challenge you to find pork producers or businessmen anywhere that can stay in business if their competitor has a $27 (U.S.) per unit cost advantage, especially when the market price of the hog or unit is only $40.

And not to belabor a point, but American producers receive no protection from government price support programs and must fend for themselves in an artificially distorted market. An even more perverse and long-lasting consequence of Canadian subsidies is the institutionalization of the excess production in Canada. After having brought about increased production in its Eastern provinces during the 1970's and early 1980's, Canadian governments have begun subsidizing the producers in their Western provinces with the express purpose of increasing pork production there. To serve the increasing hog production, the number and capacity of packing plants in the west have been increased. Canada is now faced with an excessive production base bearing no relation whatsoever to market prices or to internal Canadian consumption. If not terminated, Canadian pork subsidies will result in an unchecked and permanent flood of Canadian pork into the U.S.

We are hopeful that the Canadian subsidy programs will ultimately be removed in the present Uruguay Round of GATT negotiations. Canada must be required to end its pork subsidy programs so that trade in pork between the countries will be truly free and fair.

Last week we learned of a proposal released by GATT Director-General Arthur Dunkel in Geneva, relating to agriculture subsidy programs that could strike to the very heart of our ability to be competitive in our own country, let alone in the international marketplace. Depending on the form in which it might be adopted, the plan could allow Canadian pork producers to continue to receive as many as 28 different federal and provincial subsidies in the short-term. A unified market between the U.S. and Canada cannot exist where one group of producers of a product are subsidized and the other producers are operating under a free-market oriented system. It is important that no agreement be adopted in Geneva which would preclude the use of the countervailing duty laws against agricultural subsidies of Canada or any other country.

I don't hesitate in stating that the pork industry in Montana or any state will simply be wiped out if the Canadians are given a free hand to unfairly subsidize the pork producing industry in their country.

U.S. pork producers have always been supportive of fair and free trade internationally, and have supported the U.S.-Canada Free Trade Agreement, with the understanding that the U.S. government would work to eliminate trade-distorting domestic subsidies in this Uruguay Round of trade negotiations. Pork producers comprise one of the few agricultural industries in the U.S. that do not receive direct government subsidies, and have not supported unfair import restrictions such as quotas and other non-tariff trade barriers.

We will be available for consultation on any proposals affecting our industry during the ongoing GATT negotiations. We only ask that we have some say in these critical proposals that effect the ability of our producers to have a fair opportunity to make a living.

An inability to subject the Canadian subsidies to a CVD on pork products, coupled with extremely low hog prices that are below the cost of production, together with higher interest rates and higher feed costs, could make the difference between the survival and failure of many of our producers.

Our industry has not recovered from the devastating drought of 1988 that has wreaked havoc with the financial status of many of our producers and their families. During the drought of 1988, pork producers received little assistance under the emergency feed programs, and do not look forward to another drought this year.

Thank you again for this opportunity to testify at this important hearing. I would be pleased to answer any questions that you might have and look forward to working with your committee as we address these issues of mutual concern.

Prepared Statement of Robert J. Muth

I. INTRODUCTION

The Non-Ferrous Metals Producers Committee (NFMPC) is grateful for this opportunity to testify before the Trade Subcommittee concerning the U.S.-Canada Free-Trade Agreement (FTA).[1] I am Robert J. Muth, Vice President of ASARCO Incorporated and President of the NFMPC. We very much appreciate the Committee's invitation to testify today about issues which are very important to the long-term development of the U.S. mining and metals industry.

My statement addresses several topics related to the FTA. They are respectively: the U.S. industry's progress in achieving an internationally-competitive cost structure; developments in the Canadian industry; the Canadian Government's provision of new subsidies since the FTA was concluded; the initiation of subsidy negotiations under the FTA Working Group; requests for acceleration of the FTA tariff phase-down schedule for non-ferrous metal products; and the NFMPC's filing with the U.S. Trade Representative of a petition under the FTA implementing legislation's Baucus/Danforth provision.

II. THE STATE OF THE U.S. INDUSTRY

In the NFMPC's previous appearances before this Committee, we have sought to keep the Congress informed about the achievements of the U.S. non-ferrous metal and mining industry in reducing its production costs and increasing its international competitiveness. During the early and mid-1980s, the industry endured a grueling restructuring involving the closing of facilities, reduction in production and management employment, and major capital investments in productivity-enhancing plant and equipment. The effect has been to reduce the industry's cost of production dramatically. For refined copper, production cost was reduced by 37 percent over the 1981-86 period with additional reductions more recently.[2] For refined lead, progress in the industry is typified by the Doe Run Company—the nation's largest primary lead producer—whose unit cost of production was reduced by 23 percent while its production efficiency per manhour of labor was increased by 44 percent over the 1983-88 period.

Far from being an industry with high costs, antiquated plant and equipment, and a profile of economic obsolescence, the industry today is robust and maintaining a cost structure which makes it willing to compete head-to-head with foreign producers in a free-market environment. It is clear, however, that any free market indus-

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[1] The Non-Ferrous Metals Producers Committee is an association of U.S. producers of primary copper, lead, and zinc. Its members include:

—ASARCO Incorporated
—Doe Run Company
—Phelps Dodge Corporation.

NFMPC members account for more than one-half of U.S. primary refined copper production, virtually all of U.S. primary refined lead production, and a significant share of U.S. production of zinc ores and concentrates. The member companies also produce significant quantities of by-product cadmium, bismuth, antimony, and sulfuric acid.

[2] Office of Technology Assessment, U.S. Congress, *Copper: Technology and Competitiveness.* U.S. Government Printing Office: Washington, D.C., 1988, p. 11. OTA found that copper net operating costs declined from 80-90 cents/pound in 1981 to approximately 54 cents/pound in 1986.

try is inherently vulnerable to the damaging effects of foreign practices that distort international trade.

III. THE CANADIAN INDUSTRY

The Canadian mining and metal industry is, of course, very large and of global importance, but occasionally a romanticized image of Canada's natural endowments seems to arise in the midst of policy debates about international mining and metal matters. There appears to be a perception that Canada with its vast expanse of wilderness is a nearly limitless storehouse of minerals and that Canada, therefore, has a natural economic role to play as the leading supplier of such products to a mineral-depleted United States. Although reality and this perception are in conflict, I nonetheless have heard Canadian Government subsidy practices being justified on the grounds that they merely build upon Canada's natural endowments.

While Canada certainly does have major reserves of some metals, such as nickel and zinc, its proven reserves of other metals, such as copper and lead, are in fact being depleted.[3] Its ore grades for some metals, such as copper, are no higher than those in the United States. Indeed, Canada has no inherent advantage over the United States in the mining of many mineral products. The U.S. mining industry, with major reserves of many minerals, efficient production technology, and proximity to metal consumers, has a long-term, strategic place in the U.S. industrial structure. It therefore makes sense to prevent damage to the U.S. industry arising from subsidies to the Canadian non-ferrous industry.

What happens in the Canadian non-ferrous metals industry has great importance for the United States. Likewise the policy of the United States toward imports of Canadian non-ferrous metals is of great importance to Canada. Canada is the largest exporter of copper, lead, and zinc to the United States. Canadian exports of copper, lead, and zinc to the United States account for from 34 percent to 61 percent of total Canadian production of these metals.[4] Therefore, what the Canadian Government does to subsidize its non-ferrous metal producers certainly has a direct impact on the long-term prospects of the U.S. industry.

IV. CONTINUING CANADIAN GOVERNMENT SUBSIDIZATION

Since the initiation of the FTA negotiations, the NFMPC's greatest concern has been that the FTA's failure to provide any discipline on Canadian subsidy practices would encourage the Canadian Government to offer additional subsidies to the Canadian non-ferrous metal producers.[5] Indeed, in the period since conclusion of the FTA, that is precisely what has happened. Let me cite some specific examples [6]:

—Even as Congress was in the midst of its consideration of the FTA implementing legislation in May 1988, Cominco Ltd. announced its intention to seek provincial government financial assistance for a major zinc smelter project at Trail, British Columbia. The new lead smelter at the same location has already been the recipient of major government financing.

—A new subsidy package is being provided to Hudson Bay Mining & Smelting Co. Ltd. for modernization and pollution control at its Flin Flon, Manitoba copper and zinc smelter. Funding for the C$130 million project is to be split as follows: one-third paid for by the Canadian Federal Government; one-third paid for by the Manitoba Provincial Government; and one-third is the responsibility of the company although even this share is to be loaned to Hudson Bay by the Federal Government on terms which permit no repayment if metal prices fail to stay above a specified level.

One point that should not be overlooked is the prominent role of pollution control financing in the overall fabric of Canadian Government subsidies for this industry. The technology of the non-ferrous metal smelting industry is such that technical

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[3] Canadian smelters are relying to an increasing extent on imported ore and concentrate raw materials.

[4] Shown below for 1988 are Canada's production of refined copper, lead, and zinc metal, U.S. imports of such products from Canada, and such U.S. imports as a percent of Canadian production. Quantities are in metric tons:

	Canadian production	U.S. imports	U.S. imports as % of production
Copper	528,723	178,004	33.7
Lead	268,324	92,033	34.2
Zinc	703,206	427,514	60.8

Copper includes continuous cast copper rod in imports. Lead includes primary and secondary.
Source: U.S. Bureau of Mines and U.S. Department of Commerce.

[5] A summary description of the more publicized subsidy programs is provided as Exhibit A.

[6] News clippings concerning these programs are attached as Exhibit B.

steps to control or reduce emissions generally require the modernization of much of the basic production equipment itself. A common result is that from such pollution control investment comes a reduction in production costs. Unfortunately for the U.S. industry, production cost reductions due to modernization are usually fully offset by the cost of raising new capital from the financial markets and by the pollution abatement operating expenses. In Canada, however, industry enjoys the reduced cost flowing from modernization while the Government absorbs capital charges. The U.S-Canadian difference might be expressed very simply as "polluter pays versus polluter collects."

Is it likely that such subsidy practices will continue? We believe that it is. We believe also that the Canadian Government will resist strongly any attempt to use the U.S. countervailing duty (CVD) law to inhibit the provision of such subsidies. In fact, Canadian Government officials have made clear that they view the FTA's binational dispute resolution panel as a mechanism to prevent application of U.S. CVD law to certain categories of Canadian subsidy programs. These programs, including those to offset rising pollution control costs, are central to the Canadian government's program of financial assistance to the Canadian copper, lead, and zinc industries. Canadian Trade Minister Crosbie, for example, stated in Parliament that governmental grants for pollution control could not legitimately be challenged as trade distorting and that the likelihood of such a challenge under U.S. trade law would actually be reduced because the FTA's binational dispute resolution panels would discourage such "frivolous" actions.[7]

The NFMPC believes that U.S. law is unambiguous in viewing the Canadian subsidy programs as potentially countervailable. We understand that the Executive Branch concurs on this point.

As we look into the future, it is clear that the U.S. industry will bear by itself the major costs for its emissions and hazardous waste control programs. The Canadian industry, on the other hand, will benefit both from being relieved of the financial cost of such control by its Federal and provincial Governments and by having at the same time put in place new efficient production technology. The commercial implication of such a development would be a major competitive advantage for the Canadian industry over the U.S. industry, the effects of which will only be fully manifest when U.S. economic growth slows—as it will—and metal prices then fall—as they always have in the past.

V. THE FTA WORKING GROUP NEGOTIATIONS

The FTA does provide for a bilateral Working Group to negotiate new subsidy and antidumping disciplines over a period of up to seven years. Although we sincerely hope that the Working Group achieves rapid, substantive success, major barriers to this goal exist. The Executive Branch should take a very firm position that the goal of this process is real discipline on the Canadian subsidy practices. We are acutely aware that there may be considerable pressure to settle for something less. We believe an important and constructive role for the Congress is to ensure that the U.S. negotiators have the backing to maintain a firm position.

