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December 4, 2013

BY ELECTRONIC MAIL to webmaster_support@trade.gov

The Honorable Penny Pritzker
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Softwood Lumber Subsidies Semi-Annual Report

Dear Secretary Pritzker:

On behalf of the U.S. Lumber Coalition (the "Coalition"),[1] we hereby submit these comments in response to the request by the Department of Commerce (the "Department") for comments on subsidies provided by certain countries exporting softwood lumber to the United States.[2]

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[1] The Coalition is an association of domestic entities interested in promoting fair trade in softwood lumber products. Members of the Coalition have been petitioners in several antidumping and countervailing duty proceedings involving softwood lumber products from Canada.

[2] Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment, 78 Fed. Reg. 65,970 (Dep't Commerce Nov. 4, 2013).

Please do not hesitate to contact any of the undersigned should you have any questions concerning this submission.

Respectfully submitted,

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SUBSIDIES TO SOFTWOOD LUMBER PRODUCTION

Comments of the U.S. Lumber Coalition

Submitted Pursuant to Section 805 of the Softwood Lumber Act of 2008

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Submission of the U.S. Lumber Coalition to the Department of Commerce
Pursuant to Section 805 of the Softwood Lumber Act of 2008
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1. CANADA

A. Provincial Stumpage Programs

The large majority of timber used in the production of softwood lumber in Canada is harvested from "Crown lands" owned and managed by the several Canadian provincial governments. This timber is provided by the provincial governments to lumber producers (or, less often, to logging contractors who in turn sell the harvested logs to lumber producers) under a variety of contractual arrangements. While the details vary from one province to another, these provincial systems share some common features, including:

- an administered price for most, if not all, Crown timber at levels that are demonstrably well below market prices;
- low minimum or "reservation" prices, ensuring higher volumes of timber are harvested in poor markets when a profit-maximizing landowner would withhold timber from the market until prices improve; and
- domestic processing requirements, to ensure that the benefit of this below-market timber is provided exclusively to softwood lumber producers in Canada.

Further, the provincial systems generally account for such a large share of the timber available to lumber producers that the government's administered price for Crown timber suppresses market pricing mechanisms for private timber (and any small share of Crown timber that may be sold competitively in some provinces).

As the Department has previously established, the provision of Crown timber by provincial governments constitutes the government provision of goods and therefore a financial contribution within the meaning of Section 771(5)(D) of the Tariff Act of 1930, as amended (19 U.S.C. § 1677(5)(D) (2006)) (the "Act"). Further, the Department has repeatedly found that because the number of industries making use of Crown timber is limited, the provision of timber is specific within the meaning of Section 771(5A)(D)(iii) of the Act. Therefore, the provision of Crown timber to softwood lumber producers is a countervailable subsidy if it confers a benefit – that is, if the provision is made for "less than adequate remuneration" as set forth in Section 771(5)(E)(iv) of the Act and the Department's implementing regulations.

Under these laws and regulations, the Department would determine whether timber is being sold for less than adequate remuneration by reference, where possible, to a market-determined benchmark price.[1] Because Crown timber sales account for the vast majority of

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[1] The Court of Appeals for the Federal Circuit has upheld the Department's application of its standard regulatory framework for selecting benchmark prices, including the use of prices outside the subsidizing country when appropriate, for purposes of the less-than-adequate-

timber sold in most Canadian provinces, internal Canadian timber prices will generally not be viable benchmarks for this purpose.[2] Under any reasonable application of these established principles, Canadian provinces plainly provide a benefit with respect to most of the softwood lumber produced in Canada from Crown timber. A brief survey of the most important lumber-producing provinces shows this to be the case.

British Columbia (BC). The BC government provides Crown timber under a wide variety of arrangements. The province sells a small portion of this timber in auctions. However, bidders must agree to process the timber in BC, so the potential highest bid is therefore excluded from the auction if the highest possible value of the timber is for an export market. The province also limits the number of open contracts any individual bidder may have at any one time. Under these constraints, the majority of auction participants are logging contractors that harvest auctioned timber and sell the logs to BC producing mills; these same contractors generally also are employed by those same mills to harvest Crown timber sold directly by the government to the BC producing mills at prices set by regulation. Thus, the ultimate price that bidders are willing to pay is limited, at the margin, by the availability of Crown timber to BC lumber mills at administered prices.

Most of the Crown timber is sold through long-term contracts directly to producers at prices set on the basis of a complex statistical modeling exercise deemed to produce the "estimated winning bid" for a given timber stand, had the stand been sold under this deeply flawed auction system.[3] But if the auction prices do not actually reflect market value, neither would the prices resulting even from a statistically valid translation of the auctions prices to these long-term "tenure" sales. And the translation procedures used by BC are far from statistically valid.

