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CENTER FOR INTERNATIONAL TRADE IN FOREST PRODUCTS

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Current Status of the Softwood Lumber Dispute between the US and Canada

Dr. Ivan Eastin, CINTRAFOR

The trade of softwood lumber between the US and Canada has historically been a contentious issue between the two countries. Since 1987, a variety of strategies have been implemented to regulate the trade of softwood lumber between the US and Canada and these regulatory efforts have usually contributed to increased lumber prices in the US (Fig. 1). The most recent of these bi-national agreements, the Softwood Lumber Agreement between the US and Canada, expired March 31st, 2001. On April 2nd the Coalition for Fair Lumber Imports (CFLI) filed two cases with the US Department of Commerce (USDOC) and the International Trade Commission (ITC) requesting that a 40% countervailing duty (CVD) as well as a 28%-38% anti-dumping duty (AD) be applied to all Canadian softwood lumber exports into the US. By May 2002 (announced on March 22nd and implemented on May 22nd), with its investigations complete, Commerce announced that the final CVD and AD duties would be set at 18.8% and 8.4% (anti-dumping duties ranged from 2.18% to 12.44%). Thus, as of May 22nd, 2002 the total import duty imposed against Canadian softwood lumber was 27.2%. In response, Canada has to date filed a total of seven appeals against the softwood lumber duties; three using the dispute resolution process established within the North American Free Trade Agreement (NAFTA) and four before the World Trade Organization (WTO). The remainder of this discussion paper will provide an update of the status of the NAFTA and WTO appeals as well as the status of negotiations between the US and Canada.

NAFTA

The Canadian government filed three separate appeals against the softwood lumber duties utilizing the dispute resolution process contained within the NAFTA framework. Specifically, the Canadian government asked NAFTA to examine and rule on: 1) the countervailing duty, 2) the anti-dumping duty, and 3) the US finding that the US softwood lumber industry was threatened by injury from Canadian softwood lumber imports.

The Countervailing Duty

In order to legally impose a countervailing duty against softwood lumber imports from Canada, the

USDOC was required to prove that the softwood lumber industry was subsidized by the Canadian government; specifically that the Canadian government provided a financial contribution to the softwood lumber industry that benefited Canadian softwood lumber producers. In August 2003 a NAFTA panel concluded that the USDOC had shown that the Canadian government did provide a financial contribution (via below market stumpage rates) and that this financial contribution was provided to a specific industry (Canadian softwood lumber producers). However, the NAFTA panel concluded that the methodology used by USDOC to measure the extent of the benefit provided to Canadian softwood lumber producers was "contrary to law." The NAFTA panel asked USDOC to recalculate the benefit provided to the softwood lumber industry as a result of below market stumpage rates.

In response to the NAFTA panel remand, USDOC adopted a market principles methodology in place of the earlier cross border price comparisons to estimate the benefit conferred upon the softwood lumber industry. Using this new methodology, USDOC concluded in January 2004 that the CVD rate on Canadian softwood lumber imports should be 13.2% (down from the original 18.8% rate), thereby reducing the total import duty (CVD + AD) from 27.2% to 21.3% (although the applied duty will not be changed until an administrative review is completed).

On March 9th, 2004, USDOC published the final results of CVD expedited reviews that established individual CVD rates for 42 companies shipping lumber into the US which will become effective immediately. The calculation of final CVD rates for all companies in Canada is expected to be completed in the fall of 2004. The results of the CVD expedited reviews for the first 42 Canadian companies can be accessed at: a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/pdf/04-5280.pdf and a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/pdf/04-5281.pdf

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The Center for International Trade in Forest Products addresses opportunities and problems related to the international trade of wood and fiber products. Emphasizing forest economics and policy impacts, international marketing, technology developments, and value-added forest products, CINTRAFOR's work results in a variety of publications, professional gatherings, and consultations with public policymakers, industry representatives, and community members. Located in the Pacific Northwest, CINTRAFOR is administered through the College of Forest Resources at the University of Washington under the guidance of an Executive Board representing both large and small companies, agencies, and academics. It is supported by state, federal, and private grants. The Center's interdisciplinary research is carried out by university faculty and graduate students, internal staff, and through cooperative arrangements with professional groups and individuals.

