



COALITION FOR FAIR LUMBER IMPORTS

FOR IMMEDIATE RELEASE

Coalition for Fair Lumber Imports Deeply Disappointed In NAFTA Panel-Driven Finding of *De Minimis* Subsidy

November 22, 2005 -- The U.S. Department of Commerce today announced a recalculation of its estimate of the subsidy to Canadian lumber, to less than 1% from the 18.8% found in 2002. The recalculation was driven by decisions of a NAFTA dispute panel which brazenly flouted its obligations to enforce the U.S. trade laws and defer to any reasonable Commerce Department decision-making. Unless overturned by a NAFTA extraordinary challenge committee, this determination would severely jeopardize essential anti-subsidy duties.

The U.S. lumber industry is deeply disappointed with the Commerce Department's decision as the lifting of the duties would further threaten the domestic industry and its workers with renewed injury – especially in light of Canada's announcement to provide its lumber industry with an additional \$1 billion dollars worth of taxpayer-funded subsidy. But, noted Steve Swanson, Chairman of the Coalition for Fair Lumber Imports, this decision does not change the fundamental fact that Canada's lumber industry receives billions of dollars in annual subsidies derived from Canadian taxpayer-owned forest resources. This fact has been, and continues to be, confirmed by Commerce Department as well as World Trade Organization panel findings.

The NAFTA panel decisions have led the Commerce Department to find a *de minimis* subsidy using information that does not even date from the period that the agency was examining, when current data -- which showed an over-*de minimis* subsidy -- were on the record. Mr. Swanson added, "something is gravely wrong when U.S. mills and workers could be decimated by unfair trade because a NAFTA review process results in a mis-matching of data and results that are nonsensical."

Swanson expressed concern that "this decision is the latest example of a Chapter 19 dispute settlement panel under NAFTA wrongfully and unconstitutionally trumping U.S. law," further explaining that "the NAFTA panel in this case has improperly directed a decision that runs counter to the facts and U.S. law. The U.S. Commerce Department has consistently confirmed that, if calculated correctly, an anti-subsidy duty of nearly 20 percent is necessary to offset Canadian subsidies."

Canada has announced that it will provide additional subsidies to its lumber industry worth over \$1 billion dollars. Mr. Swanson stated that "by openly announcing an additional \$1 billion dollars in subsidies, Canada is flaunting its ability to ignore the U.S. trade laws and its obligations under NAFTA not to provide an unfair competitive advantage to its industries by use

CONTACT:
Barry Cullen 202-862-4505
Harry Clark 202-429-2359

of subsidies or other measures,” and further expressed outrage that “the NAFTA panel system has simply neutered our trade laws and robbed the United States government of its sovereign right to enforce its laws on behalf of U.S. industries.”

Mr. Swanson concluded by stating that “lifting the countervailing duty would be devastating to U.S. lumber companies, workers, their communities, and to millions of private timberland owners across the United States.”

Attachment:

**NO BASIS TO FIND CANADIAN LUMBER SUBSIDY *DE MINIMIS*:
REMAND DETERMINATION SUBSIDY CALCULATION METHOD IS UNLAWFUL**

In 2002, the Commerce Department found that Canadian lumber is subsidized -- primarily, through the under-pricing of timber -- at 18.8%. Today, Commerce determined that it is compelled by an October 2005 NAFTA panel decision to recalculate the subsidy as being below 1%, the “*de minimis*” threshold. As Commerce had stated before, this recalculation violates U.S. law.

Commerce has been trying to estimate the value of government-owned Canadian timber (standing trees) by taking the value of private logs sold in Canada (domestically grown and imported) and subtracting the costs of harvesting those logs (buying private timber, harvesting it, and hauling it to the mill). The NAFTA panel has insisted that this approach requires Commerce to subtract an estimate of profit earned by log sellers and that Commerce calculate this profit estimate in a particular way. The panel’s instructions are patently unlawful.

As a threshold matter, the only relevant record evidence establishes that there was no profit earned by log sellers beyond any profit earned by timber sellers. So there was no basis for the panel to insist on any “profit adjustment.”

In any event, the method mandated by the panel for calculating a supposed estimate of log sellers’ profit leads to absurdities and is otherwise incompatible with the law and evidentiary record.

First, Commerce previously used a calculation for log seller profit that had been expressly advocated by Canada itself (consistent with the record, it showed no such profit). That method, then, could hardly be considered beyond the scope of Commerce’s discretion or otherwise unfair to Canada.

Second, the method mandated by the panel -- Canada’s second proposed approach -- involved a mismatch of log prices and the costs used to harvest the logs. Consequently, the results are gibberish -- they are not an estimate of any log sellers’ profit experience.

Third, the method mandated by the panel makes this whole subsidy calculation mathematically circular. The log price with which Commerce starts could be \$1 billion per log or zero, and the subsidy rate would remain the same. Neither the panel nor the Canadian government denies or attempts to justify this circularity.

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Fourth, as a closely related matter, the latest method mathematically eliminates log prices from the subsidy calculation. All that is left is a comparison between Canadian government timber prices and Canadian private timber prices. Given that governments control an overwhelming share of the Canadian timber market (between 83% and 99% depending on the province) the government-determined price sets the market price. The NAFTA panel does not deny this. Both it and the WTO have found that Commerce does not have to compare government prices to private prices that are distorted by government influence on the market. But the NAFTA panel has now demanded it. Given that the government timber price in Canada sets the residual private market price, it is hardly surprising that a comparison between the two finds that government prices are at private market levels.

Finally, the profit calculation employed by Commerce results in comparing government timber prices with private timber prices *in a previous year*. Again, neither Canada nor the panel has denied this, nor advanced any reason that it would make sense to compare Quebec public timber prices with earlier private timber prices. Whatever one might think about use of Quebec private timber prices at all (the panel has approved Commerce's finding that they are distorted and unusable), it is asinine to claim that no subsidy exists simply because government timber prices are at the level of a previous year's private timber prices. But that is exactly what Commerce's latest calculation amounts to.

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