For example, the pricing model used on the BC Coast was updated as of July 1, 2012 for the first time in nearly three and one-half years. In updating the model, BC introduced several new variables, at least one of which does not relate to timber quality or harvesting costs at all. Rather, this variable concerns the data source that would have been used for one of the factors in

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remuneration inquiry. Essar Steel, Ltd. v. United States, 678 F.3d 1268, 1273-74 (Fed. Cir. 2012).

[2] The World Trade Organization (WTO) Appellate Body has confirmed that the Department may rely on the size of the government's market share as potentially conclusive evidence that internal prices cannot be used as a reliable market benchmark. Report of the Appellate Body, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R, adopted Mar. 25, 2011, paras. 446, 458.

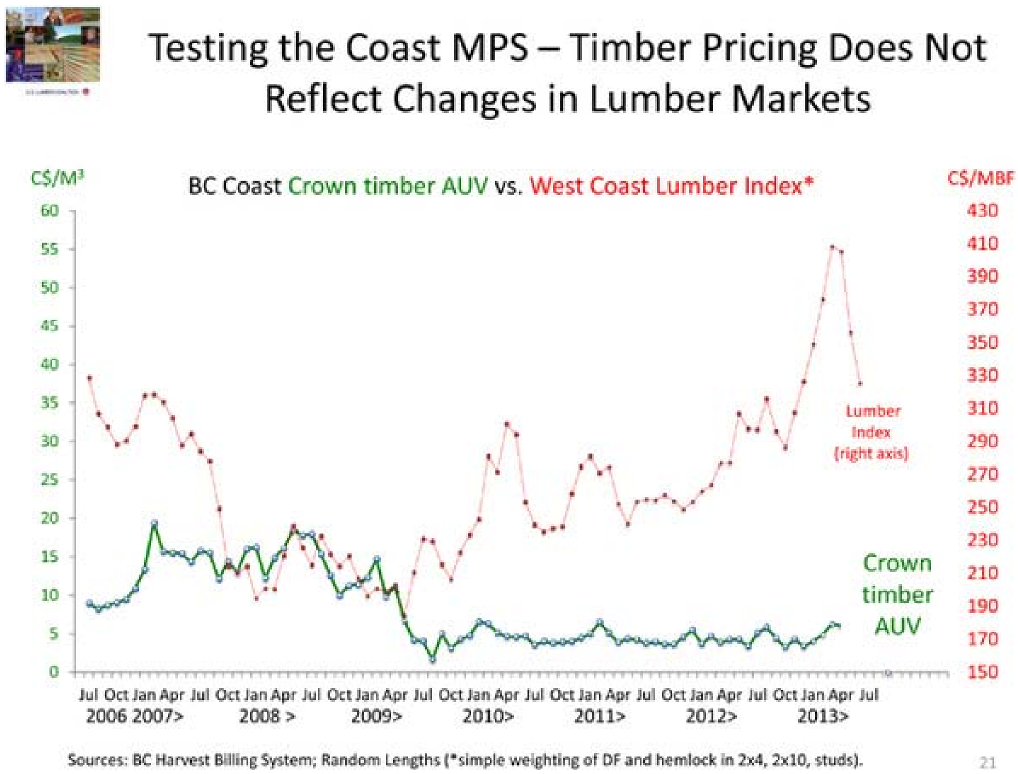
[3] The most recent modeling exercises are set forth in the Information Papers of the BC Ministry of Forests, Lands, and Natural Resources Operations Timber Pricing Branch. See "Coast Market Pricing System Update – 2012," July 1, 2012; "Interior Market Pricing System Update – 2013," July 1, 2013; http://www.for.gov.bc.ca/hva/infopaper.htm. The application of these models to Crown timber pricing is detailed in the "Coast Appraisal Manual," last revised Oct. 15, 2013, http://www.for.gov.bc.ca/hva/manuals/coast.htm, and the "Interior Appraisal Manual," last revised Nov. 1, 2013, http://www.for.gov.bc.ca/hva/manuals/interior.htm.

the tenure pricing formula, had the auctioned stand been priced using that formula. Because prices paid for auctioned timber are based solely on the results of the auctions, not the pricing formula (which applies exclusively to non-auctioned timber), the identity of the data source that would have been used under the pricing formula would not be expected to have any effect whatsoever on auction bids. The introduction of this variable into the formula appears to have the effect of reducing prices for comparable tenure-based timber. Moreover, since July 2012 BC has twice amended the provisions of the Coast Appraisal Manual governing the choice of this precise data source and defining the application of the variable. Yet the underlying modeling equation has not been updated.

