

UNITED STATES OF AMERICA  
DEPARTMENT OF COMMERCE

IMPORT ADMINISTRATION

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PUBLIC HEARING

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RETROSPECTIVE AND PROSPECTIVE  
ANTIDUMPING/COUNTERVAILING  
DUTY SYSTEMS

Tuesday,  
April 27, 2010

1st Floor Auditorium  
Herbert C. Hoover Building  
14th Street & Constitution Avenue, N.W.  
Washington, D.C. 20230

The above-entitled matter convened  
at 9:30 a.m., pursuant to notice, Ronald

Lorentzen, Chairman, presiding.

BEFORE:

RONALD LORENTZEN, Chairman, Department of  
Commerce

JOHN McINERNEY, Department of Commerce

KELLY PARKHILL, Department of Commerce

GARY TAVERMAN, Department of Commerce

TIMOTHY SKUD, Department of Treasury

MICHAEL WALSH, Department of Homeland Security

BRENDA BROCKMAN SMITH, Department of Homeland  
Security

PANELISTS:

LINDA ANDROS, United Steel, Paper, Forestry,  
Rubber, Manufacturing, Energy, Allied  
Industrial and Service Workers

EILEEN BRADNER, Nucor Corporation

TONI DEMBSKI-BRANDL, Target Corporation

GEERT DE PREST, Stewart and Stewart

MATTHEW FASS, Maritime Products International

DAVID HARTQUIST, Committee to Support  
U.S. Trade Laws

JAMES HECHT, Skadden Arps

GARY HORLICK, Law Offices of Gary Horlick

LEWIS LEIBOWITZ, Consuming Industries Trade  
Action Coalition

STEPHANIE LESTER, Retail Industry Leaders  
Association

VICTOR MROCZKA, Hughes, Hubbard & Reed

BERND NEUENKIRCHEN, Countinho and Ferrostahl

ROBERT PATERSON, Tampa Bay Fisheries

DAVID PHELPS, American Institute for  
International Steel

ALAN PRICE, Steel Manufacturers Association

TOM SNEERINGER, U.S. Steel

MICHAEL TAYLOR, King & Spalding

MARGUERITE TROSSEVIN, Trade Remedy Reform  
Action Coalition

DAVID YOCIS, Coalition for Fair Lumber Imports

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P-R-O-C-E-E-D-I-N-G-S

9:39 a.m.

MR. LORENTZEN: Good morning,  
everyone.

I would like to welcome you to the  
Department of Commerce. My name is Ron  
Lorentzen and I'm the Deputy Assistant  
Secretary for Import Administration.

Thank you for attending and  
contributing to today's hearing on the  
Retrospective and Prospective Antidumping  
Collection Systems.

In the Conference Report  
accompanying the 2010 Appropriations  
Legislation, the conferees directed the  
Secretary of Commerce to work with the  
secretaries of the Departments of Homeland  
Security and the Treasury to conduct an  
analysis of the relative advantages and  
disadvantages of prospective the retrospective  
antidumping and countervailing duty collection  
systems.

1                   As part of its analysis the  
2                   conferees requested the Department of Commerce  
3                   address the extent to which each type of  
4                   system would likely achieve the goals of  
5                   remedying and injurious dumping or subsidize  
6                   exports to the United States, minimizing  
7                   uncollected duties, reducing incentives and  
8                   opportunities for importers to evade and  
9                   antidumping and countervailing duties,  
10                  effectively targeting high risk importers  
11                  addressing the impact or retrospective rate  
12                  increases on U.S. importers and their  
13                  employees. And, finally, creating minimal  
14                  administrative burden.

15                  To help in our analysis for the  
16                  preparation of this report, we have invited,  
17                  as you know, public comment on the issue and  
18                  we decided to organize today's hearing to  
19                  allow commentators an opportunity to elaborate  
20                  on their comments.

21                  I think we'll have a good hearing  
22                  today and we very much welcome creating a

1 record for our examination of this important  
2 issue.

3           Joining me here at the table are  
4 several colleagues from Import Administration  
5 and from the other two agencies that we were  
6 requested to consult with in the preparation  
7 of our report.

8           At my far left is Mr. Michael  
9 Walsh, who is the Director of AD/CVD and  
10 Revenue Policy and Programs at Customs and  
11 Border Protection at the Department of  
12 Homeland Security.

13           To his right is Mr. Timothy Skud,  
14 who is the Deputy Assistant Secretary of  
15 Treasury for Tax, Trade and Tariff Policy.

16           To my immediate left is John  
17 McInerney, who is the Chief Counsel for Import  
18 Administration.

19           To my immediate right is Kelly  
20 Parkhill, who is the Director of Office of  
21 Industry Support and Analysis in Office of  
22 Policy in Import Administration.

1                   And to my far right is Gary  
2           Taverman, who is Senior Advisor to the Deputy  
3           Assistant Secretary for AD/CVD Operations in  
4           Import Administration.

5                   We've divided our hearing today  
6           into six panels, three in the morning and  
7           three in the afternoon.

8                   The morning panel should or the  
9           morning session should likely end around 11:30  
10          or 11:45 at which point we'll break for lunch  
11          and resume at 2:00 p.m.

12                  Panel participants will each have  
13          five minutes for their presentation. Once all  
14          of the participants in a given panel have  
15          concluded their presentations, I and others  
16          here at the hearing table will have an  
17          opportunity to ask questions.

18                  I ask all of our witnesses to try  
19          and stick to the five-minute limit. If I see  
20          that you're having trouble, I may intervene  
21          and ask you to bring things to a closure.

22                  For our first panel today I'd like

1 to introduce our panelists.

2 First Linda Andros on behalf of  
3 the United Steel, Paper, Forestry, Rubber,  
4 Manufacturing, Energy, Allied Industrial and  
5 Service Works.

6 Lewis Leibowitz on behalf of the  
7 Consuming Industries Trade Action Coalition.

8 Alan Price on behalf of the Steel  
9 Manufacturers Association.

10 And, lastly, Eileen Bradner on  
11 behalf of Nucor Corporation.

12 Thank you very much for joining us  
13 and may I invite Linda to begin.

14 MS. ANDROS: Good morning and  
15 thank you for the opportunity to speak here  
16 today.

17 My name is Linda Andros. I am the  
18 Legislative Counsel at the United Steel  
19 Workers.

20 The USW as it's called is the  
21 largest industrial union in North America. We  
22 represent a broad swath of the manufacturing

1 base here. As such, we're disproportionately  
2 harmed by import competition.

3 For example, we have several cases  
4 in pipe, one in paper and one in aluminum  
5 before the Administration right now for  
6 violations of the trade laws.

7 Manufacturing we think is needed  
8 for the future growth in the county but it's  
9 under a tremendous siege. There's been a loss  
10 of over 2.1 million manufacturing jobs since  
11 the Great Recession at the end of 2007,  
12 against a backdrop of 5.5 million  
13 manufacturing jobs lost in the last decade  
14 alone.

15 The CBO did a report in 2008  
16 looking into the decline in manufacturing  
17 employment and it found strikingly that there  
18 was much lower growth and output, much more --  
19 had fallen much more than normal and that  
20 there was an increase in import competition.  
21 And as we know, some of that import  
22 competition is unfairly traded.

1                   So, the USW standards opposed to  
2                   any attempt to undermine or diminish the  
3                   antidumping and CBD laws in anyway or in any  
4                   extent given this huge decline in  
5                   manufacturing both in output and employment  
6                   and we certainly don't want to lose more jobs  
7                   to unfair trade. So, I'm here today to oppose  
8                   on behalf of our union the prospective system  
9                   that we think would have that effect.

10                   The retrospective system that we  
11                   use in the United States we believe best  
12                   accounts for the extent of dumping and  
13                   subsidization.

14                   Accuracy matters enormously. I  
15                   repeat that. Accuracy matters enormously  
16                   because you're trying to counter the harm  
17                   that's caused in any given period. That's the  
18                   point of the statute.

19                   Also, the retrospective system is  
20                   completely consistent with other U.S. law and  
21                   international trade law. It's always been the  
22                   system in the United States so it seems to the

1 United Steel Workers that there has to be a  
2 compelling reason to change it and we don't  
3 see a compelling reason to change it. In  
4 fact, we don't see any rational reason to  
5 change it.

6 Importers claim that  
7 predictability is needed here but I would say  
8 you can never sacrifice justice for certainty.  
9 This appears as argument in many other aspects  
10 of law and commercial law in particular.

11 As a practical matter, we have  
12 obviously a glut of imports in the United  
13 States and there are multiple sources often  
14 for imports. So, one doesn't need to rely on  
15 unfairly traded imports as a business model.

16 Business also engage in risk  
17 assessment all the time. It's not unusual.  
18 And if they desire to use a business model,  
19 the imports unfairly traded goods then that  
20 risk needs to be managed by that business.  
21 Like any other risk in the commercial  
22 marketplace, which as we know is fraught with

1 risk and not a whole lot of certainty.

2           Businesses also engage in risk  
3 assessment as I said all the time. But above  
4 all else, you can't elevate the quest for  
5 certainty over the statutory requirement to  
6 fully offset all the dumping and subsidization  
7 so you can arrest the full harm that is  
8 occurring in any particular period. That's  
9 the purpose of the law so that cannot be  
10 ignored.

11           We also believe that importers are  
12 not simply looking for certainty. They're  
13 looking to buy unfairly traded goods with the  
14 least and minor restrictions and liability  
15 imposed. Prospective systems permit gaining  
16 because they're not designed by their nature  
17 to capture the full extent of the unfair trade  
18 in any period and they only provide for return  
19 of overpayments, not underpayments. So, we  
20 would ask why would we want a policy that  
21 gives a competitive advantage to those relying  
22 on unfairly traded imports but doesn't even

1 attempt to counter all the harm caused so U.S.  
2 Workers and Industries after it's been  
3 determined that there has been harm caused  
4 from unfairly traded imports?

5 We should not be encouraging that  
6 in any manner and come into law.

7 Let me end my remarks by simply  
8 making a couple of statements on that. One of  
9 the other reasons given as to why we want to  
10 switch systems and that is some discreet  
11 difficulties that have been incurring in the  
12 collection of duties by customs. But those  
13 mainly involved aquaculture and agricultural  
14 goods like honey and crawfish and garlic where  
15 you have thousands -- at least hundreds of  
16 small producers. And these are mainly from  
17 China.

18 The problem was that the  
19 additional dumping that was occurring could  
20 not be collected because people absconded --  
21 the port was just absconded and you couldn't  
22 trace them because literally there were, as I

1 said, hundreds of producers in that area. But  
2 that -- that isn't the norm in duty  
3 collection. And I'd say one shouldn't make a  
4 general rule based on an exception.

5 The problem with that additional  
6 dumping was occurring but additional duties  
7 couldn't be collected. That wouldn't get  
8 fixed in a prospective system.

9 Thank you.

10 MR. LORENTZEN: Thank you, Ms.  
11 Andros.

12 Mr. Leibowitz.

13 MR. LEIBOWITZ: Thank you very  
14 much.

15 Good morning, Members of the Panel  
16 and I wanted to thank on behalf of CITAC, the  
17 Department for having this hearing.

18 The retrospective system raises  
19 serious issues on both sides and it requires  
20 serious analysis of those issues. I think  
21 this will help and I hope so.

22 The United States is the only

1 country in the world which I'm aware that has  
2 a retrospective system of collection. There  
3 are about 65 countries in the world that use  
4 antidumping and countervailing duty laws and  
5 the U.S. is the only one that does that.

6 We need to ask ourselves why. We  
7 also need to realize that we live in an  
8 economy, a global economy today that is not  
9 like the world of 1921 or 1979 or 1994, the  
10 last time the antidumping and countervailing  
11 laws were significantly reformed.

12 The retrospective system I must  
13 say with assurance and experience doesn't  
14 increase manufacturing activity or jobs in the  
15 United States. In fact, it does the reverse.  
16 It makes a lot of U.S. manufacturers less  
17 competitive and, therefore, tends to reduce  
18 manufacturing activity in this country which  
19 is contrary to sound policy.

20 Some argue, including my  
21 predecessor on the panel that a retrospective  
22 system is more accurate than a prospective

1 system. I don't think that's true. I think  
2 it's overblown, but also we need to recognize  
3 that accuracy is not the only thing. The  
4 system itself distorts trade while unfairly  
5 imposing unacceptable risks on importers which  
6 pass through the economy.

7 So, it affects importers. It  
8 affects U.S. producers who rely on imports in  
9 the market, foreign producers and U.S.  
10 downstream users of those products in  
11 significant way. Most important, it deters  
12 imports whether they're fairly traded or not.

13 The deterrents result from the  
14 uncertainty of the final duties imposed and  
15 also the expense and burden of finding out  
16 what the actual duties are. It's too heavy  
17 for all but the most high volume, high value  
18 and important products. So, importers will  
19 avoid these burdens the only way they can by  
20 not importing subject merchandise into the  
21 U.S.

22 They other places to send those

1 products. They can ship it to markets other  
2 than the United States or they can import  
3 products into the United States that are  
4 further advanced and beyond the scope of  
5 dumping or countervailing duty proceedings.  
6 This is entirely lawful and I assure you very  
7 common -- increasingly common.

8 So, the result of U.S. industries  
9 that depend on imports in the market is the  
10 loss of imported components in raw materials  
11 that they need at globally competitive prices  
12 and conditions and the increased importation  
13 of further processed good. This is a double  
14 whammy on consuming industries who employ many  
15 times the workers of antidumping and  
16 countervailing duty petitioners. So, they  
17 lose business to overseas competitors.

18 The effects go -- the effects for  
19 U.S. petitioners go well beyond the remedial  
20 purpose which is fine and laudable of  
21 antidumping and countervailing duties to  
22 restore competitive conditions to the market.

1           The accuracy argument is I believe  
2           ephemeral, a loosery. Is it worth the cost?  
3           No. A fair system would account of the  
4           interest of all elements in the U.S. economy,  
5           not just a few. A fair system would balance  
6           the need for remedial duties to restore  
7           competitive conditions with the importance of  
8           having a rational system, a reasonable system  
9           that keeps imports that are appropriately  
10          taxed in the market.

11           A fair system would permit any  
12          party to initiate a review of dumping or  
13          subsidy margins. A prospectus system doesn't  
14          have to only go one way, down. Imports  
15          entering the country should be at duties that  
16          accurately reflect as much as possible the  
17          actual margins of dumping or subsidies without  
18          creating the open-ended risk of devastating  
19          surprises which we have now.

20           Petitioners, respondents and other  
21          parties such as U.S. consumers should have the  
22          opportunity to request reviews. The results

1 should be applied to entries after the  
2 issuance of the final results.

3 CITAC believes that a system  
4 reducing the current uncertainty of importing  
5 products would be superior, a substantial  
6 improvement on the current system. So, we  
7 urge the department to include a full analysis  
8 and a fair analysis of the benefits and costs  
9 of their prospective and retrospective systems  
10 keeping in mind that there are lots of  
11 decisions that would need to be made in making  
12 a change of keeping a retrospective system in  
13 place.

14 A significant cost of the  
15 retrospective system is a loss of imports to  
16 the U.S. market for manufacturers because of  
17 the workings of the system. It imposes an  
18 unlimited risk on imports that can't be  
19 reduced or passed on unless imports are not  
20 brought into the country.

21 In our global economy of the 21st  
22 century, the loss of these imports will make

1 their U.S. users and consumers less  
2 competitive in global markets. This hurts  
3 exporters. It hurts domestic producers of  
4 products that compete with imports. With out  
5 current unemployment rate of 9.7 percent and  
6 the real prospect of extended hardship for  
7 millions of workers we must preserve and  
8 enhance the competitiveness of American  
9 factories.

10 Thanks very much.

11 MR. LORENTZEN: Thank you.

12 Mr. Price.

13 MR. PRICE: Good morning, Mr.

14 Lorentzen, and thank you for the opportunity  
15 to speak here today.

16 My name is Alan Price. I'm a  
17 partner with Wiley Rein LLP and counsel to the  
18 Steel Manufacturers Association.

19 I'm going to largely agree with  
20 the remarks of Ms. Andros, although I probably  
21 won't be as eloquent.

22 The SMA represents over 75 percent

1 of U.S. steel production capacity, has 36  
2 members with 130 steel plants and nearly  
3 60,000 workers. Along with Nucor, USW and  
4 numerous U.S producers the SMA also voices our  
5 strong support for maintaining the current  
6 U.S. retrospective system for calculating  
7 assessing antidumping and subsidy duties.

8 We believe that moving to a  
9 prospective system would in inappropriate and  
10 would not fulfill U.S. legal requirements to  
11 apply dumping margins as accurately as  
12 possible. On its face a prospective system is  
13 one-sided and puts the interest of foreign  
14 producers, foreign importers ahead of American  
15 producers and workers who have been injured  
16 and are injured by unfair trade.

17 First, prospective systems are  
18 inaccurate. As such, they are ill-equipped to  
19 remedy injurious dumping and subsidization of  
20 imports. The systems apply antidumping and  
21 countervailing duty margins to entries based  
22 upon margin or normal value calculations that

1 are made before the entries even occur.

2 Therefore, accurate duties are not applied to  
3 the actual entries. Thus, if in a subsequent  
4 review the actual dumping or subsidy margins  
5 are found to have been much higher, the harm  
6 and injury from those sales goes unremedied.

7 This inaccuracy is especially  
8 troubling in cases involving products such as  
9 steel, chemical and paper where prices for  
10 inputs and raw materials can change  
11 dramatically through the course of just one  
12 year and certainly over many years. Because  
13 duty rates for prospective systems apply past  
14 margins to current and future shipments for  
15 many years such systems can be widely  
16 inaccurate.

17 Second, by their nature  
18 prospective systems increase incentives for  
19 evasion of antidumping and countervailing  
20 duties. Unless a retrospective system,  
21 prospective systems under WTO laws,  
22 specifically Article 9.3.2 of the Antidumping

1 Agreement only provide for refunds to  
2 importers for the overpayment on dumping and  
3 subsidy duties. They do not contain any  
4 mechanism to collect additional duties when an  
5 importer's duties or normal values are  
6 insufficient.

7 This flaw in -- this flaw results  
8 in the creation of an entire universe of what  
9 are in essence additional uncollected duties  
10 by insuring noncollection and simply defining  
11 it away. Where still this flaw also invites  
12 arbitrage on a massive scale. Exporters can  
13 double or even triple the real dumping of  
14 subsidy margins over the course of a review  
15 period without any fear or liability of  
16 incurring additional duties.

17 Sophisticated importers and  
18 exporters can exploit mismatches between  
19 margins, price, normal values and current  
20 market conditions by flooding the market with  
21 out any risk under a prospective system. Now  
22 this provided certainty and it's the certainty

1 that retailers and CITAC crave, but frankly  
2 it's not helpful to U.S. industry and those  
3 who are injured by unfair trade.

4 Lastly, there would be no  
5 reduction in administrative burden is a  
6 prospective system is adopted and this is  
7 really one of the great flaws that is out  
8 there when people a prospective system reduces  
9 burden.

10 The administrative burden frankly  
11 is inherent whether or not a system is  
12 prospective or retrospective. It is  
13 fictitious to believe that a prospective  
14 system would leave to less administrative  
15 burden in light of the obligations under the  
16 Antidumping Agreement and the need to have  
17 frankly refund reviews. Indeed, under our  
18 transparent system of government, a  
19 prospective system might encourage more  
20 administrative reviews due to the fact that  
21 import volumes will not be disciplined when  
22 margins and normal values do not match the

1 actual level of dumping of subsidization. As  
2 such, U.S. producers will be more inclined to  
3 request review to insure appropriate margins  
4 on future entries.

5 Conversely, importers with margins  
6 will be likely to also request reviews as they  
7 have frankly little to lose since there is no  
8 chance of a retroactive margin increase.

9 So, in summary, we concur with  
10 Nucor and the USW that fraud and under  
11 collection of duties is a major problem in the  
12 United States and in all AC/CVD systems and we  
13 are working on proposals to deal with fraud  
14 and evasion.

15 Changing our entire system as a  
16 result of duty evasion 90 percent stemming  
17 from China is widely imprudent. Prospective  
18 systems are inferior systems that do not  
19 provide justifiable improvements over our WTO  
20 permitted retrospective system.

21 Thank you.

22 MR. LORENTZEN: Thank you very

1 much.

2 And, lastly, Ms. Bradner.

3 MS. BRADNER: Thank you and good  
4 morning.

5 Thank you for the opportunity to  
6 appear here today. I'm Eileen Bradner, Senior  
7 Director and Counsel for Federal Government  
8 Affairs for Nucor Corporation.

9 On behalf of Nucor I would like to  
10 voice our strong support for maintaining the  
11 current U.S. retrospective system for  
12 administering antidumping and countervailing  
13 duties.

14 Nucor has operations in 22 states  
15 and employs over 21,000 workers in the U.S.  
16 We are a leading innovator and producer of  
17 steel products and see first hand every day  
18 that America's steel producers and workers can  
19 compete with anyone in the world as long as we  
20 have fair trade, the level playing field.

21 the current U.S. retrospective  
22 system helps to insure that we have that level

1 playing field. Moving to a prospective system  
2 would make our trade laws a less effective  
3 remedy.

4 The current system has three main  
5 advantages over any other system.

6 First, the retrospective system is  
7 b y definition the most accurate way to  
8 calculate duties. When illegal dumping or  
9 subsidization occurs, the retrospective system  
10 allows for the precise calculation of margins  
11 and provides refunds and duty assessments  
12 based on the actual prices and costs at the  
13 time of importation.

