



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

JUN 11 2010

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Senator Grassley:

Enclosed, pursuant to Section 809(b) of Title VII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), is the Administration's Semiannual Softwood Lumber Subsidies Report.

If you have any questions or would like additional information, please contact me or Rodney Emery, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 482-3105.

Sincerely,

Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration





**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

JUN 11 2010

The Honorable Dave Camp  
Ranking Member  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Camp:

Enclosed, pursuant to Section 809(b) of Title VII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), is the Administration's Semiannual Softwood Lumber Subsidies Report.

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Ronald K. Lorentzen  
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for Import Administration





**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

JUN 11 2010

The Honorable Sander M. Levin  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

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**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

JUN 11 2010

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Enclosed, pursuant to Section 809(b) of Title VII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), is the Administration's Semiannual Softwood Lumber Subsidies Report.

If you have any questions or would like additional information, please contact me or Rodney Emery, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 482-3105.

Sincerely,

Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration



**SOFTWOOD LUMBER SUBSIDIES REPORT  
TO THE CONGRESS**

U.S. Department of Commerce

June 2010

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## I. Background and Reporting Methodology

As an initial matter, given the large number of countries that export softwood lumber and softwood lumber products to the United States, we concluded that it was untenable to find subsidy information for every country that exports softwood lumber or softwood lumber products to the United States.<sup>1</sup> Instead, in order to provide a report that reflects subsidies which have a significant impact on the U.S. softwood lumber industry, we analyzed U.S. imports of softwood lumber and softwood lumber products to determine which countries were the largest exporters of such products to the United States. As a result, based on data published by the United States International Trade Commission Tariff and Trade DataWeb, we include in this report subsidies provided by Canada and Chile, the two countries with exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001,<sup>2</sup> during the period July 1 through December 30, 2009.

As in this, the fourth Softwood Lumber Subsidies Report to Congress, we intend to rely on similar six-month periods to identify the countries subject to future reports on softwood lumber subsidies. We will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1 through June 30, 2010 to select the countries subject to the next report.

Under U.S. countervailing duty (CVD) law, a subsidy is defined as when a government authority: (i) provides a financial contribution, (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

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<sup>1</sup> For the period July 1 through December 30, 2009, 39 countries had exports of softwood lumber to the United States.

<sup>2</sup> Imports classified under Harmonized Tariff Schedule code 4407.1001 account for the vast majority of imports of softwood lumber and softwood lumber products.

## II. Identification of Subsidies

The U.S. Government investigates and monitors the provision of subsidies by other countries through various means, including the enforcement of U.S. trade laws, participation at the World Trade Organization (WTO), and the implementation of bilateral trade agreements. Therefore, we examined subsidies identified in those areas, specifically: 1) CVD investigations and reviews; 2) WTO reporting by member countries; and 3) subsidies identified in the course of enforcing bilateral agreements regarding softwood lumber and softwood lumber products.

### A. Countervailing Duty Proceedings

To identify subsidies on softwood lumber or softwood lumber products provided by Canada and Chile, we analyzed the most recently completed CVD proceedings involving exports to the United States of softwood lumber or softwood lumber products from Canada and have included in this report any subsidies identified in relevant proceedings. Commerce has not conducted CVD proceedings involving imports of softwood lumber and softwood lumber products from Chile.

In 2006, the United States and Canada signed the Softwood Lumber Agreement (SLA), a bilateral accord between the United States and Canada, which resulted in the U.S. government terminating the most recent CVD order on imports of Canadian softwood lumber. The CVD order had been established in 2002, pursuant to U.S. government determinations that federal and provincial governments in Canada were unfairly subsidizing Canadian producers, and that imports of the subsidized Canadian lumber threatened to injure the U.S. industry. We included in our first three reports any subsidies identified in the last administrative review of the CVD order on softwood lumber from Canada which was completed prior to the termination of the order pursuant to the SLA. That administrative review covered the period April 2003 through March 2004.

