



U.S. LUMBER COALITION, INC.

November 3, 2025

**SUBMITTED VIA [HTTPS://COMMENTS.USTR.GOV/S](https://comments.ustr.gov/s)
DOCKET NO. USTR-2025-0004**

The Honorable Jamieson Greer
United States Trade Representative
600 17th Street, NW
Office of the United States Trade Representative
Washington, DC 20508

**Re: Comments of the U.S. Lumber Coalition on the Operation of the Agreement
between the United States of America, the United Mexican States, and Canada**

Dear Ambassador Greer:

On behalf the U.S. Lumber Coalition (“USLC”), I respectfully submit the following comments in response to the notice published by the Office of the U.S. Trade Representative (“USTR”) on September 17, 2025, requesting public comments relating to the operation of the Agreement Between the United States of America, the United Mexican States, and Canada (“USMCA” or “Agreement”).¹ These comments are submitted by the due date set forth in the notice and contain no business confidential information.²

For the reasons set forth below, the USLC requests that USTR communicate to the other USMCA Parties that the United States, at this time, cannot confirm that it wishes to extend the term of the Agreement. Extension of the USMCA should be conditioned on the elimination of the binational panel review process established in Chapter 10 of the Agreement.

The Chapter 10 process strips U.S. courts of jurisdiction to review determinations of the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“ITC”). In this alternative process, review of U.S. agency determinations, including issues of U.S. law, are decided by panels that include non-citizens – as opposed to Federal judges nominated by the President and confirmed by the Senate.³ In brief, this binational panel review under Chapter 10 of the USMCA – like the processes that existed under Chapter 19 of the North American Free Trade Agreement (“NAFTA”) and Chapter 19 of the U.S.-Canada Free Trade Agreement (“U.S.-Canada FTA”) before it – does not work. Chapter 10 panel review unconstitutionally deprives U.S. interested parties of impartial judicial review by Article III

¹ See Request for Public Comments and Notice of Public Hearing Relating to the Operation of the Agreement Between the United States of America, the United Mexican States, and Canada, 90 Fed. Reg. 44,869 (USTR, Sep. 17, 2025).

² See *id.* at 44,870.

³ See USMCA, Chapter 10, Section D.

courts of actions taken by Commerce and the ITC. Binational panel review has, at times, yielded deeply flawed decisions and caused years-long delays in finalizing agency determinations. It is past time for this failed experiment to end.

I. About the U.S. Lumber Coalition

The USLC is an alliance of large and small softwood lumber producers from around the country, joined by their employees and woodland owners, working to address Canada’s unfair lumber trade practices and ensure the survival and success of the U.S. softwood lumber industry.⁴ Our primary goal is to serve as the voice of the American lumber community and effectively address Canada’s unfair softwood lumber trade practices.

The USLC supports the full enforcement of the U.S. trade laws to allow the U.S. industry to invest and grow to its natural size without being impaired by unfairly traded imports. Continued full enforcement of the U.S. trade laws will strengthen domestic supply lines by maximizing long-term domestic production and availability of lumber produced by U.S. workers to build U.S. homes.

The U.S. softwood lumber industry is critical to the prosperity and growth of U.S. manufacturing, local communities, and state economies nationwide. Around the country, the industry is responsible for 500 manufacturing facilities operating in the sawmill, millwork, and treating sectors. These facilities support 750,000 jobs across America, including highly-skilled jobs utilizing robotics and 3D imaging, as well as high-paying skilled jobs that don’t require college degrees, and 420 million acres of family-owned timberlands owned by more than 10 million private timberland owners throughout the United States.

These workers, their families, timberland owners, downstream industries, and communities across the country – from Maine to Montana, to Oregon, to Florida – are the reason we advocate for fair trade policies and enforcement.

In November 2016, the USLC—as part of the *ad hoc* Committee Overseeing Action for Lumber International Trade Investigations or Negotiations—filed petitions seeking relief from unfairly subsidized and dumped imports of softwood lumber products from Canada. Following rigorous investigations conducted by Commerce and the ITC, antidumping (“AD”) and countervailing duty (“CVD”) orders were issued on softwood lumber products from Canada in January 2018. Since the orders were issued, Commerce has completed six annual administrative reviews of the orders, each time confirming that Canadian exporters and producers continue to benefit from unfair subsidies and sell into the U.S. market at dumped prices. In December 2023, the ITC confirmed through a sunset review that the trade remedies remain necessary to prevent the continuation or recurrence of material injury to our industry.⁵

⁴ Additional information on the USLC and its efforts to maximize domestic lumber production and availability is available on the USLC’s website at www.uslumbercoalition.org.

