

*United States – Investigation of the International Trade
Commission in Softwood Lumber from Canada*

Recourse to Article 21.5 of the DSU by Canada

(WT/DS277)

**EXECUTIVE SUMMARY OF THE
SECOND WRITTEN SUBMISSION OF THE
UNITED STATES**

May 24, 2005

1. Canada's critique of the ITC's Section 129 Determination inappropriately assumes that the Panel's task is to compare the new determination with the original determination, rather than review the new determination for consistency with the covered agreements. It also relies on mischaracterizations of findings in both determinations. And, it is based on the patently incorrect assumption that only a negative determination could bring the United States into compliance.

2. Canada questions the ITC's reopening of the record in the Section 129 proceeding, which was done precisely to collect additional information, primarily to provide it with a more complete data series for the period closest to the original determination, and thereby to assist it in considering and addressing issues raised by the original panel regarding the imminent future. Additional data from questionnaire responses were limited, because the majority of Canadian producers either expressly refused to answer, or simply did not respond to, requests for additional data.

3. Canada raises concerns about the Commission's use of certain data in the Section 129 Determination that may not have been available at the time of the Commission's original determination. The data at issue covered the years during the period of investigation and first quarter of 2002. All of the data at issue covered a period prior to the original determination.

The Commission's Section 129 Determination is Consistent With the Covered Agreements.

4. In its Section 129 Determination, the Commission's analysis of likely substantial increases in subject imports first took into account the fact that subject import volumes already were at significant levels during the investigative period – accounting for between 33.2 percent and 34.7 percent of the U.S. market. The evidence showed volume increases from Canada even with the restraining effect of the SLA in place and significant increases in subject import volume at the end of the period of investigation, when such imports were no longer subject to the SLA, including when they were not yet subject to preliminary antidumping or countervailing duties. Moreover, Canadian producers had increasing excess capacity during the period of investigation.

5. The Commission found that the likely substantial increases in subject imports would result in excess supply in the U.S. market, putting further downward pressure on prices. Excess supply generally caused the substantial price declines in 2000 that led to the deterioration in the condition of the domestic industry. The evidence demonstrated that prices were weak toward the end of the period of investigation, with prices in the third and fourth quarters of 2001 again at levels as low as they had been in 2000. While prices increased in the first quarter of 2002, as consumption temporarily increased, they were still at the low levels reported in 2000 when subject imports were impacting the financial performance of the domestic industry.

6. Throughout its argument, Canada provides a snapshot focus on a given incremental increase or decrease that it views as favorable to its assertions. For example, Canada ignores the significance of the size of baseline volume, whether of imports or production. In addition, Canada frequently compares percentage increases or decreases in two numbers – such as U.S. production and Canadian production – which may not be comparable, because the baseline for the numbers being compared is different. Finally, Canada ignores the interrelationship between factors relevant to the determination of present injury and factors relevant to the determination of threat of injury, as well as the fact that evidence regarding any one factor often is intertwined with evidence regarding other factors.

7. **Likelihood of Substantially Increased Imports.** The original panel recognized that subject imports already were at significant levels but questioned whether the ITC had relied on a significant

rate of increase during the period of investigation as support for its conclusion that subject imports would increase substantially in the future. The panel report also found that the ITC did not address why the expiration of the SLA would result in a further substantial increase in imports, rather than a reallocation of imports from non-covered to previously covered provinces or merely a shift in timing of imports to avoid duties associated with the new petitions. In its Section 129 Determination, the ITC evaluated the significance of the import levels and increases in imports before and during the period of investigation, taking into account the significant restraining effect of the SLA and considered the impact that the expiration of that agreement would have on the market for softwood lumber.