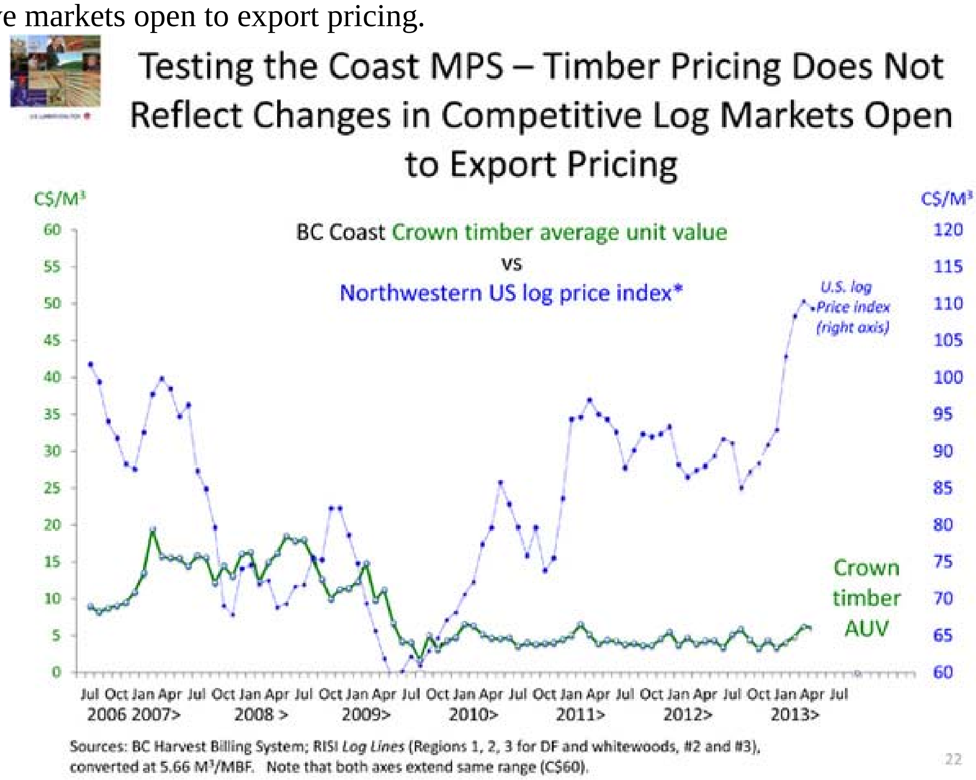
BC has not disclosed the rationale for these changes in the pricing model, nor made publicly available any data that could be used to evaluate the appropriateness or the impact of these changes. Nonetheless, BC's long delay in implementing updates to the pricing formula, as well as the unexplained anomalies in the update when it finally appeared on July 1 of last year, make a mockery of the term "market pricing system" that BC gives to its timber pricing formulas. If the government can adjust the formulas at its convenience and without explaining the introduction of variables with no apparent relationship to timber value but large (downward) effects on timber pricing, such formulas hardly evidence a "system" that could possibly mimic "market" pricing.

In the Interior, the pricing model has been distorted since 2007 by a massive increase in the share of the harvest that has been classified as "lumber reject" and sold for C$0.25/m3 instead of the sawlog price resulting from the Interior pricing model. Although BC claims that the increase was caused by a mountain pine beetle epidemic, there has been no significant increase in the amount of timber not being used for lumber or in the amount of "low-grade" lumber (#3 and economy) being produced in the BC Interior, which are the only legitimate reasons within the BC system for timber to be sold at "lumber reject" prices. This misgrading, and resulting mispricing, of BC Interior timber was the subject of arbitration under the Softwood Lumber Agreement 2006 (SLA). Although the arbitral tribunal found that it could not tie such misgrading and mispricing directly to BC government actions implemented after July 1, 2006, the record of the arbitration nonetheless established that timber was being misgraded and mispriced, which increased the benefit of timber sales to BC timber producers.

That the BC "market pricing system" fails to systematically price BC Crown timber at market levels is clear by comparing the results of the system to actual observed market prices for similar timber sold in the United States. For example, average BC Coast timber prices fell very sharply after the January 2009 update to the Coast MPS, and have been essentially flat ever since, even though lumber prices of the main Coast species have more than doubled since that time – as illustrated in the following chart.



Further, while prices for the similar U.S. timber species are not readily available, delivered log prices to U.S. sawmills have increased in keeping with the increase in lumber prices – showing that BC fiber costs have not reflected the market forces that have affected log prices in competitive markets open to export pricing.