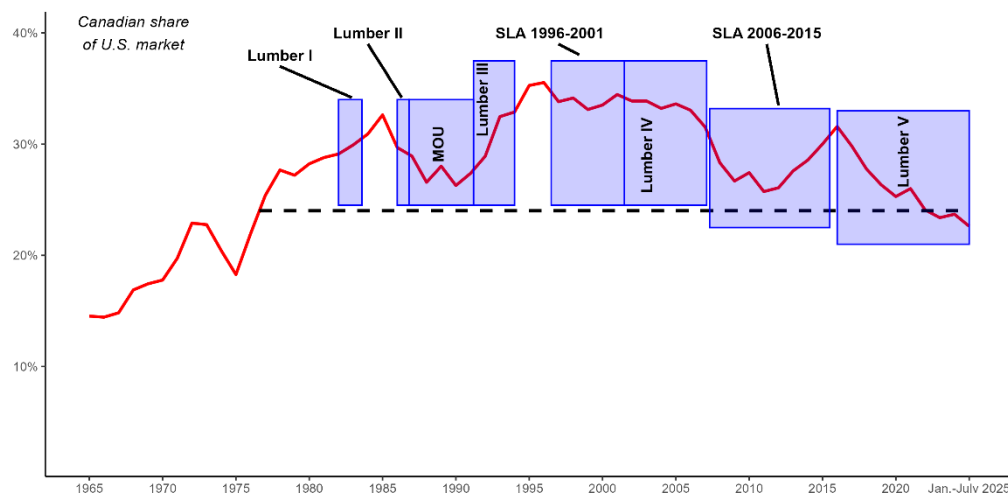
⁵ See *Softwood Lumber Products from Canada*, Inv. Nos. 701-TA-566 and 731-TA-1342 (Review), USITC Pub. 5479 (Dec. 2023).

Accordingly, the USLC is deeply committed to the strong enforcement of our nation's trade laws, including laws designed to protect the economic and national security of the United States.

II. History of Softwood Lumber Imports from Canada

The Canadian softwood lumber industry is export-oriented and much larger than required to support Canada's own domestic demand. The over-production of Canada's softwood lumber industry is driven by government subsidies that result in Canada's excess capacity being off-loaded in the United States at the expense of domestic producers. Recently, Canadian softwood lumber producers have shipped approximately 12 billion board feet of softwood lumber to the United States each year (enough to fill 100,000 railcars). This represents almost 60 percent of Canada's total annual production. The growth of the Canadian industry has been supported by a variety of subsidies administered largely by provincial governments. These subsidies enabled the Canadian industry to rapidly increase its share of the U.S. market from approximately 14.5 percent in 1965 to 32.6 percent in 1985 (*see* Figure 1 below).

Figure 1. Since 2023, Canada's market share in the United States has dropped to levels not seen since the mid-1970s⁶



Canada's subsidy-induced gains in the U.S. market were facilitated by two economic characteristics of the softwood lumber market. First, the price of softwood lumber is very sensitive to the quantity of lumber in the market. Second, softwood lumber from Canada is highly substitutable with softwood lumber produced in the United States. As a result, when the volume of unfairly traded lumber products is allowed to increase, U.S. production is displaced, negatively impacting American manufacturers and workers.

⁶ Sources: 1965-2014 data: USDA, U.S. Timber Production, Trade, Consumption, and Price Statistics, 1965-2017, July 2019 at Tables 30, 31, and 32; 2015-2025 data: WWPAL Lumber Track Reports (U.S. softwood lumber consumption); USITC DataWeb (U.S. imports of softwood lumber from Canada).

The economic harms caused by Canadian subsidization led to multiple efforts by the domestic industry to obtain trade relief. From 1982 to 2015, there were four government- or industry-initiated trade remedy investigations (*Lumber I* through *Lumber IV*) and three bilateral agreements (one Memorandum of Understanding and two Softwood Lumber Agreements). During this period, Canadian market share fluctuated between 25.7 percent and 35.5 percent. Each of these agreements eventually failed to meaningfully address the underlying problem of Canadian unfair trade. These failures were driven by a variety of factors, including the weak or temporary nature of the trade measures, as well as the measures' lack of responsiveness to dynamic market conditions.