8. **Volume of Imports Already Significant and Likely to Increase Substantially in the Imminent Future.** In the Section 129 Determination, the Commission found that subject imports were already at a significant level during the investigation period, increasing during 1999 to 2001 from 17,983 to 18,483 million board feet (mmbf) out of a total U.S. market of about 54,000 mmbf. Subject imports held a consistently large and increasing share of the U.S. market, accounting for 33.2 percent to 34.7 percent of the U.S. market for softwood lumber in the period examined. The Commission found that the rate of increase in the volume of subject imports from 1999 to 2001 was 2.8 percent and stated that “2.8 percent is a significant rate of increase when the baseline volume is already so significant.” The Commission also recognized that the 2.8 percent increase in subject imports from 1999 to 2001 had occurred even though such imports had been subject to the restrictive impact of the SLA, and even though apparent U.S. consumption had declined slightly, by 0.4 percent.

9. Canada focuses on the percentage without regard to the enormous size of the baseline, the SLA’s restraining effects, and the relatively flat demand for softwood lumber. Moreover, Canada dismisses evidence showing a pattern of substantially increasing subject imports at the end of the period of investigation (increases of 2.4 percent (comparing 2001 to 2000), 4.9 percent (comparing April-December 2001 to April-December 2000), and 14.6 percent (comparing first quarter 2002 to first quarter 2001)). The ITC placed the 14.6 percent increase during the first quarter of 2002 compared with the same period in 2001, in perspective. The ITC found that “[w]hile apparent U.S. consumption also increased, it did so at a substantially lower rate, 9.7 percent for first quarter 2002 compared with first quarter 2001, leading subject import market share to be higher at 34.7 percent in first quarter 2002 compared with 33.2 percent in first quarter 2001.” By focusing on the theory that “opposite commercial incentives existed in the[se] two quarters” – that is, that there was an alleged “short-term disincentive to ship to the United States in the first quarter of 2001” – Canada misses the point that subject imports still were 6.2 percent higher in the first quarter of 2002 compared with the first quarter of 2000, while apparent U.S. consumption declined by 2.3 percent. In any event, Canada’s argument rests on the incorrect assumption that there was a four-month gap in the application of preliminary measures.

10. **The SLA had a Restraining Effect on Subject Imports.** To place subject imports in the appropriate context, the Commission considered the restraining effects of the SLA on imports and trends in subject imports during periods when such imports were not subject to some type of restraint. Canada incorrectly assumes that the ITC’s finding in the Section 129 determination diverged from its finding in the original determination. It also incorrectly assumes that when it came to present material injury, the ITC found that subject imports did not support an affirmative determination.

11. The evidence demonstrated that while the volume of subject imports increased even with the SLA in place, substantial increases occurred during periods when such imports were not subject to import restraints. The ITC also considered evidence demonstrating the impact of the SLA on the

domestic market, including evidence that the constraints on the volume of imports resulted in higher prices for such imports and higher costs for construction than in the absence of the SLA. Additional evidence demonstrating the restraining effect of the SLA included the fact that increases in subject imports while the SLA was in effect did not keep pace with increases in demand from 1995 to 2001.

12. Canada's focus on the economic studies referred to in a footnote is misplaced for two reasons. First, Canada suggests incorrectly that the ITC relied more heavily on one economic study than others. Second, Canada provided no comments on that study during the Section 129 proceeding, although specifically requested to do so by the ITC.

13. Another aspect of the SLA discussion that Canada mischaracterizes concerns the fact that, during the final year of the SLA, a portion of one of the quotas provided for under the SLA went unused. Canada misleadingly implies that this means that subject imports declined in the last year of the SLA. They did not. Moreover, Canada ignores the fact that in each year during the pendency of the SLA, including 2000-2001, Canadian producers exported significant quantities of softwood lumber under the \$100 fee quota and significant quantities of "bonus" exports.

14. Finally, the ITC recognized that, during the pendency of the SLA, Canadian shipments from provinces not covered by the SLA to the United States more than doubled. The ITC found, however, that the evidence demonstrated that when the expiration of the SLA left no restraint on imports from any of the provinces, imports from the provinces formerly under the SLA increased, while imports from the non-covered provinces continued at levels much higher than those prior to the SLA. The ITC also found that the redistribution theory failed to recognize that the volume of production is much greater in formerly covered provinces than in non-covered provinces.