14 Duties finally assessed reflect  
15 the actual pricing behavior of covered  
16 exporters and importers or the level of  
17 improper government subsidies. So, we would  
18 agree with the Steel Workers that we should  
19 not sacrifice accuracy for certainty.

20 Secondly, the U.S. retrospective  
21 system is equitable to all. It not only  
22 provides refunds within interest to importers

1 for overpayments of dumping or subsidy duties,  
2 but it also insures that additional duties  
3 will be collected if commerce finds increased  
4 levels of dumping or subsidies.

5 In contrast, a prospective system  
6 does not condone any mechanism to collect  
7 additional duties when an importer's deposits  
8 are insufficient to cover the actual magnitude  
9 of unfair trade. This is a big flaw, invites  
10 abuse on a massive scale and creates an entire  
11 universe of uncollected duties. In fact,  
12 exporters can double or even triple their  
13 dumping or subsidy margins over the course of  
14 a review period without fear of liability for  
15 incurring additional duties. They are in  
16 effect given a green light for this additional  
17 dumping.

18 Finally, a retrospective system  
19 brings discipline to the market. Markets  
20 change rapidly and prospective systems are  
21 slow to react. Retrospective systems are  
22 superior because they encourage the timely

1 elimination of unfair trade.

2           Nucor agrees that the volume of  
3 uncollected duties is a serious problem that  
4 must be addressed. However, we cannot blame  
5 the retrospective system for this problem. It  
6 is as much a function of flaws in our  
7 enforcement mechanisms. The majority of the  
8 uncollected duties as Linda Andros said are  
9 tied to four products in the agricultural and  
10 aquacultural sectors and from a single  
11 country.

12           We have a very specific problem  
13 that requires some specific actions by  
14 commerce and customs, not a wholesale change  
15 to our AD/CVD system.

16           In closing, the current  
17 retrospective system is superior because it is  
18 accurate, fair to all parties and encourages  
19 fair trade behavior. It is better equipped to  
20 remedy injury from dumped and subsidized  
21 imports for America's producers, manufacturers  
22 and workers.

1 Thank you.

2 MR. LORENTZEN: Thank you very  
3 much to all of you and let me commend you,  
4 first of all, for respecting the time limits  
5 much better than I did in terms of getting off  
6 on a timely basis.

7 Let me premise maybe the questions  
8 that you will hear from this particular panel  
9 with a cautionary comment which is that as we  
10 see our role it's to probe and help fully  
11 develop the record. So, I or others of my  
12 colleagues here at this table may ask  
13 questions that sound like we favor one side or  
14 the other when I think you should actually  
15 interpret it as just making sure we get all  
16 the information out before us.

17 So, exercising the chairman's  
18 prerogative, I will start with a question and  
19 this would be directed primarily to those of  
20 the witnesses that have advocated retaining a  
21 retrospective system.

22 It's my understanding that one of

1 the motivating developments that prompted an  
2 interest by the Appropriations Committees and  
3 having us look at this issue was the  
4 experience of some constitutes of members of  
5 those committees who were importers who found  
6 themselves in a situation where they had  
7 brought in certain entries at a particular  
8 deposit rate and in the course of an  
9 administrative review, as a result of the  
10 suppliers not cooperating with the department  
11 and a rate based upon adverse emphasis  
12 applying at the end of the review, the U.S.  
13 importers were caught with significant  
14 increases in their duty liability.

15           Again, mainly for those favoring a  
16 retrospective system, can you react or respond  
17 to that and give me your thoughts about  
18 whether that's something that our agency  
19 should be concerned about?

20           Thank you.

21           MS. ANDROS: Linda Andros. I just  
22 answered that briefly as I addressed in my

1        comments.

2                    You know, that's a risk of doing  
3        business. If an importer chooses to do  
4        business after orders are in place with  
5        producers in the country where there is an  
6        order, they have to be mindful of the system.  
7        Like the tax system. They have to educate  
8        themselves as to how they're going to behave  
9        within that system so they're not harmed.  
10       They have to assess the risk.

11                   Also, I don't think our law does  
12        or should account for a decision by an  
13        importer to -- to -- to engage in importing  
14        goods that have been found to be dumping.

15                   There is a liability. They're  
16        aware there's a liability. They have to  
17        manage that risk. And if they choose to do  
18        business with some player overseas that  
19        decides they don't want to play the game  
20        anymore, well, they should be assessing that  
21        risk at the outset if they're smart and that  
22        would be the advice I'd be giving them. But

1 I don't think that should fall in our  
2 retrospective system whatsoever. I don't  
3 think that's relevant to what you must do  
4 under the AD/CVD laws and I'll let other  
5 people comment on the trade particularly.

6 MS. BRADNER: Eileen Bradner with  
7 Nucor.

8 Just to echo what Linda said, you  
9 now, we have one of the most transparent  
10 systems in the world for administering our  
11 trade laws. And everyone knows what the  
12 procedures are. They know what the sanctions  
13 can be if you choose not to cooperate, if you  
14 choose to give false information to the  
15 Commerce Department. So, perhaps, those  
16 importers should be encouraging who they are  
17 buying from to cooperate and participate in  
18 our proceedings. Otherwise, you know, they  
19 deserve what they get.

20 MR. LEIBOWITZ: I just want to  
21 thank my colleagues for proving my points that  
22 the importers have no ability to reduce that

1 risk or eliminate it. They have no  
2 significant leverage over huge exporters if  
3 they're a small importer other than not  
4 importing. And that is what the retrospective  
5 system does. I think on balance that needs to  
6 be looked at.

7 MR. PRICE: I would -- let me --  
8 let me jump in here. Alan Price, Wiley Rein.

9 First of all, many of the  
10 importers are really quite sophisticated  
11 companies, very large operations. they can  
12 assess these risks. They take these risks.  
13 They can calculate the risk. So, to say that  
14 they don't understand these risks I think is -  
15 - is a mischaracterization.

16 The question is in balancing --  
17 where the balances are, are we going to  
18 balance, create a system that puts the balance  
19 to those who have been injured by unfair trade  
20 to assure that full margins are assessed  
21 against imports when the deposits or normal  
22 values don't accurately capture the dumping or

1 not. And I think given the fact that U.S.  
2 industry have been injured, the goal here  
3 should be to alleviate that injury and that's  
4 what our concern should be, not necessarily  
5 the risk of a major retailer in the United  
6 States for example who understands these risks  
7 and decides to move ahead with imports anyway.  
8 It is a business decision and I would add that  
9 many of the small -- many of the businesses  
10 who have used this law are small businesses.  
11 They are small petitioners, whether it's a  
12 producer of nails or a producer of paper or a  
13 producer of hand tools. Small businesses  
14 really benefit from this law.

15 So, it's important that we keep  
16 this law effective not only for large  
17 institutions but for small institutions.

18 MR. LORENTZEN: Thank you.

19 Can I ask my colleagues here if  
20 they have questions.

21 MR. McINERNEY: Lew, I have a  
22 question that I thought of during your

1 presentation but the others should be free to  
2 join in.

3 I -- I take your point that a  
4 prospective system would provide an element of  
5 predictability precisely because it caps the  
6 duties on the upside.

7 I'm wondering if -- do you really  
8 think there would be any reduction in burden  
9 from switching systems? It strikes me that  
10 the United States system is as burdensome as  
11 it is because this is the United States and  
12 you can actually get the right number.  
13 There's complete transparency. The  
14 traditional system is far more aggressive than  
15 what it is in any other jurisdiction and so  
16 forth. And I've always assumed that if you  
17 switch the system, that there would be just as  
18 much litigation and maybe as many reviews as  
19 there are now. It would just sort of be, you  
20 know, in a different setting.

21 Would you like to comment on that?

22 MR. LEIBOWITZ: Briefly.

1           I think it's speculative to see  
2           because I don't know what system we have to  
3           replace the current system. There's a lot of  
4           variables that we could discuss.

5           We are the United States. We like  
6           to litigate more than most other places. I  
7           just point out that the burden is not likely  
8           to increase with the change of system. If  
9           anything it will decrease or stay about the  
10          same.

11          I think the main concern that we  
12          have at CITAC is that imports stop. They're  
13          never examined because of the retrospective  
14          system creating unacceptable risks that can't  
15          be managed by importers who have no place to  
16          go. That's -- that's the point I would -- I  
17          would argue.

18          As far as burden is concerned. We  
19          are a litigious society and we are -- we're  
20          going to litigate. And I think as I said in  
21          my statement, there should be an opportunity  
22          for all sides to get the margin as accurate as

1       they can and sure. It's a complex process and  
2       requires -- and requires resources to do it.  
3       I don't think you can get away from that too  
4       much.

5                   MR. PRICE: I'd like to comment on  
6       two things.

7                   First of all, the comment that  
8       imports stop.

9                   Representing petitioners in a  
10       number of cases, I can assure you that's not  
11       the case. There are many cases where -- where  
12       there are massive amounts of imports and so  
13       after an order is entered so the idea that  
14       imports stop I think it just fatuous.

15                   Now, they may stop because --  
16       because they would be at dumped prices if they  
17       come in. But the idea that the whole process  
18       stops imports is just -- just wrong.

19                   Regarding burden. What I would  
20       say is what I said earlier. A lot of people  
21       labor under a misconception that there would  
22       be less burden in a prospective system. I

1       tend to concur with the idea that under the  
2       U.S. legal process you end up with the same  
3       burden.

4                   Under the WTO requirements under  
5       9.3.2 and other elements of the Antidumping  
6       Agreement you end up having to have the same  
7       suspensions, the same -- the potential for  
8       refund reviews, so you end up with mostly the  
9       same type of process that's there.

10                   You end up, I believe, with an  
11       increased incentive for petitioners to request  
12       reviews when frankly the normal values are  
13       inadequate. And, frankly, you end up with an  
14       increased likelihood of respondents or  
15       importers asking for reviews because there's  
16       no down side to ever asking for a refund  
17       review.

18                   And so I think we end up with more  
19       administrative burden at the Commerce  
20       Department under -- under a prospective  
21       system.

22                   There are different systems.

1       Certainly there are countries where there are  
2       many fewer reviews.  But there also tends to  
3       be less litigation and less transparency in  
4       those countries.

5                   MR. PARKHILL:  Hi.  This question  
6       is for Eileen.

7                   In your presentation you mentioned  
8       that in the increasing changes in the global  
9       economy prospective systems were slower to  
10      react than retrospective systems.  Can you  
11      elaborate on what you see that makes the  
12      retrospective system more quicker to react?

13                   MS. BRADNER:  Well, I think it  
14      goes to the notion that some of these imports  
15      are just off the hook after -- in a  
16      prospective system and that -- that shippers  
17      can -- foreign shippers can dramatically  
18      increase their exports to the United States at  
19      dumped prices and never be on the hook for  
20      those duties.

21                   Alan, did you have anything to  
22      add?

1 MR. PRICE: Yes. Yes. Let me  
2 add.

3 Without going into the intricacies  
4 of dumping law, particularly the -- the way  
5 the review process occurs here. Under a  
6 prospective system, when prices change, costs  
7 change, you have some fairly wild fluctuations  
8 and depending on the exact way you implement  
9 it and I think I can agree with Lew we don't  
10 know who this exactly would be implemented  
11 going forward. But the ways that most of  
12 these systems appear to be implemented, you  
13 have periods where prospective systems simply  
14 don't catch market changes for an extended  
15 period, sometimes for many years, sometimes  
16 five years, depending on the way that these  
17 systems can be implemented in terms of  
18 changing the fundamental normal values or  
19 deposit rates.

20 And as a result of that imports  
21 can come in whenever there -- whenever the  
22 normal values are really not accurately

1        assessing the margins of dumping and  
2        unassessing or not assessing at all.

3                For example, on steel prices, I  
4        think based on public data we can say we've  
5        seen hot roll prices vary from the high four  
6        hundreds to the eleven hundred dollar range  
7        just over the last two to three years. And  
8        when those -- when you have these types of  
9        variations that occur, prospective systems  
10       just never catch up. And as a result, when  
11       the normal value is too low, imports come in.  
12       They can be dumped by massive volumes.  
13       There's no discipline.

14               You apply that to consumer  
15       products and you have a very substantial  
16       problem. And the dumping law applies to a lot  
17       -- a lot of consumer products, things like  
18       hand tools, things like notebooks, things like  
19       crepe paper things like tissue paper, things  
20       like nails. And so these small businesses get  
21       no remedy when -- when a company like a Target  
22       or a Walmart or a Loew's can see these gaps in

1 the marketplace and they have the most  
2 sophisticated types of buying operations out  
3 there and can take advantage of these gaps.

4 So, there's little question to me  
5 that a prospective system just is just too  
6 slow to react. Under a retrospective system  
7 the importer is constantly -- has to be aware  
8 of what the market changes are for prices,  
9 what the market changes are for costs and  
10 therefore is managing to the 30 or 60 or 90-  
11 day period when the imports come in to make  
12 sure that they're not dumped and then decides  
13 whether or not they can bring in the product.  
14 So, you get a very different type of market  
15 reaction. And that's the discipline which is  
16 exactly what the law is intended to provide in  
17 more real time, even though the calculations  
18 may not catch up with it that a retrospective  
19 system is vastly superior.

20 MR. PARKHILL: Lewis, do you have  
21 anything to add?

22 MR. LEIBOWITZ: No.

1 MR. TAVERMAN: I think everyone  
2 can comment on this.

3 A large percentage of imports into  
4 the United States are made to affiliated  
5 parties. And the final sale price is not  
6 known at the time of importation.

7 How do you see that scenario  
8 working under a prospective system with  
9 respect to the actual calculation of the duty  
10 owed?

11 MR. LEIBOWITZ: Again -- again,  
12 there are a variety of solutions to that  
13 problem. And, again, I come back to the  
14 point. The United States is the only country  
15 in the world that does it the way we do it.

16 And when you have, for example, a  
17 prospective normal value system you assess the  
18 duty at the time of importation when that  
19 entered value is not appropriate as the  
20 measure of the export price you have to spend.

21 So, you know, there are occasions  
22 where suspension is necessary and each country

1 has to decide how to deal with that, whether  
2 to set a ceiling or not.

3 I think the uncertainty is -- is a  
4 problem there and it has to be addressed.

5 Look forward to working much harder than we  
6 can here this morning on those issues. As I  
7 said, these are -- these are serious issues.

8 So, I can't answer definitively  
9 but I think that each -- each system has --  
10 has its problems. And I just have to say one  
11 word about accuracy having done this for more  
12 than 30 years. I've had my share of  
13 inaccurate results and even the department has  
14 trouble describing what it does when they say  
15 that the margin is 111 percent below normal  
16 value. That can't be. It would be a negative  
17 number. You need to look at that phraseology  
18 a little bit.

19 But any system that continues to  
20 zero is not accurate. So, I just want to make  
21 sure that that point is out there.

22 MR. PRICE: Alan Price, Wiley

1 Rein.

2 I think, Mr. Taverman, I think  
3 you identify an area for abuse and I think the  
4 abuse is less likely to be identified and  
5 properly assessed under a prospective system.  
6 It's not that this problem isn't -- doesn't  
7 also exist under a retrospective system, but  
8 with assessments, it's more likely to be  
9 caught and ultimately the correct duty is  
10 likely to be assessed on the product line.

11 MR. SKUD: I have one question.

12 A number of the panelists said  
13 that under a prospective system merely defines  
14 a way. The duties that -- additional duties  
15 that might be assessed under a retrospective  
16 system and that's why it has a better duty  
17 collection rate.

18 But that would seem to depend on  
19 the nature of the prospective system. I  
20 understand that some countries have systems  
21 with built in adjustments that based on the  
22 export price, automatically increase the

1 amount if antidumping duty that might be paid  
2 at import. And so wouldn't automatically  
3 define a way. Extra duties that would be a  
4 result of increased dumping.

5 Would anybody care to elaborate on  
6 that?

7 MR. LEIBOWITZ: You may be -- this  
8 is Lewis Leibowitz.

9 You may be describing sort of a  
10 modified perspective normal value system where  
11 antidumping duties are determined at the time  
12 of importation based on the information  
13 available. A precalculated normal value and  
14 the entered value of the shipment.

15 That works if you, you know, you  
16 do have to sacrifice further investigation if  
17 you make that definitive. If you don't make  
18 it definitive you do create some uncertainty.  
19 It's a matter of balancing the uncertainty and  
20 the accuracy against each other in coming up  
21 with a system that's fair to everyone. That's  
22 where I think frankly the U.S. system falls

1 short right now.

2 I'm not coming here this morning  
3 with a solution that solves all these problems  
4 in a way that everyone is going to agree with.  
5 I think it's a process and I again commend  
6 Congress and the department for undertaking  
7 that process. It's -- it's complicated.

8 MR. PRICE: I agree. Alan Price,  
9 Wiley Rein.

10 I agree that these systems are  
11 complicated. However, the fundamental cap  
12 that exists under a prospective system means  
13 that whenever the normal values don't fully  
14 capture the margin of dumping, even under  
15 these modified systems, you have an under  
16 collection of duty.

17 And so you're getting less remedy  
18 to the injured U.S. industry and that to me is  
19 the principal purpose of the law. That's what  
20 you're supposed to provide relief from and I  
21 think the other things you point to as you  
22 start asking about the modified systems are

1 also increasing degrees of complexity and  
2 point out the fact that various systems may be  
3 just prospective system may be just as complex  
4 if not more complex than our current  
5 retrospective system.

6 MR. LEIBOWITZ: Can I react just  
7 for one second? I know we're running short on  
8 time.

9 I don't think that the prospective  
10 system and its so-called cap as Alan refers to  
11 it really is different from the retrospective  
12 system in that duties will ultimately be  
13 collected. They will not be assessed upon  
14 prior imports. I get that. But they will be  
15 assessed because they will be assessed against  
16 future imports. If dumping and countervailing  
17 margins go up, the increased duties will be  
18 assessed on future imports.

19 You remove the uncertainty without  
20 really removing the ultimate liability for  
21 payment of money. It's just that they're not  
22 connected to imports you've already brought

1 in. And so --

2 MR. LORENTZEN: Okay. Well, as  
3 you know, we are running short of time so let  
4 me take this opportunity to thank our first  
5 panel for their comments and their answers.  
6 And call to the floor our second panel which  
7 is Mr. James Hecht from Skadden Arps, Mr.  
8 Sneeringer from U.S. Steel, Mr. Mroczka from  
9 Hughes, Hubbard and Reed and Mr. De Prest from  
10 Stewart and Stewart.

11 Thank you.

12 MR. LORENTZEN: Good morning,  
13 gentlemen.

14 Mr. Hecht, may I ask you to kick  
15 things off?

16 MR. HECHT: Good morning. I'm Jim  
17 Hecht with Skadden Arps and then appearing  
18 today on behalf of United States Steel  
19 Corporation.

20 I appreciate this opportunity to  
21 testify regarding the relative merits of  
22 retrospective and prospective systems for

1 assessing antidumping and countervailing  
2 duties.

3 As discussed at length in our  
4 written submission, the existing U.S.  
5 retrospective trade law system is the most  
6 open, transparent and accurate in the world.  
7 In our view, it is far superior to prospective  
8 systems in achieving each of the six goals  
9 outlined in the Congressional request for the  
10 study at issue here today.

11 We would be happy to address any  
12 specifics regarding these goals, but I would  
13 like to focus my remarks this morning on a few  
14 issues that deserve special emphasis.

15 First, prospective system by their  
16 nature simply cannot achieve the accuracy of  
17 a retrospective system and will as a result  
18 always open the possibility for manipulation  
19 of trade remedy laws and for significant  
20 volumes of unfair trade to go without remedy.

21 While there are different types of  
22 prospective systems, the common feature is

1 that they typically assess duties based upon  
2 unfair trade margins or normal values  
3 calculated for a prior period.

4 The problem with type of approach  
5 is that unfair trade margins and normal values  
6 can and do change through time often  
7 significantly. Where the level of unfair  
8 trade associated with current imports is  
9 higher than the prospective rate, this  
10 additional margin of dumping or subsidization  
11 will go without remedy.

12 Foreign producers and importers  
13 observing a prospective rate that is too low  
14 to account for current levels of unfair trade  
15 can thereby be given an opportunity and even  
16 an incentive to flood the market with dumped  
17 and subsidized imports without the injured  
18 domestic industry having effective remedy.

19 Prospective systems can of course be  
20 made somewhat more accurate by increasing the  
21 frequency of reviews to update normal values  
22 or duty rates. That is to make them more

1        closely resemble retrospective systems. This  
2        would also have the effect however of  
3        lessening the simplicity and ease of  
4        administration of such systems which is often  
5        touted as their greatest virtue while not  
6        eliminating inaccuracies often very  
7        substantial inaccuracies.

8                    The logical conclusion is that it  
9        is better to get it right to begin with an  
10       employ a system like the United States that  
11       can assess the actual level of unfair trade  
12       for each transaction.

13                   Second, concern regarding  
14       collection of duties does not in anyway argue  
15       for the superiority of prospective systems.  
16       In fact, just the opposite is true.

17                   While there may at times be  
18       difficulties in collecting additional duties  
19       assessed after entry under a retrospective  
20       system, it is essential to recall that such  
21       duties will never be assessed to begin with  
22       under the prospective system.

1                    Claiming that collection efforts  
2 will improve if we decide never to levy the  
3 duties in the first place makes no sense. It  
4 would be like legalizing mugging and then  
5 bragging about the improvement in prosecuting  
6 violent crime and the reduction in the crime  
7 rate.

8                    Third, concerns regarding the  
9 impact of retroactive rate increases on U.S.  
10 importers must be evaluated in the context of  
11 all market participants including not only  
12 domestic producers and workers who may be  
13 injured by unfair trade but also other  
14 importers and foreign producers who are  
15 trading fairly in the market.