We would like to see the Working Group directly address the types of subsidies which plague the non-ferrous metals industry. In particular, it should seek discipline on the range of domestic subsidies, including the Regional Development Program subsidies, for Canadian export industries such as the non-ferrous metals industry. Additionally, it should make clear that so-called "pollution control" financing is included among the disciplined activities. Furthermore, any subsidy agreement with Canada must provide for additional "transparency" for government assistance pro-

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[7] International Trade Minister Crosbie stated:

It is quite clear to us, and I do not think it would be challenged by the United States, that any attempt to assist in reduction of pollution, or grants from government to assist in controlling detrimental environmental consequences will not be challenged as trade distorting.

"Canadian Officials Dispute Report Charging That FTA Will Undermine Environmental Plans," *International Trade Reporter*, October 12, 1988, p. 1379. The publication reports the thrust of Mr. Crosbie's comments as:

International Trade Minister Crosbie has said earlier that the FTA will not give the U.S. government any greater ability to challenge Canadian environmental programs as unfair trade subsidies. The likelihood of that happening should actually *be reduced* under the agreement because Canada will have available binational dispute resolution panels to discourage 'frivolous' attempts to use U.S. trade law in that way, he said Sept. 22 in the House of Commons.

Id., emphasis added.

grams so that both the U.S. industry and the Canadian taxpayers can clearly identify just what the Government program provides.[8]

VI. REQUESTS FOR ACCELERATION OF THE FTA TARIFF PHASE-DOWN

An integral part of the original FTA negotiations was the establishment of a phase-down schedule for the tariff on each product. The phase-down on copper products was set at 5 years, while that for lead and zinc was set at 10 years. Recently, the Office of the United States Trade Representative (USTR) announced that it would accept public requests for the acceleration of the U.S. tariff phase-down on a product-by-product basis. According to USTR, acceleration requests have been received concerning copper, lead, and zinc metal.

The NFMPC opposes any acceleration of the tariff phase-down schedules for these products. The current schedules are themselves the result of difficult negotiations only recently completed. To accelerate the tariff phase-down would only multiply the difficulties facing the U.S. industries as they confront continuing Canadian subsidization. Although the Executive Branch has not announced full details regarding the procedure for determining which acceleration requests to accept, the NFMPC will certainly make whatever representations it can to make clear its position on this matter.[9]

VII. THE NFMPC PETITION TO USTR UNDER THE BAUCUS/DANFORTH PROVISION OF THE FTA

Given the failure of the FTA to provide any discipline on Canadian subsidies, the very existence of the Baucus/Danforth provision in the implementing legislation—Section 409(b)—sends an important message to the Canadian Government that the issue of Canadian subsidies remains a priority for the U.S. Government. On behalf of the NFMPC and its member companies, I would like to thank Chairman Baucus and Senator Danforth once more for their earnest efforts on behalf of the U.S. industry as exemplified by the enactment of this important provision.

Indeed, on April 6, 1989, the NFMPC filed a petition with USTR asking that the U.S. primary copper, lead, and zinc industries be identified under Section 409(b).[10] Once so identified, these industries become eligible to request an investigation by USTR and the U.S. International Trade Commission regarding the Canadian subsidy practices and their effects. USTR has 90 days to act on a petition. We are hopeful that USTR will promptly review our petition and favorably act upon it.

VIII. CONCLUSION

The economic relationship between the United States and Canada is of great importance, particularly for the U.S. non-ferrous metals industry. Although the FTA now provides a framework for this relationship, it is important to keep in mind that the framework is still quite incomplete and will remain so until the problem of Canadian governmental subsidies is properly solved. We ask that Congress play a guiding role in completing this framework and preventing harm to the U.S. industry while the subsidy discipline negotiations are completed. Certainly a lesson of the U.S.-Canada FTA experience is that no other free trade arrangement should be contemplated without measures for firm discipline on governmental subsidies. As to our petition under the Baucus/Danforth provision, we hope that USTR will act quickly and favorably upon it. We would be pleased to keep the Committee advised of progress regarding it.

Enclosure.

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[8] Key aspects of the financing arrangements for certain large subsidy programs, such as the Cominco lead smelter at Trail, British Columbia, are treated by the Canadian Government as "confidential."

[9] Although not yet the focus of public attention, the FTA permits the alteration of the rule of origin provisions by mutual consent of the two governments. The rule of origin provisions pertaining to non-ferrous metals provide important assurance against third country products improperly gaining preferential access to the U.S. market. The NFMPC will certainly oppose any efforts to dismantle these provisions as well.

[10] As required by Section 409(b), these U.S. industries have reason to believe that as a result of the implementation of the FTA, they will face increased competition from imports of subsidized Canadian goods and that they are likely to experience a deterioration of their competitive positions before the FTA Working Group can negotiate rules and disciplines on government subsidies.

EXHIBIT A.—CANADIAN FEDERAL AND PROVINCIAL SUBSIDIES TO CANADIAN COPPER, LEAD, AND ZINC PRODUCERS

A. COMINCO LTD.'S LEAD SMELTER AT TRAIL, BRITISH COLUMBIA

According to information provided by USTR, the Canadian federal government and the British Columbia provincial government have made available to Cominco Ltd., a Canadian metals producer, C$134 million for the complete modernization of its lead smelter in Trail, British Columbia, largely to process ores from the Red Dog Mine in Alaska. Under the arrangement, the Canadian government has essentially assumed the major risks associated with the modernization, particularly the risk of metal price fluctuations. For example, if metal prices should be below a certain threshold, the assistance takes the form of a grant and requires no repayment whatsoever. The Government press release announcing the financing package states: "The package would be structured in such a way as to reduce the company's downside risk..." (November 8, 1985) Canadian Trade Minister Pat Carney stated at that time: "Without federal assistance, this $270 million modernization project would not proceed and the old lead smelter at Trail would be in danger of being shut down." The NFMPC understands that even at the current relatively high metal prices, no repayment is required. Assuming grant treatment, the assistance could have a subsidy effect of nearly 5 cents or more per pound of lead produced depending on the level of production attained. A subsidy of nearly 5 cents per pound is equivalent to 13 percent of the 1988 average price of 37 cents per pound (*Metals Week*).[1]

There currently is an oversupply of lead smelting capacity in the world. In the U.S. alone, several smelting operations have been shut down for lack of raw material to process. Yet, by stepping in to bear a major portion of the cost and risk of building a new, state-of-the-art "QSL" smelting and refining plant in British Columbia, the Canadian government is in effect attempting to ensure that otherwise uncompetitive Canadian smelting and refining capacity will survive. Ultimately, the Trail smelter will begin processing concentrate from the Red Dog mine in northwestern Alaska, which could have been smelted in a U.S. facility.

B. COMINCO LTD.'S ZINC SMELTER AT TRAIL, BRITISH COLUMBIA

Cominco Ltd. is planning to expand output at its Trail, British Columbia, zinc smelter by one-third and has asked for Canadian government aid in the C$150 million project. In May 1988, it requested the provincial government to support the project by eliminating a C$9 million annual tax on water used to generate electricity. Based on the experience of Cominco's lead facility at the same location, the tax forgiveness request is likely to be but the first piece of a larger government package to finance the zinc project.

C. NORANDA LTD.'S COPPER SMELTER AT ROUYN, QUEBEC

In the Canadian acid rain program, an additional C$300 million in Canadian federal and provincial funds have been made available for smelter modernization and pollution control.[2] Of this sum, C$84 million has already been allotted for the Noranda copper smelter at Rouyn, Quebec. The Rouyn assistance represents two-thirds of the cost of plant modernization and a moderate degree of pollution control. The output from this smelter, as indeed from all Canadian smelters, is to be directed at the export market and, importantly, at the U.S. market. The Hudson Bay Mining & Smelting zinc facility located at Flin Flon, Manitoba, is also eligible for this assistance, as are other smelters.

Although the complete terms of repayment for the Noranda assistance have not been made public, it has been reported that (1) the interest rate being paid is 1-2 percent below what Noranda would have paid on a corporate loan in the market, (2) a portion of the repayments due in a year can be deferred if copper prices fall below

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[1] As a commodity product, the price of lead metal fluctuates. During recent peak price months, the subsidy represented 11 percent of the 42 cents per pound price, but during the cyclical low of 18 cents per pound in 1986, the subsidy was the equivalent of 25 percent.

[2] The Canadian federal government has provided C$150 million which is being matched by C$150 million from the provinces. See Environment Canada, *Taking Action Against Acid Rain*, March 1986, section 3 "Provide $150 million for Emission Control at Smelters," p.4.

a certain level, and (3) at least some repayment will be forgiven if the funds are reinvested in certain facets of the facility. Clearly, U.S. smelters have never enjoyed pollution control financing which is nearly so concessionary.[3]

Although Noranda has contended that the government financing did not constitute a subsidy, a Noranda spokesman is quoted as stating that Noranda has the option of *repaying* the loan "either through monetary reimbursement, *or through additional investments* aimed at maintaining its commitment to Quebec's copper industry" (emphasis added). By "investments," the spokesman is referring simply to not repaying the funds at all and instead using them for still other copper modernization and expansion projects with more subsidized copper coming into the U.S. market.

D. HUDSON BAY MINING & SMELTING CO. LTD. COPPER AND ZINC OPERATIONS AT FLIN FLON, MANITOBA

Hudson Bay Mining & Smelting Co. Ltd. is to receive C$130 million (US$107 million) in Canadian federal and provincial government funding for the modernization of its Flin Flon, Manitoba, copper and zinc operations. According to a statement by Hudson Bay management in December 1988, the funds are to be used to reduce the company's copper production costs by about 8 cents per pound, while zinc production costs would be cut by 4-5 cents per pound. The modernization program would also permit the company facilities to reduce sulfur dioxide emissions.

The company will pay only one-third of the cost for the modernization. The company has stated that it will require a government loan even to finance its share of the project cost. According to the firm's president, Hudson Bay's obligation to repay such a loan would itself be made contingent upon continuing high copper prices.

E. CYPRUS ANVIL ZINC MINE AT FARO, YUKON

The Yukon Government provided an 85 percent guarantee of C$15 million in financing for the reopening in 1985 of the Cyprus Anvil zinc mine, located in Faro, Yukon. The Canadian federal government in turn re-guaranteed 90 percent of the provincial guarantee. U.S. government contacts with the Canadian Government indicate that an additional C$10 million package of benefits including grants, a second mortgage, and government purchase of certain properties have been provided. The Cyprus Anvil Mine, which reportedly could supply 3 percent of world zinc production, had been closed by Dome Mines, its previous owner, in mid-1982 because of high costs and declining zinc prices. In 1985, Curragh Resources purchased the property and, with the help of government assistance has reopened it.

E. POSSIBLE FUTURE SUBSIDIES

There is no indication that the Canadian government i ntends to moderate its subsidy practices. Indeed, the Canadian Government is currently touting the Agreement as placing no restrictions on their continuation. A possible future subsidy of concern to the U.S. industry involves Noranda's Gaspe copper mine at Murdockville, Quebec, which was closed in April 1987 because of a fire. Noranda is reportedly seeking a C$20 million interest-free loan from the Quebec government for the rehabilitation of the mine which supplies feed to Noranda's Gaspe smelter. According to recent press reports, discussions have been put off until July 1988 for reasons that have not been stated.

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[3] Although U.S. smelters try to recoup some of the cost of pollution control by selling the captured sulfur in the form of sulfuric acid, their efforts will be increasingly thwarted by Canadian sulfuric acid exported to the United States from Canadian pollution control-related acid plants financed with Canadian Federal and Provincial Government assistance.

Exhibit B

METALS WEEK

(May 2, 1988)

Cominco will make a final decision on whether to expand output at its 300,000-mtpy Trail, BC, zinc refinery sometime this year. Construction to increase capacity another 100,000 mtpy would take two years. Cominco has asked the provincial government to support the project by eliminating a C$9-million annual tax on water used to generate electricity.

