SOFTWOOD LUMBER SUBSIDIES REPORT TO THE CONGRESS

U.S. Department of Commerce

June 2014

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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 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,[2] during the period July 1, 2013 through December 31, 2013. In particular, Canada accounts for 96.74 percent of total U.S. imports, and Chile accounts for 1.13 percent of total U.S. imports.

As in past reports, for this, the Twelfth Softwood Lumber Subsidies Report to Congress (Twelfth Report), 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 January 1, 2014 through June 30, 2014, to select the countries subject to the next report.

Under U.S. countervailing duty (CVD) law, a subsidy will be found if 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), the implementation of bilateral trade agreements, as well as public comment. Therefore, we examined subsidies identified in those areas, specifically: A) CVD investigations and reviews; B) WTO reporting by member countries and WTO monitoring; C) subsidies identified in the course of enforcing bilateral agreements regarding softwood lumber and softwood lumber products; and D) comments from the public.

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[1] For the period July 1, 2013 through December 31, 2013, 42 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 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. The Department of Commerce (the Department) 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.[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 eleven 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. We continue to report these identified subsidies.

B. WTO Notifications and Monitoring

We identified two sources of information from the WTO – Subsidies Notifications and Trade Policy Reviews (TPRs). 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 report 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,

[3] In January of 2012, the United States and Canada signed a two-year extension of the SLA, which extended the SLA from October 12, 2013 to October 12, 2015.
[4] http://www.wto.org/english/tratop_e/scm_e/scm_e.htm.

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

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] As noted above, 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. Pursuant to the SLA, 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 certain export measures and not to take any action having the effect of reducing or offsetting the export measures.

D. Public Comment

On April 30, 2014, the Department 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.[7] The comments received are attached as Appendix I. To the extent these comments contain 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, Ninth Report, Tenth Report, and Eleventh Report, we listed all known subsidies, identified using the methodology described above, provided by Canada.[8]

For the period July 1, 2013 through December 31, 2013, in this Twelfth Report we have applied the methodology described above with regard to Canada and Chile. No new subsidies were identified for Canada in comparison with the Eleventh Report.

[5] http://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm#bycountry.
[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*, 79 FR 24403 (April 30, 2014).
[8] Our previous reports are posted on our website at www.trade.gov/Enforcement under the "Trade Agreements" link. *See* http://enforcement.trade.gov/sla2008/sla-index.html.

Although we have not reported on Chile since the Seventh Report, no new subsidies were identified for Chile in comparison with that report. The subsidies identified for Canada and Chile are as follows.

Canada

We previously 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. There have been no new TPRs or Subsidies Notifications for Canada since the last Report; thus, the following are unchanged from the prior Report.

<u>Subsidies Identified in CVD Proceedings</u>

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.[9]

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.

[9] 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,[10] 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 reinstituted 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

[10] 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 recent WTO notifications that the PFDP program was created in 1995 to protect and enhance registered forest land and that it remains an ongoing program.[11] 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 and *Canada N253* at page 48.

[11] *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; and *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/253/CAN (7/19/13) (*Canada N253*), at 48.

Additional Subsidies Information from Canada's WTO Notifications

The following programs were reported in *Canada N220* and/or *Canada N253*.

1. Pulp and Paper Green Transformation Program[12]

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. 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. As of March 31, 2012, when the program ended, 38 pulp and paper mills across Canada, representing 24 companies, generated credits under the PAPGTP based on their 2009 production levels of black liquor. [13] 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. Under the authority of the *Department of Natural Resources Act* and the *Forestry Act*, the program funds research related to new product development, improved manufacturing processes, market trends, and codes and standards. Canada reported a budget of CAD $3.7 million and CAD $3.5 million fiscal years 2008/2009 and 2009/2010, respectively, increasing to CAD $4 million per year for fiscal years 2010/2011 and 2011/2012. Recipients from 2008 through 2012 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 and *Canada N253* at page 27.

3. Investments in Forest Industry Transformation Program (IFIT)

Launched in August 2010, the IFIT provides targeted investments for projects that implement new technologies leading to non-traditional high-value forest products and renewable energies. Eligible recipients are companies that produce forest products and

[12] This program was listed in the Sixth Report under the heading "Additional Subsidies Identified in Connection with the SLA."
[13] Source: http://www.nrcan-rncan.gc.ca/media/newcom/2009/200961a-eng.php.

own at least one existing forest product manufacturing facility located in Canada. Projects were selected for funding through a competitive process. The program is funded under the *Department of Natural Resources Act* and the *Energy Efficiency Act*. *See Canada N253* at page 25.

