



COALITION FOR FAIR LUMBER IMPORTS

June 1, 2010

PUBLIC DOCUMENT

BY HAND DELIVERY

The Honorable Gary Locke
Secretary of Commerce
Attn: James Terpstra
Import Administration
APO/Dockets Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Subject: Softwood Lumber Subsidies Bi-Annual Report: Request for Comment

Dear Secretary Locke:

The Coalition for Fair Lumber Imports (“Coalition”) hereby submits an original and six copies of comments to the U.S. Department of Commerce (the “Department”) on subsidies provided by Canada, a country exporting softwood lumber and softwood lumber products to the United States. These comments are submitted in response to the Department’s request for comments published in the Federal Register on April 30, 2010. Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment, 75 Fed. Reg. 22,743 (Dep’t Commerce Apr. 30, 2010).

Canada is the dominant exporter of softwood lumber to the United States. The attached comments describe known Canadian subsidy programs, including the names for the programs if available, and identify whether the subsidy is provided by the Canadian federal government or one of the Canadian provincial governments. The attachment does not purport to comment on every Canadian softwood lumber subsidy program that may exist. We also incorporate by reference our previous comments to the Department in our submissions dated November 26, 2008, May 29, 2009, and November 30, 2009.

The Coalition urges the Department to include all subsidies identified in the attachment and any others of which the agency becomes aware in the Department’s report to Congress pursuant to the Softwood Lumber Act of 2008.

The Honorable Gary Locke

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Please contact me at (202) 567-6035 if you require clarification of any aspect of this submission. An electronic copy of this submission has been e-mailed to *webmaster-support@ita.doc.gov*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. A. Bentley", with a long horizontal flourish extending to the right.

David A. Bentley
General Counsel

Attachment

CANADIAN SUBSIDIES TO SOFTWOOD LUMBER

The following subsidy programs of the Canadian federal and provincial governments have been identified in response to the Department's request for comment on subsidies provided by countries exporting softwood lumber to the United States. Some of these programs were addressed more fully in prior submissions to the Department dated November 26, 2008, May 29, 2009, and November 30, 2009, and those prior submissions are incorporated herein by reference. There is no publicly available information suggesting that any of these Canadian subsidy programs have been eliminated or changed in any material way. This submission does not purport to include all Canadian subsidies to softwood lumber, and the subsidy programs identified herein are not listed in any particular order. Although some of these subsidy programs pre-existed the U.S. – Canada Softwood Lumber Agreement 2006 (“SLA”) and are thus not inconsistent with the SLA, other identified programs are new and are believed to be possible violations of the SLA.

I. Stumpage Subsidies

Other than in Atlantic Canada,¹ provincial governments own the vast majority of merchantable forest land and provide the vast majority of softwood timber used for lumber production in Canada. Although the details of each province's timber sale programs vary, all of these provinces set timber prices at levels far below market value. Because timber is the principal input cost for lumber producers, the availability of large amounts of government-owned timber at below-market prices confers a substantial advantage on Canadian lumber producers. As the Department has found in several past proceedings, the provision of government-owned timber for less than adequate remuneration confers large subsidies on Canadian softwood lumber producers.

A. British Columbia

British Columbia ("BC") has created a complex system of different “tenure” arrangements that permit private forest products firms to harvest logs on government land, in most cases at prices set by the government. The BC Ministry of Forests and Range sells a small portion of this timber in auctions, but participation in these auctions is limited and the ultimate price that bidders are willing to pay is determined by the virtually unlimited amounts of timber available to BC lumber mills at administered prices. The majority of timber is sold at prices set by the Ministry based on the results of a complex statistical modeling exercise deemed to produce the "estimated winning bid" for a given timber stand. Average prices are one-third or less of the market price for timber of identical species just south of the BC border, where all timber is sold competitively.