### B. WTO Reporting

We identified two sources of information from the WTO -- Subsidies Notifications and Trade Policy Reviews (TPR). The Subsidies Notification is the primary source of information under the WTO framework for each member country's subsidy programs. WTO member countries are required to notify the WTO of specific subsidies, in accordance with Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). This portion of the SCM Agreement requires that members notify all specific subsidies, at all levels of government and covering all goods sectors, to the SCM Committee. New and full notifications are due every two years; members may also submit update notifications at any time, but those have been de-emphasized by the SCM Committee. These documents are available from the WTO Secretariat and may be accessed through the WTO's website.<sup>3</sup>

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<sup>3</sup> [http://www.wto.org/english/tratop\\_e/scm\\_e/scm\\_e.htm](http://www.wto.org/english/tratop_e/scm_e/scm_e.htm)

Pursuant to the WTO's Trade Policy Review (TPR) Mechanism, each WTO member country's national trade policies are subject to periodic review by the WTO Secretariat, which then publishes a report. Information on subsidy programs is also found in the TPR of each member country. The frequency of each country's TPR varies according to its share of world trade: Canada subject to review every four years, and Chile every six years. The TPR reports for each country are available from the WTO Secretariat and may be accessed through the WTO's website.<sup>4</sup>

#### C. Monitoring and Enforcement Related to Bilateral Trade Agreements

We have also included in this report subsidies identified in the course of administering and enforcing the SLA.<sup>5</sup> On September 12, 2006, the United States and Canada signed the 2006 Softwood Lumber Agreement to settle outstanding disputes regarding the importation of softwood lumber from Canada into the United States. Per the agreement, the United States terminated antidumping and countervailing duty orders on softwood lumber from Canada, refunded cash deposits, and agreed not to impose other trade remedies. In exchange, Canada agreed to impose export measures and not to take any action having the effect of reducing or offsetting the export measures.

#### D. Public Comment

On April 30, 2010, Commerce published a notice in the *Federal Register* soliciting public comment on subsidies provided by Canada and Chile on softwood lumber or softwood lumber products for inclusion in this report.<sup>6</sup> The comments received are attached as Appendix I of this report.

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<sup>4</sup> [http://www.wto.org/english/tratop\\_e/tp\\_r\\_e/tp\\_rep\\_e.htm#bycountry](http://www.wto.org/english/tratop_e/tp_r_e/tp_rep_e.htm#bycountry)

<sup>5</sup> The SLA is particular to Canada. The United States does not have in place a similar agreement involving softwood lumber or softwood lumber products with Chile.

<sup>6</sup> See *Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment*, 75 FR 22743 (April 30, 2010).

### III. Subsidies Provided

Of the three reports that have been issued, in the First Report, we listed all known subsidies, identified using the methodology described above, provided by Brazil, Canada, Chile, and Germany on softwood lumber or softwood lumber products exported to the United States. In the Second Report, we listed all known subsidies, identified using the methodology described above, provided by Canada, Chile, and Germany. In the Third Report, we listed all known subsidies, identified using the methodology described above, provided for by Brazil, Canada, Chile, Germany, and Sweden.<sup>7</sup>

For the period July 1 through December 31, 2009, we applied the methodology described above with regard to Canada and Chile. No new subsidies were identified for Chile, and one new subsidy was identified for Canada. The subsidies identified for Canada and the subsidies identified for Chile are as follows.

#### **Canada**

We identified subsidies provided by Canada on softwood lumber and softwood lumber products through an examination of the most recently completed CVD administrative review, WTO notifications, and the implementation and enforcement of the SLA.

#### Subsidies Identified in CVD Proceedings

Commerce determined that the following programs benefited Canadian softwood lumber producers in the second administrative review of imports under the CVD order, which was the last review completed before the order was terminated. The second administrative review investigated Canadian subsidy programs in effect between April 2003 and March 2004.<sup>8</sup>

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<sup>7</sup> Our December 15, 2008, June 15, 2009, and December 18, 2009, reports are posted on our website at [www.trade.gov/IA](http://www.trade.gov/IA) under the "Highlights and the "Softwood Lumber Export Charges" links. See <http://ia.ita.doc.gov/lumber/softwood-lumber-subsidies-report-121508.pdf>, <http://ia.ita.doc.gov/lumber/softwood-lumber-subsidies-report-061509.pdf> and <http://ia.ita.doc.gov/sla2008/reports/softwood-lumber-subsidies-report-121809.pdf>.