With respect to the BC Interior, BC sawmills paid an average of C$56.65/m^3 for spruce-pine-fir (SPF) logs purchased from third parties during the third quarter of 2013.[4] During the same period, U.S. mills paid an equivalent of $76.20/m^3, or 35 percent more, for sawlog-quality logs of the same species.[5] While traded logs in the BC Interior may not be fully representative of the full Interior harvest, this comparison illustrates the significant price differential between prices generated by the BC "market pricing system" and actual market prices.

Quebec. Pursuant to the Sustainable Forest Development Act, enacted in 2010, Quebec significantly modified its Crown timber sales program as of April 1, 2013. Prior to that date, Quebec sawmills accessed Crown timber under "Timber Supply and Forest Management Agreements," which allowed mills to harvest Crown timber exclusively for use in the processing mill designated in the license. A standard per-cubic-meter timber price was fixed for each of more than 100 zones using a complicated methodology that used Quebec private timber prices as a starting point.

As of April 2013, these licenses were withdrawn and replaced with "Timber Supply Guarantees." A new "Bureau de mis en marché des bois" (Timber Sales Office) began to sell timber at auction in 2011, and these Crown timber auction prices now serve as the starting point of the methodology for calculating the timber price for each zone. Thus, in effect, the new Quebec pricing system closely resembles the BC "market pricing system." And it has many of the same flaws, including a prohibition on access to Quebec Crown timber by processing facilities outside the province (even within Canada).

According to David Paterson, former CEO of AbitibiBowater (now known as Resolute Forest Products), a major Quebec lumber producer, "there will be more of a free market component to wood in Quebec under the governmental plan."[6] However – as in BC – the addition of "more of a free market component" to timber pricing does not mean prices are at market levels. Recent press reports attribute to Quebec forest executives the claim that Quebec wood fiber costs have increased 25 percent since 2011.[7] However, the prices received for lumber produced by Quebec mills has increased by considerably more than that. According to *Random Lengths*, Eastern SPF 2x4 lumber (delivered to Boston) was $297/MBF in the week to May 13, 2011, but had increased to $503/MBF in the week ending April 12, 2013. One would

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[4] BC Interior Log Market Report, http://www.for.gov.bc.ca/hva/logreports.htm.

[5] According to *Log Lines*, U.S. sawmills paid, on average, $353/MBF for lodgepole pine (and $354/MBF for Engelmann spruce) during the third quarter of 2013. *Log Lines*, Nov. 2013, at 6. The $353/MBF price was converted using a conversion factor of 4.81 m^3/MBF and an exchange rate of US$1 = C$1.038367.

[6] Hearing Before the House of Commons Standing Committee on Industry, Science and Technology, Sept. 10, 2010 (testimony of Mr. David Paterson, then President and CEO of AbitibiBowater, Inc.), *available at* http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4652345&Language=E&Mode=1&Parl=40&Ses=3.

[7] "Forestry's Elusive Quest for Innovation," *Globe and Mail* (Nov. 20, 2013).

expect that, in such a pricing environment, the market value of timber to have increased by at least 25 percent.

Yet, according to the same press report, the Quebec industry is urgently demanding that the Quebec government provide relief from these increases:

> "How can an industry survive and thrive in this environment?" asks a simmering James (Jim) Lopez, president and CEO of Tembec Inc.
>
> The complaint has been heard so often it sounds like a broken record. And yet the industry has found a new way to approach the government for aid . . . .
>
> . . . . But while the industry is courting the government once more, it is also threatening to invest elsewhere. Case in point: Tembec, which has to decide how it is going to allocate $80-million in investments between its Ontario and Quebec sawmills.
>
> "It is an unfortunate truth that if you are faced as an investor with the decision on where to put your money first, it will not be in Quebec – not with this business environment, not with this business environment, not with this fibre supply, not with the rapid rise in the cost of wood," says Mr. Lopez.[8]

Perhaps as a result of these entreaties, or threats, the Quebec government announced a substantial aid package to the forest industry on November 21.[9] In addition, the government announced a new task force dedicated to "improvements in the implementation of the [new] forest system" (*les améliorations à apporter à la mise en oeuvre du régime forestier*).[10] Whether, as in BC, this task force develops ways to use the province's discretion in the carrying out the opaque, highly technical details of the pricing system to respond to industry complaints remains to be seen.

Alberta, Saskatchewan, Manitoba, Ontario. In these provinces, virtually all Crown timber is provided to softwood lumber producers at fixed rates.

In Alberta, most timber is provided at a fixed rate of C$1.90/$m^3$. This rate increases slightly when lumber prices surpass certain levels, such as in April and May of 2013, and again in November 2013. However, the identical price – in November 2013, a total of C$2.15/m3 for the first 107,296 m3 and C$3.64/m3 thereafter – is charged for "timber that is used or will be

[8] *Id.*

[9] "Quebec Pledges $430 Million to Struggling Forestry Sector," *CTV News* (Nov. 22, 2013), http://montreal.ctvnews.ca/quebec-pledges-430-million-to-struggling-forestry-sector-1.1554958.