CINTRAFOR News Editor:
Nicole Stevens

The first half of 2004 has seen an unusually large amount of activity in the regulatory arena for the US forest products industry. In March, the EU imposed a five percent retaliatory tariff on US imports, including over 165 forest products whose export value to Europe exceeded \$220 million in 2002. This retaliatory tariff will increase at the rate of 1% per month over a one year period or until the US repeals the Foreign Sales Corporation export tax incentive that was ruled illegal by the WTO. In late April a NAFTA panel, following a similar ruling by the WTO, found that the US International Trade Commission had failed to prove its case that imports of Canadian softwood lumber into the US posed a threat of injury to the US softwood lumber industry. This ruling, if allowed to stand, would significantly alter the dynamics of the negotiations on softwood lumber trade between the US and Canadian governments. Finally, in June the US Commerce Department announced that it would be levying import duties of between 4.9% and 198.08% on wooden bedroom furniture from China.

Adding a surreal touch to these activities was the announcement by the Japanese government in March that it had established a Wood Export Promotion Council that has been tasked with promoting the export of Japanese logs and lumber to China, Korea and Taiwan, and eventually

"Softwood Lumber Dispute" continued from page one

The Anti-Dumping Duty

In July 2003, a NAFTA panel ruled that the anti-dumping duty should remain in place and that USDOC was within its authority to conduct the anti-dumping investigation and had complied with all of the requirements of due process, but instructed USDOC to explain certain aspects of its methodology for calculating dumping margins and make other specific changes to its methodology. USDOC responded by lowering the AD duty from 8.4% to 8.1% in October 2003. In March 2004, the NAFTA panel again remanded the AD case to USDOC, directing USDOC to reconsider certain expenses as they regard the dumping margins for three of the six Canadian companies (Tembec, West Fraser, and Slocan) that were specifically reviewed by USDOC in determining the average dumping duty for the Canadian industry. In addition, the NAFTA panel declined to overturn USDOC's

to the US. All this occurs during a period when the US forest products industry has been significantly reducing their involvement in export markets in favor of the red hot domestic market. Unfortunately, the US market has attracted the attention of forest products exporters around the world. As a result, during the first quarter of 2004, US imports of softwood lumber increased by 33% over the first quarter of 2003, imports of veneer sheets increased by 25.4%, imports of continuously shaped wood (e.g., molding, door and window stock and T&G lumber) increased by 20.1% and imports of plywood increased 45.5%.

As the US auto industry learned to its chagrin, it is not enough to compete only within the domestic marketplace. Rather, a competitive business strategy requires that firms (including those in the forest products industry) maintain a presence in export markets. This not only provides a countercyclical balance to national economic trends but also compels a firm to remain attentive to developments in the international marketplace...developments that often have significant implications for the competitive business environment back home in the US. We will develop this connection between the domestic and international markets in greater depth at the 21st Annual International Forest Products Markets Conference which will be held on September 27th at the SeaTac Marriott Conference Center. Visit the CINTRAFOR website (www.cintrafor.org) to see the agenda for this year's conference. ▲

method of calculating anti-dumping duties (known as zeroing). In April, 2004 USDOC amended the AD duties for the three companies downward (dropping one company below the "de minimis" level and removing it from the AD duty calculation for all other companies). As a result, the average AD duty levied against all other Canadian companies (which is based on the weighted average of the AD rate calculated for five rather than six companies) increased from 8.1% to 8.8%.

Threat of Injury

In September 2003, the NAFTA panel remanded the threat of injury case back to the ITC citing "extensive lack of analysis." The ITC, in December 2003, reaffirmed in a 5-0 vote that the US industry is indeed threatened by Canadian softwood lumber imports. This case, which asserts that US softwood lumber producers are threatened with injury from Canadian softwood lumber imports, provides the justification for imposing both CVD and AD duties on softwood