¹ “Atlantic Canada” includes the Maritimes Provinces (New Brunswick, Nova Scotia, and Prince Edward Island), as well as Newfoundland and Labrador.

Not only does this program continue to exist, but recent developments show that the benefit conferred under this program has significantly increased, both in the Interior and Coast regions of BC.

Already low timber prices in the Interior region of BC have been further reduced since mid-2007 as an increasing share of the timber harvest has been deemed “lumber reject” or “Grade 4.” This timber is sold for the statutory minimum price of C\$0.25/m³ rather than at the administered price generated under the ordinary stumpage price system. According to online BC Harvest Billing System data, the share of the BC Interior harvest classified as Grade 4 increased from 16 percent in fiscal year 2006-2007 to more than 42 percent in each of the last two years. This increase in Grade 4 translates to a further significant decrease in the average BC government timber price and a substantial increase in the subsidy benefit conferred under this program. Moreover, available evidence demonstrates that the increase in the share of timber classified as Grade 4 is not attributable to any decline in the quality of BC timber used for lumber production (due to the mountain pine beetle infestation or any other cause), but rather to changes in the Ministry’s rules and procedures governing log grading.

Further changes in the BC Interior timber sales program, including “stand-as-a-whole” pricing that will eliminate the actual scaling and grading of timber harvested on many stands sold on a non-competitive basis and other changes in the Interior pricing system, are due to be implemented beginning June 1, 2010.² Although many of the details of the new system have not been publicly released, several elements of the proposed changes are likely to further increase the subsidy benefit from BC timber sales.

In addition, stumpage prices on the BC Coast have continued to decline in the first part of 2010, even as lumber prices (and thus the market value of the timber) have sharply increased this year. For example, an amendment to the Coast Appraisal Manual effective March 1, 2010 reduced the timber price of most species, including high-value species such as Western Red Cedar, to C\$0.25/m³ for many licensees – and fixed this low price for the next 12 months, regardless of market conditions. The basis for this and other stumpage reductions on the Coast is unclear. Even if this price reduction is simply the result of applying the existing BC timber pricing system without change – as it would have to be, in order to be consistent with the U.S.-Canada Softwood Lumber Agreement 2006 – this would be even further indication that the BC timber pricing system results in massive underpricing of timber. Either way, the benefit from the BC timber pricing program continues to increase.

B. Alberta

The Alberta government owns the vast majority of useable timberland in the province. The Ministry of Sustainable Resource Development provides softwood timber to forest products companies – mainly lumber producers – at fixed rates. Holders of Forest Management Agreements (FMAs) and Coniferous Timber Quotas pay fixed fees of C\$1.90/m³ for all softwood timber harvested, regardless of species, quality, end use, or almost all market

² The Ministry of Forests and Range has set up a web site to disseminate information about these changes at <https://www.for.gov.bc.ca/hva/interior-pricing-changes.htm>.

conditions. This fee is far below the market value of timber useable for softwood lumber production, as demonstrated by market prices for timber of the same species and quality in U.S. jurisdictions where all timber is sold competitively.

This subsidy program remains in existence.

C. Saskatchewan

The Saskatchewan government owns the vast majority of the timberland in the province. Timber is provided to softwood lumber producers at fixed rates that are well below market values. This subsidy program remains in existence.

D. Manitoba

The Manitoba government owns the vast majority of the timberland in the province. Timber is provided to softwood lumber producers at fixed rates that are well below market values. This subsidy program remains in existence.

E. Ontario

The Ontario government owns the vast majority of the province's forestland and allocates the rights to harvest provincial timber through 20-year, renewable tenure arrangements known as Sustainable Forest Licenses ("SFL") and through Forest Resource Licenses ("FRL"). The Ministry of Natural Resources periodically sets administered prices for timber that are well below market values.