American Metal Market

(Oct. 7, 1988)

Hudson Bay seeks government funds to curb emissions

THOMPSON, Manitoba (FNS)—Hudson Bay Mining & Smelting Co. Ltd. said it will require both federal and provincial government aid if it is to meet its commitment to cut sulfur dioxide gas emissions from its Flin Flon smelter and retain more than 2,000 jobs.

Hudson Bay president Lloyd Nilsen estimated that it will cost about C$130 million ($107 million) to modernize the aging mining complex. By 1994, he said, emissions from the company's 750-foot stack are to be cut 25 percent to 240 tons from 320 tons a year.

Nilsen said Hudson Bay is looking for a three-way funding split between the company and the Canadian and Manitoba governments. The company said it will require a government loan to meet its C$43 million ($35.6 million) share.

"The loan, of course, would be fully repayable at today's copper prices," Nilsen said.

"The federal government has indicated that it would be able to assist companies to renovate their smelters to comply with the new regulations. We at HBMS are hoping the Canadian government will make a commitment either before or during the federal election campaign, expected momentarily," he added. The election is scheduled for Nov. 21.

Nilsen warned that if federal and provincial help is not forthcoming "some 2,000 jobs in Flin Flon, Snow Lake and Leaf Rapids (all in Manitoba) could be in jeopardy.

"It could have a devastating effect on everybody who depends on the northern Manitoba mining industry," he said.

Nilsen recently met the mayors of Flin Flon and Snow Lake, representatives of the United Steelworkers union, the Allied Trades Council and suppliers in Winnipeg to discuss the situation and plan strategy.

He said both federal and provincial governments already have considerable material relating to the project, noting that parts of the Flin Flon mining complex date back to 1930.

Nilsen said, however, that the zinc refinery and copper smelter have been modernized and other parts of the plant have been kept in good repair "and are capable of maintaining good production levels."

He noted that in 1986 Hudson Bay produced about 175 million pounds of zinc and 140 million pounds of copper. In addition, by-product production included 686,000 ounces of gold and about 1.4 million ounces of silver.

Nilsen said renovations needed to bring about the required sulfur dioxide reductions include installation of a zinc pressure-leaching process in the zinc refinery and a Noranda converter process in the copper smelter.

Innovations are expected to take two years to complete once financing is in place. Hudson Bay, Nilsen added, also plans to spend C$220 million ($181.9 million) on exploration and mine development over the next 10 years.

American Metal Market
(Dec. 5, 1988)

Hudson Bay awaits funds for upgrade

By WARREN RAPPLEYEA

NEW YORK—Hudson Bay Mining & Smelting Co. Ltd., Toronto, is nearing provincial and federal government approval of funding for a Canadian $130 million ($107 million) modernization of its Flin Flon, Manitoba, copper and zinc operation, according to Reuben Richards, chairman of Hudson Bay's parent company, Inspiration Resources Corp.

Speaking before the New York Society of Security Analysts late last week, Richards said he has been in contact with the relevant agencies in both governments and indications are that the funding will be approved soon.

The modernization would allow the company to reduce its copper production costs by about 8 cents per pound, while zinc costs would drop between 4 and 5 cents per pound, Richards said. It also would allow Hudson Bay to meet the government-imposed 20 percent reduction in sulfur dioxide emissions. To accomplish this, a zinc pressure-leaching system will be installed in the zinc refinery and a Noranda converter system in the copper smelter.

The company will pay for one-third of the renovation through a government loan. The modernization is expected to take about two years to finish.

Richards also told the analysts that Inspiration's earnings should increase "significantly" in 1989. He pointed to the resurgence of the company's Terra International agricultural products unit, along with continuing strength in base metals, as the reasons for the optimistic forecast.

Moreover, Hudson Bay's recently opened nickel and copper mine at Namew Lake, Manitoba, is expected to produce 9 million pounds of refined nickel in 1989, which should further boost earnings, Richards said.

AMERICAN METAL MARKET

Cominco mulls Trail zinc capacity boost

By WARREN RAPPLEYEA

NEW YORK—Cominco Ltd. is mulling a plan to increase zinc capacity at its Trail, British Columbia, smelter to 400,000 short tons—a boost of one-third—at a cost of about Canadian $150 million.

Robert Hallbauer, president of the Vancouver-based company, yesterday told a gathering at the firm's annual meeting that there is enough excess electrical power at the site to support such an expansion.

According to Klaus Goeckmann, Cominco's vice president of marketing for metals, water rental fees are the major stumbling block that could prohibit the move.

"That's something that we are very concerned about and it will have to be resolved before we do anything," he said. "Subgenerators of electricity have to pay a very high rate and we have a problem with this."

Goeckmann noted that the company presently is in the process of constructing a new lead smelter at the Trail site to replace the older model now in use. The new smelter will be in operation in early 1989. He added that a zinc expansion would not necessarily have to wait until the new smelter is completed. A zinc smelter with a capacity of 300,000 short tons currently is in operation.

In order to increase zinc capacity, additions would have to be made to several buildings at Trail and an unspecified number of workers would have to be hired, he said.

"This is not definite," Goeckmann stressed. "It is something we are considering."

Richard Fish, manager at Trail, said the facility employs about 3,200 workers and makes refined zinc from concentrate. The site includes a lead smelter, lead refinery and zinc plant. Silver and cadmium are also produced there.

EXHIBIT C.—NON-FERROUS METALS PRODUCERS COMMITTEE, BEFORE THE OFFICE OF THE U.S. TRADE REPRESENTATIVE

PETITION FOR IDENTIFICATION UNDER SECTION 409(b) OF THE U.S.-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT

I. INTRODUCTION

The Non-Ferrous Metals Producers Committee ("NFMPC") and its individual company members [1] petition the United States Trade Representative ("USTR") to designate the U.S. primary copper, lead, and zinc industries as industries identified under Section 409(b) of U.S.-Canada Free-Trade Agreement Implementation Act ("Act".[2] These U.S. industries are likely to face increased competition from Subsidized imports from Canada with which the U.S. industries directly compete as a result of the implementation of the U.S.-Canada Free-Trade Agreement ("FTA"). In addition, these industries are likely to experience a deterioration of their competitive position before rules and disciplines relating to government subsidies have been developed. Each of the three industries fulfills the requirements for identification under Section 409(b) and should be so designated. Moreover, Congress made quite clear that it intended these industries to be so identified.

II. THE INDUSTRIES AND THE GOODS COVERED BY THE PETITION

Petitioners are representative of the U.S. primary copper, lead, and zinc industries. In 1987, the Petitioners accounted for more than one-half of U.S. primary refined copper production, virtually all of U.S. primary refined lead production, and a significant share of U.S. production of zinc ores and concentrates.

The goods covered by this petition are the products and associated by-products of U.S. primary copper, lead, and zinc producers.[3] A listing of these goods and their TSUSA and HS numbers is provided in Exhibit A.

III. INCREASED COMPETITION

In order to obtain identification under Section 409(b), an industry must have "reason to believe that" as result of implementation of the FTA, "the industry is likely to face increased competition from subsidized Canadian imports with which it directly competes." These U.S. non-ferrous metals industries have more than sufficient reason to believe that the implementation of the FTA is likely to result in increased competition from the subsidized Canadian products with which the industries directly compete.

There is no question that the Canadian copper, lead, and zinc industries benefit from Canadian Federal and provincial government subsidies. USTR itself amply documented the existence of such subsidies in conducting a review under Section 305 of the Trade Act of 1974 requested by the NFMPC's predecessor organization.[4] The NFMPC has also provided USTR with voluminous materials extracted from the Canadian press and government publications and statements that describe the financial assistance provided by the government to these copper, lead, and zinc producers. A summary description of the more publicized subsidy programs and compendium of resource materials are included with this petition as Exhibit B.

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[1] ASARCO Incorporated; the Doe Run Company; and Phelps Dodge Inc.

[2] PL 100-449; 102 Stat. 1851.

[3] By-products have an important role in the economics of the non-ferrous metals industry. Revenues derived from by-product metals, such as cadmium and bismuth, are substantial and can have a significant impact on the overall economics of copper, lead, and zinc mining, smelting, and refining operations. To the extent that Canadian governmental subsidies permit Canadian firms to produce and sell more copper, lead, and zinc than they otherwise would, the subsidies result in increased production and sale of by-product metals (i.e., an outward shift in the by-product metals supply curve).

Sales of by-product sulfuric acid have a particularly important role in helping U.S. smelters offset rising pollution control costs. As a significant portion of Canadian governmental subsidies to Canadian non-ferrous metal producers is for advanced pollution control facilities, the Canadian subsidies result in increased volume of sulfuric acid being placed on the market by Canadian smelters. Since most Canadian sulfuric acid is exported to the United States, an effect of these Canadian subsidies is to add to the surplus volume of sulfuric acid on the U.S. market. The additional Canadian acid depresses the U.S. acid price and therefore reduces the revenues from acid sales available to U.S. smelters to offset their unsubsidized pollution control costs.

[4] The Lead-Zinc Producers Committee—predecessor to the NFMPC—requested in a December 19, 1985 letter to Ambassador Yeutter that USTR gather and provide information concerning Canadian governmental subsidies to the Canadian copper, lead, and zinc producers.

A principal source of the increased competition expected from Canadian producers is the staged elimination of all U.S. import duties on the products of these Canadian industries. The tariff rates being eliminated are shown in Exhibit A. The tariff on primary copper products will be eliminated in five annual phases by January 1, 1993, while the duties on primary lead and zinc will be eliminated in ten annual phases by January 1, 1998.[5] The lower tariffs permit Canadian producers to reduce the prices of their products in the U.S. market or to refrain from implementing price increases. The Canadian producers, therefore, are more competitive in the U.S. market.

Even at constant Canadian producer selling prices, the absence of duties results in improved profitability for Canadian producers. Their stronger financial position permits them to weather better the decline-periods in metal price cycles. Although prices currently are relatively strong, the historical pattern has been for such prices to be highly cyclical and to be tied to the trends in aggregate U.S. and world economic growth. During a future cyclical down-swing as prices approach and fall below long-term average cost and then average variable cost, the Canadian producers will be able to maintain production for a longer period of time. The result will be that there will be increased quantities of Canadian product on the market, thereby causing the market price to be lower than it would be in the absence of subsidization.

Although it is common to judge the importance of a tariff in relation to the final price of the product, such an approach is inappropriate when analyzing the economics of U.S. "custom smelting" operations. Custom smelters are not vertically integrated; typically they purchase ores and concentrates which they refine and sell.[6] For such producers, the appropriate measure of the importance of a tariff is in relation to the producer's value added. Consider, for example, a product whose price is 100 and whose tariff is "only" 3 percent. For a custom smelter that pays 70 to purchase the concentrate raw material, its margin [7] would be 30. The 3 percent tariff is in fact equivalent to 10 percent of the smelter's margin. Therefore, in light of the economics of the non-ferrous metals industry, even seemingly low tariff rates can be commercially very important.[8]

Canada is already the largest foreign supplier to the United States of refined copper, lead, and zinc metal, as shown in Exhibit C. With the elimination of U.S. duties under the FTA, it is virtually certain that U.S. imports from Canada will increase.

Additionally, given the conclusion of the FTA without achieving any significant discipline on Canadian subsidy practices, U.S. producers can anticipate that the Canadian authorities will continue and perhaps expand their subsidy programs. U.S. producers can seek relief from the impact of Canadian subsidies only by bearing the expense of a trade law proceeding against such imports.

Therefore, as a result of the FTA, it is reasonable to expect that Canadian producers will put increased competitive pressure on the U.S. industries both because of

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[5] Although the absolute level of some of the tariffs may appear relatively low, the economics of the non-ferrous metals industry makes them important. Primary non-ferrous metals are homogeneous commodity products. Purchasers are, therefore, indifferent between purchasing metal from U.S. or Canadian sources. Thus, there is a very high cross-price elasticity of demand between U.S. and Canadian metal, meaning that a small price change in imported Canadian metal could have a relatively large quantity impact on U.S. suppliers. An impact of the duties is partially to offset the effect of Canadian Government subsidies which artificially reduce the production cost for Canadian metal entering the U.S. market.