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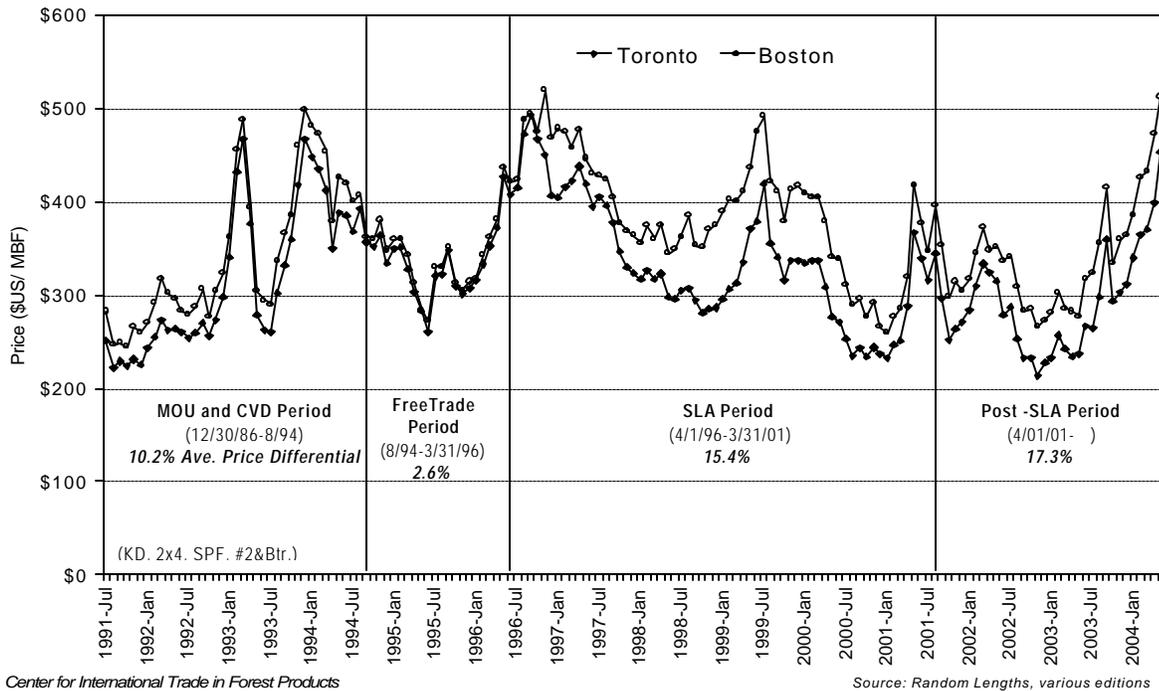


Figure 1: Softwood Lumber Price Differentials Between Canada and the US

lumber imports from Canada. An injury or threat of injury is necessary for the United States to impose countervailing and anti-dumping duties and a finding of no injury by the NAFTA panel would mean that neither CVD nor AD duties could be imposed against Canadian lumber imports. The NAFTA panel, on April 29th, 2004, again remanded the threat of injury case back to the ITC saying that it had not provided enough evidence to prove its case. The NAFTA panel gave the ITC 21 days to respond to the panel’s findings. On May 27th, the ITC requested that the NAFTA panel reconsider its ruling in the threat of injury case and also reconsider the ITC’s request for an extension in order to allow more time to respond to the panel’s questions.

WTO

The Canadian government has also filed four appeals with the World Trade Organization regarding the imposition of softwood lumber duties by the US. Specifically, the Canadian government has asked WTO to examine and rule on: 1) the legality of the Byrd Amendment, 2) the countervailing duty, 3) the anti-dumping duty, and 4) the ITC finding that the US softwood lumber industry was threatened by injury from Canadian softwood lumber imports.

Byrd Amendment

In July 2002 the WTO ruled that the US must remove or change the Byrd Amendment, a law that provides for the distribution of duties collected from Canadian softwood lumber imports to those US lumber producers who petitioned the US government for protection. Citing a lack of response from the US side, in January 2004 Canada and seven other countries asked the WTO for permission to impose retaliatory tariffs against the

US until the US complies with the WTO decision regarding the Byrd Amendment. (Interestingly, the original case did not include Canada as a complainant, although the subsequent case did).

The Countervailing Duty

In July 2002, WTO ruled that below market Canadian stumpage prices can represent a subsidy for Canadian lumber producers, although the WTO ruled that the US cannot use cross-border price comparisons as a methodology to estimate the level of subsidy. However, in January 2004 the WTO amended its decision of July 2002 and determined that the US may use a benchmark other than private timber prices within Canada to estimate the magnitude of timber subsidies provided to Canadian lumber manufacturers.