<sup>8</sup> During the conduct of the investigation and three different administrative reviews, the Department investigated a large number of programs, not all of which were in use, or evaluated, during the second administrative review. Because the second administrative review was the most recently completed review with a final determination, we have used it as the most accurate and current measure of our findings.

A. Provincial Stumpage Programs (provision of lumber for less than adequate remuneration)

1. Alberta
2. British Columbia
3. Manitoba
4. Ontario
5. Quebec
6. Saskatchewan

In Canada, the vast majority of standing timber used by softwood lumber producers originates from lands owned by the Crown. Each of the Canadian provinces reviewed in the last review to be completed under the most recent CVD order, *i.e.*, Alberta, British Columbia, Manitoba, Ontario, Quebec, and Saskatchewan, has established programs through which it charges certain license holders “stumpage” fees for standing timber harvested from Crown lands. In the underlying investigation of the most recent CVD order and in subsequent administrative reviews, the Department found that the provincial governments provided a countervailable subsidy to softwood lumber producers by selling the key input for softwood lumber production, timber, to the Canadian producers in each of the provinces listed above for less than adequate remuneration.

B. Non-Stumpage Programs Determined To Confer Subsidies

**Programs Administered by the Government of Canada**

1. Western Economic Diversification Program (WDP): Grants and Conditionally Repayable Contributions

Introduced in 1987, the Western Economic Diversification Program (WDP) is administered by the Government of Canada’s (GOC’s) Department of Western Economic Diversification headquartered in Edmonton, Alberta, whose jurisdiction encompasses the four western provinces of Alberta, British Columbia, Manitoba, and Saskatchewan. The program supports commercial and non-commercial projects that promote economic development and diversification in the region.

During the 2003-2004 period covered by the most recently completed administrative review of the CVD order, the WDP provided grants to softwood lumber producers or associations under two “sub-programs,” *i.e.*, the International Trade Personnel Program (ITPP) and “Other WDP Projects.” Under the ITPP and “Other WDP Projects,” companies were reimbursed for certain salary expenses in Alberta, British Columbia, Manitoba, and Saskatchewan.

## 2. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies

In 2002, the GOC approved a total of C\$75 million in grants to target new and existing export markets for wood products and to provide increased research and development to supplement innovation in the forest products sector. This total was allocated to three sub-programs: Canada Wood Export Program (Canada Wood), Value to Wood Program (VWP), and the National Research Institutes Initiative (NRII). The programs were placed under the administration of NRCAN, a part of the Canadian Forest Service.

The VWP is a five-year research and technology transfer initiative supporting the value-added wood sector through partnerships with academic and private non-profit entities. In particular, during the 2003-2004 period of review, NRCAN entered into research contribution agreements with Forintek Canada Corp. (Forintek) to do research on efficient resource use, manufacturing process improvements, product development, and product access improvement. The VWP is still available.

The NRII is a two-year program that provides salary support to three national research institutes: the Forest Engineering Research Institute of Canada (FERIC), Forintek, and the Pulp & Paper Research Institute of Canada. In the 2003-2004 administrative review, the Department found that research undertaken by FERIC constitutes a government financial contribution to commercial users of Canada's forests. Further, the Department found that FERIC's research covers harvesting, processing, and transportation of forest products, silviculture operations, and small-scale operations and, thus, the Department determined that government-funded R&D by FERIC benefits, *inter alia*, producers of softwood lumber. Similarly, the Department found that Forintek's operations, done in collaboration with the GOC under NRII, which pertain to resource utilization, tree and wood quality, and wood physics<sup>9</sup>, also constitute a government financial contribution. The Department also reconfirmed its earlier determination that because grants offered under the NRII are limited to Forintek and FERIC, institutions that conducted research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry, the program is specific to that industry. The NRII is periodically reinstated and is currently in effect.

### **Programs Administered by the Government of British Columbia**

#### 1. Forestry Innovation Investment Program (FIIP)

The Forestry Innovation Investment Program came into effect on April 1, 2002. On March 31, 2003, FIIP was incorporated as Forestry Innovation Investment Ltd. (FII). FII funds are used to support the activities of universities, research and educational organizations, and industry associations producing a wide range of wood products. FII's strategic objectives are implemented through three sub-programs addressing: research, product development and international marketing.