[6] Some of a custom smelter's operations may be based on a tolling contract in which the smelter provides a processing service for a fee. The title to the concentrate raw material and the refined product remains with the raw material supplier.

[7] Also termed the smelting and refining "charge."

[8] The tariffs for two specific products are worth noting in particular. First, the duty on continuous cast copper rod at 4 percent ad valorem can be a commercially significant factor even at relatively high prices.

Second, a special and important duty arrangement is in place for unwrought lead. In the late-1970s, U.S. producers and consumers of unwrought lead reached a compromise regarding a question of the proper U.S. tariff on this product. The agreement provided for a reduction in the prevailing tariff to 3.0 percent *ad valorem* but with a floor of 1.0625 cents per pound The mutual benefit of the arrangement is that it provides lead consumers and producers with greater price stability. Lead consumers (e.g., battery producers) benefit from a lower duty on imported lead during period of relatively high prices, while lead producers receive some measure of duty protection when the price is relatively low which is when the assistance is most needed.

The lead duty arrangement has been extended by Congress three times, most recently in 1988 as part of the tariff provisions (section 9004) of the Technical and Miscellaneous Revenue Act of 1988. Congress, thus, has repeatedly made clear that this special duty is important to U.S. lead producers and consumers.

the elimination of U.S. import duties and because of the absence of any FTA discipline on the Canadian government subsidy programs.

IV. THE U.S. INDUSTRIES ARE LIKELY TO EXPERIENCE A DETERIORATION OF THEIR COMPETITIVE POSITION

Section 409(b) also requires that an industry must "have reason to believe that" it "is likely to experience a deterioration of its competitive position before rules and disciplines relating to government subsidies have been developed." The U.S. primary copper, lead, and zinc industries have considerable reason to believe that they are likely to experience a deterioration of their competitive position before such rules and disciplines have been developed. The FTA provides for a U.S.-Canadian Working Group to negotiate new subsidy rules and disciplines within a five year time frame, extendible to seven years.

Petitioners do not anticipate a quick conclusion to the Working Group negotiations. First, the Canadian Government has stated publicly that it will not accept any restriction on such important subsidy programs as its Regional Development Assistance programs. Such programs are viewed as linchpins of federal-provincial relations in the Canadian Commonwealth. Second, it is at best uncertain whether the Canadian authorities can be persuaded to accept subsidy disciplines in the independent Working Group negotiation, while they were not willing to do so during the intense FTA negotiations when arguably the entire FTA was at risk. It is possible that the entire seven year period will be necessary if meaningful rules and disciplines are to be negotiated.

During this period, these U.S. industries anticipate that their competitive position will deteriorate. The deterioration will have two major sources.[9] First is the fact that the products of the U.S. industries' most important foreign competitor—Canada—will enter the United States duty free or at diminishing duty levels.[10] This fact alone wll result in a competitive shift in favor of the Canadian producers and against the U.S. producers.[11]

An additional source of concern as to the deterioration in the U.S. industries' competitive position is the historically cyclical nature of commodity metal prices. Macroeconomic cyclical swings over the next seven years will likely lead to declines in metal prices, if historical patterns are repeated. Recent metal prices are near historical peaks, as shown in Exhibit D.

A recession or significant slowing in the growth of the U.S. economy will almost certainly cause the demand—and hence the price—for copper, lead, and zinc metal to weaken, perhaps precipitously. Therefore, based on historical patterns, the U.S. industries have reason to believe that the demand for, and hence the volume and value of sales of, metal will weaken at some point during the next seven years. Indeed, prices for some metals have recently dropped from their peak levels.

As metal prices fall, the companies with the higher cost structures will tend to be the ones to halt production first, as the price falls first to the level of long-run average cost and then to the level of per unit variable cost. A firm may reasonably continue to produce over the short-term for a price that is less than its full costs. It will not continue to produce at this level over the long-term and certainly will not do so once the price falls below the firm's per unit variable cost.

Subsidized Canadian producers enjoy distinct advantages with regard to cost structure. The absorption by the Canadian federal and provincial governments of costs means that a firm's cost structure is less burdened than it otherwise would be. In addition, because of preferential access to capital, Canadian producers can afford to install highly-efficient production technology which will permanently reduce the firm's production costs. At full market capital cost, the investment in such technolo-

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[9] Congress has made explicit its intent that there need be no causal link between the alleged Canadian Government subsidies and the deterioration of a U.S. industry's competitive position. The Report of the House Ways and Means Committee states: "The Committee also emphasizes that no causal relationship is implied between the subsidy criteria under subparagraph (A) and the economic criteria under subparagraph (B) of paragraph (1) [of Section 409(b)]." *United States-Canada Free-Trade Agreement Implementation Act of 1988: Report Together with Additional Views*, 100th Congress, 2nd Session, Rept. 100-816, Part I, p. 50.

[10] During 1988, Canada supplied the following percentages of U.S. imports of the subject metals: refined copper (including continuous cast rod), 52 percent; refined lead, 69 percent; and refined zinc, 57 percent. U.S. Department of Commerce official import statistics.

[11] The impact of the duty elimination may be greatest with regard to primary lead metal for which there exists a special duty provision, reducing the duty to 3.0 percent rate but also establishing a 1.0625 cents/lb. duty floor. At prices below 35.4 cents/lb. ((1.0625 cents/lb.)/.03)), the duty floor becomes operative. As the price falls further, the duty remains at the specified rate of 1.0625 cents/lb. but has an increasing *ad valorem* equivalent in excess of 3.0 percent.

gy might not have been economic. Thus, with this lower production and capital cost structure, a subsidized Canadian firm can continue to operate at market prices which otherwise would cause it to halt operations.[12] Therefore, while market forces in the absence of subsidies would have curtailed the firm's production, the subsidies permit the firm to continue adding metal production to market supply, further depressing the market price.

As U.S. producers do not enjoy the Canadian subsidies, they cannot evade the dictates of market forces and must curtail production when prices reach non-economic levels for the firm. In short, during periods of falling prices, the Canadian subsidies have the effect of accelerating price declines and causing U.S. firms to cease operations sooner than otherwise would be the case and, due to the excess Canadian supply, cause U.S. firms to remain closed for a longer period than otherwise would be the case.[13] The prospect is, therefore, for competitive deterioration for the U.S. industries as duty free Canadian metal enters the U.S. market and as falling prices cause the U.S. facilities to close while subsidized Canadian producers remain in operation.

An additional factor creating the expectation of a decline in the U.S. competitive position is the fact that new Canadian production capacity as well as modernized capacity are expected to come on-stream during the period of the negotiations on subsidy disciplines.[14] Production facilities for these industries are very capital intensive and require relatively long lead times between an investment decision and the initiation of production. Subsidies provided prior to as well as since the conclusion of the FTA will result in the production of additional Canadian metal during the next few years.

V. CONGRESS INTENDED THE U.S. PRIMARY COPPER, LEAD, AND ZINC INDUSTRIES TO BE IDENTIFIED UNDER SECTION 409(B)

In its enactment of Section 409(b), the Congress clearly had the special plight of the U.S. primary copper, lead, and zinc industries in mind. The report of the Senate Finance Committee states that in the Working Group negotiating with Canada on new subsidy rules and disciplines,[15]

> [s]pecial emphasis should be given to obtaining discipline on Canadian subsidy programs that adversely affect U.S. industries which directly compete with subsidized imports, including but not limited to, coal mining, oil and gas production, *non-ferrous metal mining and smelting*, agricultural production, fisheries, and forest products industries.[16]

Congressional focus on the non-ferrous metals industry in designing Section 409(b) is also reflected in two other Finance Committee statements concerning these producers. Regarding the initial preference for possible countervailing duty ("CVD") action by the Executive Branch in response to Canadian subsidies, the report states:

> However, there may also be domestic subsidies, including those faced by the *non-ferrous metals* industry, that are more appropriately addressed under section 301.[17]

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[12] Canadian Government financial assistance not only provides financing at below market rates, it may also provide that debt repayment is relieved if metal prices fall below a certain threshold. Price risk—a major risk for any free market commodity business—is effectively transferred from the Canadian producers to the Canadian Government. See in particular the descriptions in Exhibit B regarding the government programs for Cominco's lead smelter at Trail, B.C., and Noranda's copper smelter at Rouyn, Quebec.

[13] For U.S. lead producers, the absence of the special lead duty provisions on imports from Canada is particularly significant during such periods of low price, as described in footnote 11.

[14] Even since the conclusion of the FTA negotiations, additional subsidy programs have arisen. Two examples are the following. Details are provided in Exhibit B.

—A new subsidy package is being provided to Hudson Bay Mining & Smelting Co. Ltd. for modernization and pollution control at its Flin Flon, Manitoba copper and zinc smelter. Funding for the C$130 million project is to be split as follows: one-third paid for by the Canadian Federal Government; one-third paid for by the Manitoba Provincial Government; and one-third is the responsibility of the company although even this share is to be loaned to Hudson Bay by the Federal Government on terms which permit no repayment if metal prices fail to stay above a specified level.

—Even as Congress was in the midst of its consideration of the FTA implementing legislation in May 1988, Cominco Ltd. announced its intention to seek Provincial government financial assistance for a major zinc smelter project at Trail, British Columbia. The new lead smelter at the same location has already been the recipient of major government financing.

[15] Article 1907 of the FTA.

[16] Senate Finance Committee, "Approving and Implementing the United States-Canada Free-Trade Agreement," 100th Congress, 2nd session, Report 100-509, p. 41, emphasis added.

[17] Id., p. 42, emphasis added. The referenced provision is section 301 of the Trade Act of 1974 (P.L. 93-618, as amended; 19 U.S.C. 2411).

As to the notion of "sectoral retaliation" resulting from a Section 301 action stemming from a Section 409(b) proceeding, the Report states:

> The preference was established in this group of cases because of the unique circumstances of various U.S. industries that may be affected by this section [409(b)], including *non-ferrous metal* producers.[18]

The Executive Branch made explicit its understanding of such a Congressional intent. The "Statement of Administrative Action" accompanying the President's proposed FTA implementing legislation, states concerning Section 409(b):

> This provision was drafted as an interim measure to respond to Congressional concerns that certain industries, including the *non-ferrous metals industry,* are likely to face increased subsidized competition as a result of the sweeping removal of trade barriers that now limit Canadian access to the U.S. market.[19]

VI. CONCLUSION

Petitioners meet all of the requirements for designation by USTR as industries identified under Section 409(b) of the Act. These U.S. industries have reason to believe that as a result of the implementation of the FTA they will face increased competition from imports of subsidized Canadian goods and that they are likely to experience a deterioration of their competitive position before the FTA Working Group can negotiate rules and disciplines on government subsidies. USTR should designate the U.S. primary copper, lead, and zinc industries as being identified under section 409(b).

PREPARED STATEMENT OF WINSTON WILSON

CANADIAN WHEAT EXPORTS TO THE UNITED STATES

Due to unfavorable weather conditions this year, Canadian production fell by 10.3 million metric tons, 39.7 percent from 1987/88. Thus, total Canadian exports were reduced by 11.8 million metric tons, down 50.2 percent from last year; yet Canadian wheat exports to the United States are already up almost 87,000 tons from last year with four months remaining in the year.

The United States' share of the Canadian wheat export market has been increasing since 1980. For the first eight months of the 1988/89 marketing year, the United States accounts for 3.08 percent of the Canadian export market, which makes the U.S. the tenth largest customer of Canadian wheat. Just eight years ago, in 1981, the U.S. represented less than ½ of one percent of Canadian wheat exports. From 1984 to 1987, imports of Canadian wheat into the U.S. increased tremendously by 764 percent to 414,700 tons.

Imports of Durum wheat from Canada have grown, especially in the past three years. From 1983 to 1986, imports of Durum from Canada were negligible. This year, of the 340,900 tons of wheat exported to the United States from Canada, 156,100 tons—46 percent—is Durum. Last year, Durum exports represented 55 percent of the total amount of Canadian wheat exported to the United States.

