

**SOFTWOOD LUMBER SUBSIDIES REPORT
TO THE CONGRESS**

U.S. Department of Commerce

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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.¹ 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, the only country 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 4407.1001,² during the period January 1 through June 30, 2012.

As in past reports, for this, the ninth Softwood Lumber Subsidies Report to Congress, we are relying on a six-month period to identify the countries subject to review. We will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1 through December 31, 2012, 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 (the Act).

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.

¹ For the period January 1 through June 30, 2012, 34 countries had exports of softwood lumber to the United States.

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

A. Countervailing Duty Proceedings

To identify subsidies on softwood lumber or softwood lumber products provided by Canada, 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.

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.³ 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 eight reports 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 updated 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.⁴

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 is subject to review every four years. The TPR reports for each country are available from the WTO Secretariat and may be accessed through the WTO's website.⁵

³ In January of this year, the United States and Canada signed a two-year extension of the SLA.

⁴ http://www.wto.org/english/tratop_e/scm_e/scm_e.htm.

⁵ http://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm#bycountry.

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.⁶ On September 12, 2006, the United States and Canada signed the 2006 SLA 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 November 6, 2012, the Department published a notice in the *Federal Register* soliciting public comment on subsidies provided by Canada on softwood lumber or softwood lumber products for inclusion in this report.⁷ The comments received are attached as Appendix I. To the extent these comments contained information regarding any potentially new programs, we will review that information, going forward, as appropriate.

III. Subsidies Provided

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 by Brazil, Canada, Chile, Germany, and Sweden. In the Fourth Report, the Fifth Report, the Sixth Report, and the Seventh Report, we listed all known subsidies, identified using the methodology described above, provided by Canada and Chile. In the Eighth Report, we listed all known subsidies, identified using the methodology described above, provided by Canada.⁹

For the period January 1 through June 30, 2012, in this report we have applied the methodology described above with regard to Canada. No new subsidies were identified. The subsidies identified for Canada are as follows.

⁶ The SLA is particular to Canada. The United States does not have a similar agreement involving softwood lumber or softwood lumber products from any other country.

⁷ See *Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment*, 77 FR 66584 (November 6, 2012).

⁹ Our December 15, 2008, June 15, 2009, December 18, 2009, June 11, 2010, December 6, 2010, June 15, 2011, December 15, 2011, and June 15, 2012, reports are posted on our website at www.trade.gov/IA under the "Softwood Lumber Export Charges" link. See <http://ia.ita.doc.gov/sla2008/sla-index.html>.

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

Subsidies Identified in CVD Proceedings

The Department 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 2004.¹⁰

- 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 administrative review 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.

¹⁰ 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.

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 with 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. See below under "Subsidies Identified from Canada's WTO Notification" for additional information.

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,¹¹ 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.

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 from 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

¹¹ The area of wood science is concerned with the physical and mechanical properties of wood and the factors which affect them.

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 of 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 increases 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.

Canada reported in its most recent WTO notification that the PFDP program was created in 1995 to protect and enhance registered forest land and that it remains an ongoing program.¹² Canada reported that the assistance is limited to 80 percent of the costs of eligible initiatives, but the aggregate value of assistance and identity of beneficiaries are not provided in the notification. See Canada N220 at page 44.

¹² See New & Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, G/SCM/N/220/CAN (7/14/11) (“Canada N220”), at 44.

Additional Subsidies Information from Canada's WTO Notification

The following information was included in Canada N220.

1. Pulp and Paper Green Transformation Program¹³

On June 17, 2009, Canada announced a \$1 billion Pulp and Paper Green Transformation Program (PAPGTP) to support its pulp and paper producers. The stated purpose of this program is to improve energy efficiency and renewable energy production technologies. As of April 2010, 38 pulp and paper mills across Canada, representing 24 companies, generated credits under the PAPGTP based on their 2009 production levels of black liquor.¹⁴

Canada reported in its WTO Notification that the program provides contribution funding, capped at CAD \$1 billion, to pulp and paper companies for environmental upgrades to Canadian facilities, based on a credits system. Contributions are provided in the form of grants, contingent on approval that funds will be used for capital projects that offer demonstrable environmental benefits. Funding for a company is based on credits of CAD \$0.16 per liter of black liquor produced by the company's mills between January 1, 2009 (i.e., the calculation start date) and May 9, 2009, which is the date the CAD \$1 billion cap was reached. Qualified companies are required to submit project proposals for their facilities and had until March 31, 2012, to apply the credits to environmental improvement projects. The GOC has confirmed on its website that the program ended on this date. See <http://cfs.nrcan.gc.ca/pages/231>.