16                    It must be acknowledge that a  
17 prospective system would be better for  
18 importers that focus on sales of unfairly  
19 traded products as well as foreign producers  
20 that supply such products. As discussed, a  
21 prospective system would provide opportunities  
22 for such entities to evade duties and ship

1 dumped and subsidized merchandise with little  
2 or no consequence.

3 By contrast, however, a  
4 retrospective system is far better for  
5 importers, domestic producers and foreign  
6 producers engaging in fair trade. It insures  
7 that everyone is playing by the same set of  
8 rules in the market and it removes the  
9 pressure for other market participants to  
10 adopt the practices of unfair traders in order  
11 to stay competitive.

12 Finally, it is crucial that we not  
13 sacrifice accuracy and equity in pursuit of  
14 simplicity in our trade law system. While  
15 certain types of prospective systems may be  
16 simpler, they would permit and even encourage  
17 distortions throughout the market.

18 In this regard, any added  
19 complexity in time in getting things right is  
20 more than justified by the need to effectively  
21 and accurately combat unfair trade which is  
22 the purpose of our system.

1 I appreciate the opportunity to be  
2 here and would be happy to answer questions.

3 MR. LORENTZEN: Thank you very  
4 much.

5 Mr. Sneeringer.

6 MR. SNEERINGER: Tom Sneeringer  
7 and I appreciate the opportunity to present  
8 the position of U.S. Steel on this important  
9 matter before your respective departments.

10 I'd like to focus this morning not  
11 on the technical differences between  
12 prospective and retrospective systems but on  
13 the importance of maintaining the accurate and  
14 effective trade remedy system possible for our  
15 nation's manufacturing companies and workers.

16 For a number of reasons, U.S.  
17 Steel believes that preserving our existing  
18 retrospective system is critical to that goal  
19 and that it would be a grave mistake to move  
20 away from it.

21 The steel industry in the United  
22 States has a long and painful history in

1 dealing with unfair trade. For decades  
2 American steel producers have repeatedly been  
3 forced to resort to our nation's AD/CVD laws  
4 to stop and deter the harm caused by dumping  
5 and subsidies. Why we've had to do that would  
6 be the subject of another hearing equally as  
7 long a today's and what we would welcome, by  
8 the way.

9 For our purposes today though,  
10 suffice it to say that the domestic steel  
11 industry would likely not exist in any  
12 recognizable form but for the national  
13 commitment to keep our trade laws strong and  
14 strictly enforced.

15 Besides steel's ongoing  
16 challenges, all of American industry find  
17 ourselves in the midst of a widely recognized  
18 and when you consider the nearly five and a  
19 half million manufacturing jobs lost in the  
20 last 10 years, deeply distressing  
21 manufacturing crisis, a crisis now recognized  
22 firmly by the Administration in the release of

1 the President's framework on manufacturing.

2 This historical segment of our  
3 economy, the source of great American pride  
4 for over two centuries has fallen from a high  
5 of 25 percent of GDP to now well less than  
6 half that, 11.5 percent to be exact. And  
7 unfair trade has been a significant  
8 contributor to that decline.

9 So, any weakening of U.S. remedies  
10 against unfair trade will only make matters  
11 worse. In the case of the steel industry  
12 much, much worse, irreversibly worse. And to  
13 get to the point of this hearing, moving to a  
14 prospective system would result in exactly  
15 that kind of weakening to those very remedies.  
16 From the point of U.S. Steel, there is no  
17 question that a prospective system would be  
18 far less effective than our current system in  
19 combating unfair trade.

20 It's easy to see why such a system  
21 would open loopholes that could severely  
22 undermine our trade remedy laws. Unscrupulous

1 foreign producers or importers would look at  
2 the duty rates or reference prices and where  
3 market conditions or market distortion  
4 opportunities allowed, would simply increase  
5 the level of dumping or subsidized trade in  
6 the sure knowledge that there would be no way  
7 to assess higher duties on those sales.

8 The result, significant and  
9 injurious surges of unfair trade could occur  
10 with little or no remedy available to U.S.  
11 workers and producers.

12 Now, it is argued and has already  
13 been argued that prospective systems provide  
14 more certainty for market participants. But  
15 certainty at the expense of accuracy is hardly  
16 sound policy.

17 There are plenty of ways in which  
18 the government can simplify things ostensibly  
19 to promote certainty. But many of those ways  
20 are arbitrary, unfair and ultimately harmful.

21 I'm surprised we've gotten this  
22 far into the hearing without reference to H.L.

1 Mencken, but he did say that every complex  
2 problem has an answer. Clear, simple and  
3 wrong.

4 Under a prospective system one  
5 certainty is that irresponsible market  
6 participants will be able to increase their  
7 level of unfair trade in the United States  
8 with impunity. That is, without fear of  
9 consequence.

10 On the other hand, our  
11 retrospective system provides a different and  
12 better kind of certainty. The assurance that  
13 duty rates will be precisely calibrated to  
14 offset the actual amount of unfair trade on  
15 specific U.S. imports. They're more or no  
16 less.

17 Under our system, foreign  
18 producers who desist from dumping or finally  
19 wean themselves of subsidies face no liability  
20 for AD/CVD duties. On the other hand, those  
21 who continue to trade unfairly and ramp up the  
22 level of unfair trade after relief are not

1 giving an advantage -- not given an advantage  
2 over market participants playing by the rules.

3 Now, here we are. We're only the  
4 sixth witness into this hearing and I think  
5 we're approaching that moment that Mo Udall  
6 warned us of where everything has been said  
7 but not by everybody.

8 But I do want to introduce a new  
9 concept into this hearing. And that is  
10 something I know a little bit more about than  
11 calculating remedy calculations.

12 And that is that our trade law  
13 system is a critical element in promoting  
14 popular support in this country for open  
15 markets and liberalized globalized trade.  
16 We're repeatedly reminded that our citizens  
17 must have confidence that market distortions  
18 that cheat them out of their jobs, distortions  
19 like dumping and subsidies will be vigorously  
20 opposed and effectively remedied. And that  
21 American producers and workers will be given  
22 a fair shot at competing for the fruits of

1 liberalized trade.

2 In our view, cynical manipulation  
3 of prospective remedies would severely erode  
4 public confidence in the fairness of our  
5 system with predictable implications for other  
6 elements of the trade agenda.

7 Mr. Chairman, Members of the  
8 Panel, we have the most transparent, equitable  
9 and precise trade remedy regime in the world.  
10 If we want to promote popular support for the  
11 advancement of rules-based global trade that  
12 we all embrace, we should be looking for ways  
13 to strengthen it not weaken it.

14 Thank you.

15 MR. LORENTZEN: Thank you very  
16 much.

17 We've gone from a Mencken to  
18 Udall. I have the advantage of knowing how to  
19 pronounce those names. I mispronounced yours,  
20 Mr. Sneeringer. And our next witness I fear  
21 that I may equally fail. So, Mr. Mroczka.

22 MR. MROZKA: Just like it's

1 spelled. Yes.

2 MR. LORENTZEN: Okay. Thank you.

3 MR. MROCKA: Good morning,  
4 everyone. My name is Victor Mrocka. I am  
5 International Trade Counsel at Hughes, Hubbard  
6 and Reed here in Washington, D.C.

7 Our law firm serves as counsel to  
8 petitioning, exporting, importing and  
9 consuming industries in antidumping and  
10 countervailing duty proceedings in the United  
11 States and in other countries. That being  
12 said, I'm testifying here today in my  
13 individual capacity and not on behalf of any  
14 clients.

15 I thank the U.S, Department of  
16 Commerce for the opportunity to speak today  
17 and I am particularly grateful to be on this  
18 particular panel as I would be very interested  
19 in hearing from the panels from U.S. Steel as  
20 U.S. Steel along with our U.S. steel makers is  
21 and has been involved in many anti-dumping and  
22 countervailing duty proceedings throughout the

1 world including those with a prospective  
2 system.

3 I would be particularly interested  
4 in hearing what impact operating under a  
5 prospective systems had on U.S. Steel's  
6 imports into those jurisdictions. Maybe this  
7 is something we can discuss during the  
8 question and answer portion.

9 On the issue of remedying,  
10 injurious dumping or subsidized imports,  
11 there's no question that a prospective system  
12 is preferred over a retrospective one.

13 Under both systems a margin is  
14 calculated based on information submitted  
15 during the original investigation. A key  
16 distinction is what happens next.

17 Under the retrospective system  
18 U.S. importers pose estimated cash deposits  
19 based on the margin calculated but final duty  
20 is not owed until years after. With appeals,  
21 the final duties may not be owed for several  
22 years.

1                   As my fellow panelist from U.S.  
2                   Steel and his lawyer may recall, we recently  
3                   concluded six years of litigation over a  
4                   dispute on the finale duties to be owed on a  
5                   CVD case involved hot rolled steel from  
6                   Thailand. Those final duties were up in the  
7                   air up until the U.S. Court of Appeals for the  
8                   Federal Circuit denied U.S. Steel's appeal.

9                   This uncertainty, even though both  
10                  the original cash deposits and final rates  
11                  were lowered, disrupted trade for many  
12                  American steel consumers for some time. This  
13                  disruption had an impact far beyond anything  
14                  in excess of any so-called accurate remedy.

15                  In contract, had we been operating  
16                  under a prospective system, there would have  
17                  been some finality to all the interested  
18                  parties of the final duty rate. U.S.  
19                  importers subject to the rate would have known  
20                  the final amount owed to U.S. Customs and this  
21                  amount would have been paid upon entry.

22                  As a result, the certainty

1 involved in operating under such a system  
2 allowed both U.S. importer and the customer to  
3 know the final price of the goods. And it  
4 also allowed U.S. Customs to collect the  
5 correct amount of duties owed without having  
6 to worry about disappearing or bankrupt  
7 entities to collect from. Failure to collect  
8 and then having to write off tens of millions  
9 of dollars in duty liability or having to  
10 investigate and identify high risk imports.

11 In addition, under the prospective  
12 system petitioners have the continuing  
13 advantage as under the retrospective system  
14 are requesting an administrative review if  
15 there is a change in conditions from the time  
16 of the original duty calculations. So, in  
17 other words, all of the benefit of the  
18 retrospective system and none of the headache  
19 and they don't want that?

20 One of the stated reasons that  
21 U.S. petitioners favor a retrospective system  
22 is they claim that the retrospective system

1 provides more certainty to the process. I  
2 find this statement a little hard to swallow.

3 With the calculation methodology  
4 that includes sampling, use of surrogate  
5 values, zeroing and quarterly cost averaging  
6 to name a few, where exactly is the accuracy  
7 that they're referring to? And, again, I turn  
8 to my panelists from U.S. Steel and ask. If  
9 you believe that the retrospective system is  
10 more accurate, are you now telling the  
11 authorities and all the other jurisdictions to  
12 which you and others are subject to  
13 antidumping and countervailing duty orders  
14 that you would prefer that they do the same to  
15 you?

16 Again, maybe this is something we  
17 get into in the question and answer session.

18 Finally, I'd like to briefly  
19 address the burden that the retrospective  
20 system has on both the U.S. importing industry  
21 and U.S. Customs.

22 In addition to getting hit with a

1 bill that is much larger than cash deposit,  
2 the importers themselves have to keep records  
3 for years carrying an indefinite liability  
4 until final determination is made and live  
5 with the inability to pass along any cost to  
6 its customers because the product has long  
7 been sold, consumed and likely made into  
8 something else. And for what?

9 As the GAO so amply stated in its  
10 report, less than two percent of importers  
11 subject to antidumping subsidy duties failed  
12 to pay their bill. Only four products are  
13 responsible for approximately 84 percent of  
14 the total uncollected amount. And imported  
15 products from China account for 90 percent of  
16 the uncollected amount. And all of this is  
17 because of the retrospective system.

18 In other words, everyone else is  
19 playing by the rules and paying when payment  
20 is due despite all the burden. All the  
21 retrospective system has managed to accomplish  
22 is to create a massive amount of uncollected

1 duties and an inability by U.S. companies to  
2 purchase reasonably priced imports, usually in  
3 the form of manufacturing inputs for use in  
4 the U.S. market.

5 This ultimately makes the United  
6 States uncompetitive as evidenced by the  
7 progress other countries have made in terms of  
8 catching or in some cases surpassing U.S.  
9 competitiveness in manufacturing. Without the  
10 right tools and incentives to do what American  
11 companies do best, what other results shall we  
12 expect?

13 I thank the department for its  
14 time today and recommend that the department  
15 report the advantages of the prospective  
16 system discussed today, along with those in  
17 the comments submitted to Congress for its  
18 consideration.

19 Thank you.

20 MR. LORENTZEN: Thank you very  
21 much, Mr. De Prest.

22 MR. De PREST: My name is Geert De

1       Prest. I'm with the law firm of Stewart and  
2       Stewart. Geert De Prest of the law firm of  
3       Stewart and Stewart.

4                I'm here to only on behalf of  
5       Stewart and Stewart. I'm not here speaking on  
6       behalf of anyone of our clients, although we  
7       have represented a number of clients in these  
8       cases.

9                Unlike my colleagues I don't have  
10       prepared remarks. I will try to keep in  
11       within my five minutes and try to reach some  
12       of the points that -- from the discussions  
13       that we've had seem to be the most salient.

14               First, I would like to also start  
15       with the issue of accuracy because I don't  
16       think -- I've looked through all of the papers  
17       that were submitted. I've not read all of  
18       them at equal attention, but I've looked at  
19       all of them and it doesn't seem to me that  
20       anyone of the papers presents any coherent  
21       argument that somehow or another the  
22       prospective system would be more accurate.

1 And it makes sense because the prospective  
2 system by definition applies historical data  
3 to current events. I mean, it reflects the  
4 rate that it has reflects something that  
5 prices, cost that were valid at some point in  
6 time but not now.

7 So, by definition the prospective  
8 system is less accurate.

9 Now, I'm going to leave that and  
10 the next issue I would like to address is the  
11 impact on importers where after a number of  
12 years they are all of a sudden presented with  
13 a bill that is a much larger duty payment than  
14 they had expected when they imported the stuff  
15 to begin with.

16 And I found in the paper that was  
17 submitted I think by U.S. Steel, there's a  
18 citation to the GAO report. Page 21 of that  
19 report has some actual numbers on that  
20 supposed problem. And the GAO examined  
21 entries over a six year period and I think it  
22 said it was over 900,000 entries and there was

1 an assessment increase in only 16 percent of  
2 the cases. So, I'm not saying anything in  
3 particular to the particular cases that other  
4 people have referred to where there were large  
5 increases. All I'm saying is that according  
6 to the GAO report, it doesn't seem to be a  
7 widespread problem and so it doesn't seem like  
8 any, you know, grand conclusions ought to be  
9 made from a few isolated cases.

10 Then the second point I would like  
11 to make is with regard to importers being  
12 stuck with enormous bills, I would like to say  
13 and I think some of us have already touched on  
14 that. There are importers and importers.

15 I was recently in New York. There  
16 are lots of small importers in Chinatown and  
17 in Greenwich Village. I'm sure those  
18 importers are different -- have a different  
19 market clout than for example, you know,  
20 Walmart or Caterpillar who also do a lot of  
21 importing and so the idea that somehow or  
22 another the importer, you know, doesn't know

1        what's going on, can't predict. You know,  
2        maybe true in certain cases but it's -- it's,  
3        you know, again, you shouldn't make general  
4        conclusions.

5                    Then thirdly and this is probably  
6        the most important point. If there is an  
7        increase in the dumping rate, that increase  
8        obviously reflects determination by the  
9        Department of Commerce that the duty that was  
10       deposited was not enough to offset the amount  
11       of dumping or offset the amount of subsidies.  
12       And, therefore, the duties ought to be  
13       increased to the level that the Commerce  
14       Department determines. And that is in keeping  
15       with the goals of the statute. I mean, the  
16       statute has very clear goals. It's to provide  
17       a remedy to domestic producers that have been  
18       injured.

19                    You know, there's nothing in the  
20       law that says you have to provide a remedy to  
21       domestic producers for injurious unfair  
22       imports but only if it doesn't harm the

1 importer. There is nothing about that.  
2 There's nothing in there that requires you to  
3 do some kind of balancing act. No. The  
4 purpose of the statute is to provide a remedy  
5 against unfair imports.

6 Plus, in each of these cases,  
7 there has been a determination by the  
8 International Trade Commission that there was  
9 a domestic industry that was injured. But  
10 there has not been a determination by the  
11 International Trade Commission that there are  
12 a bunch of importers in trouble. No. There  
13 has been a determination by the Commission  
14 that there is a domestic industry that needs  
15 your help and need the help of the statute  
16 that -- that qualifies for the remedy that  
17 Congress has in place.

18 The next point that I would like  
19 to address is the issue of the collection  
20 problems and the certainty of collection.

21 I think a number of people have  
22 pointed this out. There are absolutely zero

1 advantages for the prospective system because  
2 in -- in -- in both systems you collect money  
3 at the time of entry. Now, of course, in the  
4 current system that we have, we are quite  
5 willing to do back and figure out whether that  
6 amount that was deposited is enough.

7 In the prospective system you give  
8 up on that idea. Well, that's not certainty.  
9 That's just giving up on the purpose of the  
10 statute.

11 So, that is really a nonsensical  
12 proposition that you should go to prospective  
13 system because somehow or another that will  
14 fix your collection problems. It will make  
15 them go away but it doesn't fix anything.

16 Then the next point I would like  
17 to address is the issue of -- of the  
18 administrative burdens and -- and -- and I'm  
19 kind of assuming that we're talking about the  
20 administrative burdens of the Commerce  
21 Department.

22 I'm getting to the end of my

1 period.

2 Okay. Yes.

3 First, I would like to join the  
4 call that I think was made in the U.S. Steel  
5 paper that -- that the Commerce Department  
6 should be fully manned its division with all  
7 the people that it needs to effectively  
8 enforce the laws. But -- but the point that  
9 I would like to make also is that your burden  
10 doesn't really depend on the timing of your  
11 review when the assessments are made. Your  
12 burden depends on the number of reviews that  
13 you do and on the amount of due process and  
14 the transparency that you provide. It's not  
15 about the timing.

16 So, if you have a -- somehow  
17 concocted a prospective system that has the  
18 same transparency and gives you the same  
19 accuracy because it lets everybody including  
20 the domestic industry go back and -- well,  
21 then you would end up with exactly the same  
22 system that you have now, the same amount of

1       efforts you would put in it and it would be  
2       just a change in name.

3                       So, it -- it -- it, you know, if  
4       you're going to talk about minimizing the  
5       administrative burden, you know, we can't do  
6       it in the context of prospective and  
7       retrospective. It's going to have to be from  
8       a different -- from a different prospective.

9                       That includes my remarks.

10                      Thank you very much for permitting  
11       us to testify.

12                      MR. LORENTZEN: Thank you very  
13       much.

14                      Let me begin things by turning to  
15       this issue that has been discussed several  
16       times on any possible change in administrative  
17       burden. And I'd like to focus in particular  
18       on the respective responsibilities of the  
19       Commerce Department on the one hand and our  
20       friends at CBP on the other.

21                      If the United States were to  
22       change to a prospective system and I

1 understand that that's a general proposition  
2 because there are many different variations on  
3 that theme, but people had spoken earlier  
4 today about the possible increase in refund  
5 procedures.

6           Could the witnesses comment on the  
7 relative differences and perhaps burden shift  
8 between Commerce and CBP in terms of  
9 administrative responsibilities? If we had a  
10 prospective system with a number of refund  
11 procedures that at least under the current  
12 system we're not entirely familiar with.

13           Thank you.

14           MR. HECHT: I'll kick it off.

15           You know, I think you have to say  
16 at the outset is you acknowledge there really  
17 are many different types of systems. It's  
18 hard to speak with great generality. You have  
19 certain prospective systems that have  
20 retrospective elements to them and I think the  
21 one point Mr. Price made in the earlier panel  
22 is that by WTO rules, every prospective system

1 is supposed to have a refund procedure that  
2 would allow at least a one-way street where if  
3 an importer over paid, he can request a review  
4 and you really would, I think, in a system  
5 like the U.S. system that is so open and so  
6 transparent see a dramatic increase or  
7 certainly dramatic incentive of importers to  
8 request reviews because it really is a one-way  
9 street. There's no way they can see their  
10 liability increase but they could see a  
11 decrease.

12 So, in that respect at least I  
13 think you could certainly see a similar or  
14 even greater administrative burden on the  
15 department in terms of conducting reviews.  
16 But I think I would acknowledge that depending  
17 on how you set it up, you certainly could have  
18 a simpler system that was prospective in  
19 nature. Simpler for Customs if they were  
20 assessing a duty right at the time it came  
21 across the border. But for all the reasons  
22 we've discussed, it would come at the expense

1 of accuracy and really create enormous  
2 potential incentives to trade unfairly in the  
3 U.S. market.

4 MR. MROCKA: If I could very  
5 briefly. Victor Mrocka from Hughes Hubbard.

6 You see this in the other  
7 jurisdictions that have the prospective  
8 system. You see it n the EU and Canada and  
9 India, in Mexico. You do have a slight  
10 increase in the refund process but it's not  
11 something, you know, major and dramatic. And  
12 those are very prosperous, open economies.  
13 And where a lot of goods are flowing. And you  
14 just -- you don't see that because, again, as  
15 I think Mr. Leibowitz mentioned earlier, it  
16 really does depend on the sophistication of  
17 the importer and the volumes involved.