[10] Press Release, Ministère des Ressources Naturelles, "Rendez-vous de la forêt québécoise – 'Une vision d'avenir commune pour la filière bois' – Martine Ouellet," Nov. 22, 2013, http://www.mrn.gouv.qc.ca/presse/communiques-detail.jsp?id=10456.

used to make lumber, pulp, or roundwood timber products."[11] Regardless of the rate, the mere fact that Alberta charges the same price for logs that can be used to make lumber as it does for logs only fit to be chipped for pulp demonstrates that its sawlog prices are below those that would prevail in a market.

Ontario also charges a single fixed rate, currently C$4.80/$m^3$, for most timber used in sawmills.[12] Theoretically, this rate can also increase during periods of high lumber prices, but timber fees have not actually been higher than the minimum rate in any month since April 2005. The forest industry succeeded in amending the Ontario Forest Tenure Modernization Act, which was enacted on June 1, 2011,[13] to ensure that sawmills will continue to have guaranteed access to Crown timber (at administered price levels) for at least the next five years. As industry representatives explained in testimony on this legislation, guaranteed timber access plays an essential role in the lumber industry's access to investment. For example, EACOM Timber Corp. stated that it recently invested in six Ontario lumber mills "based in large measure on secure, predictable, and affordable supplies of committed crown timber. That was the basis of the offer and the transaction."[14] The legislation allows the creation of local forest management corporations, which will manage a region's Crown forests and provide sawmills with access to Crown timber. These corporations hold forest licenses and are responsible for providing "predictable" access to Crown timber.[15] For the first five years, there will be only two such corporations established.

New Brunswick. Crown timber plays a much smaller role in New Brunswick than in the six Canadian provinces mentioned above, accounting for just over half of the harvest; the other half of the timber harvest is divided roughly equally between industrial freehold land owned by major lumber producers and private woodlots owned by thousands of small holders. Crown prices are derived from periodic surveys of timber prices obtained by small woodlot owners. However, many in New Brunswick – including the woodlot owners themselves – believe that the terms of access to Crown timber by lumber producers actually forces private timber prices to

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[11] Alberta Ministry of Environment and Sustainable Resource Development, "General Rates of Timber November 2013," *available at* http://srd.alberta.ca/LandsForests/ForestManagement/TimberDuesCrownFees/MonthlyTimberDuesLetters.aspx.

[12] Monthly Ontario stumpage rate charts are available *at* http://forest.lrc.gov.on.ca/itrees/stumpage/stumpage_rates.html.

[13] An Act to enact the Ontario Forest Tenure Modernization Act, 2011 and to amend the Crown Forest Sustainability Act, 1994, *available at* http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2454&detailPage=bills_detail_the_bill&Intranet= [hereinafter 2011 Ontario Tenure Act]. .

[14] Official Report of Debates (Hansard), Standing Committee on General Government, at G-303, Apr. 13, 2011, at (testimony of Brian Nicks, director of forestry for Ontario, EACOM Timber Corp.).

[15] 2011 Ontario Tenure Act at §5(4).

conform to the administered price of Crown timber, rather than the reverse.[16] A report by the provincial Auditor General concluded: "The fact that the [lumber] mills directly or indirectly control so much of the source of timber supply in New Brunswick means that the [timber] market is not truly an open market. In such a situation it is not possible to be confident that the prices paid in the market are in fact fair market value."[17]

Accordingly, it is possible that the provision of Crown timber in New Brunswick is also made for less than adequate remuneration. However, recent price levels for private timber sales in New Brunswick and Nova Scotia are relatively close to those prevailing for similar timber in Maine. The most recently available average private SPF sawtimber price in New Brunswick and Nova Scotia, for the period November 1, 2009 through October 31, 2010, was C$21.75/$m^3$.[18] This was slightly below contemporaneous Maine SPF sawtimber prices, which in 2010 averaged C$24.19/$m^3$.[19]

Nova Scotia. Most timberland in Nova Scotia, unlike other provinces, is privately held, and most timber purchases are therefore market transactions between private parties. However, the provincial government recently purchased more than 500,000 acres of formerly commercial timberland, which will become Crown land on which companies could obtain harvesting rights.[20]

B. Federal and Provincial Log Export Restrictions

All Canadian provinces prohibit the export of unprocessed logs harvested from Crown timber. These prohibitions may take the form of direct restrictions on log exports or a domestic processing requirement imposed as a condition on harvesters of Crown timber. In either case, exceptions are granted rarely, usually as a result of exceptional conditions such as a large amount of timber damaged by fire or disease. The Canadian federal government also restricts exports of logs harvested from most private land in BC, although the provincial government manages the procedures for seeking exemptions from these federal restrictions.