This subsidy program remains in existence. On April 30, 2010, the Ministry released a proposed framework paper describing potential modifications to the Ontario timber sales program. Under this proposal, SFLs would be issued to new government-owned Local Forest Management Corporations ("LFMCs"), which would in turn manage the forests and sell timber or logs to lumber producers. According to the framework proposal, selling all provincial timber through LFMCs could result in market pricing:

In a truly competitive market, all timber sales would occur at market prices. Consuming mills (both existing and future) would compete for Crown timber instead of relying on government commitments. Access to Crown timber would be provided through competitive sales by the LFMCs.³

Unfortunately, the actual proposal does not contemplate that all or even most Crown timber would be sold competitively through LFMCs. Rather, upon full implementation, it is envisioned that only 25 percent of timber would be sold competitively, and that these prices would "guide" the prices for the large majority of timber sales, which would continue to be non-competitive

³ Ontario Ministry of Northern Development, Mines, and Forestry, "Putting Ontario's Wood to Work," Apr. 30, 2010, at 16, available at <http://foresttenure.mndmf.gov.on.ca/pdfs/proposed.pdf>.

sales priced administratively. This proposal, therefore, is unlikely to produce the “truly competitive market” described in the proposal itself, and thus is unlikely to result in actual market pricing of timber.

F. Quebec

The Quebec government owns the vast majority of the province’s forestland and allocates the rights to harvest public timber through 25-year, renewable tenure arrangements known as Timber Supply and Forest Management Agreements (“TSFMAs”) and through Forest Management Contracts (“FMCs”). The Ministry of Natural Resources and Wildlife (*Ministère des ressources naturelles et faune*) sets stumpage rates for timber sold under TSFMAs and FMCs through a complex, administered calculation methodology which results in payments that are far less than “adequate remuneration.” The system is designed to enhance artificially economic growth in the lumber industry and to maintain employment, not to maximize the return on the timber resource.

This subsidy program remains in existence.

II. Wood Cost Subsidies Associated with Log Export Bans

A. British Columbia Log Export Ban

BC maintains a domestic processing requirement and other log export restrictions. These measures prevent non-BC producers from obtaining BC logs and thereby reduce the demand for such logs and further reduce the domestic price of softwood sawtimber throughout the province.

The BC log export restrictions have two central legislative components: 1) an in-province processing requirement (*i.e.*, an affirmative obligation to provide logs only to BC processors); and 2) a log export tax, which is designed to remove any incentive to export sawlogs even if an exemption to the processing requirement is issued. These restrictions apply to all logs harvested from lands under provincial jurisdiction. Federal restrictions apply to logs not covered by provincial restrictions.

By largely eliminating the market impact of a strong international demand for BC logs, the domestic processing requirement causes domestic BC log prices to be far lower than they otherwise would be.

This subsidy program remains in existence.

B. Alberta Log Export Ban

Section 31(1) of the Alberta Forests Act prohibits the export of logs outside of Alberta.⁴ The provincial government may, in its discretion, authorize the shipment outside of Alberta of logs for limited purposes (*i.e.*, to be used for research or experimental purposes) or for a limited

⁴ Alberta Forests Act, R.S.A. 1980 C. F-16, § 31(1).

time (i.e., one year). By largely eliminating the market impact of international (primarily U.S.) demand for Alberta logs, the domestic processing requirement causes Alberta log prices to be lower than they otherwise would be. This results in more Alberta lumber production and employment, at the expense of U.S. production and jobs, than otherwise would be the case because Alberta sawmilling is permitted to operate with the benefit of undervalued logs.

This subsidy program remains in existence.

C. Ontario Log Export Ban

Ontario legislation mandates that trees harvested from public lands be manufactured in Canada, thus precluding the export of logs from the province.⁵ Although the Ontario government may, in its discretion, authorize the manufacture outside of Ontario of logs originating from Crown lands,⁶ there is no evidence any significant volume of softwood logs are in fact authorized for export. By largely eliminating the market impact of international (primarily U.S.) demand for Ontario logs, the domestic processing requirement causes Ontario log prices to be lower than they otherwise would be.