18 Some of these -- it's -- it's --  
19 it really is a burden at all to deal with  
20 Customs. No offense to the Customs  
21 representative. But it is -- it is very  
22 difficult because they just -- they don't have

1 the sophistication to do so. Their margins  
2 are tight and they're basically in the  
3 business of moving stuff along.

4 As far as the -- one thing I'd  
5 like to comment on if I could on the -- the  
6 so-called sacrificing of accuracy.

7 I think as far as and going to  
8 your question also on the administrative  
9 burden, I think one of the things the  
10 department can look to for guidance is the  
11 system they already have in place regarding  
12 the administration of suspension agreements.

13 Fairly easy to administer in my  
14 opinion. I would welcome anybody for other  
15 comments. But they're fairly easy -- fairly  
16 easy to administer in that you do have almost  
17 very similar to Canadian system, a normal  
18 value system, where that normal value is  
19 adjusted when conditions change.

20 Now, depending on the suspension  
21 agreement, I only have experience with some  
22 and not obviously all of them. But those

1 changes can be made annually. They can be  
2 made quarterly. You now, it really does  
3 depend on the agreement itself. But I think  
4 that would provide some type of guidance as to  
5 when there are conditions that do change,  
6 adjustments can be made.

7 MR. LORENTZEN: Actually, if my  
8 colleagues here don't mind, you touched upon  
9 something that was going to be another  
10 question I was about to ask.

11 It's been observed earlier today  
12 that our system may be the only one if not  
13 virtually the only one that is retrospective  
14 in nature. I think it's also there is a  
15 general proposition too that in other  
16 jurisdictions throughout the world there is a  
17 greater tendency to resort to suspension  
18 agreements or undertakings, the terminology  
19 used.

20 Do you think that there is a  
21 relationship between a prospective duty  
22 collection system and a grater tendency to use

1       undertakings and if there is such a  
2       relationship, would that be a good or bad  
3       thing for the United States?

4                   MR. MROCZKA: That's a difficult  
5       question to answer because it really does  
6       depend on the system you're looking at.

7                   I don't see that being the case  
8       under the Canadian system because their system  
9       essentially is a number value system so  
10      undertakings, although they do exist, are --  
11      are -- are not as frequent.

12                   Under the European system I think  
13      you do see a lot of undertakings taking place,  
14      but I don't know if that's necessarily a  
15      relationship to the -- to the necessarily  
16      system that's in place, but more so the -- the  
17      willingness of both industries on both sides  
18      of the dispute to -- to agree to partake in  
19      the undertaking more so than anything else.

20                   I think especially in the EU you  
21      do have a lot more willingness, I guess, to  
22      accept that idea but I think it's also because

1 the Europeans are when they're in other  
2 markets, they are more willing to accept that  
3 undertaking as well. But, again, it would be  
4 difficult to make that link because it really  
5 does, one, depend on the system and also  
6 depend on the industries you're dealing with.

7 MR. HECHT: Yes. I guess I'd make  
8 a couple of points on that.

9 I do think it's difficult to give  
10 a perspective on how much the possibility of  
11 using other things like undertakings influence  
12 the development of the foreign systems itself.  
13 But I guess I would say one thing to keep in  
14 mind. You really do have to evaluate what a  
15 prospective system would look like in the U.S.  
16 And I think Mr. McInerney alluded to that with  
17 the nature of our transparent system, our  
18 legal regime. It's very, very different from  
19 the regimes you see in some foreign systems  
20 that they use a prospective system. And I  
21 think there may be limited lessons to be drawn  
22 from how those systems operate there versus

1       how they would operate here.

2                       And in terms of greater -- to the  
3       extent a prospective system would lead to the  
4       grater use of undertakings, I do not think  
5       that would be a positive development for all  
6       the reasons we talked about that you, again,  
7       are substituting maybe convenience or sort of  
8       a perspective look at what somebody might do  
9       based on past behavior at the expense of what  
10      under the U.S. system is the ability to  
11      actually go back and look and exactly  
12      calibrate the response to what the behavior  
13      was.

14                     If somebody is not dumping they  
15      don't pay anything at all. If they increase  
16      the level of dumping that can be taken into  
17      account. And for the reasons we've discussed  
18      we really do think that's a superior system.

19                     MR. McINERNEY: Yes. I just have  
20      a thought that anyone is free to comment on.

21                     Ron brought up the subject of  
22      undertakings and my -- my feeling and I don't

1 really have any hard information on this. My  
2 feeling is that around the world not only do  
3 you have formal undertakings but you have  
4 informal undertakings where the administrators  
5 come up with a high number and then people get  
6 together and decide to apply the lesser duty.  
7 And the less duties, in fact, is a negotiated  
8 number. So, you don't really need -- you  
9 don't really need a formal undertaking. You  
10 just have a lesser duty.

11 And then because the duty, in  
12 effect, is in fact a negotiated number, you  
13 don't really have any reviews.

14 Does anyone have any thoughts  
15 about the extent to which that actually  
16 happens and explains this sort of relative  
17 rarity of reviews in the countries?

18 MR. HECHT: Tough question. Yes.

19 I would not sit here and say that  
20 I am an expert on the day-to-day workings of  
21 some of those foreign systems where I would  
22 feel comfortable speculating on frequency or

1 that type of thing.

2 I would say that even in the trade  
3 press or review of sort of articles in this  
4 area, there certainly is a sense that other  
5 jurisdictions rely far more frequently on sort  
6 of non-transparent mechanisms, things outside  
7 of the dumping regime itself in terms of how  
8 they manage trade relationship and so I think  
9 there is likely some connection. Exactly how  
10 concretely you would draw it would be hard to  
11 say. But again I think it's another example  
12 of why our system is better where the cards  
13 are on the table. People know what the rules  
14 are. They are enforced in a transparent way.  
15 And I think for confidence in the trading  
16 system as Tom talked about, that's a good  
17 thing and a model other countries should  
18 follow.

19 MR. De PREST: The only thing I  
20 would like to add. I don't really know  
21 anything about how these particular systems  
22 work in Europe. But I can say having grown up

1 in Europe that for many sectors of the economy  
2 and not just the antidumping regime, but also  
3 for other regimes, there is in most of the  
4 European countries a long tradition of -- of  
5 setting up agreements and getting stakeholders  
6 together and coming up with agreements that,  
7 you know, regulate if you can use that word,  
8 particular aspects of their economic life,  
9 including healthcare, for example.

10 So, you know --

11 MR. SNEERINGER: Not an exact  
12 parallel, but I believe in the criminal  
13 justice system plea bargains are not appeals  
14 as often as trial verdicts.

15 MR. PARKHILL: Hi. This is just a  
16 general question to any or all of the  
17 participants.

18 But focus today has mostly been on  
19 antidumping systems within the context of a  
20 prospective or retrospective system.

21 Can you speak to what you see as  
22 the system for countervailing duties,

1 particularly since we've had an uptake  
2 recently in the number of CBP cases?

3 MR. HECHT: Yes. I'm happy to  
4 lead it off.

5 I think that's an even simpler and  
6 clearer case of some of the problems with a  
7 prospective system to the extent that you are  
8 assessing a countervailing duty rate based on  
9 past behavior without the possibility to  
10 reflect whether additional subsidies were  
11 granted until a review period occurs. You  
12 could have a very easy situation where a  
13 foreign government responds to an order by  
14 simply increasing the level of support to that  
15 industry.

16 So, in some ways that's even a  
17 simpler way depending again on how the system  
18 is set up that you could see real miss skewed  
19 incentives and a failure to address unfair  
20 trade in the market.

21 MR. MROCZKA: This is Victor  
22 Mroczka from Hughes, Hubbard.

1 I think that's an interesting  
2 question actually because I would pose the  
3 opposite happens. When you have -- again, we  
4 are sort of in theoretical land with how this  
5 prospective system is going to work but you  
6 could probably make if you're under a normal  
7 value system or even something akin to the EU  
8 systems, you could probably make adjustments  
9 a lot faster when something happens and  
10 effective n more real time.

11 One of the things that we see as a  
12 petitional law firm in other jurisdictions is  
13 the reviews are a lot shorter. And the  
14 adjustments to normal value or the rate that's  
15 applied happens much quicker and it's because,  
16 I think, of the prospective system because you  
17 want that faster adjustment. You don't want  
18 a long lag. And you see it a lot -- a lot  
19 often.

20 I think -- I think the main  
21 advantage that you will have there is also as  
22 well in the administration because you want

1 those -- you want those duties collected and,  
2 you know, being a petitioner you want it  
3 obviously done sooner rather than later.

4 MR. SNEERINGER: I would just say  
5 to echo Mr. Hecht's point that governments can  
6 play the same games as exporters and I think  
7 there's one country in particular I'm thinking  
8 of that has proven itself to be quite creative  
9 and adept at creating new ways to subsidize  
10 it's steel industry on kind of an as needed  
11 basis. So, I think we have to be able to look  
12 back and catch them at it.

13 MR. HECHT: Can I just make one  
14 quick follow that's related and goes to a  
15 point Mr. Leibowitz made in the prior panel  
16 which is the sense that, you know, there may  
17 be no response with respect to the imports  
18 that already came in under a prospective  
19 system but you'll have a future effect on  
20 imports going forward. I think that is  
21 something of a misnomer because really what  
22 you could see in a prospective system is a

1 response where when the duty rates are too low  
2 you ship in a lot. You're only real risk is  
3 that the prospective duty may go up. But  
4 given that refund procedure at the WTO you're  
5 always going to have the chance at the back  
6 end to come in, request a refund. And if you  
7 were not dumping or being subsidized at that  
8 higher level, you really don't have the risk  
9 of being assessed at that higher rate. So, it  
10 really does open up some -- some skewed  
11 incentives, we think.

12 MR. LORENTZEN: Well, let me thank  
13 this panel for their testimony and we'll move  
14 on to Panel Number 3.

15 This panel is constituted of Gary  
16 Horlick of the law offices of Gary Horlick,  
17 Mr. David Phelps from the American Institute  
18 for International Steel and Mr. Bernd  
19 Neuenkirchen from Coutinho and Ferrostaal.

20 Thank you again.

21 Okay. Shall we begin with Mr.  
22 Horlick please.

1                   Okay.

2                   MR. NEUENKIRCHEN: I'm Bernd  
3 Neuenkirchen. I'm Vice President of Coutinho  
4 and Ferrostahl in Houston, Texas. We are an  
5 international steel trading company and in any  
6 given year and in any less normal year we are  
7 trading five million tons of steels globally  
8 out of which 20 to 25 percent are coming to  
9 the U.S.

10                   I'm here to make a case for the  
11 prospective system rather than the  
12 retrospective system because the retrospective  
13 system is limiting not only my choices but  
14 more importantly the choices of my customers  
15 who are the consuming steel industry.

16                   My customers make all kinds of  
17 steel products. I personally sell wire road  
18 and my customers make products such as chain  
19 link fence, nails, shopping carts, shelving  
20 for refrigerators and closets, stoves, shower  
21 caddies and mattress springs. There are a lot  
22 more springs -- there are a lot more

1 applications for wire but it would be too much  
2 -- too many to mention here.

3 We cannot supply to my customers  
4 or to our customer right now the range of  
5 choices that would be possible. Wire rods  
6 goes up and down. It's not always available  
7 here in this country and my consuming industry  
8 would like to have choices to the domestic  
9 mills because they compete globally with  
10 finished products.

11 My range as I said before is  
12 limited because in the retrospective system  
13 the risk is just too high. It's very hard to  
14 manage and we just do not offer wire rod from  
15 countries that are affected by dumping  
16 margins, even though when the deposit rate is  
17 relatively minor such as two or three percent  
18 because you don't know what's going to happen  
19 down the road four to five years from now.

20 It has an impact on all businesses  
21 as well. We employ 75 people in Texas, in  
22 California and in Oregon. We are in addition

1 to the steel that we sell, we are spending  
2 roughly \$40 million plus in money that we  
3 spend on trucking companies, on stevedoring  
4 companies, box operations, freight forwarders,  
5 houseworkers, etcetera. Many of them by the  
6 way are members of unions too.

7 As I said before the dilemma is if  
8 we have a -- a dumping margin that is  
9 manageable like two or three percent, we don't  
10 do it. We do not buy the steel. We do not  
11 offer it to the consuming industry because of  
12 the risk that we can face four or five years  
13 down the road.

14 We do business all over the world  
15 and personally I'm not aware of it that we are  
16 facing the same kind of problems elsewhere.  
17 In many countries when we -- when we face a  
18 dumping situation and if we decide the margin  
19 is -- is surmountable we pay the margin, do  
20 the transaction and go on to the next one.

21 We don't have to have any lawyers  
22 to -- to help us in that way. We don't have

1 to hold accounts open for five years or even  
2 longer as we are facing here. This in a  
3 nutshell is the problem that I'm facing, that  
4 we are facing and I'm happy to answer any  
5 questions later on.

6 MR. PHELPS: Good morning and  
7 thank you for the invitation to participate.

8 I'm Dave Phelps, President of the  
9 American Institute for International Steel.

10 We are importers and exporters of  
11 steel. We also have 15 port authorities from  
12 all over the country stevedoring firms,  
13 including ILA workers, including ILA Unions  
14 who are members of our group. Ocean carriers,  
15 barge companies, truckers, railroads, service  
16 centers, American steel mills, freight  
17 forwarders, customs brokers and even three law  
18 firms.

19 We are pleased to be able to voice  
20 our opinion on this issue which has been for  
21 a very long time the top trade law change on  
22 our list at AIIS.

1                   We understand that one of the  
2                   reason that this issue has gotten the  
3                   attention of Congress and now the Department  
4                   of Commerce, is related to unpaid duty  
5                   collections primarily from the aquaculture  
6                   industry. However, in the steel world, the  
7                   kind of corporate irresponsibility exhibited  
8                   in these cases is not how our members do  
9                   business.

10                   AIIS's importing members are long-  
11                   standing suppliers of steel to steel consumers  
12                   I n the U.S. Many of the trading companies  
13                   have large physical investments in the U.S.,  
14                   including service center operations and  
15                   processing and even some steel mills.

16                   AIIS trading company members are  
17                   also involved in the growing export trade of  
18                   steel. In short, our trading company members  
19                   play a critical role in supplying steel to the  
20                   steel short in normal years U.S. market and  
21                   export high quality American made steel around  
22                   the world.

1 American steel consumers employ 60  
2 workers for every American steel worker and  
3 their value added is critical to the U.S.  
4 manufacturing base. Steel importers are an  
5 important part of the international  
6 competitiveness of American steel consumers  
7 and through the growing export trade, the  
8 domestic industry itself.

9 Now, for example, to get to the  
10 question at hand.

11 What we have many instances  
12 including one of our members who needed import  
13 material that was covered by an antidumping  
14 duty with a zero deposit rate. Zero. Meaning  
15 they weren't dumping. They refused to import  
16 the product because of the unlimited risk  
17 associated. This was also interestingly  
18 enough was a related party transaction. Would  
19 have been a related party transaction.

20 This is clearly over and above  
21 what they need -- what is needed to -- under  
22 the WTO rules to offset injury.

1                   Another insidious side effect of  
2                   the current system is even more disagreeable.  
3                   It is not uncommon for petitioners to ask for  
4                   an administrative review for an exporter  
5                   producer who has been shipping to the U.S. at  
6                   a moderate or even zero AD/CVD rate and then  
7                   faced with the possibility that what the  
8                   importer consumer thought were profitable  
9                   sales in the U.S., would become unprofitable.  
10                  The exporter producer offers cash to the  
11                  petitioners' lawyers to drop the request for  
12                  a review.

13                   Once the request for an  
14                   administrative review is rescinded by the  
15                   domestic industry lawyers the original posting  
16                   rate charged to the importer at the time of  
17                   importation becomes the final duty. This  
18                   dirty little extortion game is legal and is a  
19                   natural outgrowth of the retrospective system.  
20                   And by the way, this issue was reported in the  
21                   Wall Street Journal April 3rd, 2007.

22                   Thank you for your time and

1 attention. I'll be ready to answer questions.

2 MR. HORLICK: Thank you very much.

3 My name is Gary Horlick. I want  
4 to explain how all parties would be better off  
5 with the prospective system.

6 First of all, the U.S. Government  
7 would be better off. The Government could go  
8 off, collect the antidumping and  
9 countervailing duties fairly straight  
10 forwardly, wouldn't have to chase down  
11 sureties, go to court, pursuing unhappy  
12 insurance companies. It doesn't have to  
13 pursue importers who disappear. It doesn't  
14 have to worry about changes in names and  
15 addresses and all that. It would collect the  
16 duties the way it collects the rest of the  
17 duties.

18 So, that's the most  
19 straightforward reason why a prospective  
20 system is better for the Government.

21 Secondly, based on experience  
22 around the world, very few exporters seek

1 refunds. It's an empirical fact. It was  
2 great to hear some of my learned colleagues  
3 earlier today explain that theoretically  
4 people would game the systems, do this or do  
5 that. The fact is around the world and  
6 countries with prospective systems, people pay  
7 the duties and move on. It's the way Bernd  
8 explained it. I note Bernd is the only non-  
9 lawyer to testify so far and Dave. Sorry.

10 MR. PHELPS: Thank you.

11 MR. HORLICK: The only business  
12 person to testify, though Dave runs a small  
13 association.

14 Lawyers are great at speculating  
15 what might happen. We have years, decades now  
16 of empirical evidence. Companies simply pay  
17 the duties and move on. They don't want to be  
18 bothered.

19 If you dig a little deeper, in the  
20 U.S. retrospective system, you have no choice  
21 if you're an importer and have liabilities  
22 built up. You have to hire a lawyer and go

1 through the process.

2 In a prospective system there is  
3 no incentive to hire a lawyer and do it. So,  
4 you're faced with, you pay the duty. Do you  
5 want to hire a lawyer to get a refund? No.

6 I was charmed by one of my learned  
7 colleague's statement that there is no  
8 downside to requesting a refund or review.  
9 There is. The downside is you have to pay  
10 lawyers and have other transactions costs.  
11 Most companies, you just heard Bernd, the  
12 companies aren't going to do that. They're  
13 going to decide whether to make the sale at  
14 the existing duty rate and then just move on.

15 If you do talk about litigation  
16 and it is worth noting as others did that  
17 there is this very theoretical in my view  
18 chance that other countries will imitate us.  
19 We're not the only litigious country in the  
20 world. The other country that I'm aware of  
21 that's equally litigious is India which is the  
22 world's largest user of antidumping.

1           So, if you want to get into what  
2 other countries might do. Yes. Other  
3 countries are litigious. But basically  
4 companies are not litigious possibly with a  
5 few exceptions. Most companies when asked do  
6 you want to hire a lawyer if they're not  
7 actually required to say no. Unfortunately,  
8 but true.

9           So, I don't buy this idea that  
10 there will be this wave of refunds. Most  
11 companies simply won't be bothered.

12           Further, for the U.S. Government,  
13 fewer resources will be needed on reviews.  
14 They can be devoted to investigations and  
15 analysis. The cases as you all know as well,  
16 I think better than I do, have gotten more and  
17 more complex in recent years plus you have WTO  
18 issues to deal with. This will give you the  
19 staff to do it.

20           Finally, from the Government's  
21 perspective, it reduces the incentive for what  
22 Dave has politely labeled extortion which is

1 what it is.

2 I'm sitting here listening to my  
3 colleagues describe the wonderfully  
4 transparent U.S. system. I would like each of  
5 them to put on the record all the deals  
6 they've signed. These are not transparent.  
7 Commerce isn't even aware of most of them.  
8 And -- but -- but around the world and you all  
9 have seen this in Geneva. The U.S. Government  
10 is blamed for this extortion. It really  
11 discredits our whole trade remedy system  
12 around the world.

13 When people think of the U.S.  
14 trade remedy laws they think of extortion.  
15 It's sad but true. This is an unintended  
16 consequence of the retrospective system. The  
17 retrospective system as we know it was dreamed  
18 up in August 1980 before Commerce had ever  
19 issued a single antidumping or countervailing  
20 duty order.

21 Commerce took that responsibility  
22 in January 1 so it didn't start the

1 investigations on its own until after that.

2 So, this was -- well intention. No one  
3 understood the problems that would occur, but  
4 it's not at all surprising that over time the  
5 problems become apparent and that's why it's  
6 a laudable effort to try and look now at the  
7 systems to see what's wrong.

8 Plaintiffs would be better off.

9 Petitioners despite the complaints you heard  
10 here probably would be better off is the  
11 duties are all paid. That is, after all the  
12 goal. It would be nice to have the duties  
13 paid. I don't -- you know, we heard from a  
14 lot of them but you'll hear from some later.  
15 A lot of duties now as we've seen aren't being  
16 paid and once people read about this and  
17 realize that you can get away with it, it will  
18 only snowball which will increase the problems  
19 for the Government.

20 Importers will be better off.

21 Importers are Americans too. Some importers  
22 go bankrupt because they can't figure out the

1 difficulties or as an example you heard there  
2 are foreign suppliers who choose not to  
3 participants in reviews. You only find that  
4 out later.

5 I can only think of one loser from  
6 going to a prospective system which is my  
7 colleagues in the trade bar and they won't  
8 have to learn how to adjust.

9 Thank you.

10 MR. LORENTZEN: Thank you.

11 Someone who began his career in  
12 the Federal Government in August of 1980, I  
13 don't want anyone to think there's any  
14 association between my coming to the Commerce  
15 Department and the establishment of the  
16 current system. I take no credit or blame for  
17 that.

18 We have heard earlier today in  
19 response to some of the questions that have  
20 been posed quite justifiably I think responses  
21 that begin, well, it depends upon what kind of  
22 prospective system that you would consider

1 putting into place.