While Canadian exports of wheat to the United States are small relative to U.S. production and consumption, the trend is definitely upwards. However, it is worth noting that exports of Canadian Durum are growing quite significantly. Since Durum is a very specialized crop with limited production and utilization, imports of Durum from Canada represent 10-12 percent of total U.S. domestic demand. At the same time, U.S. carryovers are still estimated to be equal to an entire year's domestic utilization. If the trend continues, it is possible that U.S. Durum producers could experience significant injury from Canadian imports while exports to Canada are prohibited under terms of the U.S.-Canadian Trade Agreement.

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[18] d., p. 43, emphasis added.

[19] "Statement of Administrative Action," *Communication from the President of the United States Transmitting the Final Legal Text of the U.S.-Canada Free-Trade Agreement, the Proposed U.S.-Canada Free-Trade Agreement Implementation Act of 1988, and a Statement of Administrative Action, Pursuant to 19 (U.S.C. 2112(2)(2), 2212(a),* House Document 100-216, p 123, emphasis added.

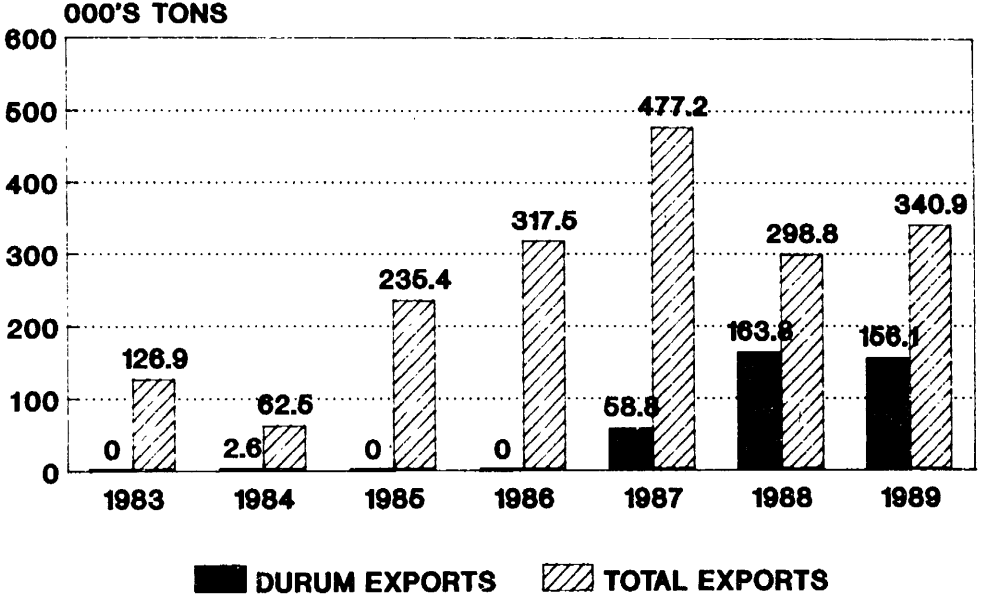
IMPORTS OF CANADIAN WHEAT TO THE UNITED STATES

[In thousands of tons]

Year	Total	Durum
1982/83	126.9	0
1983/84	62.5	2.6
1984/85	235.4	0
1985/86	317.5	0
1986/87	477.2	58.8
1987/88	298.8	163.8
1988/89	340.9	156.1

1989 Figures only represent the first 8 months of the marketing year.
Source: Canadian Grain Commisssion.

IMPORTS OF CANADIAN WHEAT
TO THE U.S.



BASED ON JUNE 1 - MAY 31 MARKETING YR

1989 figures are as of Jan. 1989 - Only 8 months of the marketing year.

COMMUNICATIONS

STATEMENT OF GREEN FOREST LUMBER LIMITED

SUBMITTED BY JOHN T. SERENY, CHAIRMAN OF THE BOARD

Dear Mr. Chairman: On April 7, 1989, the International Trade Subcommittee heard testimony from L. G. Broderick, the president of Rivendell Forest Products, Ltd. of Colorado, the President of Aragon Forest Products, Ltd. of Canada, and the Acting Chairman of the Alliance for Enforcement of the Canadian Export Tax. Mr. Broderick, in his testimony, graphically described a shipment of lumber in which the top layer of three bundles of export lumber contained tax-exempt British Columbia lumber covering non-tax-exempt Eastern Canadian lumber. The witness told the Subcommittee that such a shipment would be put together in this way only to mislead U.S. Customs officials and exemplified "egregious export tax evasion" on the part of Toronto-based Green Forest Lumber Limited ("GFL").

Since GFL was not afforded the opportunity to present its side of the story to the Subcommittee or to address the charges levied by Mr. Broderick at the April 7 hearing, I would like to respond to those allegations at this time.

GFL is one of the larger Canadian softwood exporters. Incorporated in 1957, it is a wholly owned subsidiary of Green Forest Lumber Corporation which has been a public company, listed on the Toronto and Montreal Stock Exchanges, since 1987. I am the President and Chairman of the Board of GFL.

These are serious charges which were of as much concern to GFL as they may have been to the members of the Subcommittee. Accordingly, GFL took immediate action as follows. Upon learning of these charges GFL requested that the Government of Canada inspect its books and procedures as quickly as possible in order to verify that GFL acted in full compliance with the letter and spirit of Canadian law with respect both to the cited example as well as to GFL's overall lumber export business.

GFL is cognizant of the history of controversy which lead to the Memorandum of Understanding on Softwood Lumber ("MOU") between the United States and Canada. GFL understands that the specific allegations against GFL introduced into the Subcommittee hearing have been used both to resurrect old grievances between U.S. and Canadian industry and to advantage our competitors through unfair allegations with respect to us. Nevertheless GFL cannot allow itself to be used as a scapegoat. Thus, the following points are in response to the allegations made before the Senate Subcommittee.

1. GFL has developed a system for reporting the taxes owed to Revenue Canada and for reporting duties to U.S. Customs which is in *full compliance* with Canadian law (and concomitantly with the MOU). The system is explained in Enclosure 1. As evidenced by Enclosure Revenue Canada's audit will be provided by June 23, 1989 at which time we will forward it to you for inclusion in the printed hearings of the Subcommittee.

2. Our competitor, Mr. Broderick, apparently misunderstood and, in his testimony to the Subcommittee, mischaracterized the tax and customs reporting system used by GFL.

• Taxes paid to Revenue Canada are based on a computer inventory system. A daily snapshot is made of the millions of board feet of lumber (by origin) in inventory. An average tax for that day is calculated (15% on lumber from the eastern provinces, 8% on Quebec lumber, 0% on B.C. and U.S. lumber). This average tax is applied against every board foot shipped that day. Thus, a tax is paid on every piece of exported lumber regardless of origin.

• Customs reports are filed based on this average daily tax. The formulas for these calculations are simplified so that (I) they can be performed by a yard superin-

tendent and (2) the results are consistent both with monitoring and tax procedures. Taxes are *not* based on customs declarations.

• This is a sophisticated system, but it minimizes the chance of error in shipments totaling hundreds of millions of board feet of export lumber annually and originating from every Canadian province as well as in the United States.

• The system which has been employed by GFL since shortly after the entry into force of the MOU has previously been communicated to Revenue Canada which has audited GFL tax returns without taking exception to the system.

• Packaging of B.C. lumber on top of Ontario lumber was a result of filling out a shipment order so it contained a standard 120 pieces. The order was a remanufactured order and the yard may have shipped lumber from a different point of origin than the one requested by the buyers but this fact has nothing to do with whether taxes were paid on the shipment, since tax is paid by GFL on every piece of lumber shipped regardless of origin.

3. Under its systems GFL pays an average duty on all lumber bound for export to the U.S. regardless of origin. Thus, the same duty was paid on the mixed B.C./Eastern lumber order which was discussed before the Subcommittee as would have been paid had it been a shipment of all-B.C. or all-Eastern lumber.

4. The U.S. customer who ordered GFL lumber may have specified a shipment of Western (B.C.) lumber. When the complainant customer notified GFL that it had received three mixed packages out of a total of 13 packages, GFL offered to take them back, but the customer determined that it would retain the order in stock. The details of this incident are set forth in Enclosure 3.

GFL, as a major lumber wholesaler and distributor, handles hundreds of millions of board feet of lumber, and its distribution centers make mistakes. Nevertheless, although GFL's customer may have a complaint that GFL did not fill its order correctly, it is the position of the Company that this fact is unrelated to whether or not GFL paid the correct duty on this or any other shipment. Indeed, the pattern of orders from the customer in this alleged incident have been consistent since the date of the incidents, and the customer itself has stated that it has perceived no act of wrongdoing on the part of GFL.

5. GFL is a leader in the Canadian softwood industry and enjoys a reputation as a responsible and established corporate citizen of Canada and the U.S. GFL has not or will not run its business using practices that are inconsistent with all applicable laws and regulations both in Canada and the United States

6. GFL is prepared to respond to any legitimate criticisms of its current audit procedures used in complying with export tax laws if Revenue Canada finds any such deficiencies. Moreover, GFL will cooperate with U.S. Customs authorities where its U.S. Operations are concerned. GFL would expect its competitors such as Rivendell to do so as well. Healthy competition within the industry is welcomed by GFL, but charges as were levied during the April 7 hearing must be answered and the record must be corrected to show that GFL did not engage in any improprieties as alleged by its competitor.

We therefore, appreciate the Subcommittee's assistance in allowing the record of the April 7 hearing to reflect GFL's and Revenue Canada's responses.

Enclosure 1—GFL Reporting System
Enclosure 2—Revenue Canada's letter of May 29, 1989
Enclosure 3—GFL Statement of Facts

ENCLOSURE 1.

GREEN FOREST LUMBER LTD. ("GFL") Export Reporting System

GFL's computer inventory system calculates daily the maximum duty payable based on the origin and value of its inventory. Assume that on a given day GFL has in its inventory four packages of lumber. Each package contains 1000 board feet of lumber identified by origin (tax rate in parenthesis): British Columbia (0%), United States (0%), Ontario (15%) and Quebec (8%).

1. Calculate the duty payable on the total inventory:

Origin	Quantity	Value	Tax rate (percent)	Duty owed
B.C.	1,000	$100	0	$0.00
U.S.	1,000	100	0	0.00
ONT.	1,000	100	15	15.00

Origin	Quantity	Value	Tax rate (percent)	Duty owed
QUE	1,000	100	8	8.00
Total duty				$23.00

2. Calculate the average duty (per 1000 board feet): $23.00 divided by 4 (4000÷1000) equals $ 5.75.

3. In this example, GFL would pay $5.75 duty on each 1000 board feet of inventory exported to the U.S., regardless of whether the lumber originates from a taxable or nontaxable locale.

4. In addition to GFL's duty calculation, which is the basis for tax payments, GFL's yard supervisors file customs declarations (Form V Export Notices). In order to simplify the Form V calculations, he is provided with an average value per 1000 board feet which is applied against both nontaxable (B.C./U.S.) and taxable (Ont./Que.) lumber. In determining this value the result must be that a 15% duty applied to all taxable lumber must equal the total duty owed. In this example, the average value of $76.65 per 1000 board feet produces the correct results, as follows:

Origin	Quantity	Average value	Tax rate (percent)	Duty owed
West/U.S.	2,000	$153.3 (2 x 76.65)	0	$0.00
Eastern	2,000	$153.3 (2 x 76.65)	15	23.00
Total duty				$23.00

5. In actual practice, other factors such as freight charges and mill discounts enter the refined calculation. In sum, GFL pays tax on the inventory number as calculated in paragraphs 1 to 3 above. The ratio of taxable to nontaxable inventory remains relatively constant. The yard calculation in paragraph 4 is for Customs' monitoring purposes only.

ENCLOSURE 2.

REVENUE CANADA, CUSTOMS AND EXCISE,
Ottawa, Canada, May 12, 1989.