15. **During Periods With No Import Restraints, There Were Substantial Increases in Subject Imports.** To place subject imports in context in the Section 129 Determination, the Commission considered trends in subject imports during periods when such imports were not subject to some type of restraint (such as the SLA or preliminary countervailing duties). The evidence demonstrated that during the period following expiration of the SLA (April 2001) and before suspension of liquidation of softwood lumber entries due to the investigation (August 2001), subject import volume was substantially higher, by a range of 9.2 percent to 12.3 percent, than in the comparable April-August period in each of the preceding three years (1998-2000). The Commission acknowledged that the rate of increase in imports slowed when bonding requirements associated with the preliminary countervailing duties were imposed in August 2001, but recognized that subject imports still entered the U.S. market in the April-December 2001 period at a rate 4.9 percent higher than in the comparable 2000 period. The evidence in the Section 129 proceeding demonstrated an even more significant increase of 14.6 percent for the first quarter of 2002 compared with the first quarter of 2001, and a significant increase of 6.2 percent compared with the first quarter of 2000.

16. Canada faults the ITC for not taking account of an alleged "four-month 'gap' in the application of provisional measures" – *i.e.*, the period from the expiration of provisional countervailing duties, in December 2001 through the end of the investigation in April 2002. However, what Canada fails to acknowledge is that even though bonding requirements with respect to preliminary countervailing duties expired in December 2001, bonding requirements associated with preliminary antidumping duty findings did not expire until April 2002.

17. Nor does the supposed existence of "opposite commercial incentives" in the first quarters of 2002 and 2001, respectively, explain away the increase in imports during the first quarter of 2002. The suggestion that this comparison is anomalous is belied by the fact that there also was a significant

increase of 6.2 percent in subject imports in the first quarter of 2002 compared with the first quarter of 2000. Market conditions (other than the presence or absence of the SLA), such as differences in consumption, did not explain the significant increases in subject imports.

18. Another concern of the original panel was that the ITC had not addressed claims that the substantial increase in imports during the April-August 2001 period only reflects “a shift in the timing of imports.” In its Section 129 Determination, the ITC found that subject imports increased *both* during the April-August 2001 period *and* afterward, a fact inconsistent with the suggestion that import volumes during the period could be explained as a simple timing shift. Canada’s focus on monthly subject import data for the April-August 2001 period does nothing to undermine this finding. First, the ITC found that “monthly subject import volumes were higher in each month between April and August 2001 than the comparable month in 2000, with the exception of June, by a range of 7.5 percent to 25.6 percent;” similarly, monthly import volumes were higher in each month between October 2001 and March 2002 than the comparable month in the preceding year, with the exception of November. These increases in the already significant volume were not the result of increases in demand, which was relatively flat (0.4 percent) in 2001. Second, Canada contends that “[i]f the USITC were correct, one would expect to see a steady increase in imports.” But, that is exactly what the evidence demonstrates.

19. The Commission also considered the similar pattern of increases in subject imports during 1994-1996, immediately prior to the adoption of the SLA, increases which ceased when the SLA entered into force. The evidence in the record for 1995 to 1996 showed that subject import volume rose at a rate higher than increases in U.S. apparent consumption.

20. **Importation Relative to Demand.** The ITC found that there was no basis in the record evidence to conclude that likely substantial increases in subject imports would be outpaced by increases in demand. First, the ITC found that evidence in 2001 showed that the increase in subject imports outstripped demand. Moreover, subject imports after removal of the restraining effect of the SLA were 11.3 percent higher for the April-August 2001 period compared to the same period in 2000, and 4.9 percent higher for the April-December 2001 period compared to the April-December 2000 period, while apparent U.S. consumption for all of 2001 was only 0.2 percent higher than it had been in 2000. The evidence in the Section 129 proceeding demonstrates that while apparent U.S. consumption for first quarter 2002 increased compared with first quarter 2001, it was at a substantially lower rate, 9.7 percent, than the 14.6 percent increase in subject imports. Moreover, subject imports were 6.2 percent higher in the first quarter of 2002 compared with the first quarter of 2000, while apparent U.S. consumption declined by 2.3 percent for first quarter 2002 compared with first quarter 2000.