2 And I noticed that for the AIIS  
3 submission there seemed to be a recommendation  
4 that for a model for a prospective system we  
5 could look to Canada's prospective normal  
6 value system as one that would be better than  
7 others so to speak.

8 Could I have the panelists talk a  
9 little bit about their perspectives or views  
10 on how well or not such a system would work in  
11 the U.S. in terms of the relative differences  
12 in the size of markets and the number of  
13 respondents that are looked at in cases to  
14 kind of have a more precise sense of what  
15 would work, what wouldn't and what the pros  
16 and cons would be?

17 MR. HORLICK: Canada is not a  
18 small country or one notably less bureaucratic  
19 than we are so it's worth looking at. It's  
20 natural to look north of the border first  
21 because Canada's economy is fairly similar to  
22 ours as well.

1           The Canadian normal value based  
2           system is attractive. It seems to be fairly  
3           labor intensive. You have to update normal  
4           values on a fairly regular basis. That does  
5           answer some of the issues that were raised by  
6           the steel industry representatives here and  
7           it's worth remembering that the Canadian steel  
8           industry though now owned mainly by foreigners  
9           had a major role in shaping the Canadian  
10          antidumping systems. So, the same issues came  
11          up there.

12           It seems to make sense. You  
13          update the normal values. If you sell below  
14          the normal value you pay a duty basically and  
15          I'm over generalizing. If you sell above the  
16          normal value there is no duty. There is no  
17          pile of money building up that leads you to  
18          hire lawyers.

19           The Canadian trade bar normally  
20          for Canada of course everything is one tenth  
21          the size of here except their trade bar. And  
22          the absence of a retrospective system is

1 almost invariably given as the reason why  
2 there are not one tenth as many trade lawyers  
3 in Canada as here.

4 So, that's an attractive model.  
5 But even sort of a straight EU system. I'm  
6 not pushing it.

7 Again, if you look at the numbers.  
8 The number of refund requests in Europe in a  
9 given year is always single digits, usually  
10 low single digits. This idea that there are  
11 secret deals in EU and not here well at least  
12 as I said, the Europeans publish theirs unlike  
13 some of the deals here.

14 Basically, you have exporters in  
15 Europe paying the duties and moving on.  
16 What's interesting if you look at the list of  
17 duties in the EU, many of them are the same  
18 products as here. So, the same exporters,  
19 export to both Europe and here.

20 In a global economy if you want to  
21 be a serious player, you're going to have to  
22 sell in both markets. And so they're used to

1 a prospective system. They, as Bernd said,  
2 they pay the duty and move on.

3 So, we're not advocating just one  
4 system but we can see the attractions of the  
5 Canadian system and it seems to work.

6 MR. PHELPS: In my discussions  
7 with Canadian producers about the difference  
8 in the system and also with Canadian trade  
9 negotiators in Geneva, there's a comfort level  
10 if you are a producer and you know that a  
11 particular hot rolled sheet from -- hot rolled  
12 sheet from a particular producer has a normal  
13 value of "X", whatever that is, you understand  
14 that that material won't enter your market at  
15 a lower price. It is -- that's the normal  
16 value. So, they understand that -- that below  
17 that is dumping and they pay the margin.  
18 Above that, of course, they're free to charge.

19 But there's a comfort level for  
20 the domestic industry in Canada looking at the  
21 data. And understanding that this is how the  
22 system works.

1                   They're obviously as Gary said,  
2                   they were involved in the development of it  
3                   and they think it works.

4                   MR. PARKHILL:   In a system like  
5                   Canada's with the normal value, is there any  
6                   concerns that you see in terms of publishing  
7                   prices or normal values that may indicate what  
8                   a producer's costs are, things like that,  
9                   which are protected in the U.S. system under  
10                  our APO Rules?

11                  MR. HORLICK:   Canada has the same  
12                  -- sorry.   Canada has a very protective system  
13                  for data also and indeed the WTO antidumping  
14                  rules require protection of confidential  
15                  information.

16                  I don't claim to be an expert in  
17                  the Canadian system.   You would have to get  
18                  Canadians to explain it to you but as I  
19                  understand it, no one seems to bother there.

20                  MR. SKUD:    I guess I'm looking for  
21                  a little education.

22                  I understand how in the

1 retrospective system there are deals between  
2 say plaintiffs and exporters to turn off a  
3 review in exchange for an agreement transfer  
4 of funds. How -- how do the deals people have  
5 alluded to in a prospective system work?

6 MR. HORLICK: I don't know. I  
7 know about the retrospective ones because I've  
8 made some of those deals. I'm not allowed to  
9 talk to them because I don't have  
10 confidentiality clauses.

11 The prospective system all we've  
12 heard is speculation is that since they are  
13 foreigners we know they must be making evil  
14 deals. That doesn't rise to the level of  
15 evidence.

16 The assumption, I guess, the  
17 speculation we heard is that in a prospective  
18 system the deals are made in advance to reach  
19 the duty level through a lesser duty  
20 mechanism. As I say, it was interesting  
21 speculation. You'd have to ask people in DG  
22 Trade if that, in fact, is what they do.

1 MR. SKUD: Just to follow up on  
2 that. So, those kind of deals then would  
3 involves Government participation as opposed  
4 to purely private ones?

5 MR. HORLICK: At the risk of  
6 speculating about the speculation, as I  
7 understand the speculation, someone goes to  
8 the DG Trade and says, gee, that duty is a  
9 little high. Why don't you lower it and I'll  
10 be happy. And you can lower it by calling it  
11 a lesser duty. I'm guessing what is meant.

12 As I said, I'd be interested to  
13 see, you know, Honis Fel's reaction to that  
14 claim. You'd have to ask them.

15 MR. LORENTZEN: One sort of  
16 logistical question. It may be a little bit  
17 unfair because I suspect if we were taken  
18 seriously that answer would have to be very  
19 complicated.

20 But do you have any thoughts. If  
21 our system were to change and we were to  
22 undertake the steps necessary to effect a

1 transition, what would be some of the  
2 transitional considerations we'd have to take  
3 account of in going from the current system to  
4 a different one?

5 MR. HORLICK: That's a really  
6 interesting question and I'm not sure so I'm  
7 not going to guess now. You'd have to design  
8 something so that -- well, basically, I'm just  
9 guessing out loud. But this is off the top of  
10 my head.

11 At some point you'd say from  
12 henceforth we're -- for cases from day one for  
13 dumping orders or countervailing orders, from  
14 day "X", we're going to be prospective and  
15 then for prior cases you would work in some  
16 sort of phase out. It could get messy.

17 MR. PHELPS: Just as a side  
18 speculation to that.

19 Our friends in the Customs Service  
20 have huge, huge stores of unliquidated entries  
21 and a prospective system and I've dealt with  
22 Customs for many years and understand the

1 difficulties of that system.

2           Wouldn't it be good -- wouldn't it  
3 be nice for a Customs official at the time of  
4 entry to pay a two percent, one percent, half  
5 a percent whatever the prospective duty is and  
6 close the entry out in a normal fashion as  
7 opposed to holding the entries open for five,  
8 six and seven years and then having the  
9 liquidation dance that currently exists? The  
10 absurdities that currently exist. I'm sure  
11 there's probably some entries still in  
12 litigation that are at least ten years old.  
13 Maybe even older. I've begun to call it  
14 intergenerational dumping. And it's  
15 intergenerational liquidation of entries.

16           So, from every perspective, this  
17 gives certainty and clarity to the U.S.  
18 manufacturing base that imports and needs  
19 imports. Keep in mind, 55 percent of our  
20 imports, merchandise imports, go -- come in to  
21 the United States for further manufacturing.  
22 This is an important fact that is often

1 ignored.

2 We have a need for these imports  
3 for our manufacturing base. They don't  
4 decimate manufacturing. They sustain  
5 manufacturing, particularly in the steel  
6 sector. And having the certainty is key.

7 The bureaucratic process is hugely  
8 simplified under -- under a prospective system  
9 and so certainly that's where we stand on it.

10 MR. PHELPS: To add one thought.  
11 The core problem is it and the U.S.  
12 Antidumping and Countervailing duty system  
13 creates a system that does attempt to offset  
14 trade which Congress has decided should be  
15 offset.

16 The problem comes and Bernd is my  
17 Exhibit A, when it chills trade beyond that.  
18 And that's the problem with the retrospective  
19 system. It leads people because of the  
20 transaction costs of the system and the  
21 uncertainty created by it to create a chilling  
22 effect beyond what Congress intended by

1       offsetting the amount of the dumping or the  
2       amount of the subsidy.

3                   MR. LORENTZEN:  Okay.  Well, let  
4       me thank you again for your testimonies and  
5       with this I will suspend today's hearing and  
6       we will resume in the same location at 2:00  
7       p.m. this afternoon.

8                   Thank you.

9                   (Whereupon, the above-entitled  
10       matter went off the record at 11:32 a.m., and  
11       resumed at 2:00 p.m.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:04 p.m.

3 MR. LORENTZEN: Okay. Thanks to  
4 those of you who have rejoined us and for  
5 those who are new to our hearing today.

6 We went through three panels this  
7 morning and we will have three panels  
8 remaining this afternoon.

9 Before I turn to Panel Number 4  
10 let me just indicate that for those of you who  
11 are interested in eventually obtaining a copy  
12 of the transcript of the hearing, as we  
13 understand it, it should be ready within two  
14 to three weeks and there will be information  
15 available on our website, either a copy of the  
16 transcript itself or information about how to  
17 obtain it. And it would be available in our  
18 Reading Room as well.

19 So, for Panel Number 4 we have two  
20 witnesses. Stephanie Lester from the Retail  
21 Industry Leaders Association and David  
22 Hartquist from the Committee to Support the

1 U.S. Trade Laws. If you would join us here to  
2 my right, we can begin.

3 MS. LESTER: Can you hear me?

4 Okay.

5 Good afternoon. I'm Stephanie  
6 Lester with the Retail Industry Leaders  
7 Association or RILA. RILA members include the  
8 largest and fastest growing companies in the  
9 retail industry.

10 Retailers, product manufacturers  
11 and service supplies which together account  
12 for more than \$1.5 trillion in annual sales.

13 RILA members employ millions of  
14 workers and operate more than 100,000 stores,  
15 manufacturing facilities and distribution  
16 centers domestically and abroad.

17 As an alumna of Import  
18 Administration I'm particularly pleased to  
19 appear here today on an issue of such  
20 importance for American businesses and  
21 workers.

22 RILA members strongly supply a

1 prospective antidumping and countervailing  
2 duty assessment system. It's time for a  
3 change in the law to reflect the changing  
4 times in our globally competitive economy.

5 First, I'd like to address the  
6 suggestion by some who commented that the  
7 problems faced by importers are unimportant  
8 for that importers want to reap benefits from  
9 unfair trade. Such statements are untrue and  
10 undeserved.

11 RILA members strongly support fair  
12 trade as do the vast majority of U.S.  
13 importers in consuming industries. With many  
14 of our largest importers spending millions of  
15 dollars to develop programs to insure  
16 compliance with U.S. trade laws.

17 Our position is simply. Tell U.S.  
18 retailer what a fairly traded price is and we  
19 will pay it. Supporters of strong trade  
20 remedies stress the importance of leveling the  
21 playing field. We agree. What could be more  
22 level, however, than a playing field in which

1 all market participants including petitioners  
2 and importers know up front what constitutes  
3 a fairly traded price and compete on that  
4 basis?

5 It is undeniable that the  
6 retrospective system creates significant often  
7 intolerable uncertainty in global supply  
8 chains. As a result, it undermines American  
9 competitiveness by denying U.S. companies  
10 access to important sources of supply even  
11 though they're willing to pay a fairly traded  
12 price.

13 As pointed out by Philips and  
14 Alcoa in their written comments, the  
15 unpredictability in the retrospective system  
16 unnecessarily limits competition by driving  
17 suppliers from the U.S. market, not because  
18 they aren't willing to trade fairly, but  
19 because the uncertainty makes serving U.S.  
20 consuming industries too risky.

21 For example, retailers and  
22 suppliers cannot predict when some unrelated

1 supplier may drive up an all others rate and  
2 administrative review or when Commerce may  
3 change a calculation methodology or surrogate  
4 value.

5           Supporters of this status quo  
6 argue that this uncertainty and its harmful  
7 effects is simply a price U.S. business must  
8 pay because it's just not possible to  
9 accurately determine a fairly traded price  
10 until well after goods have been purchased and  
11 imported.

12           If that is true, how is it  
13 reasonable to penalize importers with huge  
14 rate increases for not knowing the unknowable?

15           Second, those who oppose change  
16 argue as if moving to a prospective system  
17 means the United States must adopt a system  
18 already in place somewhere else like Canada  
19 or the European Union. That, of course, also  
20 is not true.

21           If there are flaws in existing  
22 prospective systems, the United States can

1 design a better one. For example, if other  
2 prospective normal value systems do not  
3 provide for a sufficient review in updating of  
4 normal values, we can design a system that  
5 does.

6 We also disagree with those who  
7 suggest that moving to a prospective system  
8 would automatically weaken the effectiveness  
9 of the remedy. There is no question that a  
10 prospective system responds immediately to  
11 changes in import pricing. Thus, if exporters  
12 with low duty rates, lower their U.S. prices,  
13 it will immediately result in the assessment  
14 of higher duties at the time the goods enter  
15 the United States, not years later when it may  
16 be significantly more difficult for Customs  
17 and Border Protection to collect the  
18 additional duty from the importer of record.

19 The problem of uncollected duties  
20 and high risk importers disappears and the  
21 remedy is more effective, not less.

22 Another problem will also

1 disappear, one that is of significant concern  
2 to U.S. importers and should be of concern to  
3 policymakers.

4           Petitioning companies will no  
5 longer be able to use the uncertainty in the  
6 retrospective system to extract cash payments  
7 from U.S. importers and foreign exporters who  
8 make those payments rather than assume the  
9 risk that anyone of a dozen different things  
10 could happen through no fault of their own  
11 that could significantly increase their future  
12 duty liability.

13           RILA urges Commerce to develop a  
14 transparent predictable and effective  
15 prospective duty assessment system. We would  
16 also urge Commerce to do so through a process  
17 that allows all stakeholders to participate  
18 and RILA would welcome the opportunity to  
19 participate in that effort.

20           Thanks.

21           MR. LORENTZEN: Thank you.

22           Mr. Hartquist please.

1 MR. HARTQUIST: Thank you, Mr.  
2 Chairman.

3 I'm David A. Hartquist, Executive  
4 Director of the Committee to Support U.S.  
5 Trade Laws and a partner in the law firm of  
6 Kelley Drye & Warren.

7 The Committee to Support U.S.  
8 Trade Laws is an organization of companies,  
9 trade associations, labor unions, workers and  
10 individuals committed to preserving and  
11 enhancing the U.S. trade laws.

12 CSUSTL's members span all sectors  
13 including manufacturing, technology,  
14 agriculture, mining, energy and services.

15 CSUSTL is dedicated to insuring  
16 that the unfair trade laws are not weakened  
17 through legislation or policy decisions in  
18 Washington, D.C., in international  
19 negotiations or through dispute settlements at  
20 the World Trade Organization and elsewhere.

21 We filed a written statement  
22 detailing our reasons for supporting

1 continuation of the retrospective antidumping  
2 and countervailing duties systems employed by  
3 the United States and I'm going to summarize  
4 our views drastically as I expect that most of  
5 what I have to say you probably heard this  
6 morning from other witnesses.

7 First, with respect to fairness  
8 and accuracy.

9 We believe that the U.S. system is  
10 fair and accurate, both for domestic  
11 interested parties and for importers.

12 Decisions as to antidumping and  
13 countervailing duty margins are based upon  
14 recent actual economic behavior. The current  
15 system serves the goal of remedying injurious  
16 dumping and subsidization and rewards  
17 exporters and importers when and if they  
18 comply with the law. Prospective systems  
19 cannot do that.

20 And I would comment also to those  
21 who argue the unpredictability of -- of the  
22 retrospective system that it's interesting to

1 me that during the process of investigating  
2 allegations of dumping, lawyers and their  
3 economists are able to calculate the duties  
4 that they're likely to have to pay within  
5 probably one one-hundredth of one percent.  
6 But somehow they can't develop a system of  
7 being able to compare their whole market  
8 prices with their U.S. prices in future  
9 periods, lending the uncertainty that we hear  
10 about. I just can't buy that. I think they  
11 know exactly what they're doing in the  
12 marketplace and they know how to avoid dumping  
13 duties by pricing their products fairly.

14 Secondly, minimization of  
15 collection problems. The GAO has identified  
16 significant difficulties with the collection  
17 of antidumping and countervailing duties and  
18 the Commerce Department we're pleased is  
19 working to deal with these issues.

20 These problems would not be solved  
21 with a prospective system. They would simply  
22 be defined out of existence by law.

1                   A prospective system would limit  
2                   liability to the deposits and would not allow  
3                   for adjustments based upon actual behavior in  
4                   the marketplace. I really think this is the  
5                   fundamental issue with the retention of the  
6                   retrospective system versus a prospective  
7                   system.

8                   And third, circumvention certainly  
9                   is a serious problem but those issues would  
10                  not be remedied under a prospective system.

11                 In fact, we believe that evasion of duties  
12                 would actually be encouraged under prospective  
13                 system and the duties would not be subject to  
14                 being increased as in our retrospective  
15                 system. In a prospective system you can get  
16                 your overpayments back, but you can't be  
17                 penalized if you increase your dumping during  
18                 the -- during the period just past.

19                 In conclusion CSUSTL believes that  
20                 the current system should be maintained and  
21                 improved through more effective enforcement  
22                 but that the United States would not be well

1 served by changing to a prospective system.

2 Thank you.

3 MR. LORENTZEN: Thank you very  
4 much to both of you for your testimony.

5 For those of you who weren't here  
6 this morning, I indicated that when this panel  
7 asks questions, you should not read any  
8 particular meaning into the questions that we  
9 ask other than our effort to develop a fullest  
10 record of information as we possibly can to  
11 examine this important issue.

12 I guess just to kick things off I  
13 would have a question for Ms. Lester because  
14 you mentioned, Stephanie, that to the extent  
15 that we or others believe that there are  
16 shortcomings in other prospective system we  
17 could use this as an opportunity to improve  
18 upon them.

19 And I would be -- and to go to the  
20 issue of uncertainty, I would be interested in  
21 whether you think that in a system in the  
22 United States if we had a prospective system

1       it would naturally have a feature of allowing  
2       both exporters and domestic industries to  
3       request an update of the prospective rate or  
4       normal value. And to the extent that that's  
5       the case, if we assume that that's also  
6       accompanied by judicial review, how does that  
7       at the end of the day really sort of cut back  
8       on the amount of uncertainty that's of concern  
9       to you and your members?

10               MS. LESTER: Well, the answer to  
11       your first question. Absolutely. I think we  
12       would have to have a system in the U.S. that  
13       allows for any interested party to ask for a  
14       review. It just makes sense to look back if  
15       circumstances have changed to warrant a  
16       different normal value.

17               The question, a judicial review in  
18       delaying the timing, that's interesting. I  
19       hadn't really thought about how you would work  
20       through that and what the timing for anew  
21       normal value would be. I don't know. I don't  
22       know that I could answer that right now.

1                   But certainly switching and  
2                   sending the market signal for entries going  
3                   forward at the time of entry is going to have  
4                   a huge impact, a very positive impact for  
5                   importers to eliminate the un certainty that  
6                   they are facing right now. And we could work  
7                   through that timing issue under judicial  
8                   review.

9                   MR. PARKHILL: One question that  
10                  would be in regard to duty collections much of  
11                  the problem that we have seen have been  
12                  related to new shippers.

13                 Do you see -- how -- both parties,  
14                 how would you those dealing with new shippers  
15                 in a prospective system to resolve some of the  
16                 problems we've seen even in the retrospective  
17                 system with new shippers?

18                 MR. HARTQUIST: Go ahead.

19                 MS. LESTER: Well, I think for  
20                 one, a prospective system you're paying at the  
21                 time of entry and so it's going to eliminate  
22                 some of the motivations for new shippers to

1 try and gain the system, bring in entries low  
2 and then drop their prices after they get a  
3 low rate. You couldn't do that. If you drop  
4 your prices after you get a low rate from a  
5 new shipper, well, you would have an immediate  
6 signal that your U.S. price dropped and you  
7 would get more duties. you would have to  
8 collect more duties at the time of entry going  
9 forward.

10 I mean, isn't that part of it with  
11 new shippers? They come in, they give some  
12 maybe bogus sales. Get a low rate and then  
13 flood the market follow up with cheap imports.  
14 Where a prospective system would have a much  
15 more timely signal of a change in U.S. price  
16 that you wouldn't be able to do that. You  
17 would stop that behavior at the time of  
18 import.

19 MR. HARTQUIST: Sorry. We didn't  
20 deal with the new shipper issue in the CSUSTL  
21 statement, but in the statement that we filed  
22 on behalf of my law firm, Kelley, Drye and

1 Warren we did deal with that issue. And we  
2 feel that a prospective system really would  
3 not remedy the concerns that we have with the  
4 new shipper issue. We think that it's  
5 primarily an enforcement issue and also an  
6 issue as to whether transactions are based  
7 upon a really commercial sales or sales that  
8 are not of commercial quantities in order to  
9 establish an antidumping rate.

10 So, we think the retrospective  
11 system is fair to new shippers. They have an  
12 opportunity to come in and establish that  
13 they're not dumping. And then to continue  
14 selling their product in the United States if  
15 they can show that.

16 MS. LESTER: Yes. I want to say  
17 one more thing about duty collections.

18 Because right now with the  
19 uncertainty a lot of established importers  
20 don't want to be the importer of record. If  
21 for no other reason, they don't want the risk  
22 in liability that a rate increase could occur.