Mr. JOHN SERENY,
President and Chief Executive Officer,
Green Forest Lumber Limited, Toronto, Ontario

Dear Mr. Sereny: Reference is made to our telephone conversation of May 12, 1989, in which you asked for the results of our investigation on an allegation received concerning transactions by Green Forest Lumber Limited.

I must advise you that the field work of the investigation is not expected to conclude until June 21, 1989. We will be able to provide complete details of the audit by June 23, 1989.

I regret that we are not in a position to provide you with more complete information at this time.

Yours truly,

R.J. COURNEYEA, *Director, Audit and Compliance.*

ENCLOSURE 3.

GREEN FOREST LUMBER ("GFL") STATEMENT OF FACTS REGARDING GFL-BROJACK LUMBER SHIPMENT OF OCTOBER 13, 1988

The following recitation of facts represents the result of the investigation of Green Forest Lumber Limited ("GFL") into a shipment of lumber to Wm. Brojack Lumber Co. which was the subject of an April 7, 1989, hearing before the International Trade Subcommittee of the Senate Finance Committee:

During the week of October 10, 1988, Dave Brojack of Wm. Brojack Lumber Co. of Montdale, Pennsylvania, placed several orders with John Taylor, the sales manager

of GFL in the Toronto headquarters of GFL. One of these orders was telephoned to Mr. Taylor on October 13, 1988. Mr. Taylor telefaxed a copy of GFL's confirmation of sale to Guy Sherk, the yard manager of GFL's yard in Fort Erie, Ontario. Mr. Sherk, in turn, filled the order from yard inventory and shipped 13 units, which contained 120 pieces of 12-foot spruce lumber. This lumber, to the best knowledge of Mr. Sherk at the time, had originated in British Columbia.

On October 14, 1988, Dave Brojack again called Mr. Taylor and advised that a shipment of lumber from GFL had been received, but some of the units contained both Eastern and Western (B.C.) stock. Mr. Taylor asked whether Mr. Brojack wished to return the mixed units, but Mr. Brojack stated that the grade looked fine and that he would keep it.

Thereafter, Mr. Taylor made inquiries to determine how the units came to be mixed. His investigation revealed the following:

On October 6, 1988, according to Gary Clement, yard manager of the GFL yard located in Windsor, Ontario, the Windsor yard processed lumber from two shipments, one from British Columbia, one from Ontario. Each of the shipments contained boards of 14 foot lengths. The British Columbia shipments were packaged in lots of 147 pieces per unit, the Ontario shipments were packaged in lots of 114 pieces per unit. Each of the shipments were cut to 12 foot specifications and repackaged in standardized lots of 120 pieces per unit. The Windsor yard apparently added British Columbia pieces to round out three of the Ontario units. The mixing was not a standard or desirable practice, but was the result of random trimming and packaging procedures.

The trimmed and repackaged bundles were then given a Windsor identification number, wrapped in Green Forest identified packaging (*i.e.*, Eastern Canada wrapping) and transhipped to the GFL yard in Fort Erie, and, in turn, shipped to Wm. Brojack Lumber Co.

When the yard in Fort Erie shipped the lumber to Wm. Brojack Lumber Co., it filed a customs declaration form (Export Notice, Form V) which identified all of the lumber as being from British Columbia. This was in error as three of the units contained Ontario lumber.

The tax which GFL pays on its export lumber, however, is not based on the Export Notice. The information supplied on the Export Notice is an approximation based on information available to the yard manager at the exporting yard at the time of shipment.

Taxes, or duties, are determined by a computer-based report submitted by GFL to Revenue Canada monthly. Calculation of these taxes is as follows:

- The GFL system computer derives a daily average duty for each 1000 board feet of lumber in inventory. This daily average duty is applied against every export shipment (whether originating at a taxable or nontaxable location), reported to Revenue Canada, and paid by Green Forest. The average duty is recalculated daily.
- The Ontario lumber (to which British Columbia lumber was added in Windsor) was reflected in the GFL inventory as Ontario lumber, and therefore was integrated into the daily average for duty purposes.
- Since the daily average duty is applied equally against Ontario and British Columbia exported board feet, full duty was paid on the mixed shipment. There would have been no difference in the duty paid had the shipment contained all British Columbia or all Ontario lumber.

In sum:

- First, contrary to the testimony given before the Subcommittee, GFL did not attempt to conceal Ontario lumber by stacking British Columbia lumber on top of it, either for the purpose of evading duty or for any other purpose.
- Second, GFL paid duty on the lumber which originated in Ontario, as it was obligated to do.

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD,
Washington, DC, June 28, 1989.

Senator MAX BAUCUS,
U.S. Senate, Washington, DC

Dear Senator Baucus: As you may recall, at the April 7 Trade Subcommittee hearing, Larry Broderick, President of Rivendell Lumber, presented testimony concerning possible fraudulent avoidance of the Canadian Softwood Lumber Export Tax. Mr. Broderick testified concerning a shipment of lumber from Green Forest Lumber of Ontario which Broderick believed had unfairly avoided paying the export tax. In response to Mr. Broderick's testimony, Green Forest wrote you a letter ex-

plaining how it reported the amount of softwood lumber export tax on its shipments to the United states.

While I am not familiar with the manner in which Green actually administers its system of paying the export tax, I am concerned that Green's system could be used to avoid paying the amount of export tax actually due. If this were to occur, subsidized Canadian lumber would be permitted into the U.S. market, both to the detriment of U.S. lumber mills and the detriment of fair trading wholesalers in Canada and the United states. The details of this scheme are discussed in the attached letter.

I believe that the only method to reasonably enforce the export tax is to require export tax notices to state the province of origin of the lumber (thus indicating whether the lumber is subject to the tax) and basing collections on those notices.

I hope that this explanation is helpful.

Sincerely,

MICHAEL H. STEIN.

Attachment.

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD,
Washington, DC, June 28, 1989.

Mr. JOSEPH SPETRINI,
Deputy Assistant Secretary.
U.S. Department of Commerce, Washington, DC

Dear Joe: We were very reassured to see the report in the Toronto *Globe & Mail* that Canada is planning to amend the Softwood Lumber Memorandum of Understanding export tax notice to require that each notice show the province of origin of lumber shipped to the United States. Only through such a specific notice can U.S. Customs agents—or, for that matter, Canadian Customs agents— play a significant role in ensuring the strict enforcement of the Softwood Lumber MOU.

Of course, as we have discussed, once the mechanism to allow enforcement is in place, it will be necessary for officials responsible for enforcement, both north and south of the border, to ensure that the appropriate amount of tax is in fact paid. Thus, we are very concerned about a report indicating that the process for calculating the export tax used by a major Canadian exporter could avoid a substantial amount of the tax actually due.

You may recall that Larry Broderick of Rivendell Forest Products testified before the Senate Finance Committee on April 7 concerning lumber tax fraud. Mr. Broderick indicated that information available to him seemed to indicate that Green Forest Lumber Ltd. of Ontario might be avoiding the export tax. In response to Mr. Broderick's testimony, Green Forest filed a letter with the Finance Committee explaining its method of calculating the tax due on its lumber shipments. It seems to us, however, that this document establishes that Green Forest is not complying with the requirements of the law and may be avoiding a substantial amount of the tax due.

Green Forest explains that it does not base its export tax payments on the value of lumber actually exported (as reported in the export tax notices) Rather, Green Forest calculates an average tax due on all the lumber which it purchases, and pays that average tax on all the lumber exported to the United States. Admittedly, in some circumstances, this may be only a technical breach of the requirements for paying tax on lumber shipped to the United States. On the other hand, the method used by Green Forest in fact can create substantial lumber tax fraud.

Green Forest uses an example which, in a slightly modified form, will suffice to prove this point. Assume that on a particular day Green's lumber inventory includes five MBF of lumber subject to the tax as follows:

Origin	Quantity	Value	Tax rate (percent)	Duty
B.C.	1 MBF	$100	0	$0
U.S.	1 MBF	100	0	0
N.B.	1 MBF	100	0	0
Ont.	1 MBF	100	15	15
Quebec	1 MBF	100	8	8
Total duty				$23

Thus, Green assumes that an average duty of $4.60/MBF ($23/5 MBF) must be paid on all lumber shipped to the United States.

This would be an accurate method of paying the export tax *if all* of Green's lumber was shipped to the United States. This, however, is unlikely.

Imagine, for example, that of the five MBF specified above, Green only ships two MBF to the United States, the lumber from Ontario and Quebec.[1] In this circumstance, Green is only paying $9.20 total tax ($4.60/MBF x 2), when the tax actually due is $23 ($15 for the Ontario lumber and $8 for the Quebec lumber). Thus, Green would avoid 60% of the tax due.

In fact, the Green formula would only work if all of Green's lumber was shipped to the United States or if the shipments to the United States matched in precise proportions the purchases from the various provinces.

The question remains, could this be used as an effective method to avoid the tax through gerrymandering shipments. The answer is clearly "Yes." *In Canada,* in effect, there is no cost imposed on Ontario and Quebec lumber as a result of the MOU. That cost is only incurred if the lumber is shipped to the United States. B.C. lumber, on the other hand, has the cost of the MOU implicitly included in the lumber because of stumpage increases. Lumber from the United States and the Maritimes has, in practical terms, avoided additional costs as a result of the MOU.

Green's method of calculating the tax due potentially allows Green to ship some Ontario and Quebec lumber to the United States without paying the full cost of the MOU, thus allowing Green to undercut other sellers of Quebec and Ontario lumber in the United States and sellers of B.C. lumber in the United States. To the extent that the percentage of lumber in Green's inventory from the United States, the Maritimes and British Columbia is greater than the percentage of Green's exports to the United States from these regions (see footnote one), Green is avoiding the export tax.

Of course, we do not know as a matter of fact how Green is administering this program. This analysis does demonstrate, however, that failure to require a strict accounting of the tax due on the lumber actually shipped to the United States can result in undercollection of the export tax. This is why it is imperative that new export tax notices specify the province of origin and the enforcing agencies in the United States and Canada require that the tax actually paid be based upon such accurate notices.

Please let us know if you have any questions. For your information, we will be sending a copy of this letter to the Senate Finance Committee to explain the concern raised by the Green Forest submission.

Sincerely,

MICHAEL H. STEIN.
JOHN A. RAGOSTA.

STATEMENT OF ICICLE SEAFOODS, INC.

Icicle Seafoods, Inc. of Seattle, Washington submits this statement to the International Trade subcommittee of the U.S. Senate Committee on Finance for inclusion in the record of the hearing on "U.S.-Canada Trade Disputes" scheduled for April 7, 1989.

Icicle Seafoods, Inc., on its own behalf and on behalf of nine other seafood processing companies located in Washington State and Alaska, filed a Section 301 Petition with the Office of the U.S. Trade Representative on April 1, 1986. The gravamen of the petition was the assertion that Canadian law forbade the export of unprocessed salmon and herring to the United States in violation of General Agreement on Tariffs and Trade (GATT) and is therefore an unfair trade practice under Section 301 of the Trade Act of 1974. The Canadian export restriction gives Canada's fish processing companies a competitive advantage because they are able to freely purchase unprocessed salmon and herring in the United States when additional supplies are

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[1] For example, the lumber from British Columbia, the Maritimes and the United States might be used primarily in Ontario and Quebec. This would not be surprising. Lumber imported from the United States into Ontario is likely to be products not readily available in Canada, such as Ponderosa Pine, Yellow Cedar, Redwood or Southern Yellow Pine. Only a very small percentage of this might be shipped back to the United States. Similarly, it would not be surprising if Douglas Fir, Hemlock and Cedar, and larger pieces of SPF dimension lumber from British Columbia (not readily available in Ontario) was consumed largely in Ontario and Quebec. Finally, Maritime lumber could be sold almost interchangeably with Ontario and Quebec lumber, as economics dictated.

needed. U.S. fish processing companies are denied this ability by the Canadian export restriction.

A summary of the history of this dispute is as follows:

1986

April 1—Section 301 Petition filed with USTR.
May 16—USTR initiated investigation and requested consultations with Canada.
September 3 and October 27—Consultations between U.S. and Canada.