2. Value to Wood (VWP)

As explained above in the "Subsidies Identified in CVD Proceedings" section, the VWP is one of three softwood marketing subsidy programs administered by NRCAN. Canada reported in its WTO Notification that the VWP funds pre-competitive research and technology transfer activities in support of secondary wood products manufacturers. The program also funds research related to new product development, improved manufacturing processes, market trends, and codes and standards. Canada reported that CAD \$3.7 million and CAD \$3.5 million were budgeted for fiscal years 2008/2009 and 2009/2010, respectively. Recipients from 2008 through 2010 included FPInnovations, Canada's national forest research institute, and various Canadian universities. Canada also reported that the VWP expired in March 2011. See Canada N220 at page 27.

¹³ This program was listed in the Sixth Report under the heading "Additional Subsidies Identified in Connection with the SLA."

¹⁴ Source: <http://www.nrcan-rncan.gc.ca/media/newcom/2009/200961a-eng.php>.

3. Ontario Tax Credit for Manufacturing and Processing

Canada reported in its WTO Notification that this program provides a tax credit under the Ontario Taxation Act 2007 against Ontario taxable income for eligible Canadian profits from manufacturing and processing, farming, fishing, logging, mining, the generation of electrical energy for sale, or the production of steam for sale. Canada did not report the amount or rate of the credit. See Canada N220 at page 41.

4. Quebec Private Forest Property Tax Refund

Canada reported in its WTO Notification that this program provides refunds of up to 85 percent of property taxes for certified forest producers that log in privately-owned forests. The program was created in 1998 to encourage producers to undertake projects to increase the value of their privately owned forests and remains an ongoing program. See Canada N220 at page 44.

Subsidies Identified in Connection with the SLA which have been Reviewed by an Arbitration Panel¹⁵

In January 2008, the United States requested arbitration regarding provincial assistance programs benefitting the lumber industries in Quebec and Ontario. The tribunal issued a final decision on January 21, 2011, finding that Canada had circumvented the export measures provided in the SLA with respect to five programs. To comply with the award, on March 1, 2011, Canada began imposing additional export charges of 0.1 percent and 2.6 percent on softwood lumber exported from Ontario and Quebec, respectively.

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.

¹⁵ These five programs were listed in each of the first five reports under the heading "Subsidies in Connection with the SLA upon which Arbitration has been Requested."

3. 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.

4. 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.

5. Quebec's Road Tax Credit¹⁶

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\$100 million for a refundable tax credit of 40% for the construction of and major repairs to access roads and bridges.

6. British Columbia Sales of Grade 4 Timber

On January 18, 2011, the United States requested arbitration under the rules of the LCIA (formerly the London Court of International Arbitration) regarding the underpricing of timber in the interior of British Columbia. Since 2007, British Columbia has sold increasing amounts of publicly-owned timber in its interior for salvage rates, providing a benefit to softwood lumber producers in apparent circumvention of the SLA. While the mountain pine beetle infestation has caused extensive damage to forests in British Columbia, the majority of the damaged timber is usable for softwood lumber products.

On July, 18, 2012, the tribunal issued its finding. While the tribunal acknowledged the dramatic increase in the amount of timber priced as grade 4, and reviewed a number of actions by British Columbia that the United States had explained helped account for that increase, the tribunal did not find a conclusive link between the increase and actions taken by British Columbia. British Columbia has issued an update with regard to its timber pricing systems and the United States will be monitoring the resulting pricing closely.

¹⁶ In each of the first five reports, this funding was included in the program description "Forest Management Measures," which was listed under the heading "Subsidies in Connection with the SLA upon which Arbitration has been Requested."

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.

4. Ontario Forest Access Road Construction and Maintenance Program¹⁷

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.

5. Reductions in Operational and Silvicultural Costs¹⁸

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.

IV. Conclusion

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.

¹⁷ This program was listed in each of the first five reports under the heading "Subsidies in Connection with the SLA upon which Arbitration has been Requested."

¹⁸ In each of the first five reports, this funding was included in the program description "Forest Management Measures," which was listed under the heading "Subsidies in Connection with the SLA upon which Arbitration has been Requested."

Appendix I