21. The ITC found that the evidence dispelled any claims that projected substantial growth in demand for softwood lumber in the imminent future. Canada points out that, in the Section 129 Determination, the ITC found that “[f]orecasts expected it [demand] to be relatively unchanged until the second half of 2002, and then begin to increase in 2003 as the U.S. economy rebounded from a recession.” That finding is almost identical to the ITC findings in the original determination, where it stated that “[d]emand for softwood lumber is forecast to remain relatively unchanged or increase slightly in 2002, followed by increases in 2003 as the U.S. economy rebounds from recession.”

22. The Commission found that the demand forecasts for softwood lumber from industry analysts were somewhat mixed. Whereas Canada focuses on the demand forecasts for softwood lumber in isolation, the Commission considered those forecasts together with forecasts for softwood lumber’s primary end-use, U.S. housing. The Commission found that the lack of a correlation between

forecasted lumber demand growth and forecasted housing starts and the lack of any agreement among forecasters raised questions about the usefulness of these forecasts. The Commission also found that the sharp decline in housing starts in March 2002 showed that the improvements in demand during the mild winter of 2001-2002 were not sustainable.

23. **The Canadian Producers Had Sufficient Freely Disposable Excess Capacity and Projected Increases in Capacity and Production in 2002 and 2003 to Substantially Increase Exports to the United States.** On the issue of available excess Canadian capacity, the panel report found that the Commission's discussion regarding the Canadian industry's export orientation did not support the conclusion that excess capacity would be exported to the United States beyond the "historical" level. In its Section 129 Determination, the Commission analyzed capacity and found that Canadian producers had sufficient excess capacity, and projected increases in production and capacity in 2002 and 2003, to substantially increase exports to the United States.

24. Canada has substantial capacity to produce softwood lumber, equal to about 60 percent of U.S. consumption. Excess Canadian capacity in 2001 had increased to 5,343 mmbf, which was equivalent to 10 percent of U.S. apparent consumption, as capacity utilization declined to 84 percent from 90 percent in 1999. Even more telling was the fact that Canadian producers expected to further increase their ability to supply the U.S. softwood lumber market, projecting increases in production of 8.9 percent from 2001 to 2003 and increases in their capacity utilization to 90 percent in 2003 (from 84 percent in 2001). These increases were projected at the same time that demand in the U.S. market was forecast to remain relatively unchanged or increase only slightly. Canada's claim focuses inappropriately on the incremental increase in production capacity.

25. Canadian production is tied to the U.S. market, which continues to be the most important market for Canadian producers. The U.S. market accounts for 60-65 percent of Canadian production and shipments, whereas in 2001 other export markets accounted for only 8 percent of Canadian production, and the Canadian home market accounted for only about 24 percent of production. The record in the Section 129 proceeding provided further support for the ITC's finding: in the first quarter 2002, as apparent Canadian consumption declined by 23 percent compared with the first quarter of 2001, Canadian producers shifted sales from the home market to the U.S. market. In the first quarter of 2002, Canadian exports to the U.S. market accounted for 63.8 percent of Canadian production compared with 54.2 percent for the first quarter of 2001 and 55.8 percent for the first quarter of 2000. Given the positive record evidence on the export orientation of Canadian lumber producers, the ITC discounted Canadian producers' self-interested projections that additional production would be exported to the United States at below historical levels of 20 percent of production.

26. The Commission recognized that revisions to the public data for Canadian production resulted in slightly lower levels for exports to the United States as a share of revised Canadian production, ranging from 57.5 percent to 61.3 percent for the 1999-2001 period, compared with the range reported in the original investigation (63.1 percent to 68.1 percent). Canada's claim that this "vindicates the projections of the Canadian producers" is misplaced. The Commission discounted projections that showed that only 20 percent of the projected additional production would be exported to the U.S. market. Canada's claim only involves whether the accurate historical level of exports as a share of production is 65 percent (under the original data) or 60 percent (under the revised data). Either of these numbers is far greater than the 20 percent projected by Canadian producers.