1987

February 20—US requested GATT to establish a dispute settlement panel.
June—GATT panel was designated and met with U.S. and Canada on June 18 and July 10.
November 4—GATT panel ruled in favor of the U.S., finding Canada's export restrictions in violation of GATT Article XXXIII.

1988

March 11—Consultations between U.S. and Canada.
March 22—Canada says it will accept GATT panel decision and remove export prohibition by January 1, 1989. Certain Canadian officials announce intent to substitute landing restriction for export prohibition to protect Canadian industry. Landing of all fish in Canada prior to export was indicated.
March 23—GATT panel report is adopted by GATT Council.
August 30—USTR publishes a Notice Of Proposed Determination and Action under Section 301. The Notice requests comments on the impact of Canada's export restrictions and alternative Canadian landing or inspection requirements.
September—Canadian negotiators in Free Trade Agreement (FTA) talks attempt to include provision 'grandfathering' Canadian provincial laws that prevent the export of unprocessed fish. U.S. negotiators object but agree to language referring to export prohibition laws of the maritime provinces on the East Coast (i.e. not British Columbia), and making the language subject to GATT. Article 1203 of the FTA.
Congress amends FTA implementing legislation to require the President to take appropriate action within 30 days of any action by Canada applying export restrictions referred to under Section 1203 of the FTA or applying landing requirements.

1989

January 1—Canada does *not* remove its export prohibition on herring and salmon.
January 4-5—Canada begins consultations with USTR and discloses, for the first time, landing law program for West Coast salmon and herring only. USTR offers counter proposal to allow landing in U.S. subject to Canada's regulations.
February 2—Canadian negotiators reject counter proposal by the U.S.

Recently, Ambassador Carla Hills met with Canadian Trade Minister John Crosbie and indicated that Canada's proposed landing requirements were not acceptable to the United States because of the delay inherent in landing the fish and resulting reduction in the fish's value. *See,* 6 *International Trade Reporter* 323 (March 15, 1989).

This dispute has continued without a satisfactory resolution for almost three years. During this time, the petitioners have had to endure the fact that Canadian fish processing companies are able to freely purchase unprocessed fish in the United States to increase their inventories, while U.S. fish processors are denied this ability by Canadian law. Canada has not fulfilled its promise to GATT to remove its export prohibitions on salmon and herring, and the Canadian herring season is now nearly over for 1989. Canadian government foot-dragging has been an obvious negotiation tactic, requiring our government to press for a resolution at every turn only to see more delay from Canada each time. Our fish processing companies are increasingly dismayed by the strong "free trade" rhetoric coming from the two governments while resolution of this dispute remains as uncertain as when the case was filed in 1986. Moreover, USTR has been unwilling to support reciprocal measures that would eliminate the obvious buying advantage of Canadian companies in U.S. fish markets.

On March 28, Ambassador Hills determined that Canada's failure to lift the export restriction denies the United States rights to which it is entitled under a trade agreement and has published a notice of possible retaliation. *See,* attached *Federal Register* notice. A hearing has also been scheduled for April 26, 1989 to con-

sider a final list of products that would be subject to increased duties or other trade restrictions if Canada does not comply with the GATT ruling.

Retaliation is not welcomed by the Petitioners in this case. Unfortunately, the Canadian government is unprepared to deal with this dispute on a straight-forward basis and to eliminate the export restrictions and not replace them with equally restrictive landing requirements. The dispute has been fairly and effectively handled by the Office of the U.S. Trade Representative, without threats or rhetoric. But this approach has been met with continual resistance and delay from the Canadian negotiators. From this, our negotiators have concluded that only the toughest measures, i.e. retaliation against Canadian fish exports, will get that country to reach a meaningful settlement.

In conclusion, the Petitioners want an early and quick resolution of this dispute that fulfills the "free" trade promise of the Free Trade Agreement between the United States and Canada. Many of the Petitioners have now become victims of the worst oil spill in U.S. history and will suffer substantial loss of business as a result. Access to fish in Canada will help soften the blow to our fish processing operations. We hope the subcommittee will continue to monitor this dispute and to press for a resolution as soon as possible.

For the Nuclear Regulatory Commission.
James R. Hall,
Acting Director, Project Directorate III-3, Division of Reactor Projects - III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 89-7823 Filed 3-30-89; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 30-58]

Unfair Trade Practices; Icicle Seafoods; USTR Determination and Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Section 304 Determination; Notice of Public Hearing and Request for Public Comments on Possible U.S. Action in Response to Certain Canadian Unfair Trade Practices.

SUMMARY: In May 1986, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974, as amended, 19 U.S.C. 2411 *et seq.* ("the Act"), concerning Canada's prohibition on the export to the United States of unprocessed Pacific herring and pink and sockeye salmon. In March 1988, the General Agreement on Tariffs and Trade (GATT) Council of Representatives adopted a panel report finding that Canada's export prohibition is inconsistent with Canada's obligations under the GATT.

Based on the Council's findings, and because Canada continues to maintain its export prohibition, the USTR has determined under section 304(a)(1)A) of the Act, subject to the direction of the President, that Canada's export prohibition consultations with the Government of Canada. These consultations were held on September 3 and October 27, 1988. They failed to yield a satisfactory resolution of the issue. Consequently, the USTR invoked the formal dispute settlement procedures of the GATT and won a favorable panel decision that was adopted by the GATT Council in March 1988.

Representatives of the United States and Canada again consulted on March 9-11, 1988. On March 22, 1988, the Government of Canada announced that it would eliminate the export restrictions effective January 1, 1989. The Government of Canada also announced that it intended to impose new requirements for landing and inspection of certain species of fish prior to exportation.

On August 30, 1988, the USTR invited public comments, pursuant to section 304(b)(1)(A), on a proposed USTR determination regarding the Canadian export prohibition. 53 FR 33207. Canada has not as yet eliminated its export restrictions nor imposed landing and inspection requirements.

Notice of Determinations and Public Hearing

On the basis of the findings adopted by the GATT Contracting Parties, and because Canada continues to maintain the export prohibition, the USTR determined on March 28, 1989 that Canada's export prohibition denies a right to which the United States is entitled under a trade agreement. The USTR also directed the denies rights to which the United States is entitled under a trade agreement. Pending further developments in this case, the USTR has directed the Section 301 Committee to conduct a public hearing on possible U.S. action under section 301 as a result of this determination. This hearing will be held on April 28, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about products under consideration for increased duties or other import restrictions should be directed to Mr. Jukka Kolbonen, U.S. Department of Commerce, (301) 427-2383. Questions concerning the status of this case, or other questions, should be referred to Mr. Peter Murphy, Assistant United States Trade Representative, Office of the United States Trade Representative (202) 395-4866.

SUPPLEMENTARY INFORMATION: On April 1, 1986, Icicle Seafoods and nine other companies with fish processing facilities in southeastern Alaska and the State of Washington filed a petition under section 301 of the Trade Act of 1974 alleging that Canada prohibited exports of unprocessed Pacific herring and pink and sockeye salmon, and that this policy was an *unjustifiable trade practice* in violation of Article XI of the GATT. Article XI prohibits most types of export restrictions.

On May 16, 1986, pursuant to 19 U.S.C. 2412(a), the USTR initiated an investigation on the basis of the petition (51 FR 19648). On the same date, the United States requested Section 301 Committee to conduct a public hearing pursuant to section 304(b)(1)(A) on possible U.S. action as a result of this determination.

Legal Authority

The Trade Act of 1974, as amended, requires the USTR in this case to determine under section 304(a)(1)(A) whether rights to which the United States is entitled under a trade agreement are being denied. In the event that the USTR finds that such rights are being denied, the USTR must take appropriate and feasible action in response, subject to the specific direction, if any, of the President, unless an exception specified in section 301(a)(2) applies. Section 301(c)(1)(B) expressly authorizes the USTR to impose duties or other import restrictions on the goods of a foreign country for such time as the USTR determines appropriate. Measures under section 301 may be taken against the country concerned or against all countries, at the discretion of the USTR.

Public Hearing

The section 301 Committee will hold a public hearing on a list of products exported from Canada under consideration for inclusion on a final list of products that would be subject to increased duties or other trade restrictions. The hearing will be held on April 28, 1989, at 10:00 a.m. in Court Room A, Room 100, of the U.S. International Trade Commission, 500 E Street SW., Washington, DC.

The public is invited to comment at the hearing on: (1) The appropriateness of subjecting the products listed in Annex A to an increase in duties or to other trade restrictions; (2) the levels at which U.S. customs duties or other import restrictions on particular products should be set; and (3) the degree to which increased duties or other import restrictions might have an adverse effect on U.S. consumers of the products concerned. The comments submitted will be considered in recommending any action under section 301 to the USTR.

Interested persons wishing to testify must provide written notice of their intention by noon, April 14, 1989, to Ms. Jane Bradley, Chairman of the Section 301 Committee, Office of the United States Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. The written notice must provide the following information: (1) Name, firm or affiliation, address and telephone number; and (2) a summary of the proposed testimony, including the products, by tariff subheading numbers, to be discussed. In addition, such persons must submit a complete written statement in copies, in English, by noon, April 17, 1989, at the above address.

Remarks at the hearing will be limited to five minutes.

Persons not wishing to participate in the public hearing may submit written comments, in 20 copies, by noon, April 21, 1989, at the same address. All written comments must be filed in accordance with 15 CFR 2006.8.

A. Jane Bradley,
Chairman, Section 301 Committee

ANNEX

HTS subheading [1]	Article description
[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
0302.70.40	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Livers and roes: [Sturgeon roe] Other.
0303.80.40	Fish, frozen, excluding fish fillets and other fish meats of heading 0304: Livers and roes: [Sturgeon roe] Other.
0304.10.4050	Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen: Fresh or chilled: [Cod, cusk, haddock, hake (*Urophycis* spp.), pollock and Atlantic ocean perch (rosefish)] Other: [Fresh-water fish] [Flatfish] Other.
0304.20.6050	Frozen fillets: [Skinned, whether or not divided into pieces, and frozen into blocks each weighing over 4.5 kg, imported to be minced, ground or cut into pieces of uniform weights and dimensions] Other: [Cod, cusk, haddock, hake (*Urophycis* spp.), pollock, and Atlantic ocean perch (rosefish)] Other: [Fresh-water fish] Flatfish: Halibut
0304.20.6055	Greenland turbot (*Reinhardtius hippoglossoides*)
0304.20.6060	Other: [Wolf fish (sea catfish)]
0304.20.6080	Other.
0304.90.10	Other. In bulk or in immediate containers weighing with their contents over 6.8 kg each.
0306.20.40	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; fish meal fit for human consumption: Livers and roes, dried, smoked, salted or in brine: [Sturgeon roe] Other.
0306.41.00	Smoked fish, including fillets: Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*)
0306.42.0040	Herrings (*Clupea harengus, Clupea pallasii*): [Whole or beheaded but not otherwise processed].
0306.59.40	Other. Fish, salted but not dried or smoked and fish in brine: [Herrings (*Clupea harengus, Clupea Pallasii*); cod (*Gadus morhua, Gadus ogac, Gadus macrocephalus*); anchovies (*Engraulis* spp.)]. Other: Salmon.
0306.12.00	Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; crustaceans, in shells, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine: Frozen: Lobsters (*Homarus* spp.)
0306.22.00	Not frozen: Lobsters (*Homarus* spp.)
1604.11.20	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Salmon: In oil, in airtight containers
1604.12.60	Herrings: [In oil, in airtight containers] Other: [In tomato sauce, smoked or kippered, and in immediate containers weighing with their contents over 0.45 kg each] Other.
1604.13.20	Sardines, sardinella and brisling or sprats: In oil, in airtight containers: [Smoked sardines, neither skinned nor boned, valued $1 or more per kg in tin-plate containers, or $1.10 or more per kg in other containers] Other: Neither skinned nor boned
1604.13.40	Other: In immediate containers weighing with their contents under 225 grams each.
1604.19.40	[Tunas, skipjack and Atlantic bonito (*Sarda* spp.); mackerel; anchovies] Other [including yellowtail]: [In airtight containers] Other: Flaps, sticks and similar products of any size or shape, fillets or other portions or fish, if breaded, coated with batter or similarly prepared: Neither cooked nor in oil.
1604.30.40	Caviar and caviar substitutes: Caviar substitutes: [Boiled and in airtight containers] Other.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

[FR Doc. 89-7660 Filed 3-3-89; 8:45 am]
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RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

STATEMENT OF THE U.S. COUNCIL FOR AN OPEN WORLD ECONOMY

Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Subcommittee on International Trade of the Senate Committee on Finance for a hearing on the advisability of the United States negotiating bilateral free-trade agreements (May 5, 1989)

(The U.S. Council for an Open World Economy is a private, nonprofit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

Preparedness to negotiate bilateral free-trade agreements with market-oriented countries should be on the trade-policy agenda of the United States—but only if the following conditions are met:

(a) The free-trade agreement with any of these countries (or groups of countries) should be within the framework of a multilateral free-trade strategy seeking a totally-free-and-fair-trade compact with as many of the world's more advanced economies as care to participate in such a venture (open-ended to accept the eventual participation of those countries that initially may decline the invitation). Thus, seeking the broadest multilateral coverage in a definitively free-trade initiative, we should be prepared to proceed bilaterally or minilaterally (or, as some might say, plurilaterally) if only one or a few countries are interested. Sooner or later (much sooner than later), all the advanced countries would seek participation; they could not afford to stay out.