1 And so they push that liability off on  
2 somebody else who is willing to take on that  
3 risk. Where if you eliminate that risk and  
4 you know what you're paying at the time of  
5 entry, you can have bigger, well established  
6 importers who have a strong relationship with  
7 Customs willing to be the importer of record.  
8 So, you're less likely to have these fly-by-  
9 night importers that you can't track down  
10 later because you've eliminated a big  
11 motivation for them not to be the importer of  
12 record.

13 MR. McINERNEY: This morning there  
14 was a good deal of back and forth about the  
15 extent to which switching to prospective  
16 system might reduce the overall workload  
17 involved in administering these laws. Some of  
18 the folks who testified said that basically in  
19 the rest of the world everybody else has a  
20 prospective system. And they have a lot fewer  
21 requests for administrative reviews. In fact,  
22 not many at all.

1                   And they typically drew a direct  
2                   cause and effect relationship between that.  
3                   So, their argument was if we switch to a  
4                   prospective system in the United States we  
5                   would have fewer administrative reviews  
6                   because a prospective system inherently causes  
7                   that.

8                   Some of us are less certain.

9                   Do you have any comments on that,  
10                  either of you?

11                  MS. LESTER: I think in the  
12                  administrative burden of implementing the laws  
13                  you have to look at not only the burden on  
14                  Customs -- I mean, on Commerce which I think  
15                  what you already do. You already look at a  
16                  new normal value rate but you're comparing it  
17                  with U.S. rates and kind of lop that analysis  
18                  in half in administrative reviews. So, I  
19                  think your burden could be less for an  
20                  administrative review which would give you  
21                  more resources to conduct reviews of more  
22                  companies because so often in cases you can't

1 do a review for every company that's asking to  
2 be reviewed. You have to pick the top two or  
3 three or five companies. You might have more  
4 resources to look at more individual  
5 companies.

6 So, whether there would actually  
7 be a reduction on the Commerce side, I don't  
8 know. You might pick up in being able to do  
9 with more companies. But I think it's really  
10 important to look at the administrative burden  
11 on Customs and there I think you would see a  
12 substantially less burdensome regime for  
13 Customs in that they're collecting it at the  
14 time of entry rather than trying to chase  
15 somebody down years later. And Brenda's  
16 probably better positioned to speak on that.  
17 But I think that that's where you'd see the  
18 greatest reduction in administrative burden is  
19 on the collection side.

20 MR. HARTQUIST: I would agree with  
21 Stephanie that the administrative burdens  
22 probably would be reduced in a prospective

1 system but I think for the wrong reasons.

2 I think they would be reduced  
3 because, Mr. McInerney, as you indicated,  
4 experience has shown that few reviews are  
5 requested under those circumstances. And it's  
6 because the duties are fixed. I don't mean  
7 rigged in some way. I mean, they are set in  
8 a prospective system. And so you don't have  
9 an opportunity to get to achieve adjustments  
10 based upon actual economic behavior during the  
11 prior period.

12 So, I think the gain in terms of  
13 reduction possibly in administrative burden is  
14 completely outweighed by the loss of the  
15 fairness and accuracy of a system under that  
16 kind of a regime.

17 MS. SMITH: Mr. Hartquist, you  
18 mentioned the enforcement issues related to a  
19 retrospective and a prospective system. And  
20 I wonder if I could ask both of you if you  
21 could talk a little bit about the enforcement  
22 challenges and opportunities that you see

1 under both systems.

2 MR. HARTQUIST: Well, certainly we  
3 see issues under the retrospective system that  
4 Commerce is struggling with and Customs is  
5 struggling with and petitioners are struggling  
6 with. It's -- it's not easy, particularly  
7 when you have producers that are trying to  
8 gain the system, trying to circumvent the  
9 system, trying to modify a product very  
10 slightly so that it doesn't meet the scope  
11 requirements.

12 The enforcement problems are  
13 significant and a lot of good people are  
14 putting a lot of thought as to how to improve  
15 collections these days. Particularly, given  
16 the -- well, the GAO Report mentioned four  
17 product areas of particular concern. Three of  
18 those are our cases so we feel this very  
19 significantly for our clients.

20 But my view is that those  
21 enforcement issues both reflect the system and  
22 are caused by the system. If you have

1 prospective system where there's no argument  
2 about what the duty is going to be, or whether  
3 there was increased or lessened dumping during  
4 the prior period, then you don't have an issue  
5 to debate. Whereas, in our system, where  
6 adjustments are made based upon behavior in  
7 the marketplace, there is a debate about what  
8 has happened and whether the collections have  
9 been properly made, whether the duties were  
10 properly paid. All of those kinds of issues  
11 that flow from our system.

12 So, again, I think that is a --  
13 it's a burden. It's a concern but is a  
14 reflection of the openness and fairness of the  
15 retrospective system.

16 MS. LESTER: Just to respond to  
17 one point about adjustments on what's  
18 happening in the marketplace. I think a  
19 prospective dumping system would absolutely  
20 much more quickly adjust for what's happening  
21 in the marketplace. And particularly, I think  
22 the concern with dumping is mostly U.S.

1 prices. Is someone dumping in the U.S.? Are  
2 they dropping their U.S. prices? I'm  
3 struggling a little bit to see how the concern  
4 would be. They ramped up their whole market  
5 price and this is hurting us because they --  
6 they dramatically increased their whole market  
7 price. That's not it. It's the U.S. price  
8 that is of concern and that's what would get  
9 the immediate adjustment at the border at the  
10 time of entry and then you could have a review  
11 look at any changes in the whole market price  
12 for normal value.

13 I think for enforcement there will  
14 always be fraud. You're going to have it  
15 under either system and you need to address it  
16 and try and fight it. I don't think --  
17 actually think a prospective system would  
18 limit the opportunity for fraud further than  
19 you get under retrospective system because  
20 you're paying at the time of entry. You can't  
21 bank on not being around when Customs tries to  
22 collect on that bond three years down the

1 road. You've got to pay up front.

2 So, I actually think a prospective  
3 system reduces the ability for fraud.

4 MR. TAVERMAN: I just have a quick  
5 question.

6 Most of the discussion this  
7 morning and now focuses on antidumping, normal  
8 value U.S. price.

9 Do you see any differences in the  
10 context of CVD and the way a prospective  
11 system might work?

12 MS. LESTER: I think it's more  
13 just market signals. You know, what is  
14 Commerce saying about subsidies at the time  
15 that they're saying it? I don't -- I don't  
16 think there's a difference in application.  
17 Just tell us if -- if a company is getting a  
18 subsidy and you're going to offset it with  
19 duties. Great. Just tell us -- well, not  
20 great. But just tell us what it is and we'll  
21 pay the duty. I don't think there's anything  
22 inherently better about a CVD system that

1 looks back in time. I actually think it would  
2 be more timely with a prospective system. No.  
3 I think that all the same arguments would  
4 apply.

5 I guess I look at this from RILA  
6 members and what they're facing in the current  
7 system. I have one member who brought in  
8 products three years ago and at the time they  
9 looked at what the duty bill was and they  
10 said, okay. Well, we're willing to pay that  
11 duty and we'll bring in the goods. Just last  
12 month they got hit with increased duty bills  
13 of \$4 million. And good grief, where did this  
14 come from? How can we afford this? We can't  
15 do this.

16 Meanwhile, who benefits from that  
17 extra bills? That extra burden on the  
18 importer. That \$4 million has to come out of  
19 that company that would have otherwise gone to  
20 investment or jobs. It's hard to see how the  
21 petitioning industries would benefit from that  
22 increased cost from entry that came in three

1 years ago. But it's just a burden on the  
2 importer and it's just -- we don't think  
3 that's fair.

4 Tell us at the time of entry it's  
5 \$4 million than what it would have been and  
6 we'll probably decide not to do business with  
7 that supplier.

8 MR. HARTQUIST: Well, we did have  
9 a system whereby activities such as increasing  
10 the dumping margins resulted in a rewards to  
11 the domestic industry when they were able to  
12 obtain those duties. That's gone now but I  
13 thought that was a pretty good -- pretty good  
14 system.

15 But I would comment beyond that to  
16 Stephanie's remarks that I think, Mr.  
17 Taverman, there is a similarity in the subsidy  
18 regime as to the antidumping regime in that  
19 during any particular period you may have  
20 subsidies increase or decrease during that  
21 time. And under a prospective system if the  
22 subsidies are increased during that period it

1 doesn't take account of any changes.

2 Under the retrospective system  
3 adjustments can be made to reflect what's  
4 going on in the marketplace in the subsidy  
5 area as well as in the antidumping area.

6 MS. LESTER: Actually, I think it  
7 could take account. You just ask for a  
8 review.

9 MR. LORENTZEN: Well, thank you  
10 very much both of you for your time and your  
11 testimony.

12 We will proceed to Panel Number 5  
13 which is comprised of Michael Taylor from King  
14 and Spaulding, Marquerite Trossevin from the  
15 Trade Remedy Reform Action Coalition and  
16 Robert Paterson from Tampa Bay Fisheries.

17 Mr. Taylor, would you like to  
18 begin?

19 MR. TAYLOR: Yes. Thank you very  
20 much, Mr. Chairman.

21 My name is Michael Taylor and I'm  
22 a partner at the law firm of King and

1 Spaulding. I'll be testifying today on behalf  
2 of the domestic industries represented by King  
3 and Spaulding and ongoing antidumping and  
4 countervailing duty proceedings.

5 Like others, we filed written  
6 comments that the short amount of time doesn't  
7 allow us to get into so we respectfully refer  
8 you to those comments.

9 We do not believe that the  
10 objectives outlined by the Congressional  
11 Conference Committee would be served through  
12 a switch from the current retrospective system  
13 to a prospective system. To the contrary, a  
14 prospective system would diminish the efficacy  
15 of the AD/CVD laws while doing nothing to  
16 diminish or eliminate the evasion of duties.

17 Any administrative simplicity  
18 added by a prospective system would be at the  
19 expense of fairness and accuracy undermining  
20 the remedy provided to U.S. companies injured  
21 by dump and subsidized imports.

22 Finally, foreign producers could

1 gain the system under a prospective system by  
2 increasing their levels of dumping or by  
3 benefitting from additional Government  
4 subsidies.

5 As an initial point, the  
6 retrospective system is a fair and a balanced  
7 system for all the parties involved in AD and  
8 CVD proceedings. It's a more accurate system  
9 because it relies on information that is more  
10 recent and is based on the actual entries on  
11 which the duties are assessed.

12 A retrospective system also  
13 affords foreign producers the opportunity and  
14 the incentive to adjust their price and  
15 behavior to avoid dumping and to forego  
16 Government subsidies.

17 The retrospective system protects  
18 domestic industries by insuring that duties  
19 will be assessed in order to reflect any  
20 increase in the rate of dumping or  
21 subsidization.

22 By contrast, most prospective

1 systems establish a margin of dumping or  
2 subsidization during the course of an initial  
3 investigation which then becomes fixed as a  
4 new AD or CVD rates that applied to all  
5 subject entries until the new -- until the AD  
6 or CVD measure expires

7           While some countries and Customs  
8 unions do actually have procedures for making  
9 adjustments to AD and CVD rates during  
10 reviews, changes that are made account for  
11 increased dumping or subsidization only  
12 prospectively. In other words, prospective  
13 systems do not readily provide for duties on  
14 past imports to be adjusted and those imports  
15 may have been dumped or subsidized at  
16 significant high levels.

17           The introduction of a prospective  
18 system would not eliminate the problem of  
19 uncollected duties. Instead, it would simply  
20 sweep the problem under the rug by  
21 establishing fixed rates of duty that do not  
22 reflect the true rates of dumping or

1 subsidization.

2           As the panel is aware, the GAO  
3 Report outlines several reasons for the  
4 problem of uncollected duties. Duty  
5 collection difficulties, however, relate to  
6 the problem of making importers accountable.  
7 it is not appropriate to blame the assessment  
8 system for what is really a problem holding  
9 importers accountable for duty assessments  
10 owed.

11           The real problem is not that  
12 importers are failing to make duty deposits  
13 but rather than certain foreign producers and  
14 importers are increasing the level of dumping  
15 after an order goes into effect and then  
16 simply disappearing. Thus, the problem  
17 involves a collection of duties associated  
18 with this increased dumping.

19           A prospective system would "fix"  
20 the problem by opting not to address increases  
21 in dumping other than prospectively. That  
22 simply defines the problem away without

1 actually addressing the impact on U.S.  
2 companies injured by dumping or subsidies.

3 Finally, prospective system would  
4 not reduce the incentives and the  
5 opportunities for importers to evade AD and  
6 CVD duties nor would it reduce the problems  
7 associated with high risk importers. Instead,  
8 a prospective system would permit importers to  
9 avoid the consequences of increased unfair  
10 subsidization.

11 Often in the discussion of duty  
12 evasion, we focus on AD orders and I think  
13 there was a very focused question on the point  
14 of what happens with regard to CVD orders and  
15 it's an interesting situation.

16 Under a retrospective system at  
17 the level that subsidization increases after  
18 liquidation is first suspended or after an  
19 administrative review, the increase can be  
20 captured and the duty assessment rate can be  
21 adjusted accordingly such that the actual  
22 duties imposed reflect increased

1 subsidization.

2 Under a prospective system,  
3 however, this increase could never be captured  
4 at the time of final assessment. It gives  
5 rise to the possibility that a foreign  
6 government could increase the amount of  
7 subsidies provided to offset all or a portion  
8 of the CVD duties imposed.

9 Although the CVD rate could be  
10 increased as a result of an administrative  
11 review which is a point made in the last  
12 panel, that increase typically only applied  
13 prospectively. So, you could have an endless  
14 cycle of subsidies, increase, subsidies,  
15 increases and you might never catch up. And  
16 that would be to the detriment to competing  
17 U.S. producers who had never received the  
18 intended benefit of a level playing field.

19 The fact that most of the CVD  
20 cases I recent years cover exports from China  
21 is of particular concern in this regard. As  
22 the GAO Report notes, importers purchasing

1 from China were responsible for 90 percent of  
2 all uncollected AD and CVD duties.

3 The problem with duty evasion that  
4 results -- does result in significant levels  
5 of uncollected duties and this is a  
6 significant concern.

7 The introduction of a prospective  
8 system, however, is not the solution to such  
9 problems. It would simply define the amount  
10 of existence.

11 The purported ease of  
12 administerability -- administered ability,  
13 would come at the expense of both accuracy and  
14 fairness and would also cost the U.S. Treasury  
15 untold sums in duties that otherwise would be  
16 collected under a retrospective system.

17 Instead, the goals articulated in  
18 the Conference Report could be achieved by  
19 adopted more robust enforcement in collection  
20 procedures.

21 Thank you.

22 MR. LORENTZEN: Thank you.

1 Ms. Trossevin.

2 MS. TROSSEVIN: Thank you.

3 Good afternoon. I appreciate the  
4 opportunity to be here.

5 As many of you know over the  
6 course of about 13 years in the Chief  
7 Counsel's Office I've had the opportunity to  
8 debate sometimes very vigorously debate a lot  
9 of issues with the folks here at the table and  
10 I appreciate the opportunity to come and  
11 debate another one with you today.

12 Particularly, the relative merits  
13 of a prospective duty assessment system over  
14 the current retrospective system.

15 And it's pretty obvious I think  
16 from some of the prior panels that this is an  
17 issue that is of significant concern for a  
18 broad spectrum of U.S. consuming industries  
19 and retailers and other U.S. importers.

20 Somebody asked me. Well, why do  
21 they care? Why do all these people care about  
22 the retrospective system? So, here's how I

1 explained it.

2                   Okay. I said, imagine a young  
3 man. He's approaching his father for the keys  
4 to the car so he can go out for an evening  
5 with friends. Dad hands him the keys to the  
6 car and he says. Son, I can't tell you what  
7 your curfew is, but if you're late, you're  
8 grounded for six months. And that is exactly  
9 what the dilemma that U.S. importer face here.  
10 They don't know the rules of the road.

11                   Now, someone mentioned this  
12 morning. They said, well, that's just a  
13 business risk. Businesses manage business  
14 risk all the time. Sure they do. Market  
15 risk. It is not the business of the law to  
16 create market risk. To create market  
17 uncertainty. It's the business of the law to  
18 tell us what the rules of the road are so we  
19 can play by those rules.

20                   So, all that -- our proposal is  
21 simple. Give us a prospective system that  
22 will tell us what the rules of the road are

1 and we will pay -- we will play by those  
2 rules.

3 Now, before talking a little bit  
4 more about what that system might look like I  
5 think it's important to keep a couple of  
6 points in mind.

7 First, the purpose of the AD/CVD  
8 laws is to remedy an unfair trade practice.  
9 It is not to chill fair competition. And I  
10 note I think someone said this morning. Well,  
11 they've never heard of import stopping, you  
12 know, because of a dumping order, fairly  
13 traded imports.

14 Read the comments of Alcoa.  
15 Listen to what you're hearing from some of the  
16 other importers today. That business risk  
17 does chill trade and it chills fair trade as  
18 well.

19 The second is this notion that  
20 we're supposed to design our policy and design  
21 our system on the premise that the U.S.  
22 consuming industries and importers really just

1 want to foster unfair trade and benefit by a  
2 lot of cheap imports. And that's just --  
3 that's false and it's really unfair.

4 We should be designing our  
5 policies recognizing that in reality the vast  
6 majority of U.S. businesses want to do the  
7 right thing. They want to trade fairly. They  
8 just want to know what fair trade is.

9 So, I don't see how we can tell  
10 them we don't know quite yet until a year  
11 later, but expect them to know up front.

12 The second thing is -- or the next  
13 thing is that no system is perfect. This  
14 statement is true. The prospective system  
15 won't be perfect nor is the retrospective  
16 system we now have perfect. But only a  
17 prospective system can give you both the  
18 remedy against unfair trade and the  
19 predictability that U.S. consuming industries  
20 and retailers and others need to conduct  
21 business and be competitive. It is the only  
22 system that can do that. And we need a better

1 system.

2 So, what would the system look  
3 like? It would have three essential  
4 characteristics. First, like we've been  
5 talking, it would calculate prospective normal  
6 values and subsidy rates to establish final  
7 duty liability at the time of entry. That  
8 would enable importers to know what a fair  
9 value is and make business decisions on that  
10 basis and it will reward those who do trade  
11 fairly by eliminating or lowering their duty  
12 liability and it will not unnecessarily stifle  
13 free -- fair competition. And it will also  
14 resolve the zeroing issue.

15 The second characteristic is that  
16 it will be a system that will respond rapidly  
17 to changes in import prices on a transaction  
18 specific basis at the time of entry.

19 Now, you know, there's been a lot  
20 of debate back and forth but I can tell you  
21 over the years. When you hear most 99 percent  
22 of the complaints about the dumping system and

1 about evasion are always about what happens to  
2 U.s. prices after the fact? Whether it's new  
3 shippers as Stephanie mentioned. Whether t's  
4 new shippers coming in having one single sale  
5 at a high price and then coming in and  
6 selling, you know, huge volumes at lower  
7 prices. All of these prices -- all of these  
8 issues about lowering or changes prices into  
9 the United States go away. They will  
10 immediately be met with higher duties at the  
11 border.

12 And the third one is a robust  
13 system to review and update the normal values  
14 in subsidy rates.

15 There's no reason that we can't  
16 have such a system and it would -- it would  
17 enhance the remedial effect of the system.  
18 And I think -- on that issue too we have to  
19 recognize we have a real advantage, I think,  
20 over everybody else that has done this system.  
21 And that's our APO process. You don't  
22 discount the fact that when you have -- we

1 have such a more transparent system in part  
2 because of the APO system so think about that.  
3 When you do those prospective value  
4 calculations, everybody is going to know  
5 exactly -- the counsel for all the parties  
6 will know exactly what the basis for that  
7 normal value calculation is.

8 So, if the fellas in the steel  
9 industries are saying. Okay. When that  
10 normal value calculation, the cost of billets  
11 was at "X" dollars, well, most of the data --  
12 most of those costs for those inputs, their  
13 commodity inputs, they're publicly available.  
14 Everybody knows. And everybody in the steel  
15 industry knows when their costs are going up.  
16 So, you already know what the normal value is.  
17 You will have -- you will know when there's a  
18 significant change in the market that may  
19 warrant some sort of a review or update.

20 We can build a system that takes  
21 advantage of that openness and that  
22 transparency to insure than all our normal

1 values and our subsidy rates are kept up to  
2 date but they apply prospectively.

3 Now, much of the opposition, I  
4 think, goes away. Because a lot of the  
5 arguments we've seen against that, they all  
6 seem to assume that we're just going to set  
7 rates and then we're all going to go home and,  
8 you know, leave the rates in place forever and  
9 not do anything about it and that doesn't have  
10 to be the case.

11 I would also point to the fact  
12 that the GAO Report seems to contradict the  
13 notion that rates really increase that often.  
14 As I said, they found 60 percent of the time  
15 rates stay the same. Another, I think it was  
16 16 or 17 percent, they go down. But the  
17 overall trend is that rates trend downward  
18 over time. Not upward.

19 Part of the reason being as I  
20 think as Stephanie mentioned, I'm sorry, but  
21 I don't think it's realistic to assume that,  
22 you know, foreign exporters are just going to

1 triple their home market prices. That's not  
2 the only way you're going to have an issue  
3 with a normal value is it you have an input  
4 cost issue. I mean, serious. Realistically.  
5 Yes. I'll never say never but let's get  
6 realistic. That's really going to be the only  
7 issue you're going to deal with. And I think  
8 you can deal with that under our system.