The Anti-Dumping Duty

In January 2004, the WTO ruled that the US can impose anti-dumping duties against Canadian softwood lumber, although it rejected the use of zeroing in as a method for calculating anti-dumping rates and remanded the case back to USDOC to recalculate the duties.

Threat of Injury

On March 22, 2004, a WTO panel ruled that ITC failed to prove that a substantial increase in imports of softwood lumber from Canada was imminent in order to support its threat of injury determination. An injury or threat of injury is necessary for the United States to impose countervailing and anti-dumping duties. ▲

What's Driving Productivity Gains in Washington's Sawmilling Industry?

Dr. John Perez-Garcia, CINTRAFOR

This question is currently being asked in a study of the sawmilling sector in the state of Washington that CINTRAFOR has undertaken with the assistance of the US Forest Service, the Olympic Natural Resource Center, the Washington State Department of Natural Resources and USDA CSREES. Forest products operations in Washington have changed dramatically since the first mill survey was conducted in 1968. About 76 mills currently operate in Washington, down from 212 reported in the first survey. The decline in sawmill numbers has occurred with an increase in the number of mills with a capacity of 120 thousand board feet (mbf) and greater (Class A mill). The 1998 survey reports that 45 of these mills are in operation with about 30 of them located in the Olympic Peninsula and Puget Sound areas.

A prominent change observed over these past four decades has been the absolute decline in the amount of timber harvested. This by itself would have decreased mill numbers, but the major decline in timber harvest occurred during the decade of the 1990s. Harvest levels in 1968 totaled 6.9 billion board feet (bbf), and were

regions private timber harvests and log imports from out of state increased to nearly eliminate the public timber harvest decline. The changes in western Washington were drastically different however. Private timber harvest levels were constrained and not able to offset lower public timber harvest levels. By 1998, in the Lower Columbia area, the second largest source of public timber in 1968, public timber harvest levels had dropped 81%. The largest source of public timber, the Olympic Peninsula, lost 64% of the 1968 harvest level. Public timber harvest levels were reduced by 75% in the Puget Sound area. At the same time, the private sector lost anywhere from a quarter of the 1968 harvest level in the Puget Sound area to 40% in the Lower Columbia area. Statewide, public and private timber harvest levels were 42% lower in 1998 over 1968 levels. Most of the decline occurred during the last decade. By 1998, the private sector was providing over 80% of the total harvest level in each economic area of the state.

The reduction of public and private timber harvest levels affected the operation of mills. Over time, milling capacity adjusted to reflect changes in timber type,