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<sup>9</sup> The area of wood science concerned with the physical and mechanical properties of wood and the factors which affect them.

The Department reconfirmed its earlier finding that the FII grants are provided to support product development and international marketing for Canadian softwood lumber producers.

## 2. British Columbia Private Forest Property Tax Program

British Columbia's property tax system has two classes of private forest land -- Class 3, "unmanaged forest land," and Class 7, "managed forest land" -- that incurred different tax rates in the 1990s through the 2003-2004 period of review. In the second administrative review, the Department reaffirmed its earlier finding that property tax rates for Class 7 were generally lower than for Class 3 land at all levels of tax authority for most, though not all, taxes. The Department further reaffirmed its finding that the various municipal and district (a.k.a. regional) level authorities imposed generally lower rates for Class 7 than for Class 3 land. The tax program is codified in several laws, of which the most salient is the 1996 Assessment Act (and subsequent amendments). Section 24(1) of the Assessment Act contains forest land classification language expressly requiring that, *inter alia*, Class 7 land be "used for the production and harvesting of timber." Additionally, Section 24(3) or 24(4) of the Assessment Act, depending on the edition of the statute, requires the assessor to declassify all or part of Class 7 land if "the assessor is not satisfied. . . that the land meets all requirements" for managed forest land classification. Amendments to the provision, enacted from 1996 through 2003, retained the same language stating these two conditions. Thus, the law as published during the 2003-2004 period of review required that for private forest land to be classified—and remain classified—as managed forest land, it had to be "used for the production and harvesting of timber."

The Department also found that because the British Columbia tax authorities impose two different tax rates on private forest land, the governments are foregoing revenue when they collect taxes at the lower rate, and the program thus provides a government financial contribution to the British Columbia lumber industry. Further, the Department determined that because the Assessment Act expressly requires that Class 7 land be "used for the production and harvesting of timber," and additionally requires the assessor to declassify any Class 7 land not meeting all the Class 7 conditions (of which timber use was one), the British Columbia private forest land tax program is specific to the industry as a matter of law. The Department considered the sum of the tax savings enjoyed by Class 7 sawmill landowners at the provincial, regional, and sub-provincial (or local) levels of tax authority in British Columbia to represent the value of this subsidy.

## **Programs Administered by the Government of Quebec**

### **1. Private Forest Development Program**

The Private Forest Development Program (PFDP) involves the provision of certain grants to private forest landowners. These grants provide incentives to private land owners to grow more trees, which increase the supply of wood available to softwood lumber producers. In addition, some of the sawmill operators also own private land and receive these incentives. The system is set up so that every holder of a wood processing plant operating permit in Quebec must pay the Government of Quebec a fee of C\$1.20 for every cubic meter of timber acquired from a private forest. These fees fund, in part, the PFDP.

### Subsidies Identified in Connection with the SLA upon which Arbitration has been Requested

The following subsidy programs were identified in connection with arbitration pursuant to Article XIV of the SLA:

#### **1. Ontario Forest Sector Loan Guarantee Program**

This program was announced in 2005 to make available C\$350 million in loan guarantees over five years to stimulate and leverage investment in the forest industry. These loan guarantees could be for a term of two to five years and generally range from C\$500,000 to a maximum of C\$25 million.

#### **2. Ontario Forest Sector Prosperity Fund**

This grant program was announced in 2005 to provide grants to the forest sector that would support and leverage new capital investment programs.

#### **3. Ontario Forest Access Road Construction and Maintenance Program**

This program was announced in 2006 to make available C\$75 million to reimburse forest companies for costs incurred for constructing and maintaining primary and secondary forest access roads.

#### **4. Forest Industry Support Program**

This program was announced in 2006 to make available C\$425 million in financing to foster investment and modernization projects to improve the productivity and competitiveness of Quebec's forest products industry.

5. 15% Capital Tax Credit

This program was announced in 2006 to provide a 15% tax credit to Quebec's forest products industry on investments in manufacturing and processing equipment through 2009.

6. Forest Management Measures

This program was announced in 2006 and allowed the Government of Quebec to incur costs previously borne by the forest products industry. The program includes C\$210 million in measures to reduce the cost of operations and silvicultural investments and C\$100 million for a refundable tax credit of 40% for the construction of and major repairs to access roads and bridges.