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[16] See Donald W. Floyd, Robert Ritchie & Tony Rotherham, *New Approaches for Private Woodlots – Reframing the Forest Policy Debate* (Jan. 2012), *available at* http://www2.gnb.ca/content/dam/gnb/Departments/nr-rn/pdf/en/CrownLandsForests/NewApproachesForPrivateWoodlots.pdf.

[17] Province of New Brunswick, "Report of the Auditor General 2008," para. 5.36.

[18] "Survey Results and Prices for Standing Timber Sales from Maritime Private Woodlots," summary report at 5, http://www.gov.ns.ca/pfpmb/StumpageReport10.pdf.

[19] Maine Forest Service, "2010 Stumpage Prices by Maine County," at http://www.maine.gov/doc/mfs/pubs/pdf/stumpage/10stump.pdf. The Maine average price of $113/MBF was covered using a conversion factor of 4.81 m^3/MBF and a 2010 exchange rate of US$1 = C$1.029788.

[20] Chris Lambie, "Nova Scotia Chases Bowater Assets," The Chronicle Herald (Halifax), Nov. 13, 2012, *available at* thechronicleherald.ca/novascotia/171174-nova-scotia-chases-bowater-assets.

Section 127 of the BC Forest Act requires that timber harvested from the following sources must be either used or manufactured in BC: (1) Crown land; (2) private land granted by the province after March 12, 1906; or (3) private land in a tree farm license area, regardless of the date granted. Section 128(3) of that Act provides that exemptions from this requirement may only be given if the province is satisfied that (a) the timber is surplus to the requirements of BC mills; (b) the timber cannot be processed economically in the vicinity of the harvest or elsewhere in BC; or (c) the exemption would prevent waste of or improve the utilization of Crown timber.

The BC Government relies on the Timber Export Advisory Committee's (TEAC) recommendations to determine whether a permit to export logs should be granted. This determination is largely based on whether any BC mills tender an offer equal to the BC domestic price, which is calculated by TEAC. As a practical matter, persons wishing to export logs in BC must first advertise the logs or the standing timber. Any BC processor wishing to bid for the logs may do so. If no bid is received, an export permit may be issued – but if a bid is received that the province deems to be an acceptable price (even if it is well below the export price that is otherwise available), the export permit will be denied. The timber or log owner then has the option of selling domestically or not harvesting the timber at all. On January 17, 2013, BC issued a series of "clarifications" of allegedly previously existing policy on how TEAC assesses and evaluates export-blocking offers.[21]

Logs exported from land under BC's jurisdiction, whether Crown land or private land, must pay a "fee in lieu of domestic manufacture." On January 17, 2013, BC issued a new schedule of fees in lieu that applies to timber whose export permit applications are received on or after March 1, 2013.[22] This new schedule increases these fees over their previously established level, based on the average price gap between domestic prices and export prices during the prior 3-month period. The increase was 20 percent from March through June of 2013 and 30 percent from July through December 2013. Currently, therefore, the "fee in lieu" is expressed as a percentage of the domestic log price as follows:

- Douglas Fir, 19.5%;
- Saw-grade logs of other species, 13%; and
- Low-grade logs of other species, 6.5%.

Professor David Haley of the University of British Columbia describes the BC log export regime as amounting to "a transfer of wealth from timber owners, both the Crown and private

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[21] "Conditions for Surplus Test Exemptions," Jan. 17, 2013, http://www.for.gov.bc.ca/ftp/HET/external/!publish/Web/exports/Conditions_for_Exemption_Jan_2013_signed.pdf.

[22] "Fee in Lieu of Manufacturing Rates, as of March 1, 2013," Jan. 17, 2013, http://www.for.gov.bc.ca/ftp/het/external/!publish/web/exports/Fee_in_Lieu_as_of_Mar_1_2013.pdf.

sector, to forest products manufacturing companies. In other words, manufacturers receive a subsidy at the expense of timber growers."[23] The result, he explains, is that:

> By lowering domestic log prices, restrictions on log exports reduce the revenue flowing to British Columbians from stumpage sales on public forestland and also the returns to those who harvest timber on public land and sell their logs in domestic markets. . . . The benefits of log export restrictions on private land are reaped by the timber products processing sector, which enjoys lower raw material costs than it would experience in the absence of such restrictions.[24]

