

**ACAHA**  
American Consumers for  
Affordable Homes

October 9, 2003

The Honorable Jim Jochum  
Assistant Secretary, Import Administration  
Central Records Unit, Room 1870  
U.S. Department of Commerce  
Pennsylvania Ave. & 14<sup>th</sup> Street, NW  
Washington, D.C. 20230

Re: Treatment of Section 201 Duties and Countervailing Duties

Dear Mr. Jochum:

American Consumers for Affordable Homes (“ACAHA”) hereby makes the following submission regarding the proposed Federal Register notice of September 9, 2003 requesting comments as to whether Section 201 duties and countervailing duties should be deducted from the “gross unit price used in anti-dumping calculations.” ACAHA is an alliance of 17 associations and companies representing consumers of softwood lumber products. It represents thousands of individual home builders, lumber dealers, lumber consumers, and American housing the construction and remodeling businesses (a roster of organizations in our group is attached). ACAHA members account for at least 95 percent of the domestic consumption of lumber in the U.S. ACAHA, therefore, has a strong interest in how duty calculations can impact affordable housing and U.S. consumers of softwood lumber.

We strongly oppose the proposal, which would increase the current duties on softwood lumber—a hidden sales tax on U.S. homebuyers. We urge the Department to prepare an analysis of the financial impact this proposed rule on U.S. consumers of softwood lumber. In addition, this proposal must take into account all steps necessary to implement the decisions of the World Trade Organization (“WTO”) and North American Free Trade Agreement (“NAFTA”) dispute resolution panels that have ruled or are considering this dispute.

*Financial Impact Analysis – Impact of this Proposal on Consumers*

In May, 2001, the United States imposed an average countervail and antidumping duty of 27 percent on Canadian softwood lumber imports. The duties were based on a finding by the Department that the Canadian industry was dumping lumber and receiving subsidies from its government, and a determination by the International Trade Commission (“ITC”)

that imports from Canada posed a *"threat of injury,"* to the United States industry. The Department's findings have since been called into question by WTO and NAFTA panel decisions and the ITC's determination was similarly remanded by both WTO and NAFTA panels.

The continued imposition of antidumping and countervailing duties on Canadian lumber is especially troubling for the U.S. housing sector. Currently the housing sector represents one of the only strong segments of the U.S. economy. However, it is dependent on Canadian lumber imports to meet demand. Indeed, the United States must secure more than one-third of its lumber for housing construction from imported lumber. The demand cannot be met through domestic production.

U.S. consumers and lumber-dependent industries are already experiencing the harmful effect of these trade restrictions. The lumber tariffs have resulted in increased price volatility in the market, forcing U.S. purchasers to make provisions to incorporate what amounts to a 27 percent tax. It is estimated that these tariffs could add as much as \$1,000 to the price of a new home, thus excluding as many as 300,000 U.S. households from mortgage eligibility. This is especially problematic for senior citizens and first-time homebuyers. It is anticipated that under the proposed rule, duties would increase from their current levels and further harm U.S. lumber consumers.

We urge the Department to undertake and make public a careful analysis of the impact on American consumers from the continued imposition of the 27 percent duties on Canadian lumber and to quantify the impact from continued delay in reaching a resolution to the dispute that is consistent with U.S. law and international obligations as articulated by the WTO and NAFTA panels. The same analysis should be done of any "interim agreement" that the Department may be contemplating before such as agreement harms U.S. consumers. Similarly, the Department's consideration of the proposed change in calculation of export price must consider and take into account the impact of the Department's proposal on U.S. consumers.

### *Implementing Decisions of Dispute Resolution Panels*

In implementing these policy bulletins and carrying out any changed circumstances review or undertaking any other policy with respect to Canadian softwood lumber imports, we expect the Department to take all responsible and required actions, necessary to comply with decisions of WTO and NAFTA dispute resolution panels. To date the decisions rendered by those panels have ruled illegal many of the actions taken by the Department in imposing antidumping and countervailing duties on Canadian softwood Lumber.

Specifically, with respect to both the preliminary and final countervailing duty determinations of the Department, WTO panels ruled that methodology used to calculate the countervailing duties was contrary to U.S. international obligations under the Agreement on Subsidies and Countervailing Measures. The WTO panels both found that the Department improperly relied on U.S. prices to determine the "benefit" to Canadian

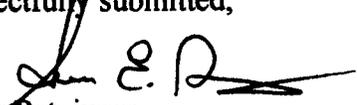
producers from alleged subsidies. Furthermore, the Panels determined that the U.S. improperly assumed that subsidies were passed on to downstream producers. Both of these errors resulted in an overestimation of the countervailing duty amount and have caused serious harm to U.S. consumers. Similarly, a recent NAFTA panel ruled that the Department's calculation of antidumping duties overestimated those duties and therefore overcharges American consumers.<sup>1</sup>

We anticipate that future decisions of WTO and NAFTA dispute panels will find similar flaws in the duties. ACAH expects the Department to make every effort to comply with future decisions as well. The antidumping and countervailing duties currently imposed on Canadian Softwood lumber are not only inconsistent with U.S. international obligations and U.S. law but also impose an unfair burden on U.S. consumers. In imposing these duties the Department has in effect imposed a 27 percent hidden sales tax on lumber that harms U.S. consumers, specifically new homebuyers and U.S. homeowners.

\* \* \*

We urge you and your colleagues in the Administration to remember the interests of U.S. consumers and lumber-dependent industries that employ seven million workers and find a long-term solution that does not harm U.S. lumber consumers and housing affordability.

Respectfully submitted,



Susan Petniunas

American Consumers for Affordable Homes

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<sup>1</sup> We also note that the WTO appellate body recently ruled that the U.S. Continued Dumping and Subsidy Offset Act of 2000 is contrary to U.S. international obligations. Accordingly, the Department should avoid any resolution of the lumber dispute that transfers any portion of the improperly collected AD/CVD duties to U.S. lumber producers. Any transfer of duties to U.S. lumber producers amounts to nothing more than picking the pockets of U.S. consumers and transferring the gains to protectionist U.S. industry.



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*The mission of ACAH is to support trade policies than enhance affordable housing.*

Participants of Alliance of American Consumers for Affordable Homes:

American Homeowners Grassroots Alliance  
Catamount Pellet Fuel Corporation  
CHEP  
Consumers for World Trade  
Fremont Forest Group Corporation  
Free Trade Lumber Council  
Home Depot  
Leggett & Platt, Incorporated  
International Mass Retail Association  
International Sleep Products Association  
Manufactured Housing Association for Regulatory Reform  
Manufactured Housing Institute  
National Association of Home Builders  
National Black Chamber of Commerce  
National Lumber and Building Material Dealers Association  
National Retail Federation  
United States Hispanic Contractors Association