Then came *Lumber V*, which built on the lessons of prior phases of the case. The CVD case focused on a wide variety of federal and provincial subsidies beyond the provision of stumpage, and, as with *Lumber IV*, the domestic industry filed an AD petition in addition to the CVD petition. This decision was critical, as Commerce's dumping investigation demonstrated that Canadian firms were not only benefiting from subsidies, but were also selling softwood lumber products in the United States below normal value. Pursuing both cases enabled the U.S. industry to fight back against both dumping and unfair subsidization, and has resulted in an overall decline in Canada's share of the U.S. market. As shown in Figure 1 above, Canada's U.S. market share has significantly declined since the *Lumber V* AD and CVD orders were imposed, and now is at a level last seen in 1975.

In short, the AD and CVD orders are working as intended, offsetting Canadian dumping and subsidization and allowing the U.S. industry to invest and begin to grow to its natural size. In fact, since 2016, U.S. softwood lumber mills have added 8.4 billion board feet of production capacity (enough to build over 550 thousand new homes per year). These investments that expand U.S. lumber manufacturing and increase our industry's capacity to support American homebuilding would not have occurred absent trade enforcement.

That said, Canada is relentless in subsidizing its softwood lumber industry. In just the past few months, after Commerce announced increased cash deposit rates in the AD and CVD proceedings and President Trump announced the imposition of an additional 10 percent Section 232 tariff, Canada responded by pledging \$1.2 billion of additional support beyond the subsidies that Commerce has already countervailed.⁷ Then, the Prime Minister announced, along with other new subsidies, another \$5 billion of support for Canadian manufacturers, including softwood lumber producers, calling it "A new Strategic Response Fund" that expressly aims to counter the effects of President Trump's tariffs.⁸ The Premier of British Columbia joined in as well, announcing that B.C. would just stop collecting fees for two months for timber used by

⁷ Prime Minister of Canada, "Prime Minister Carney announces new measures to transform Canada's softwood lumber industry" (August 5, 2025) (<https://www.pm.gc.ca/en/news/news-releases/2025/08/05/prime-minister-carney-announces-new-measures-transform-canada>).

⁸ Prime Minister of Canada, "Prime Minister Carney launches new measures to protect, build, and transform Canadian strategic industries" (September 5, 2025) (<https://www.pm.gc.ca/en/news/news-releases/2025/09/05/prime-minister-carney-launches-new-measures-protect-building>).

B.C. softwood lumber producers⁹ – that is an additional estimated \$50 million subsidy for B.C. producers.

Now more than ever, it is critical that the United States continue to strongly enforce U.S. trade remedy laws. That enforcement will be greatly enhanced by eliminating USMCA Chapter 10 binational panel review of U.S. AD and CVD determinations.

III. The Origin of Binational Panel Review of Commerce and ITC Trade Remedy Determinations

At the time of the U.S.-Canada FTA negotiations in the late 1980s, one of Canada's major objectives in the negotiations was to eliminate or weaken U.S. AD and CVD laws with respect to trade between the two countries. That was unacceptable to Congress and thus a non-starter for the United States. As a last-minute compromise, the parties agreed to establish a special mechanism for review of AD and CVD determinations by binational panels specially constituted for the purpose, instead of by domestic courts.

Chapter 19 of the U.S.-Canada FTA (Binational Dispute Settlement in Antidumping and Countervailing Duty Cases) was envisioned as a temporary stopgap to assuage Canada's concerns pending the negotiation of more detailed substantive disciplines for AD and CVD measures. Article 1906 of the U.S.-Canada FTA made this explicit, providing that the provisions of Chapter 19 "shall be in effect for five years pending the development of a substitute system of rules in both countries for antidumping and countervailing duties as applied to their bilateral trade," with the possibility of a two-year extension. Article 1906 went on to provide that "[f]ailure to agree to implement a new regime at the end of the two-year extension shall allow either Party to terminate the Agreement on six-month notice." Yet, when the U.S.-Canada FTA was succeeded by the NAFTA, Chapter 19 binational panel review was retained and expanded to cover Mexico, despite the United States and Canada having already agreed in the context of the Uruguay Round negotiations on precisely the kind of substitute system of rules for AD and CVD duties contemplated by Article 1906.

With the entry into force of the WTO agreements in 1995, Canada's original concern no longer has any basis. The Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures set forth detailed rules for the application of AD and CVD measures to which WTO members (including Canada and the United States) have agreed. The United States has implemented those rules in domestic law. While Chapter 19 may have been important for Canada at the time of the U.S.-Canada FTA, the original basis for binational panel review has been eliminated.

⁹ See Post on x.com by BC Minister of Forests, Ravi Parmar (@rparmar_BC) (September 5, 2025) (https://x.com/rparmar_BC/status/1963999304521228347). If B.C. were to continue such non-collection of stumpage fees, the benefit to the B.C. softwood lumber industry could be \$300 million annually, to the detriment of U.S. workers.