Other provincial government policies amount to at least a *de facto* restriction on the export of logs in other provinces as well. For example, there is a substantial amount of private forestland in Quebec along the U.S. border, and domestic log prices in Quebec are significantly lower than just across the border in Maine, New Hampshire, Vermont, and New York. This price differential would lead one to expect that, absent government restrictions, Quebec would export logs from private lands into the United States – but such exports do not actually occur. The sale of private logs in Quebec is governed by a number of regional marketing boards or "syndicates," which develop marketing plans that must be approved by a Quebec governmental agency. These marketing boards also facilitate the registration of private landowners in Quebec as "forestry producers" (*producteurs forestiers*), which gives private landowners access to four governmental subsidy programs: (1) the Private Forest Development Assistance Program (*Le programme d'aide à la mise en valeur des forêts privées*); (2) the Virginia Deer Damage Management Assistance Program (*Le programme d'aide à l'aménagement des ravages de cerfs de Virginie*); (3) the Property Tax Rebate Program (*Le programme de remboursement de taxes foncières*); and (4) the Forestry Finance Program (*Le programme de financement forestier*).[25] Indeed, in its November 2013 of increased aid to the forest industry, Quebec announced additional funding to increase the subsidies offered through the property tax rebate program. [26] Thus, the marketing boards have the power to prevent, or at least to discourage, the export of logs from Quebec private lands.

These export restrictions and prohibitions are countervailable subsidies to Canadian softwood lumber producers, as the Department has found in prior lumber CVD investigations as

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[23] David Haley, "Are Log Export Restrictions on Private Forestland Good Public Policy? An Analysis of the Situation in British Columbia" (2002), at 10. In response to a subsequent media inquiry about the applicability of his 2002 paper to the present situation of log exports from BC Crown land, Professor Haley stated: "The arguments used in 2002 are equally applicable today and while this paper focuses on private land most of the arguments are equally applicable to public lands." Ian MacNeill, "Log Export," Truck Logger BC, Fall 2010, at 16, 19.

[24] Haley, *supra* note 23, at 15.

[25] Syndicat des Producteurs de Bois de l'Estrie, "Frequently Asked Questions," *at* http://www.spbestrie.qc.ca/fr/faq/ (last visited Dec. 3, 2013).

[26] "Quebec Pledges $430 Million to Struggling Forestry Sector," *CTV News* (Nov. 22, 2013), http://montreal.ctvnews.ca/quebec-pledges-430-million-to-struggling-forestry-sector-1.1554958.

well as in other CVD determinations.[27] Through these policies, the provincial and federal governments either directly provide timber, or entrust or direct harvesting companies to provide timber, to domestic producers, thus providing a financial contribution. Because this timber is provided to domestic processors at below-market prices, a benefit is conferred. And because this timber is provided only to domestic processing industries, the log export restrictions are *de jure* specific.[28]

C. Other Subsidy Programs

Additional subsidy programs also provide benefits to softwood lumber producers in Canada.

1. Preferential Tax Schemes

In past softwood lumber CVD proceedings, the Department found that the British Columbia Private Forest Property Tax Program provided countervailable subsidies. BC currently refers to this program as the Managed Forest Program. Under this program, BC imposes lower tax rates on land classified as Class 7, “managed forest land.” To qualify for the lower Class 7 rates, land must be “used for the production and harvesting of timber.”

In addition, a new Quebec Capital Tax Credit Program provides tax credits of 15 percent of eligible expenses related to the acquisition of capital equipment used in the processing of forest products and acquired before January 1, 2013. The Quebec provincial government estimated that the program would reduce the taxes paid by Quebec forest products producers by C$120 million over four years. A recent report by the Quebec Auditor General found that another Quebec tax subsidy, the Quebec Road Tax Credit Program, was poorly administered and that funds were disbursed even to companies that had failed to prove eligibility.[29] This program was also found to be a subsidy in breach of the SLA by an LCIA tribunal in January 2011.

Moreover, the Quebec government offers tax credits for forest companies’ job and French language training expenses, for the construction of public access roads and bridges in forest areas, and for the purchase of shares in Caisses Desjardins, a savings and credit cooperative based in Quebec. The Quebec government also refunds any fuel taxes for fuel used while traveling on a forest road.

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[27] *E.g.*, Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia, 75 Fed. Reg. 59,209 (Dep’t Commerce Sept. 27, 2010) (final affirmative CVD determ.), Issues & Decision Memorandum at 12-14.

[28] *Id.*, Issues & Decision Memorandum at 12.

[29] Rapport du Vérificateur général du Québec à l’Assemblée nationale pour l’année 2010-2011, tome II, ch. 5 (2011), *available at* http://www.vgq.gouv.qc.ca/fr/fr_publications/fr_rapport-annuel/fr_2010-2011-T2/fr_Rapport2010-2011-T2-Chap05.pdf.

Other tax programs that appear to provide subsidies have been identified in prior Coalition submissions to the Department, incorporated herein by reference.