27. **Likely Adverse Price Effects.** The Commission found that the price trend evidence,

particularly the fact that prices reached their lowest levels as imports increased significantly after expiration of the SLA, constituted positive evidence that subject imports were entering at prices that were likely to have a significant depressing or suppressing effect on domestic prices, and thereby were likely to adversely impact the U.S. industry in the imminent future.

28. **Prices Declined During the Period of Investigation.** The evidence demonstrated that prices for softwood lumber declined substantially during the period of investigation, particularly in 2000. In mid-2001, at a time of considerable uncertainty in the market due to the expiration of the SLA and the commencement of the original investigations, prices for softwood lumber increased. However, these increases were temporary; prices began to decline in the July - September 2001 period and fell substantially in the October - December 2001 period to levels as low as those in 2000. Even with an improvement in the January - March 2002 period, prices at the end of the period of investigation were still near the lowest levels reported for the period examined. The Commission found that the price increase in the first quarter of 2002 was largely due to an increase in consumption— an improvement that was not likely to be sustained, in light of the sharp decline in housing starts in March 2002 from the record high reported for February 2002. Further, the Commission found that record U.S. housing starts throughout the period of investigation clearly did not guarantee higher prices in the U.S. market, given price competition and excess supply.

29. **Imports were Entering at Prices Likely to Have a Significant Depressing or Suppressing Effect on Domestic Prices.** Substantial price declines in 2000, and resulting deterioration of the condition of the domestic industry, were due to excess supply from both subject imports and domestic production. Thus, while the evidence supported a finding that subject imports had *some* adverse price effect, the Commission concluded that during the period of investigation, they had not yet had a *significant* price effect so as to be a substantial cause of material injury to the domestic industry. However, the Commission also found that the prices at the end of the period of investigation (*i.e.*, July-September and October-December, 2001 and January-March, 2002) were at levels as low as those in 2000, and that subject import prices, combined with the imminent significant increase in subject import volume, were likely to have a significant depressing or suppressing effect on domestic prices in the imminent future. Moreover, the SLA had a significant restraining effect on the volume of subject imports and, therefore, limited the effect of subject imports on prices in the U.S. market.

30. Canada's discussion of the pricing data in the Section 129 Determination focuses, in a snapshot approach, on the first quarter 2002 data and mischaracterizes the Commission's analysis. In evaluating the quarterly composite pricing data, the Commission found that the data showed that the composite price per mbf for January - March 2002 period – \$318 – was lower than the composite price per mbf for July - September 2001 period – \$322 – and substantially lower than for April - June 2001 period – \$364. The Commission recognized that seasonality generally affects quarterly price comparisons. Moreover, while the composite price for the January - March 2002 period – at \$318 – was higher than for the January - March 2001 period – at \$284 – it was substantially lower than \$384, which was the composite price in the January - March period for both 1999 and 2000. Canada focuses on the comparison between first quarters 2002 and 2001. In so doing, it ignores the evidence that composite prices for the January - March 2001 period had not yet recovered from the low levels of the July - September and October - December periods of 2000 (\$294 and \$277, respectively) and were subject to considerable uncertainty in the market due to the pending expiration of the SLA.

31. Canada incorrectly asserts that the Commission made a finding of no significant price underselling. Instead, the Commission found that, as agreed to by all parties to the investigations, making direct cross-species price comparisons in order to assess underselling was inappropriate.

Although the differences in many of the imported and domestic species of softwood lumber limit the meaningfulness of any direct price comparisons, the evidence indicates competition across species, such that prices of a particular species will affect the prices of other species, particularly those that are used in the same or similar applications.