(b) Any such free-and-fair-trade agreement should cover all trade between the contracting countries, allowing no exemptions on products or practices but permitting differential timetables. Through the process of trade-offs, the greatest possible coverage will help to ensure the greatest possible fairness for the participating countries, including the equity of the timetables agreed upon. The programming of totally fair trade and totally free trade are one and inseparable; neither is attainable without the other. If perceived as an instrument for totally free and totally fair trade between the contracting countries, the free trade area would gain the necessary acceptance by the peoples and governments of the countries considering participation.

(c) This initiative in U.S. foreign economic policy should encompass agreements concerning monetary policy and other policy areas substantially affecting trade between the contracting countries. It should be backstopped by a domestic economic strategy addressing (i) the adjustment needs of those sectors of our economy that may be threatened by unrestricted foreign access to our market, and (ii) through appropriate fiscal, monetary and other measures, the adjustment needs of the U.S. economy in general.

(d) Special concessions (access equal to what the contracting countries accord to one another) should be extended to the world's underdeveloped countries, which are far from able to make free-trade commitments (or even substantially freer-trade commitments) but require and deserve open, equitable access to the world's best markets. By generating consumer demand in the developing countries, such access works ultimately to the advantage of the more-advanced countries themselves. However, developing countries accorded such privileged access should not get a "free ride". To qualify for these privileges, developing countries should be required to make general trade-liberalization and other appropriate commitments consonant with their evolving economic capabilities and for which they should be held accountable.

Strictly bilateral or minilateral free-trade initiatives by the United States—that is, outside the framework of a multilateral, open-ended, free-trade strategy—would tend to fragment the world trading system into blocs which could well acquire protectionist characteristics for a considerable period pending a dramatic initiative to erase this "balkanization" of the world economy. Launching a multilateral free-trade strategy in the first instance would forestall such a crisis in the world trading system.

Stressing the importance of the most far-reaching multilateralism (preserving and enlarging upon the multilateral principles so painstakingly developed during the past 40 years), a multilateral free-trade initiative has the following additional advantages over strictly bilateral or minilateral initiatives:

(a) The sweep and drama of a multilateral initiative is much more likely to engender the domestic economic, political, perhaps cultural changes essential to the credibility and viability of a genuinely free-trade and fair-trade compact. Anything significantly short of such a charter would leave products or practices of considerable importance to the respective countries unprovided for, creating concerns likely to diminish the concessions these countries are willing to make on products, practices

and policies covered by the agreement. Profound anxiety, perhaps deep feelings of national vulnerability, about "the slings and arrows of outrageous fortune" in a rapidly changing world economy do not stir courageous inclinations to remove barriers if significant commercial sectors are exempt from the negotiations. As I said in an International Trade Commission hearing on a possible free trade area with Japan, "substantial reform of cultural, political, in a sense psychological, obstacles retarding adoption of more-open policies toward the world economy will require a much more dynamic, more far-reaching initiative than the United States has thus far pursued or seriously considered—more, even, than an effort to form a strictly bilateral free trade area."

(b) In contrast to strictly bilateral or minilateral initiatives, a multilateral free-trade strategy would tend to defuse political anxieties in potential participating countries concerning too close a tie with powerful America—a political issue that could, in some cases, discourage strictly bilateral pacts with the United States or at least reduce the scope of the agreement that might be reachable.

Similarly, a multilateral free-trade strategy would make less likely the mobilization of domestic political pressures (in the United States or elsewhere) in opposition to free trade with one particular country or another—a political roadblock that could lurk in attempts at strictly bilateral pacts. Our experience with the Canadian and Israeli free-trade agreements may not be repeatable elsewhere.

(c) A multilateral strategy may well be the only free-trade initiative that would impel, indeed compel, the domestic adjustment, redevelopment, full-employment strategy essential to the political palatability of securing and then sustaining an authentically free-trade commitment, whether multilateral or strictly bilateral or minilateral. The resultant factoring of a free-trade premise into the whole range of government, business and labor decisions would have an incalculably beneficial effect on our nation's economy across the board, enhancing the nation's ability to maximize the advantages and minimize the disadvantages of a free-trade charter.

(d) A multilateral strategy would forestall the foreign-policy problem (and attendant diplomatic and other damage) of putting-off other candidates for the free-trade-area attention accorded the one or more countries currently in favor for such a negotiation. If we seek a strictly bilateral arrangement with Japan, how do we explain to Korea, Taiwan and the Asian countries that they will have to wait—who can say for how long? If we approach Korea or Taiwan or other Pacific countries individually, how do we tell the others they will have to wait their turn? If we approach the Pacific Rim countries alone, how shall we treat countries outside the Pacific Rim who may be interested in a free-trade arrangement with the United States? Possibilities of resentment, even bitterness, in countries overlooked or rejected for seats at the negotiating table should not be taken lightly.

(e) To the extent that interest in bilaterals with the United States reflects declining confidence in the current condition of the multilateral trading system, a multilateral free-trade initiative would assuage such concerns. Pursuit of strictly bilateral agreements would tend to exacerbate these concerns, further weakening the multilateral system.

(f) To the extent that interest in bilaterals with the United States reflects concern over protectionist possibilities in this country and the need to forestall them in the interests of these concerned countries, a multilateral free-trade strategy is the policy most capable of reassuring the world about U.S. intentions.

(g) To the extent that interest in free-trade bilaterals with the United States reflects concern over being disadvantaged by U.S. bilaterals elsewhere, a multilateral free-trade strategy would be most effective in relieving such anxieties.

(h) A multilateral free-trade strategy would send a more constructive message to the European Community about U.S. trade-policy intentions and the standard we expect from the EC. It would underscore the U.S. interest in promoting the most far-reaching freer-trade arrangements—geographically and in product-and-practice coverage—and avoiding arrangements that would be or could become constrictingly inward-looking. Projecting the ultimate in freer-trade reciprocity (the programming of totally free trade), it would be an elevating response to the Community's insistence on "equivalent reciprocity" to counterbalance the free access the United States seeks in the free-trade internal market the EC is projecting for 1992.

The Community says it's objective is not to restrict foreign competition in its internal market, but "ultimately one of getting the most liberal regime that can be negotiated in the world as a whole" (quotation from an EC commissioner, *Journal of Commerce,* October 21, 1988) We should get ready to "call" them on it.

Bilateral free-trade pacts are seen in some quarters as advancing the objective of freer world trade on a multilateral basis—raising the sights of the current multilateral round of trade negotiations and possibly becoming stepping-stones to an eventu-

al multilateral free-trade charter. Did not U.S. bilateral tariff-cutting agreements with many countries in the late 1930's (it is argued) lead to formation of a multilateral commitment to freer trade by many countries in the late 1940's (the General Agreement on Tariffs and Trade) and the ensuing rounds of trade negotiations so beneficial to the United States and the world at large? The greatly restricted tariff-cutting agreements prior to World War II did not establish "free trade areas" or any other form of trading bloc, and are hence not comparable with the bilateral pacts now the subject of exploration. In any event, progression from bilateral free-trade arrangements to a multilateral free-trade compact is not a certainty—at least not for a span of years during which considerable damage could be done to the world trading system before the major trading nations are stirred to corrective action. To whatever extent such progression is in the cards, why not start the process with the kind of mutlilateral initiative I have advocated? In other words, put the ultimate goal up front, rather than put our faith in the possibility that bilaterals might somehow get us where we believe we ought to go.

Such a strategy could at least be a contingency plan in case the current GATT round of trade negotiations (supposedly the last of this century) collapses or falls significantly short of expectations, not sufficiently ambitious in the first place. The nation, however, is not prepared for this kind of trade policy planning. The government itself is not prepared. Nor, with hardly an exception do the so-called "free traders" in business, academia or anywhere else advocate it.

Many in Congress see the need for a coherent trade policy that fully advances the national interest in a rapidly changing and increasingly challenging world economy. Some urge formation of a trade strategy on the same plain of national priorities as foreign policy and national security. But, no less than foreign policy and national security, trade policy requires a credible, carefully crafted, systematically reviewed, long-term strategy as the framework for the day-to-day, year-to-year decisions and negotiations that are policy fare in all these areas. No such strategy exists on which American business and labor, and others with a major stake in U.S. trade policy, can rely. Some in Congress and elsewhere seem intrigued with the idea of bilateral free-trade areas as a device to advance the cause of freer and fairer trade, at least to avoid the proliferation of product-by-product disputes about trade barriers and distortions—disputes that can, and often do, escalate to major confrontations.

However, the implications of bilateral agreements for the multilateral trade-policy objectives to which the United States has long pledged its allegiance have not, it seems, been fully explored and adequately understood. And nowhere in government—not even in the Executive Branch, where we expect trade-policy leadership and contingency planning—does there appear to be any vision beyond the current round of GATT negotiations and a more vigorous effort (readiness to retaliate being one of the instruments) against foreign trading practices and policies the U.S. government considers unfair. In the case of Congress, there appears to be no vision beyond (a) tit-for-tat toughness against foreign trading practices and policies the United States considers unfair, and (b) in some quarters, the possibility of "free trade area" pacts that are strictly bilateral (or minilateral) and, aside from other shortcomings, don't even project totally free trade with possible signatories.

Bilateral stratagems do not a coherent, multilateral strategy make; in fact, they could well disrupt the multilateral design to which U.S. policy should consistently be committed. Nor are the commitments that urgently need to be made in macroeconomic policies (fiscal, education, productivity and much more) in order to solve the nation's trade problems likely to be made and implemented without the spur of unmistakable determination to program totally free-and-fair trade with as many countries as are interested in such a venture.

If free trade must be (as, in the real world, it should be) a "two-way street" (meaning that a country practicing free trade should have equivalent access to advanced countries enjoying such access to its national market), then the United States—leader of the Free World and of the coalition of nations seeking a more open world economy—should initiate a strategy aimed at that very objective, inviting the participation of as many countries as share such a vision. Reciprocity is a widely and intensely acclaimed goal on all sides of the trade-policy debate in this country. What better configuration of this proposition than its optimum, ultimate form—totally free-and-fair trade among all countries endorsing the reciprocity principle.

The details on when and how to launch such a policy initiative depend upon cir-

cumstances including the outcome of the GATT negotiations now in process. But planning for such an initiative—in both foreign-policy and domestic-policy terms—should begin without delay. Certainly, nothing should be done that impairs progress toward this goal by generating new configurations of trade discrimination and protectionism—changes that strictly bilateral (or minilateral) "free trade" pacts could set in motion.

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