



COALITION FOR FAIR LUMBER IMPORTS

Recent U.S. Supreme Court Decision Reinforces Doubts About
Constitutionality of NAFTA Chapter 19 Panel System

FOR IMMEDIATE RELEASE

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WASHINGTON (July 2, 2010) – The United States Supreme Court issued a major decision this week concerning the separation of powers required by the U.S. Constitution. The Court ruled that members of an accounting oversight board created as part of the Sarbanes-Oxley Act were too insulated from presidential control to be accountable to the American people in the case of Free Enterprise Fund v. Public Company Accounting Oversight Board (“PCAOB”). The Coalition for Fair Lumber Imports filed a brief *amicus curiae* supporting the challengers and bringing the Court’s attention to similar constitutional concerns raised by the NAFTA Chapter 19 binational panel system.

In PCAOB, the Supreme Court invalidated a section of the Sarbanes-Oxley Act providing that members of a board overseeing public accounting firms could be removed only for “good cause” by members of the SEC, who, in turn, could be removed only for “good cause” by the President. “That arrangement is contrary to Article II’s vesting of the executive power in the President,” wrote Chief Justice John Roberts. “Without the ability to oversee the Board, or to attribute the Board’s failings to those whom he *can* oversee, the President is no longer the judge of the Board’s conduct. . . . The diffusion of power carries with it a diffusion of accountability. . . . By granting the Board executive power without the Executive’s oversight, this Act subverts the President’s ability to ensure that the laws are faithfully executed – as well as the public’s ability to pass judgment on his efforts.” PCAOB, 561 U.S. ____ (2010) (Slip Op. at 15-17).

Steve Swanson, chairman of the Coalition and president of the family-run Swanson Group in Oregon, applauded the decision. “This is an important decision for American businesses and it supports the Coalition’s belief that the NAFTA Chapter 19 system is unconstitutional.” Under NAFTA Chapter 19, a binational panel – with some members appointed by foreign governments and no members subject to removal by the President, for good cause or otherwise – is empowered to review U.S. government agency enforcement of U.S. trade laws, and even to override and reverse their enforcement actions. The actions of the binational panel are not subject to review or control by any U.S. executive or judicial branch officials.

“In PCAOB, the Supreme Court held that any entity exercising executive power must be subject to executive oversight from the President, meaning that it is ultimately accountable to the American people,” Swanson explained. “Accountability to the American people is the bedrock of our Constitution. Unfortunately, when Congress implemented the NAFTA Chapter 19 binational panel system into U.S. law, it created a system completely lacking in accountability to the American people.”

The U.S. law authorizing binational panels to replace U.S. federal courts in trade law cases provides special but very narrow provisions for challenging the law on constitutional grounds. Prior challenges to the law filed by the Coalition were in active litigation when the United States and Canada entered agreements on trade in softwood lumber, thereby ending the court challenges before the legal questions could be decided. The PCAOB decision reinforces the legal case against the binational panel system and provides additional support for a new constitutional challenge brought by an adversely affected U.S. industry in the future.

Swanson went on to say that the Coalition hopes that another constitutional challenge to the NAFTA binational panel system will not be needed. "We are prepared to do whatever is necessary, however, to protect our industry from the excesses of the unaccountable binational panel system, and the principles behind the PCAOB decision will apply equally to the legal question of the constitutionality of binational panels replacing the U.S. court system," said Swanson. "The Coalition is proud to have contributed to this important legal development," he added.

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About the Coalition for Fair Lumber Imports

The U.S. Coalition for Fair Lumber Imports is an alliance of large and small lumber producers from around the country, joined by hundreds of thousands of their employees, and tens of thousands of woodland owners. The Coalition is united in opposition to Canada's unfair lumber-trade practices, including its gross underpricing of timber on government-owned lands. For more information, please visit the Coalition's website at www.uslumbercoalition.org.