IV. Domestic Judicial Review of Trade Remedy Determinations Should Be Restored for Goods from Canada

U.S. law provides for judicial review of Commerce and ITC determinations by Article III judges at the CIT. Thus, all interested parties are provided under U.S. law the opportunity to seek redress of any agency determination that they believe to be unlawful. There is nothing wrong with U.S. judicial review that justifies supplanting it with review by foreign citizens.

Members of the USLC have, on several occasions in recent decades, been forced to invoke the U.S. trade remedy laws with respect to softwood lumber imports from Canada. They have done so, not to punish Canada or hide from fair competition, but to seek the restoration of the competitive balance between imports and U.S. producers that is distorted by Canadian timber pricing, forest management systems, subsidization, and dumping.

Unfortunately, the effectiveness of these laws has been undermined as they apply to Canada through Chapter 10 of the USMCA. The Chapter 10 provisions concerning binational panel review replace ordinary judicial review of trade remedy actions as applied to goods from Canada with binational panel review of whether those actions comply with a party's domestic law. The USMCA review that commences next year provides an opportunity to end the failed experiment of Chapter 10 and restore a general USMCA norm that all USMCA parties should provide judicial review of trade remedy determinations to other USMCA parties on the same basis.

Several reasons independently support the desirability of eliminating Chapter 10 binational panel review. First, Chapter 10 as applied to U.S. trade remedy actions is unconstitutional, and is bad public policy even if it were not unconstitutional. Second, Chapter 10 review has proven particularly unhelpful in resolving disputes over softwood lumber trade, and in some ways has actually exacerbated the dispute. Third, Chapter 10 review was designed nearly forty years ago to address Canadian concerns that have been overtaken by subsequent events, and Chapter 10 review is therefore now obsolete. We discuss each of these reasons briefly below.

Chapter 10 is unconstitutional. As the U.S. Department of Justice recognized even at the time the U.S.-Canada FTA was being approved in 1988, there are significant constitutional problems raised by empowering international dispute settlement panels to direct the actions of U.S. government agencies. Chapter 10 panels and committees¹⁰ review U.S. agency decisions, and those panels and committees have unreviewable authority to direct the actions of the Secretary of Commerce and the Commissioners of the ITC. While the Commerce Secretary and the ITC Commissioners are all U.S. officers nominated by the President and confirmed by the Senate, the members of Chapter 10 panels and committees are chosen, in part, by foreign

¹⁰ Chapter 10 of the USMCA provides for "extraordinary challenge" committees, which assess whether a binational review panel member was "guilty of gross misconduct," the panel "seriously departed from a fundamental rule of procedure," or the panel "manifestly exceeded its powers, authority or jurisdiction," and "special" committees, which can be established to assess whether a USMCA Party is fulfilling its obligations related to the functioning of the binational panel review system.

governments not subject to constitutional oversight or democratic accountability.

Further, even U.S. members of Chapter 10 panels and committees, once selected for a panel, cannot be removed, even for cause, by the President or any other U.S. constitutional officer, without the consent of Canada. The U.S. Supreme Court has concluded that a statute limiting Presidential removal authority (in a much less substantive fashion) over persons exercising Executive Branch authority was unconstitutional, reasoning that “{t}he President cannot ‘take Care that the Laws be faithfully executed’ if he cannot oversee the faithfulness of the officers who execute them.”¹¹ Chapter 10 also deprives parties of impartial judicial review of agency action by Article III courts, like that provided to interested parties challenging agency determinations concerning imports from the United States’ other trading partners.

The USLC has twice challenged the constitutionality of the U.S.-Canada FTA and NAFTA binational panel review system in the U.S. Court of Appeals for the D.C. Circuit. On both occasions, these challenges were voluntarily dismissed only as a result of agreements reached between the U.S. and Canadian governments that resolved the underlying antidumping and countervailing duty orders. The USLC reserves the right to renew its constitutional challenge if a rogue Chapter 10 panel renders an unacceptable verdict in any of the many ongoing or future reviews of determinations in the softwood lumber proceedings. Or, another industry that is adversely affected by Chapter 10 could make its own legal challenge to the constitutionality of Chapter 10. Better that Chapter 10 be removed by negotiation during the USMCA review than have it be overturned unilaterally by court action later.