32. Imported and Domestic Softwood Lumber are Interchangeable and Substitutable.

Rather than challenging interchangeability, Canada bases its argument with respect to price effects on the premise that “purchasers do not consider them [*i.e.*, subject imports and domestic softwood lumber] substitutable to a significant extent.” Yet, the evidence demonstrated that Canadian spruce-pine-fir (SPF), which accounted for more than 85 percent of Canadian product imported into the United States, and U.S. Southern Yellow Pine (SYP), which accounted for about 45 percent of U.S. production, compete and are substitutable. Moreover, Canada also exports Douglas fir, hem-fir, western red cedar, and a few other products; all of these species also are produced in the United States, and thus there is direct competition between subject imports and domestic product. The Commission found that regional preferences do not reflect a lack of purchasers’ willingness to substitute subject imports for domestic product to a significant extent, as Canada suggests, given an available lower priced interchangeable product.

33. Impact of the Subject Imports on the Domestic Industry and Vulnerability to Threat of Injury. The condition of the domestic industry, and in particular its financial performance, deteriorated over the period of investigation, as a result of the substantial decline in prices. Subject imports were increasing substantially after expiration of the SLA and at the end of the period examined and were entering at prices at their lowest levels during the period of investigation. Thus, the Commission found that the industry was vulnerable to future injury.

34. Domestic producers’ share of apparent domestic consumption decreased from 65.0 percent in 1999 to 64.4 percent in 2000 and to 63.1 percent in 2001. The data collected in the Section 129 proceeding showed a similar trend, with domestic producers accounting for a 62.3 percent market share in the first quarter of 2002, down from 64.6 percent and 66.2 percent in the first quarters of 2001 and 2000, respectively.

35. The domestic industry’s financial performance declined during the period of investigation, with a dramatic drop from 1999 to 2000 as excess total supply contributed to price declines. The domestic industry’s unit net sales value decreased from 1999 to 2001 with the largest decrease occurring from 1999 to 2000. While unit cost of goods sold declined throughout the period of investigation, unit net sales value fell by a greater amount, and the ratio of operating income to net sales fell from 14.3 percent in 1999 to 1.8 percent in 2000, and 1.3 percent in 2001. Total operating income declined from \$1.26 billion in 1999 to \$93 million in 2001, and over \$1 billion of that decline occurred in one year, from 1999 to 2000. Net income as a share of net sales followed a similar trend, decreasing from 13.7 percent in 1999 to 0.8 percent in 2000 and 0.1 percent in 2001. Total net income declined from \$1.21 billion in 1999 to \$8 million in 2001. While the data collected in the Section 129 proceeding showed some improvements in the domestic industry’s financial performance in the first quarter of 2002 compared with the first quarter of 2001, a single quarter’s performance did not change the fact that, overall, the industry’s performance had deteriorated and remained weak. The Commission, moreover, recognized that financial data for a single quarter is not necessarily an accurate indicator of the industry’s performance for the entire year.

The Causal Relationship and Alleged Other “Known” Factor Analyses

36. **U.S. Obligations Under Article 3.5 of the Antidumping Agreement and Article 15.5 of the SCM Agreement.** Consistent with the finding of the Appellate Body in *EC - Pipe*, a methodology for evaluating causation that first asks whether an alleged other factor is an “other known factor” – *i.e.*, more than a tangential or minimal cause of injury or threat – and, only if the first question is answered affirmatively, undertakes a further analysis to ensure that any injury from an other known factor is not attributed to subject imports is permissible under Article 3.5 and 15.5. In the Section 129 Determination, the Commission found the evidence to demonstrate that none of the factors alleged to be other known factors were other known factors.

37. **Causal Relationship Between Likely Substantial Increases in Subject Imports at Depressed Prices and Threat of Injury to the Domestic Industry in the Imminent Future.** The Commission found that the evidence demonstrated that subject imports, already at significant and increasing levels even with the restraining effect of the SLA in place, and with significant increases in volume after expiration of the SLA, would continue to enter the U.S. market at significant levels and were projected to further increase substantially. Prices were weak toward the end of the period of investigation, with prices in the third and fourth quarters of 2001 again at levels as low as they had been in 2000. While prices increased in the first quarter of 2002, as consumption temporarily increased, they were still at the low levels reported in 2000 when subject imports were impacting the financial performance of the domestic industry. The Commission found that the likely substantial increases in subject imports would result in excess supply in the U.S. market, putting further downward pressure on prices.