9 So, we can develop a system that  
10 responds to changing market conditions.

11 The other things that I wanted to  
12 mention here because I thought it was really  
13 sort of interesting. The people that are  
14 opposed to the prospective system keep  
15 pointing to Article 9.3 and saying that means  
16 you can never collect the full amount of the  
17 dumping. And there's nothing in Article 9.3  
18 that says that.

19 The basic rule in Article 9.3 is  
20 that you can't ever collect duties greater  
21 than the amount of dumping. That's the rule  
22 no matter what your system is. The only

1 reason the section on prospective normal value  
2 system talks about refunds is because that's  
3 the only thing that the rule is. It's the  
4 rule is set in terms of maximum duties so you  
5 have to have a process for refunding anything  
6 in excess of the dumping found to exist.  
7 There is nothing, zero, in the agreement that  
8 says you can -- you must collect less than the  
9 dumping or that you'd be somehow precluded  
10 from that.

11 And you don't have to look any  
12 further than Article 9.1 which makes it very  
13 clear that anything -- imposing a lesser duty  
14 is truly discretionary. You always have the  
15 right. It's just simply a matter of the  
16 system you put in place to do that.

17 Now, will there be some time lags  
18 sometimes in duties? Yes. Normal values, you  
19 now, to the extent that margins change. They  
20 don't always just go up. Sometimes they go  
21 down. But if rates change, you will also --  
22 you will collect those additional duties

1 prospectively on the next entries that come in  
2 and it's just a fallacy to assume that, you  
3 know, there's already a perfect match  
4 between-- between rates and entries because we  
5 don't even have that under the current  
6 systems.

7           So, anyway. I will -- I see that  
8 I'm about to run out of my time.

9           So, I would just like to say that  
10 -- my last point is in assessing the relative  
11 merits of the two types of systems, I would  
12 also just urge the department to be honest  
13 about the level of accuracy in any system,  
14 including the current one and in that regard  
15 I would just say. Bear in mind that the rates  
16 for the vast majority of exporters are not  
17 based on their own transactions. They're  
18 based on weighted averages of margins that are  
19 calculated for other countries. Other  
20 companies that they're not affiliated with.

21           Thank you.

22           MR. LORENTZEN: Thank you.

1                   Mr. Paterson.

2                   MR. PATERSON: My name is Rob  
3 Paterson. I'm the President of Tampa Bay  
4 Fisheries headquartered in Dover, Florida.

5                   We employ just under 500 full-time  
6 employees. Our employees all have full  
7 benefits.

8                   Our business is to value add  
9 shrimp by breeding it or coating it for  
10 preparation by the end user. We use imported  
11 shrimp as a raw material, as well as operate  
12 a domestic shrimp dock in Port Arthur, Texas,  
13 that unloads shrimp boats in the Gulf of  
14 Mexico.

15                   I'm here in support of the  
16 Commerce Department adopting a prospective  
17 system of determining antidumping and  
18 countervailing duties.

19                   I request that your report give a  
20 full accounting of the benefits of such a  
21 change to the ability of U.S. companies to  
22 compete globally and to keep jobs here at

1 home.

2 As a company we have already felt  
3 devastating effects in our business due to  
4 unintended circumstances of antidumping shrimp  
5 duties. You see there is no duty on breaded  
6 shrimp. So, we as a U.S. company must compete  
7 with products produced in China and Thailand  
8 with very cheap labor and shrimp with no duty.  
9 The effects have been quite terrible.

10 In 2008 we shut down one plant in  
11 Tampa and permanently laid off 368 people.  
12 This month we shut down our Jacksonville,  
13 Florida, plant and laid off 95 people.

14 Adopting a retrospective system of  
15 determining duties will certainly not fix all  
16 the problems of my company or any U.S. shrimp  
17 processors. But it will benefit to keep us  
18 alive. It will be a great help.

19 The uncertainty in the current  
20 U.S. system for collections of antidumping and  
21 countervailing duties is therefore a matter of  
22 great concern. We support fair trade.

1                   We are also willing to pay our  
2                   fair price for our imports and we negotiate in  
3                   good faith with all of our suppliers.

4                   Under the current system, however,  
5                   we buy imported shrimp. We have no way of  
6                   knowing what the Commerce Department will find  
7                   to be a fair price or the actual duties that  
8                   we will owe on an imported product for many  
9                   months or even years after the purchase  
10                  decision is made.

11                  This is not only potentially very  
12                  costly. It also hinders our ability to make  
13                  sound, informed business decisions. That's  
14                  the last thing that any business wants and it  
15                  puts U.S. companies at a competitive  
16                  disadvantage.

17                  We sell all of our products for a  
18                  fixed sum and have no ability to go back to  
19                  our customers for additional money once the  
20                  final duty rate is set.

21                  From my own experience, I can -- I  
22                  can tell you that the prospective system would

1 reflect more appropriately the manner in which  
2 American businesses operate today.

3 In order to compete with foreign  
4 and domestic competitors we must have open  
5 markets so that we can realize the benefits of  
6 both imports and exports. Placing an  
7 additional burden on American companies which  
8 our foreign competitors do not share, serves  
9 to harm the competitiveness of our business.

10 I want to be clear that we support  
11 strong enforcement of U.S. trade laws.  
12 American companies should have the right to  
13 defend themselves against unfairly traded  
14 imports from abroad.

15 We are not taking exception with  
16 the payment of duties. It is the  
17 unpredictability of the system that  
18 unnecessarily harms companies like ours.

19 If our trading partners can  
20 effectively employ prospective dumping and  
21 countervailing duty system, it seems that we  
22 can also devise a system that protects

1 companies from unfair trade. But also  
2 eliminates the uncertainties for those of us  
3 who have to import.

4 We appreciate the Commerce  
5 Department considering our comments and taking  
6 seriously the task that has been given to you.

7 We hope that your report will  
8 present perspectives of companies like ours  
9 that the prospective system would enhance  
10 predictability for American companies that  
11 import, eliminate the costly administration  
12 burden on the economy and place American  
13 companies on an equal footing with their  
14 foreign competitors without diminishing the  
15 effectiveness of our -- our trade remedy laws.

16 I thank you for this opportunity.

17 MR. LORENTZEN: Thank you, Mr.  
18 Paterson, and thanks to all the witnesses and  
19 in particular if you've come to Washington  
20 today for this hearing, I very much appreciate  
21 your taking the time to do that.

22 I would like to just begin this

1 round of questioning to focus on this issue  
2 that's been raised periodically about the  
3 uncertainty and the unpredictability. And I  
4 think what Marguerite referred to as the  
5 consequent trade chilling effect.

6 And I guess I've been trying to  
7 sort out in my mind and I realize this won't  
8 be a scientific estimate. But if we were to  
9 assume that we change to a prospective system  
10 and then assume that a prospective system had  
11 the hallmarks that were among those that you  
12 identified of having review opportunities and  
13 that sort of thing. It seems to me that in  
14 the business world and any real world,  
15 litigation in and of itself is unpredictable  
16 and it creates transaction costs in and of  
17 itself.

18 And so it seems to me that what we  
19 may be looking at here is the distinction  
20 between what uncertainty and associates costs  
21 stem from the mere fact of being in a  
22 proceeding and being in a proceeding that may

1 have later review opportunities and being in  
2 one where the final liability is not known  
3 until later in time.

4 And so I guess I would be  
5 interested to hear a little bit of all of your  
6 thoughts about whether that's a legitimate way  
7 of sort of distinguishing things. Because as  
8 I see, to the extent that the department  
9 doesn't want to chill legitimate trade. And  
10 so our concern would be. Okay. In fulfilling  
11 our statutory obligations how that can be  
12 reasonably avoided.

13 And as other witnesses earlier  
14 today have mentioned, you know, whether I  
15 agree everyone's imperfect, but at least there  
16 is a genuine effort to be as accurate as one  
17 can possibly be given the parameters within  
18 which we work. But I'm trying to get a more  
19 sort of precise sense of this uncertainty  
20 factor and how much of it is associated with  
21 the fact that the liability ultimately may not  
22 be known and how much of it is associated with

1 the fact that you are in litigation and you  
2 would be in a litigation system that would  
3 have review opportunities because Congress  
4 would make sure it did.

5 Thank you.

6 MR. TAYLOR: I'll start.

7 One thing that I think is  
8 important as well and I'm going to take a step  
9 back from your question in the point that Ms.  
10 Trossevin made is predictability. But  
11 predictability is also important for the  
12 domestic industry as well. And I think there  
13 is a lot of advocacy going on saying  
14 predictability in regard to importers. But  
15 predictability is very important for domestic  
16 industry knowing that to the extent that there  
17 is actual dumping occurring and that is  
18 determined in a review and that has increased,  
19 that there are going to be duties collected on  
20 that. And, again, the GAO Report does go to  
21 identify some problems with collecting but  
22 those are issues that can be addressed. And,

1 again, the retrospective system versus  
2 prospective system is not necessarily going to  
3 address those issues directly.

4 With regard to the chilling effect  
5 on fair trade, I don't think there is a  
6 chilling effect on fair trade to the extent  
7 that the prospective system and retrospective  
8 system, if there is a -- if there are parties  
9 who are engaged in dumping or engaged in  
10 subsidy activities or receiving subsidy and  
11 they know that I think an importer has the  
12 responsibility to do some due diligence. And  
13 there may not be perfect certainty but the  
14 point was made earlier that people have the  
15 ability to actually go and do calculations and  
16 have some framework in which to operate. And  
17 just like there's a known and Ms. Trossevin  
18 made the point that normal values are  
19 typically known as people are engaging in  
20 their activities.

21 And as their seen, you know -- if  
22 that is the basis for kicking off a review as

1 she would propose, well, that could also be a  
2 basis for people who are adjusting their  
3 prices to set their prices at the time in  
4 order to maintain some certainty.

5 And, again, there is no perfect  
6 system but I think the retrospective system  
7 does aim and lead more towards accuracy in  
8 that sense.

9 MS. TROSSEVIN: I think -- oh, I  
10 turned it off. I didn't realize. Good thing  
11 I didn't do anything like this.

12 In terms of -- you're right. I  
13 mean, there's always litigation risk in  
14 business. But I don't think the risk that  
15 we're talking about here as I said is quite  
16 the same.

17 You will certainly have in a  
18 review process, we always -- we would probably  
19 have judicial review of that review process  
20 like we do now. And we'll certainly have to  
21 take account of that.

22 Knowing something about how

1 businesses operate though and I was actually  
2 in business for 10 years before I went to law  
3 school, I suspect really if you have a very  
4 open and transparent system for establishing  
5 a normal value, you will have your debates and  
6 you will have your litigation.

7 I would be not the least bit  
8 surprised though if you didn't have less  
9 litigation based on -- because part of this is  
10 going to just -- it will depend on some of the  
11 business judgments. Because U.S. business  
12 will make a calculated assessment as to  
13 whether or not that normal value -- on both  
14 sides. Whether it's the side that thinks it's  
15 a little too high or it's a little bit too  
16 low. But there's going to be a question when  
17 they know what they is. If it's a little bit  
18 off, are they going to take the time and  
19 effort and pay all the lawyer's fees to go  
20 ahead and fight that?

21 I mean, we've seen many times in  
22 the department where we've litigated cases for

1 two years and at the end of the day you get  
2 back the remand and the margin is changed less  
3 than one percent. I would suspect you're not  
4 going to see a lot of that because businesses  
5 just will not -- it's not calculation for  
6 them.

7 So, I think you would probably see  
8 litigation go down. Because I do believe that  
9 a lot of -- actually, I think a lot of  
10 domestic producers will probably find that  
11 they actually like knowing what a fairly  
12 traded price is.

13 Sure, they're going to want to  
14 know what the market is, but you tell them  
15 what a fairly traded price is and they can be  
16 sure that imports are at that price.

17 I thought somebody -- the analogy  
18 to suspension agreements I thought was a good  
19 one. Because by and large the parties to  
20 suspension agreements tend to like them. They  
21 know the rules of the road. They know what  
22 the reference price is and the domestic

1 industry usually is already fine with the  
2 reference price before you go into the  
3 agreement. And they work pretty smoothly.  
4 They're not very often litigated.

5 We've had what? A couple of  
6 litigations over suspension agreements. Not  
7 much. And I think you'd probably find over  
8 time that it would be somewhat similar on the  
9 -- on a prospective normal value system.

10 MR. PATERSON: I'd like to make a  
11 comment from a business side. From a small  
12 business side.

13 Today as I set here and listen to  
14 all the panels, I kind of feel like a mosquito  
15 among eagles. But yet I know from a business  
16 -- from a business view I probably represent  
17 most of the majority of the importers. Maybe  
18 not in volume, but in numbers.

19 We don't have giant staffs of  
20 legal departments and for us to try to  
21 determine what the antidumping duties are  
22 going to be on next year, especially on

1       somebody that we don't even buy product from,  
2       it's impossible. So, that is a big -- a big  
3       question for us. And I can tell you, we make  
4       decisions on buying of what is going to --  
5       what is going to be the least problem for us.

6               I think that's probably the thing  
7       that should be done by most small businesses.

8               There's a lot of cost. I mean,  
9       there's the thing of not knowing some of these  
10      things.

11              I can remember when a seafood  
12      importer your bond was \$50,000. My bond until  
13      recently as \$1.8 million. Bonding companies  
14      they don't understand everything either so  
15      they just want to make sure they're covered.  
16      So that \$1.8 comes out of my working capital.  
17      And I think we all know from listening to the  
18      news, working capital is hard to come by now.

19              So, those are just -- maybe to  
20      some people they're small. Small potatoes.  
21      To us it matters whether or not we're going to  
22      be in business.

1 MS. SMITH: Mr. Paterson, you  
2 actually raised the area that I was going to  
3 ask about.

4 At Customs we frequently hear from  
5 small and medium-sized enterprises on both  
6 sides of the equation, both domestic producers  
7 and importers. And I would like to -- I think  
8 what you laid out are some very interesting  
9 points. I'd like to ask your colleagues on  
10 the panel if they could also add their  
11 thoughts on the impact of either system on  
12 small and medium sized -- small and medium  
13 sized enterprises, both in the domestic and  
14 the importing perspective.

15 MS. TROSSEVIN: Well, I think Mr.  
16 Paterson probably hit on it best. I mean,  
17 anytime you lower transaction costs you  
18 benefit small and medium sized businesses.  
19 And when you have the kind of, you know,  
20 unknown risks or contingent liability, that's  
21 a significant transaction cost for small  
22 businesses.

1                   So, I think they would, you know,  
2                   it's -- I think the prospective system has to  
3                   be easier on them than it would be -- than a  
4                   retrospective system is.

5                   MR. TAYLOR:   And what we hear  
6                   every day is from small and medium sized  
7                   producers who are as you mentioned also going  
8                   to Customs and identifying that to the extent  
9                   that a company is dumping and they are  
10                  receiving subsidies, if they know that that is  
11                  not going to be adjusted, then they are really  
12                  having difficulties maintaining the capital  
13                  infrastructure because to keep their business  
14                  operating against unfair trade.  And if you  
15                  have a system in place that doesn't allow for  
16                  adjustments for significant increases in  
17                  dumping or significant increases in  
18                  subsidization that like we said.  You can get  
19                  in this endless cycle and you may not catch  
20                  up.

21                  If they don't ever catch up, then  
22                  the -- the fair trade remedies that have been

1 put in place by Congress are not being  
2 effectively taken advantage of and I  
3 understand the concerns that are out there.  
4 But part of the retrospective system that's is  
5 also overlooked is there is a publication that  
6 comes out and while dumping margins will  
7 adjust, companies have the ability to look at  
8 cash deposit rates. And also should be doing  
9 some diligence on who they're selling to --  
10 who they're buying from.

11 MR. PARKHILL: Hi. Marguerite, in  
12 your presentation you said part of the way to  
13 insure for both parties under a prospective  
14 system would have a robust system that updates  
15 normal values regularly and frequently.

16 Currently we're having a  
17 considerable number of cases where we need to  
18 sample in order to deal with the volume of  
19 either requests that have come in or the  
20 companies that are being investigated.

21 Given the robust and a system with  
22 frequent updates, can you describe what that

1 means in terms of the administrative burden  
2 for Commerce.

3 Thank you.

4 MS. TROSSEVIN: Well, I do -- I  
5 mean. It's hard -- it's always hard to talk  
6 about it since we haven't designed the system  
7 yet.

8 And -- but in terms of reviews and  
9 actually I think Stephanie sort of addressed  
10 this. I mean, you have the Customs burden  
11 which is lower.

12 I think on the Commerce side,  
13 you're certainly going to have a similar issue  
14 when you -- I mean, if you have industries  
15 where there's a large number of exporters,  
16 very decentralized industries. You won't  
17 necessarily be able to do importer-specific  
18 normal values for every single person. So,  
19 we'll have to have something. But I do think  
20 if you have a review system where you're  
21 really focused on the normal value, you're not  
22 as focused on the other issues that -- that --

1 that narrower focus probably should enable you  
2 to have the resources, I would think, to do  
3 more reviews.

4 And it also depends on, you know,  
5 what kind of a system we set up. I mean,  
6 there is -- there may be lots of things that  
7 or mechanisms that we could use in that kind  
8 of a context that we don't do in the  
9 retrospective system. You may have reporting  
10 requirements. You could have, who knows. I  
11 mean you could develop a system where it might  
12 even make it easier for you to do a lot of  
13 reviews because it wouldn't necessarily be all  
14 done at once. I don't know. But I think that  
15 the very fact that you're going to be focused  
16 more on one issue which is what is that fairly  
17 traded price, that would make it easier on the  
18 department.

19 MR. LORENTZEN: Okay. Thank you  
20 very much.

21 I'd like to move on to our sixth  
22 and final panel today which is comprised of

1 Toni Dembski-Brandl from the Target  
2 Corporation, David Yocis from the Coalition  
3 for Fair Lumber Imports and Matthew Fass from  
4 the Maritime Products International.

5 Okay. Thank you for joining us.

6 Toni, do you want to kick the last  
7 panel off to a roaring start here?

8 MS. DEMBSKI-BRANDL: Well, hi.

9 Again, I want to thank you for the  
10 opportunity for coming to speak to you about  
11 this issue.

12 My name is Toni Dembski-Brandl.  
13 I'm Senior Counsel with Target Corporation.  
14 And in that role part of my responsibility is  
15 to advise the corporation on matters related  
16 to international trade, specially trade remedy  
17 laws.

18 I want to begin by just spending a  
19 second talking about Target. Target is the  
20 second largest general merchandise retailer in  
21 the United States. We employ nationwide over  
22 300,000 employees in over 1,700 stores in 49

1 states and we also have 38 distribution  
2 centers.

3 We have the country's second  
4 largest importers by container volume. And  
5 Target is proud to support the communities in  
6 which it does business by contributing back  
7 five percent of its profits.

8 Target is a company that's  
9 demonstrated by its community giving that  
10 wants to do well by doing what is right. And  
11 part of what is doing right is paying a fairly  
12 traded price for the goods it purchases.

13 Under the retrospective system the  
14 price paid by Target has little to do with  
15 whether Target or the producer has engaged in  
16 unfair trade activities.

17 Target is not in a position simply  
18 and cannot simply determine a fairly traded  
19 price and really wants the DOC to help them  
20 determine what a fairly traded price as one  
21 that's making the purchasing decision.

22 For example, in the furniture

1 case, there are dozens and dozens of producers  
2 with separate rates. Dozens of companies are  
3 put up for a review on an annual basis by the  
4 industry and yet only a few companies end up  
5 being reviewed. And as you know that in the  
6 furniture case, only one or two of those  
7 companies end up being representative of the  
8 entire industry.

9 The rate that's established has  
10 little to do with whether or not Target  
11 participated in unfair trade practices.

12 I really want to take this moment  
13 too to respond to a comment that was made  
14 earlier that importers are in a position to e  
15 able to determine rates within one one-  
16 hundredth of a percent.

17 I have to tell you in my  
18 experience I have yet to get within 40 percent  
19 of a rate when I am determining it and have  
20 been as much as 120 percent off in what I  
21 thought the assessed rate would be.

22 Now, granted my experience is with

1 consumer goods and nonmarket economies. But  
2 still I think it's a vast miss statement to  
3 say that we're in any position to be able to  
4 determine those rates. Because after all, we  
5 aren't related to those entities. Those  
6 entities change at Target. Target has a  
7 vendor base that switches with incredibly --  
8 an incredibly rapid way. And that's what  
9 these consumer cases in the NME context have  
10 in common.

11 Target may purchase from any given  
12 producer for a year or two, but we may not  
13 even have a relationship with that producer  
14 when the final rate is determined.

15 I'm sorry. All these things I  
16 wanted to say but as I listen to everybody  
17 talk I kind of got -- wanted to say more so I  
18 apologize. My notes aren't quite in order.

19 Let me just say. It's our  
20 understanding that dumping duties are intended  
21 to be remedial. That the duties are supposed  
22 to adjust market price of imported goods to

1 make you as competitive with imported  
2 products.

3 But under the current system, the  
4 assessment of dumping duties is too far removed  
5 from the purchasing decision that it's hard to  
6 understand how it's supposed to be remedial.  
7 It no other way from our perspective it seems  
8 completely punitive.

9 I mean, in our situation we had  
10 duties assessed as far as six years after the  
11 day of importation. Again, from that timeline  
12 it's impossible to know how that's supposed to  
13 influence our purchasing decisions. And the  
14 U.S. industry it seems to us would be -- would  
15 receive more benefit from having those price  
16 adjustments be made closer to the time of the  
17 importation.