2. Unearned Compensation for Tenure Rights

The principal form of Crown timber harvesting rights in most Canadian provinces involves some type of long-term arrangement. Guaranteed long-term access to timber assists lumber producers in obtaining financing for capital investments to improve efficiencies, as industry observers have long recognized.[30] In recent years when provinces have withdrawn these rights prior to the expiration of the tenure arrangement, significant compensation has been paid to the tenure holder. Such payments provide substantial benefits to the former tenure holders, who paid little or nothing to obtain the long-term harvesting rights in the first place. The payments also demonstrate the high value of the tenure rights that continue to be enjoyed by the vast majority of tenure holders whose rights have not been taken back by the governments.

In BC, the Department has previously found countervailable compensation paid for tenure takebacks under the Protected Areas Forest Compensation Act and the Forest Revitalization Act. Both pieces of legislation remain in effect and compensation continues to be paid under the Protected Areas Forest Compensation Act, although details are usually not made public.

In Newfoundland and Labrador, the provincial expropriation of a pulp and paper mill, together with its associated tenure rights, was the subject of a claim under Chapter 11 of the North American Free Trade Agreement. In August 2010, the federal Canadian government agreed to settle these claims for C$130 million, one of the largest payments ever made in a Chapter 11 dispute.

In Alberta, holders of major tenures (Forest Management Agreement or FMA) are routinely compensated when timber on land associated with the tenure is removed as a result of activities by energy and mining companies. This is because FMA holders receive property rights against third parties (but not the Crown) in standing timber on their tenures – property rights that they do not pay for, but nonetheless receive as part of their tenure. This amounts to ongoing compensation for lost harvesting rights on a continuous basis – essentially, compensation for tenure takebacks in another form.

To the extent that tenure reform being planned in Quebec and under consideration in Ontario lead to modifications of existing long-term tenure arrangements in those provinces, any compensation paid by those provinces could constitute further tenure compensation subsidies to their softwood lumber producers.

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[30] *E.g.*, Halifax Global, Inc., "Newfoundland Forest Sector Strategy," Nov. 2008, at 13 n.2 (report commissioned by the Newfoundland & Labrador Department of Natural Resources).

3. Grants, Loans, and Loan Guarantees

Prior submissions by the Coalition address a number of programs by which the federal and provincial Canadian governments provide grants, loans, loan guarantees, and other support, directly and indirectly, to Canadian softwood lumber producers. These submissions are incorporated herein by reference.

As detailed in those submissions, the Department has found a number of these programs to be countervailable in prior softwood lumber proceedings. Further, the Ontario Forest Sector Prosperity Fund, the Ontario Forest Sector Loan Guarantee Program, and the Quebec Forest Industry Support Program provided benefits that were the subject of arbitration between the United States and Canada under the SLA.

With respect to new programs, it is not always clear from publicly available information whether programs that provide benefits to the "forest industry" or the "forest products industry" necessarily provide benefits to softwood lumber producers. The prohibitions in the SLA on new subsidy programs benefitting softwood lumber producers appear to have restrained somewhat, but certainly not eliminated, the provision of benefits to softwood lumber producers under these programs. In addition to those previously identified programs, the Coalition notes the following additional information regarding programs that may be providing benefits to softwood lumber producers.

Export Development Canada (EDC). Despite the name, EDC is not limited to financing export transactions, but since 2009 has also provided direct support to Canadian enterprises. EDC reports that it did C$11,803,000,000 of business with Canada's forestry sector in the year ending September 30, 2013.[31] This business includes "financing (including guarantees), political risk insurance to lenders, and equity transactions."[32] One of the largest benefits EDC provides Canadian enterprises is providing financing at a below market rate or when financing is otherwise unavailable. As the owner of an Ontario-based fencing company concisely stated to a Canadian industry newsletter: "I don't borrow money. Export Development Canada guarantees my payments."[33]

Pulp and Paper Green Transformation Program. Nearly C$1 billion in grants have been made available under this program for capital investments in pulp and paper mills to promote energy efficiency. Many of these mills are affiliated with, or co-located with, softwood lumber producers. Several of these companies, including West Fraser and Canfor, have publicly announced major capital investment programs aimed almost completely at softwood lumber

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[31] Canadian Industry Sub-Sector, Export Development Canada for the year ending September 30, 2013, available at http://www.edc.ca/EN/About-Us/Disclosure/Reporting-on-Transactions/Pages/industry-sub-sector-2013.aspx

[32] D.2 Individual Transaction Reporting, *available at* www19.edc.ca/English/disclosure_9237.htm.

[33] Madison's Timber Preview, June 15, 2012 at 1.

production, since the large grants received to fund pulp and paper investment under this program have freed up funds otherwise unavailable.