38. Excess supply generally caused the substantial price declines in 2000 that led to the deterioration in the condition of the domestic industry. Although both U.S and Canadian producers had contributed to the excess supply in 2000, by the end of 2001, U.S. producers had brought their production into line with consumption. Canadian producers, however, had excess capacity, and projected increased production, with the United States being the likely market for this excess production. This latter condition would result in excess supply in the U.S. market. Thus, the Commission found that subject imports were likely to increase substantially and were entering at prices, particularly at the low levels seen at the end of the period of investigation, that were likely to have a significant depressing or suppressing effect on domestic prices, were likely to increase demand for further imports, and thereby were likely to adversely impact the U.S. industry in the imminent future, unless protective action were taken.

39. In the Section 129 Determination, the Commission integrated its causation discussion into its analysis of the threat factors, particularly its analysis of the likely volume and likely price effects of subject imports on the already vulnerable domestic industry. Rather than address this integrated analysis, Canada focuses its critique of the ITC’s causation findings on a separate section of the Determination that merely reviewed the factors involved in those findings. Moreover, in a glaring mischaracterization of the Commission’s Section 129 Determination, Canada incorrectly asserts that “the basis for the conclusion about U.S. producers curbing production is a single reference in a footnote in the section of the Section 129 Determination discussing price declines during the POI.”

40. **Alleged Other “Known” Factors Analysis.** In its Section 129 Determination, the ITC provided a detailed and reasoned analysis of the following alleged other factors potentially causing injury to the domestic industry: (1) excess supply from the domestic industry itself; (2) third-country or non-subject imports; (3) increases in importation to meet demand in the U.S. market (discussed above, as a possible factor weighing against the threat of injury); (4) integration in the North American market; (5) the growth in importance of engineered wood products (‘EWPs’); and (6)

constraints on domestic production/insufficient timber supplies in the United States. The ITC found none of these factors to be more than a tangential or minimal threat to the domestic industry. Canada makes arguments regarding only three of these factors: domestic supply, third-country imports, and integration in the North American market.

41. **Excess Supply From the Domestic Industry.** While the Commission found in its present material injury analysis that excess supply from both subject imports and the domestic industry were contributing factors to price declines in 2000 that adversely affected the performance of the domestic industry, it found that the evidence demonstrated that domestic supply would not be an other known factor in the imminent future, as it had been in the 1999-2000 period. The Commission based its finding on evidence regarding domestic production and capacity as well as evidence indicating that the domestic producers had brought their production in line with consumption. Canadian producers, however, had excess capacity, and projected increases in production; the likely market for this excess production was the U.S. market, and Canadian exports continue to oversupply the U.S. market.

42. Canada's contention that the "USITC got exactly backward what it called the 'central problem'" is based on a single snapshot of the incremental rate for Canadian and U.S. production in the first quarter of 2002 compared with the first quarter of 2001. Domestic production capacity was fairly level during the period of investigation, following a small but steady increase between 1995 and 1999, as apparent consumption increased. Public data indicate that domestic production of softwood lumber steadily declined from a peak of 36,606 mmbf in 1999 to 34,996 mmbf in 2001, a decline of 4.4 percent. While domestic production in the first quarter of 2002 was 4.9 percent higher than the first quarter of 2001, apparent U.S. consumption was 9.7 percent higher; moreover, domestic production in the first quarter of 2002 was 9.3 percent lower than in the first quarter of 2000. Domestic capacity utilization was 87.4 percent in 2001 and, with the exception of a peak in 1999 at 92 percent, had consistently held this level from 1995-2001. Based on revised U.S. production data, domestic capacity utilization was 86.4 percent in 2001.