This subsidy program remains in existence.

D. Quebec Log Export Ban

The Quebec Forest Act has long required that all "timber harvested in the public forest, whatever the nature or object of the management permit authorizing the harvesting, must be completely processed in Quebec."⁷ Although the Quebec government may, in its discretion, authorize the shipment outside of Quebec of incompletely processed timber from public forests,⁸ there is no evidence that any significant volume of logs is in fact authorized for export. By largely eliminating the market impact of international (primarily U.S.) demand for Quebec logs, the domestic processing requirement causes Quebec log prices to be lower than they otherwise would be. This results in more Quebec lumber production and employment, at the expense of U.S. production and jobs, than otherwise would be the case because Quebec sawmilling is permitted to operate with the benefit of undervalued logs.

This subsidy program remains in existence.

III. Ontario and Quebec Subsidies Subject to SLA Arbitration

The U.S. government has advanced the claim that these programs violate the 2006 U.S.-Canada Softwood Lumber Agreement ("SLA"), and these programs are currently the subject of

⁵ Crown Forest Sustainability Act, S.O. 1994, c.25, § 30(1).

⁶ See id. at § 30(3).

⁷ The Quebec Forest Act, Que.Rev. Stat. C. F-4.1 § 159.

⁸ Id. § 161.

an arbitration proceeding between the United States and Canada (LCIA No. 81010). The programs are summarized in the November 26, 2008 submission to the Department on Canadian subsidy programs and are explained in detail in United States submissions to the arbitral panel in LCIA No. 81010.

- Quebec Capital Tax Credit for Primary Wood Processing Facilities. This program was announced in 2006 to provide a 15 percent tax credit to Quebec's forest products industry.
- Quebec Forest Management Measures. This program was announced in 2006 and allowed Quebec to incur costs previously borne by the forest products industry, e.g., road and bridge repair and construction, silviculture expenses.
- Quebec Forest Sector Financing "Envelope." This program was announced in 2006 to make financing available to Quebec's forest products industry.
- Ontario Forest Sector Prosperity Fund ("FSPF"). This program was announced in 2006 to provide grants to the forest sector in support of new capital investment.
- Ontario Forest Sector Loan Guarantee Program ("FSLGP"). This program provides C\$350 million in loan guarantees over five years to stimulate investment in the forest industry.
- Ontario Forest Roadbuilding Program. This program was announced in 2006 to make available C\$75 million to reimburse forest companies for costs incurred for constructing and maintaining forest access roads.

These subsidy programs or the effects from them continue to exist.

IV. Additional Subsidy Programs

A number of subsidy measures have been identified in prior submissions. The following additional comments supplement those prior submissions, which are incorporated here by reference.

A. Quebec Loan Guarantee for AbitibiBowater

In May 2009, Quebec issued a financing guarantee of C\$100 million for AbitibiBowater expressly to preserve its processing operations. AbitibiBowater, Canada's fourth largest lumber producer, is in receivership. Without a government guarantee, private sector financing for the company would be unthinkable at any interest rate. Since the company was clearly uncreditworthy, government guarantees amount to a significant subsidy. Further, the issue of the company's large underfunded pension obligations of more than C\$1 billion remains unresolved, even as it prepares to emerge from bankruptcy.

The effects of this subsidy program continue to exist.

B. New Brunswick Grant Aid

According to press reports, New Brunswick government officials have announced an intent to provide a C\$1.5 million loan and another C\$1.5 million in loan guarantees to Miramichi Lumber Products (formerly Newcastle Lumber). The terms of the loans and loan guarantees were not announced, but the statements of the relevant government officials imply that loans were not otherwise available to the company on commercial terms; the loans and guarantees, therefore, would likely provide a benefit. The purpose of this subsidy is to allow the previously closed Miramichi mill to reopen.

The effects of this subsidy program continue to exist.