Chapter 10 would be bad policy even if it were not unconstitutional. The NAFTA Chapter 19 system produced many poor decisions that failed to apply the proper standard of review and that made other severe legal errors, while providing no meaningful check on such improper panel decisions. A former judge of the Court of Appeals for the D.C. Circuit stated that an early NAFTA Chapter 19 decision “may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read.”¹² At least two NAFTA Chapter 19 panels expressly refused to follow binding Federal Circuit precedent.¹³ Further, because FTA panels cannot issue precedential rulings, the mere fact that an issue has been decided in a prior segment of a proceeding does not definitively resolve the question with a precedential ruling from a U.S. court, and therefore the issue can be relitigated in subsequent agency proceedings and FTA reviews, wasting agency resources as well as those of FTA panels and the parties.

Under USMCA Chapter 10, problems with binational panel review persist. The most notable issue so far is the years-long delays in establishing panels to conduct the reviews. At this

¹¹ *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 130 S. Ct. 3,138, 3,147 (2010) (quoting U.S. Const., Art. II).

¹² *In re Certain Softwood Lumber Products from Canada*, ECC-94-1904-01USA, Aug. 3, 1994, dissenting op. of Wilkey, J., at 41.

¹³ *In re Stainless Steel Sheet and Strip in Coils from Mexico*, No. USA-MEX-2007-1904- 01, Apr. 14, 2008, at 20-24; *In re Carbon and Certain Alloy Steel Wire Rod from Canada*, No. USA-CDA-2006-1904-04, Nov. 28, 2007, at 12-30.

point, there are ten ongoing USMCA Chapter 10 panel reviews of Commerce determinations in the softwood lumber proceedings. Only two Chapter 10 reviews of lumber determinations have been concluded since the USMCA entered into force, and those were resolved just this year when all parties agreed to dismiss their respective claims. These delays create and exacerbate uncertainty in the market due to the possibility of assessment rates changing years after goods have entered the United States, and during all that time, cash deposits that should go to the U.S. Treasury are held in limbo pending the outcome of the reviews. Additionally, delays result in additional spending and potential loss of revenue. Any refunds to importers require the government to make interest payments. More concerning, as the United States Government Accountability Office has reported, “large rate increases between the initial and final AD/CV duty rates and long lag times create challenges to collection.”¹⁴

Chapter 10 exacerbates the difficulties of addressing softwood lumber issues with Canada. The softwood lumber trade issue is far more politically sensitive in Canada’s domestic politics than in our own. Certain Canadian interests have unfortunately portrayed the issue as one of Canada’s sovereignty vis-à-vis the United States and have attempted to make the issue one of domestic Canadian politics.

In this context, the complex rulings on the multiple arcane issues that inevitably arise in antidumping and countervailing duty proceedings become politicized in Canada, with U.S. trade agencies falsely maligned as unprincipled institutions that require Canadian citizens to instruct them to follow U.S. law. Binational panels, usually operating without experienced staff and often without significant expertise in the particular legal matters or basic principles of U.S. administrative law at issue, are singularly ill-equipped to adjudicate such disputes. And, because – rightly or wrongly – it is perceived that USMCA panels may not, in fact, apply U.S. law correctly, as a U.S. court would, parties on both sides of the border become more willing to risk litigation because it is difficult to predict exactly how U.S. law will ultimately be applied by a USMCA panel.

That is not to say that U.S. courts will uniformly uphold U.S. agencies on matters involving lumber; respondents often prevail in their legal challenges to aspects of the application of the trade remedy laws in U.S. courts. But they do so professionally and in a way that leaves all sides feeling that the outcome is legitimate as a matter of U.S. law – something that is rarely the case, even for the winners, in binational USMCA panel proceedings.

V. Conclusion

For the reasons given above, the USLC urges USTR to condition extension of the USMCA on agreement to eliminate the Chapter 10 binational panel review process. Doing so would recognize that judicial review by Article III judges in U.S. courts already guarantees

¹⁴ United States Government Accountability Office, “Antidumping and Countervailing Duties: Information on Actions by Commerce and CBP to Address Reported Weaknesses in Duty Collection Processes,” GAO-20-50R, at 11 (Nov. 2019) (citing United States Government Accountability Office, “Antidumping and Countervailing Duties: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk,” GAO-16-542 (Jul. 2016)).

interested parties the opportunity for impartial and transparent review of the lawfulness of any agency determination in AD and CVD proceedings.

The USLC greatly appreciates the consideration of these comments and the Administration's steadfast commitment to a new golden age for U.S. lumber production. Please contact the undersigned if you wish to further discuss these important issues.

Respectfully submitted,



Zoltan van Heyningen
Executive Director