43. In contrast to U.S. industry capacity utilization, Canadian capacity utilization had declined from 90 percent in 1999 to 84 percent in 2001 (a rate substantially lower than that reported for any other year in the 1995-2001 period). In 2001, excess Canadian capacity was equivalent to 10 percent of apparent U.S. consumption. Still, Canadian producers projected increases in production of 8.9 percent from 2001 to 2003, and a return of capacity utilization to 90.4 percent in 2003.

44. While production data for the 2000-2001 period show that both Canadian and U.S. production declined by similar quantities, the evidence also demonstrated that Canadian exports to the U.S. market increased for this period. Moreover, Canadian producers projected increases in production of 8.9 percent from 2001 to 2003. When Canadian consumption declined by 23 percent in the first quarter of 2002 compared with the first quarter of 2001, Canadian producers apparently made some adjustments to production, but primarily shifted sales to the U.S. market, since subject imports were 14.6 percent higher in the later of the same comparable periods.

45. **Third-Country or Nonsubject Imports.** Non-subject imports never accounted for more than 3.0 percent of apparent consumption; in contrast, subject imports accounted for at least 34 percent of the U.S. market. Moreover, individual country non-subject imports would have been deemed negligible, with no individual country accounting for more than 1.3 percent of imports, while Canadian imports accounted for about 93 percent of all imports. Canada ignores the significance of the baseline in focusing on incremental increases in import volume. The ITC recognized that the incremental increase in subject import volume in mmbf between 1999 and 2001 was approximately

the same as the increase in nonsubject import volume. However, placed in perspective, subject imports are responsible for an enormous volume of imports (18,483 mmbf in 2001) and accounting for about 34 percent of U.S. apparent consumption in the 1999-2001 period, compared with higher valued nonsubject imports, which never exceeded 1,378 mmbf or 2.6 percent of apparent domestic consumption.

46. Imports from Canada were subject to import restraints for most of the period of investigation; nonsubject imports were not restrained. Canada's assertions regarding "projected rates of continued increases in third-country imports" are based entirely on its contention that what is relevant is the rate of increase, even when comparing small baselines to large baselines, and not the absolute volumes. Furthermore, Canada relies on the incorrect assumption that a "gap period" began in December 2001, even though subject imports were still subject to preliminary AD duties for the entire first quarter of 2002, which duties remained in place until April 2002. Canada fails to explain its basis for believing that any significant increase in nonsubject imports would be imminent and how any likely imminent increase in such a small volume of nonsubject imports relative to apparent consumption might rise to the level of having a causal impact on the domestic industry.

47. **Integration of North American Softwood Lumber Industry.** The Commission pointed out that "[n]o evidence whatsoever has been proffered to support speculative assertions that integrated firms will not harm their related companies." Canada contends that its assertions were "not speculation but a common-sense proposition," at least based on the facts in a completely unrelated case concerning a different product (pipe and tube). The Commission properly declined to rely on the evidence in an unrelated case for its findings in this case. Similarly, Canada fails to support its assertion that integration "would be even less likely to cause any adverse price effects." It relies only on its incorrect contention that the ITC found no price effects in its present material injury analysis.

48. Canada refers to the ITC's decision not to exclude from its analysis any domestic producers under the "related parties" provision under U.S. law. In Canada's view, "this finding supports, rather than contradicts, the point that integrated producers are unlikely to import lumber in injurious volumes or at injurious prices." But, in this case, no related parties were excluded precisely because there was no evidence that they were "closely aligned" and likely to be shielded from harm. Furthermore, such claims about related firms says nothing at all about the impact of the integrated companies' operations on the remainder of the U.S. industry or on the industry as a whole, which is the required focus of the injury analysis.

49. **Conclusion.** For the reasons stated above and in the First U.S. Submission, Canada's claims are groundless. The United States therefore requests that the Panel reject Canada's claims in their entirety. In the event the Panel were to accept Canada's arguments, it nevertheless should decline Canada's requested "recommend[ation]," for the reasons stated in the original panel report.