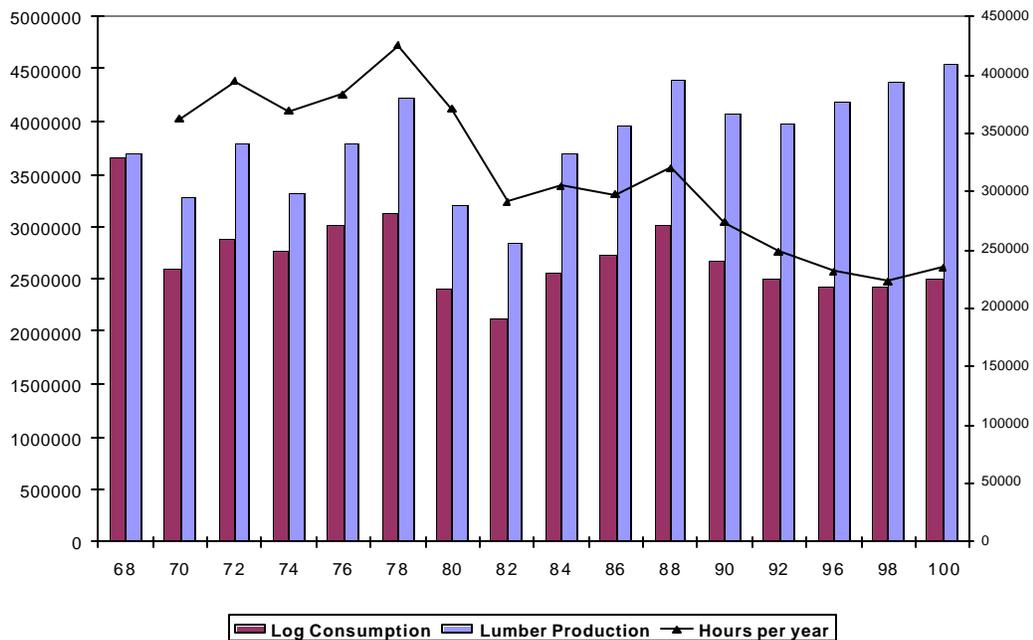


Figure 1. Log consumption, lumber production and operating hours

Source: WA Department of Natural Resources Mill Surveys from 1970 to 2000

nearly identical in 1988, with a harvest of 7.0 bbf. In 2002 however, timber harvests totaled only 3.7 bbf. The largest decline in harvest levels occurred in the public sector.



Regions responded differently to the decline in public sector harvests. In the Central Washington and Inland Empire

volume and sourcing areas. Those mills able to offset part of the public timber harvest decline were faced with higher expense by using a greater proportion of logs coming from outside of their former timber supply area. The dependency on logs from outside its economic area increased from a low of 3% in 1968 to 27% in 1998.

These trends, along with a recently completed analysis

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for the Oregon Department of Forestry which concluded with the potential need for an additional 7 to 8 Class A sized mills in the Northwest region to meet demand growth, has led CINTRAFOR to examine the milling infrastructure in the state. Figure 1, in particular, poses several interesting questions. In it, log consumption taken from the Washington Department of Natural Resources mill surveys is charted with lumber production and annual operating hours for Washington State sawmills.

The figure suggests increasing productivity overall for Washington sawmills. More lumber production is obtained using fewer logs, but this is likely to be a function of several factors including the fact that logs are smaller in diameter today than they were in 1970 (the first year of data). The downward trend of operating hours with an upward trend in lumber production leads one to conclude that labor and or capital productivity has improved. The study currently underway will help address these questions. ▲

US-China Build Program Shows Results

Rose Braden, CINTRAFOR

While our readers are familiar with CINTRAFOR's research projects and conferences focusing on markets for Pacific Northwest forest products, fewer may be familiar with CINTRAFOR's participation in the US-China Build Program. As one of the cooperators of the Evergreen Building Products Association's US-China Build Program, Rose Braden, a CINTRAFOR staff person, serves as the Program Manager with Mark Calhoun of the State of Washington Department of Trade and Economic Development. Other cooperators, such as the Foreign Agriculture Service, the American Forest & Paper Association, APA-The Engineered Wood Products Association, and the Softwood Export Council, provide financial and staff support. The goal of the program is to increase exports of US building materials to China, and improve awareness about the benefits of building wood frame homes and using American species for interior design and furniture constructions. This is achieved through the US-China Build Program's office in Shanghai, annual sales missions, seminar series, Chinese-language US Housing & Building Materials Newspapers, US supplier guides, and trade show pavilions featuring US building materials. US-China Build also informs US exporters about China's building products industry, provides advice about China business practices, and identifies potential customers.

As one of the first ongoing cooperative programs of its type US-China Build has achieved some significant results in its first three years. The SARS outbreak slowed participation in 2002 for a few months, but companies were eager to resume business when the

travel ban was lifted. As more US companies have become familiar with US-China Build, participation by US companies in overseas activities has increased - companies from across the US representing a wide range of products regularly participate. At the same time, as Chinese companies become better acquainted with US product options and US-China Build programs, seminar attendance has continued to increase. Our semi-annual Chinese-language US Housing & Building Materials Newspaper, which contains advertising, technical articles about using wood and non-wood building materials and improving energy efficiency, product and project profiles, and related news is mailed to over 8,000 Chinese architects, developers and other construction professionals. Response to the newspaper has been positive. Our activities and our Program Coordinator in Shanghai have helped us develop good working relationships with developers who use or are interested in using US building materials.