18 Instead, the retrospective system  
19 as it exists now creates market uncertainty  
20 and again we don't believe that's the  
21 objective of the statute.

22 This market uncertainty is not

1       only being taken advantage to obtain payments  
2       to get removed from annual reviews, but also  
3       during negotiations processes. U.S.  
4       industries will threaten a review in order to  
5       obtain a certain percentage of business.

6                 We don't believe, again, that this  
7       is the intent of the statute and a prospective  
8       system would take away that market uncertainty  
9       and unfair leverage.

10                A system that responds immediately  
11       to price changes will have the immediate  
12       effect of changing purchasing decisions and  
13       give petitioners the remedy actually intended  
14       by the statute. It will give Target and other  
15       importers the ability to buy their goods at a  
16       fairly traded price and to know what a fairly  
17       traded is at the time of importation. It will  
18       remove the punitive nature of the  
19       retrospective assessments.

20                Thank you.

21                MR. LORENTZEN: Thank you.

22                David.

1 MR. YOCIS: Thank you, Mr.  
2 Chairman.

3 My name is David Yocis from the  
4 law firm of Picard Kentz & Rowe here today on  
5 behalf of the Coalition for Fair Lumber  
6 Imports which is an association of domestic  
7 entities that are affected specifically by  
8 unfair trade with regard to software lumber  
9 products.

10 A number of our members have been  
11 petitioners in past, ended up being  
12 countervailing duty actions with respect to  
13 Canada and although at the moment, trade in  
14 software lumber between the United States and  
15 Canada is governed by a special agreement. In  
16 our experience, our access to effective trade  
17 remedy laws is essential for the United States  
18 to be able to negotiate agreements with Canada  
19 that successfully discipline unfair trade  
20 practices.

21 In listening to the discussion  
22 this afternoon and in reading through the

1 various written submissions that have been  
2 made, it seems that for all the -- the  
3 difference of opinion on the question of  
4 whether a prospective or retrospective system  
5 is better overall, it does seem that there is  
6 a fair amount of agreement on a number of  
7 things.

8 It seems that there is a consensus  
9 that the retrospective system is more accurate  
10 in that it insures that the amount of the  
11 duties that are paid are equal to the amount  
12 of dumping or subsidy that is found to exist  
13 on those imports.

14 At the same time, there also seems  
15 to be consensus that a prospective system  
16 provides more certainty to importers, although  
17 it provides less certainty to domestic  
18 producers in terms of their ability to see  
19 that injurious dumping and subsidization will  
20 be fully offset.

21 Even if as has been suggested this  
22 afternoon, Article 9.3 of the Antidumping

1 Agreement allows domestic producers to seek  
2 changes to the amount of the either the duty  
3 rate or a prospective normal value or a  
4 subsidy rate. Even if that's true, importers  
5 can always go back as far as the law allows  
6 and obtain a retrospective refund of duties  
7 that have been paid.

8 If domestic producers have the  
9 same opportunity than even if you called a  
10 prospective system it is effectively a  
11 retrospective system that doesn't provide the  
12 certainty that importers are looking for.

13 And so almost by definition it  
14 would seem that a prospective system is one in  
15 which importers have a right to go back and  
16 request refunds if the amount of dumping is  
17 lower than the duty or cash deposit paid, that  
18 domestic producers don't have in going in the  
19 other direction.

20 It seems that everyone is in  
21 agreement that those are the features of  
22 prospective and retrospective systems. And

1 people have different perspectives as to which  
2 of those concerns might be more important than  
3 others.

4 One of the things that I think in  
5 looking at this issue from our perspective  
6 specifically in terms of the software lumber--  
7 the software lumber market and the software  
8 lumber industry, and the particular nature of  
9 the subsidies and the government practices  
10 that encourage and facilitate dumping, that we  
11 are dealing with in our experience, it seems  
12 that we have a very hard time understanding  
13 how in practice a prospective system would  
14 work.

15 The software lumber market is one  
16 in which there is a tremendous amount of price  
17 volatility and it seems hard to -- and that  
18 price volatility also feeds directly into the  
19 amount of dumping and the amount of subsidy  
20 that exists at any given moment in time.

21 It seems difficult for us to  
22 understand how the Commerce Department would

1 be able on a prospective basis to continually  
2 adjust a dumping rate or a prospective normal  
3 value or a subsidy margin in order to keep up  
4 with the market. And so you'd always have --  
5 you would always have a place where there is  
6 a disconnect between the duty rate that's  
7 being charged at any given moment and the  
8 amount of unfair trade that is actually  
9 occurring. And that gap itself is trade  
10 distorting.

11 And as been said, this is also an  
12 industry where a lot of the information that  
13 would go into the calculation of the amount of  
14 dumping or subsidy occurring at any given  
15 moment is actually quite transparent.

16 So, from our point of view, a  
17 prospective system would create a greater  
18 degree of market distortion than a  
19 retrospective system does even with the  
20 uncertainty as to the precise amount of -- of  
21 dumping or subsidy that is occurring at any  
22 given moment and the amount of duty that will

1 eventually be assessed.

2           So, from our perspective, I think  
3 the details of how a prospective system would  
4 work are difficult to discuss in the abstract.  
5 From our specific perspective from our  
6 industry, we would see some additional reasons  
7 in addition to the general concerns that have  
8 been voiced by a number of people here and on  
9 both sides of the issue, that would make a  
10 prospective system difficult to implement in  
11 practice for us.

12           Thank you.

13           MR. LORENTZEN: Mr. Fass.

14           MR. FASS: Thank you.

15           Thank you, Mr. Chairman, and to  
16 the panel. Good afternoon.

17           Thank you for the opportunity to  
18 speak today.

19           My name is Matthew Fass. I'm  
20 President of Maritime Products International.  
21 We're a family-owned and operated company,  
22 seafood company, based in Virginia and with

1 its roots in the seafood industry for four  
2 generations, over 100 years.

3 My great-grandfather actually  
4 began the industry as an oysterman in  
5 Portsmouth, Virginia, and it developed in the  
6 years in one of the largest fresh fish  
7 operations along the Eastern Seaboard with  
8 locally owned fleet of fishing boats and a  
9 chain of restaurants.

10 The industry has changed over the  
11 years with domestic production holding steady  
12 at sustainable levels and imported products  
13 fueling the majority of consumer growth.

14 As times have changed, so have we  
15 and the focus of our company today is on  
16 importing frozen seafood from all over the  
17 world for U.S. distribution to supermarkets,  
18 restaurants and value added processors.

19 As a direct importers and  
20 distributor to major food service and retail  
21 partners, an industry with several ongoing  
22 antidumping actions, we have extensive first-

1 hand experience with the current U.S. system  
2 of retrospective duty application.

3 I believe that the retrospective  
4 system represents one of the most problematic  
5 and harmful aspects of our system trade  
6 remedies. It is not an exaggeration for me to  
7 say that it may represent the single most  
8 irrational issue I've dealt with in my  
9 professional career.

10 It does not serve the goals in my  
11 opinion for which it was created and based on  
12 the way it functions in reality and the  
13 incentives it creates, it actually creates  
14 situations that represent the exact opposite  
15 of its intentions.

16 For all of the theories and goals  
17 of the system and so many of the issues that  
18 create ongoing debate much boils back to one  
19 singular point. Simply stated, it is  
20 irrational and frankly impossible for us to  
21 conduct business when we cannot know the cost  
22 of the goods or service that we are selling.

1                   Please note that we are not  
2                   talking about having some generally good idea  
3                   on price. But just subject to some tiny  
4                   marginal, even predictable tweak down the  
5                   road.

6                   In our specific seafood cases and  
7                   I'm sure ones from other industries were are  
8                   talking about being unsure if product will be  
9                   bought, sold and in our cases long since  
10                  eaten, will end up having its cost increase by  
11                  10, 50, 100 or even 200 plus percent at some  
12                  future date. While we all wish we worked in  
13                  industries with this kind -- with these kinds  
14                  of profits margins in the real world we are  
15                  talking about single digit profits.

16                  The retrospective system can  
17                  easily put companies out of business overnight  
18                  and at the very least it forces out literally  
19                  the days the duties begin. Companies not only  
20                  with the most experience but I would suggest  
21                  the ones with the most integrity and long-term  
22                  focus in terms of helping build stable growth

1 U.S. market.

2 We often hear the term "unintended  
3 consequences" tossed about. With this issue  
4 I almost believe it is disingenuous to  
5 classify any o f the related issues we have  
6 heard discussed today as an unintended  
7 consequence.

8 We have created a system where the  
9 direct purchaser of good cannot know the cost  
10 of goods sold until long after the goods are  
11 sold and drastic changes can be made with no  
12 relation whatsoever to anything done by the  
13 importer or even the exporter, yet the  
14 complete responsibility for such changes are  
15 borne by the importer. Rather than unintended  
16 consequences in my opinion is completely  
17 foreseeable and predictable what type of  
18 activity the system will create.

19 In terms of some of the supposed  
20 goals of the retrospective duties, in my  
21 opinion there are only two types of importers  
22 in general who will be directly involved with

1 this type of system. Either those ignorant of  
2 the way of the law and the way the duties  
3 actually function and those who have been  
4 caught up and then put out of business  
5 literally overnight. Or those by definition  
6 are more high risk and enter things with a  
7 specific plan either right on the edge legally  
8 or well over the edge of how to play the  
9 system to their benefit.

10 Surely, this cannot be the  
11 intended goal of our system.

12 In terms of incentives for duty  
13 evasion and the uncollected duty problem, I'm  
14 convinced from what I've seen happen in our  
15 industry and knowing similar stores from  
16 others that this system in fact maximizes the  
17 incentives for duty evasion and exacerbates  
18 the problems with collection.

19 While I applaud every effort to  
20 prosecute illegal evasion of duties, a system  
21 that assigns final duties an average of three  
22 to four years after importation is one that

1 will never ever succeed at getting at more  
2 than the tip of the iceberg.

3 Similarly, importers acting with  
4 absolute integrity yet caught up in higher  
5 duties because of things such as changes in  
6 surrogate values from nonmarket economies or  
7 other such complicated issues and ultimately  
8 a unable to pay and therefore given -- defined  
9 as having uncollected duties, this situation  
10 is maximized by the system we have in place  
11 today.

12 I would really challenge anybody  
13 to lay out how the retrospective system truly  
14 serves in the most accurate way to value our  
15 duties. I certain respect those that have  
16 that opinion and who have made that statement.  
17 But let's be candid about it. To have a  
18 serious discussion about duty accuracy we  
19 would have to get into the nitty-gritty  
20 details of things such as how to find the  
21 appropriate surrogate values for items such as  
22 pangasius fish from Vietnam or crawfish tail

1 meet from China when in fact there may not be  
2 any or there may be short domestic supply and  
3 there is no other country than the subject  
4 country that produces those items. So, we are  
5 continuously dealing with situations that are  
6 where again well meaning and well respected  
7 lawyers may fight about the proper surrogate  
8 input value but in terms of finding that as  
9 true accuracy of what a dumping margin may  
10 have been looking backwards, I have a hard  
11 time equating that.

12 In another way while I'm not an  
13 expert to suggest exactly how a prospective  
14 system would function, there is no fundamental  
15 reason I can think of as to why a prospective  
16 system cannot be at least as effective as any  
17 other in terms of however we define accuracy.  
18 In fact, I would suggest a prospective system  
19 would almost certainly change the focus to a  
20 more real time action on behalf of those that  
21 evaluate the duties and would lead most likely  
22 to a more accurate system.

1                   There has been a lot of talk  
2 earlier today about some of the issues  
3 involved in terms of lawyers and petitioners.  
4 I think the word extortion in fact was used in  
5 terms of some of the ongoing settlements that  
6 probably a lot of folks may not even know  
7 about.

8                   And if I can mention one quick  
9 personal story in this realm.

10                   We have a situation in one  
11 particular ongoing seafood case where  
12 literally one entity has seemingly made its  
13 deals with the petitioners and the  
14 petitioners' attorneys to maintain zero or a  
15 low import rate with no challenges to any of  
16 its actions because of the deals that have  
17 been cut. And yet anytime any other company  
18 such as ours has tried to work on things such  
19 as a scope review, we are aggressively  
20 challenged by the petitioners' attorneys.  
21 This has led to a virtual monopoly situation  
22 with a particular product which putting aside

1       seems to be an outcome completely at odds with  
2       the stated goals of our system and may in fact  
3       be legal in some sense, although I would  
4       certainly think there would be some antitrust  
5       issues. I just cannot believe that is really  
6       the goal of our system.

7               And yet back to the unintended  
8       consequence comment, it is still about an  
9       importer doing anything they can to create  
10      some level of certainty with their cost of  
11      goods sold. And so it is hard for me to  
12      believe that this is not ongoing in other  
13      industries as well.

14             To the comment earlier about how  
15      our system leads to the most transparent  
16      regime of trade laws and that in fact promotes  
17      global trade. With all do respect I cannot  
18      disagree more with this comment.

19             I believe what is created with the  
20      retrospective system is the exact opposite.  
21      A system that has major and a growing under  
22      belly of issues rarely understood other than

1 by those who are involved in the trenches of  
2 these cases.

3 To this point. Yes. I have a bit  
4 of passion on this issue and I take my work  
5 home with me as many of us do I'm sure. But  
6 the best way for me to see this in perspective  
7 is when I speak with friends who aren't  
8 involved in trade at all or certainly seafood  
9 or get anything with global trade. When I try  
10 to explain the very basics of a retrospective  
11 system I'm met always with one of two  
12 responses. Often laughter at the start but  
13 then usually followed with disbelief. Surely,  
14 I'm getting something wrong. How can we have  
15 a system in place where I cannot possibly know  
16 the cost of my goods until many years later  
17 and then be forced literally to hire a team of  
18 lawyers to even participate in the most modest  
19 way in my business? To this I have no answer.

20 A prospective system would benefit  
21 all parties. I am confident of this. At  
22 least as much as others, the domestic

1 industries. It would bring back overnight the  
2 importers who have the product knowledge,  
3 experience and goals to develop functional,  
4 long-term markets with stability and  
5 transparency.

6 I believe there are some domestic  
7 industries who truly believe they benefit from  
8 the chaos of the retrospective system but I  
9 also think that at least some do not fully  
10 realize the system that is in place and what  
11 has been created in the under belly of the  
12 trade that goes on due to the retrospective  
13 systems. Or perhaps they -- or perhaps  
14 they're over-estimating or relying on poor  
15 theories as to have prospective systems would  
16 function in reality.

17 Perhaps they do, in fact,  
18 understand some of these things and maybe I  
19 underestimate the trade bar in Washington,  
20 D.C., who ware without a doubt in mind the  
21 greatest beneficiaries of a retrospective  
22 system because of the conflict it creates.

1                   Regardless, the bottom line is  
2                   that a prospective system I believe would  
3                   benefit many and better serve the stated  
4                   goals.

5                   I'm not an expert s to what form  
6                   the system should take and in the complicate  
7                   role of global trade nothing can be perfect.  
8                   But I'm confident that it would better serve  
9                   every stakeholder in the system.

10                   Thank you.

11                   MR. LORENTZEN: Thank you very  
12                   much and let me extend the same appreciation  
13                   to you as I did to Mr. Paterson for coming to  
14                   Washington today to share your comments and  
15                   views.

16                   Listening in particular to Mr.  
17                   Fass' statement, it was running through my  
18                   mind that and I'm not taking a position one  
19                   way or the other about the appropriateness or  
20                   not of aspects of the system, but that one of  
21                   the sort of challenging issues here is to  
22                   distinguish between the issue of

1       retrospectivity and prospectivity and a lot of  
2       the other features of the system that are  
3       driven by arguably unrelated things, whether  
4       it's choosing to have a nonmarket economy  
5       methodology for certain countries or having to  
6       have a policy or very detailed and specific  
7       adjustments as a result of court rulings.

8                   And the accumulation of all of  
9       that kind of creates what I perceive to be the  
10      frustration that you feel. And I guess it  
11      leads me to ask myself the question. Should  
12      Congress decide that this would be a an  
13      appropriate thing to do to try to change from  
14      retrospective to prospective, do any of you  
15      believe that that could be done in isolation?  
16      Or would it rather have to be done in  
17      conjunction with a wholesale set of changes  
18      with respect to the unfair trade laws?

19                   I'm talking about rather than  
20      policy wisdom to feasibility. In other words,  
21      is it so entangled in the nature of  
22      antidumping and countervailing duty laws that

1 you couldn't address one without having to  
2 address the whole -- the whole package?

3 Thanks.

4 MR. FASS: I obviously am not an  
5 expert in formulating policy, but I would off  
6 the top of my head I do think that just the  
7 retrospective versus the prospective nature  
8 could be handled in a -- in close to complete  
9 isolation if not completely in isolation.

10 The example that comes to mind as  
11 to -- you did hit on the head are a number of  
12 frustrations. Especially with seafood we're  
13 dealing a lot with nonmarket economy cases.

14 But an example that comes to mind  
15 right now is in the ongoing case with  
16 Pangasius for example, which is a fish from  
17 Vietnam. I believe and I am not -- again, I'm  
18 n to a direct importer. I can't be right now.  
19 But my understanding is there's a pretty rough  
20 argument going on where the petitioners are  
21 trying to argue for a new or different  
22 surrogate value for the wrong -- for the

1 actual species itself that would have a  
2 significant effect and, you know, reasonable  
3 people will disagree about what they're  
4 arguing because certainly nothing that I can  
5 anticipate as an importer or have that much  
6 effect on. But the crux -- the nut of the  
7 whole thing is for me is if they were -- for  
8 those who are the direct importers of that  
9 product, they are successful in that argument.  
10 And right now pangasius from Vietnam I should  
11 say that there are several exporters with low  
12 to zero percent duties. That would change  
13 overnight because of this one change in  
14 surrogate value. So, in effect, folks would  
15 be saying, well, because of this new  
16 calculation you have been dumping for the last  
17 several years.

18 To me the prospective versus  
19 retrospective aspect of this would address  
20 that. If that said and that said, then we'll  
21 pay the duties going forward based on this new  
22 calculation. But that needs to be forward-

1 looking not backwards because I can have no  
2 effect really on that discussion. It's all  
3 about whether or not I'm gong to be assessed  
4 that penalty backwards looking.

5 So, I think it really is a  
6 separate issue. It doesn't have to be tied in  
7 with all the other issues.

8 MS. DEMBSKI-BRANDL: I agree with  
9 statement you certainly could separate NME  
10 from the retrospective/prospective. I think  
11 the reason you're hearing a correlation  
12 especially from the importers is just the  
13 astounding rates that are been assigned in  
14 those NME cases.

15 We're seeing rates of 100, 200, up  
16 to 300 percent. I mean, in the old days.  
17 I've been doing this a little while. When a  
18 one, two, six ten percent adjustment, that's  
19 unfortunate. Right? Might be able to throw  
20 that into the bucket that some of the people  
21 up here said a risk of doing business.

22 The 200 percent, 176 percent

1 assessments five years later. That's business  
2 destroying and those cases are new and those  
3 rates are new. And I think that's why you're  
4 hearing such frustration from the importers  
5 here.

6 I mean it's just -- those numbers  
7 are so high. They're really creating a sense  
8 of urgency among us and demands from our  
9 business clients that we figure out something  
10 to do about this. I think that's why you're  
11 hearing the tie. It's just because of the  
12 surge in the -- let me say the word China  
13 cases. There are more of them now and, you  
14 know, again we want to pay a fairly traded  
15 price.

16 I don't want to say that the China  
17 cases are in anyway wrong and the rates may be  
18 fairly assessed ultimately, but we need to  
19 know that earlier in the process. I can't  
20 imagine if you weren't a \$60 billion company  
21 getting a bill for \$5 million because you  
22 wanted to sell bedroom furniture in your

1 little mom and pop shop. Can't even imagine  
2 what that feels like.

3 So, I think that's why you're  
4 hearing the urgency and the connectivity.

5 MR. YOCIS: If I could just add.

6 I'm here today on behalf of the  
7 Canadian Lumber -- of the U.S. Lumber  
8 Coalition concerned with Canada. I'm not sure  
9 that Canada has a market economy with respect  
10 to timber which is the sort of the root of our  
11 problem. But we don't use a nonmarket economy  
12 methodology and so those issues are not here  
13 today.

14 So, that's not directly an issue  
15 for the Coalition.

16 Listening to what's been said  
17 today though I would just have to say while I  
18 definitely appreciate the -- the -- the  
19 situation of an importer who has been buying  
20 a product that the importer thought was fairly  
21 traded or thought would be found not to be  
22 dumped, and then three years later it's

1 discovered that this product has been dumped  
2 for three years, that that is a problem for  
3 the importer to discover that.

4 It's also a problem for the  
5 domestic producers who discover that they have  
6 been competing against or finally able to show  
7 that they have been competing against unfairly  
8 traded goods for three years and have no  
9 relief from that.

10 So, I think that also is a part of  
11 the equation that has to be considered in  
12 deciding how to -- how to deal with -- with  
13 this issue.

14 MR. LORENTZEN: All right. Well,  
15 I guess that brings us to a close for the day.

16 Let me thank our last panel very  
17 much for their comments and their testimonies.

18 Let me thank all of the panels  
19 that we've had here today. I think we've  
20 gotten a thorough sort of exposition of the  
21 issues before us and we appreciate both the  
22 written submissions and the oral testimony

1 that we've received in order to help us do  
2 what we need to do which is to develop this  
3 report.

4 So, with that, I would like to  
5 thank you all for coming today and you'll be  
6 hearing from us down the road.

7 Thank you.

8 (Whereupon, the above-entitled  
9 matter was concluded at 3:37 p.m.)

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