Additional Subsidies Identified in Connection with the SLA

1. Wood Promotion Program

The Government of Ontario provides C\$1 million per year in funding to the forest products industry to enhance value-added manufacturing.

2. North Ontario Grow Bonds Program

The Government of Ontario provided approximately C\$13 million in bonds to new and growing businesses in the North. For example, in September 2006, a C\$250,000 loan to the Manitou Forest Products Limited for expansion of its sawmill was among the projects funded.

3. Forest Industry Long-Term Competitiveness Initiative

This program provides government funding for research and development that benefits the forest products industry.

Pulp and Paper Green Transformation Program

On June 17, 2009, Canada announced a new \$1 billion Pulp and Paper Green Transformation Program (PAPGTP) to support its pulp and paper producers. This program will provide a \$0.16 per liter credit for black liquor produced by Canadian pulp and paper mills. The stated purpose of this credit is to improve energy efficiency and renewable energy production technologies. (Source: <http://www.nrcan-rncan.gc.ca/media/newcom/2009/200961a-eng.php>).

**Chile**

We identified subsidies provided by Chile that potentially benefit softwood lumber and softwood lumber products through an examination of Chile's TPRs.

## Forestry Programs

- The Government of Chile has encouraged forestry activities by offering subsidies and favorable tax treatment. The National Forest Corporation (CONAF), which is responsible for the conservation and sustainable use of woodland and forest resources, offers rebates of between 75 and 90 percent of the net costs of reforestation and sustainable forest management activities, especially those carried out by small woodland owners. In 2009, it was planned to budget Ch\$24,600 million (about US\$42 million) for CONAF forest management, woodland area protection and fire control programs.<sup>10</sup>
- The Law on Indigenous Forests (populated by native species) was approved in 2008 and provides rebates to help meet the cost of reclaiming, protecting and improving indigenous forests. In 2009, Ch\$5,629 million (about US\$9.6 million) was budgeted for the implementation of this law.<sup>11</sup>

## IV. Conclusion

This report reflects the best publicly available information related to subsidies on softwood lumber or softwood lumber products provided by countries of export that were the largest suppliers of these products to the United States. We note that this report covers all subsidies identified following the reporting methodology described above and does not constitute a finding regarding the countervailability of the listed subsidies under U.S. law or their status under the SLA or the WTO SCM Agreement. We also note that this report only includes subsidies identified pursuant to the described reporting methodology. A subsidy's presence in or absence from this report is not an indication of whether the subsidy is countervailable under U.S. law, is in accordance with the relevant WTO agreements, or is actionable under any other international agreement.

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<sup>10</sup> See Trade Policy Review of Chile, Report by the Secretariat, WT/TPR/S/220/R1, dated November 5, 2009, Part 4, para.49.

<sup>11</sup> See Trade Policy Review of Chile, Report by the Secretariat, WT/TPR/S/220/R1, dated November 5, 2009, Part 4, para.50.

# Appendix I



## 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  
14<sup>th</sup> 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.

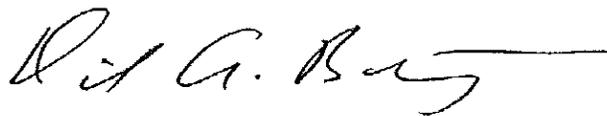
The Honorable Gary Locke

June 1, 2010

Page 2

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 "David 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,<sup>1</sup> 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.

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<sup>1</sup> "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/m<sup>3</sup> 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.<sup>2</sup> 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/m<sup>3</sup> 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/m<sup>3</sup> for all softwood timber harvested, regardless of species, quality, end use, or almost all market

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<sup>2</sup> 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.<sup>3</sup>

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

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<sup>3</sup> 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.<sup>4</sup> 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

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<sup>4</sup> 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.<sup>5</sup> Although the Ontario government may, in its discretion, authorize the manufacture outside of Ontario of logs originating from Crown lands,<sup>6</sup> 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."<sup>7</sup> Although the Quebec government may, in its discretion, authorize the shipment outside of Quebec of incompletely processed timber from public forests,<sup>8</sup> 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

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

<sup>6</sup> See *id.* at § 30(3).

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

<sup>8</sup> *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.