The result of these our work has been rising sales of US products resulting from US-China Build activities. While not all companies share all of their sales results with us, we have tallied the following success stories:

- Thirteen US companies participated in the 2002 US Housing & Building Materials Seminars and Sales Missions and reported actual and projected sales totaling \$500,000.
- The 2003 US Housing & Building Materials Seminars and Sales Mission to Shanghai, Beijing, and Shenzhen included twelve US companies who reported actual and projected sales totaling \$2.4 million. The seminars hosted 420 Chinese architects, developers, and other specifiers.
- US-China Build organized a US Pavilion at the 2003 and 2004 Shanghai International Construction & Building Products Trade Fair. SARS had a significant impact on participation in the 2002 show, with four companies participating. By 2004, the pavilion included 14 US companies and covered 1,350 square feet.
- A Distribution and Market Development Mission held in May 2004 provided US companies who have not yet exported to China, or are in the early stages of doing business, an opportunity to learn more about how Chinese developers source materials. The mission also introduced companies to developers, distributors, and arranged individual business meetings. Twelve companies representing products such as lumber, panels, bathroom fixtures, electrical products, insulation, and steel structural panels participated in the mission and reported \$2 million in projected near term sales.

Significant progress has also been made in supplying China with treated southern



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pine as the popularity of wood boardwalks, railings, and other outdoor landscaping increases. US treated pine suppliers have already supplied 1/3 of the materials needed for a 24 mile boardwalk being built along the waterfront of Qingdao, the site of the 2006 Beijing Olympic sailing events. During a recent trip to participate in the US Pavilion at the Shanghai International Construction & Building Materials Show and deliver seminars, APA-The Engineered Wood Products Association, Calvert Glulams, and Western Wood Structures signed a contract to build a 19 foot glulam foot bridge at a Shanghai area golf course.

Energy efficient and environmentally friendly products are becoming more vital in China. According to China's minister of construction, energy consumption of buildings in China is double or triple that of developed countries of comparable climate. Some of China's largest cities are taking a role in encouraging the construction of energy efficient buildings. The Shanghai government now mandates that design and construction of new residential buildings and public buildings must comply with energy conservation standards as of 2006. As a result, sales of products such as insulation, wood frame windows, structural insulated panels, and other energy saving products are making inroads into China's construction industry.

Often the first barrier to entering the Chinese construction market is reluctance by US companies to visit. As one participant in the May 2004 Business Development Mission said, "Learning about the business culture from the panelists and other meetings was the most valuable part of the mission," adding that first-hand experience beat any text book or publication available.

The US-China Build program has several upcoming activities to enable US companies to investigate the market potential and establish sales contacts. We are in the process of coordinating the 2004 Seminar Series and Sales Mission to Shanghai, Ningbo, and Beijing, three of China's leading housing markets. The theme of this year's mission will be energy efficiency. The seminars will include half-day seminars about the benefits of building American style housing and using American building materials, accompanied by a mini-trade show featuring US building materials.

Issue 6 of the Chinese-language US Housing & Building Materials Newspaper is also in production. US-China Build is accepting advertising from US companies. For more information about participating in the Fall Seminar Series and Sales Mission or advertising in the newspaper, contact Rose Braden at 206-543-0700 or

rbraden@uschinabuild.org. Information flyers and pricing can also be found on the US-China Build website at www.uschinabuild.org/Events/Events.htm ▲



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21st Annual Conference on International Forest Products Markets

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For a detailed agenda and further information on registration, please visit our website at http://www.cintrafor.org/CONFERENCE_TAB/overview.htm

US Building Materials Sales Mission to China September 13-17, 2004

The US-China Build Program with the Evergreen Building Products Association, American Forest & Paper Association, and APA-The Engineered Wood Association, is organizing a sales mission and seminar series for US building materials manufacturers and suppliers to three of China's most promising housing markets: Shanghai, Ningbo, and Beijing. The mission will include half-day seminars about the benefits of building American style housing and using American building materials to familiarize Chinese developers, architects, and importers about the benefits of using US building materials including energy efficiency, testing standards, and quality. The theme of the seminars is energy efficiency.

PRICING: Participation with speaking slots: \$650 for EBPA/AF&PA members, \$750 for non-members. Participation without speaking slots: \$550 for EBPA/AF&PA members and \$650 for non-members.

For more information contact Rose Braden at 206-543-0700 or rbraden@uschinabuild.org or visit the US-China Build website at: <http://www.uschinabuild.org/Events/Events.htm>

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