4. Transformative Technology Program (TTP)

The TTP provides funding under the *Department of Natural Resources Act* and the *Forestry Act* in the form of contributions for pre-competitive, non-proprietary R&D for development and adaptation of emerging technologies such as forest biomass, forest biotechnology and nanotechnology. The program was created in April 2007. Funded research focuses on the development of breakthrough technologies related to forest biomass utilization, nanotechnology, and next-generation forest products, as well as addressing on-going productivity challenges facing the industry. The program is funded under Canada's Forest Innovation Program. *See Canada N253* at page 26.

5. Quebec Forestry Financing Program

Ongoing since 2004, under the Québec Ministère des Ressources Naturelles et de la Faune, the program supports certified forest producers in acquiring forest plots, with assistance provided in the form of loan guarantees for loans of up to $750,000. *See Canada N253* at page 48.

6. 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.

7. 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 and *Canada N253* at page 49.

Subsidies Identified in Connection with the SLA which have been Reviewed by an Arbitration Panel[14]

On September 30, 2013, the United States and Canada agreed to jointly initiate arbitration under the SLA to resolve a disagreement over the implementation of a prior SLA arbitration award (LCIA No. 81010). The 81010 award required Canada to apply additional export charges on shipments of softwood lumber from Quebec and Ontario to remedy breaches of the SLA concerning certain forestry programs in those provinces. The additional export charges were anticipated to collect US$58.85 million over the term of the SLA, which – at the time the award was issued -- was until October 12, 2013. In January 2012, the United States and Canada extended the SLA until October 12, 2015. Canada reported that, as of October 12, 2013, it had collected less than half of the US$58.85 million. The United States and Canada reconvened the original tribunal to determine whether the award requires Canada to continue to apply the additional export charges while the SLA remains in effect until the full US$58.85 million is collected. On March 27, 2014, the LCIA Tribunal found that Canada's collection obligations ended on October 12, 2013—the original expiration date of the SLA. In April 2014, Canada began its domestic process to determine the amount of any overpayment and provide refunds to exporters.

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. 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.

[14] The first five of these 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." The sixth program was listed in the sixth, seventh, and eighth reports under the heading "Subsidies in Connection with the SLA upon which Arbitration has been Requested."

5. Quebec's Road Tax Credit[15]

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

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. 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, a LCIA tribunal acknowledged the dramatic increase in the amount of timber priced as grade 4 in British Columbia, and reviewed a number of actions by British Columbia that the United States had explained helped account for that increase. However, the tribunal did not find that Canada had circumvented the LCIA.

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 Program[16]

[15] 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."

[16] 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."

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 Costs[17]

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.

Chile

We identified subsidies provided by Chile that potentially benefit softwood lumber and softwood lumber products through an examination of WTO monitoring reports on Chile (TPRs), as indicated further below. Chile's most recent WTO Subsidies Notification (N253) does not contain new information regarding programs related to lumber, timber, or other forest products industries.[18]

<u>Forestry Programs</u>

- 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.[19]

- 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.[20]

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[17] 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."
[18] *See New and Full Notification Pursuant to Article XVI.1 of the GATT 1994 and Article 25 of the SCM Agreement: Chile*, G/SCM/N/253/CHL (2/17/14).
[19] *See Trade Policy Review of Chile, Report by the Secretariat*, WT/TPR/S/220/R1, dated November 5, 2009, Part 4, para.49.
[20] *See Trade Policy Review of Chile, Report by the Secretariat*, WT/TPR/S/220/R1, dated November 5, 2009, Part 4, para.50.

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.

Appendix

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Government Affairs

James W. Tobin III
Senior Vice President & Chief Lobbyist

May 29, 2014

By Electronic Submission

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

RE: Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States (REG-2014-09874)

Dear Secretary Pritzker:

On behalf of the more than 140,000 members of the National Association of Home Builders, I am writing in response to the request by the U.S. Department of Commerce for comments on subsidies provided by certain countries exporting softwood lumber to the United States. Access to competitively priced and readily available softwood lumber is very important to the home building industry, and I appreciate the opportunity to share our views. Please do not hesitate to contact me should you have any questions concerning this submission.

Sincerely,

James W. Tobin III

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing in response to the request by the U.S. Department of Commerce for comments on subsidies provided by certain countries exporting softwood lumber to the United States. I appreciate the opportunity to share our views.

NAHB is a Washington, D.C.-based trade association whose broad mission is to enhance the climate for housing, homeownership, and the residential building industry. NAHB is affiliated with more than 800 state and local home builder associations throughout the country. The association represents builders and developers who construct housing ranging from single-family for-sale homes to affordable rental apartments and remodelers. Access to competitively priced and readily available softwood lumber is very important to home builders, their contractors, other U.S. businesses that use softwood lumber, such as manufacturers of trusses, cabinets, pallets, and furniture, as well as lumber wholesalers and retailers, and millions more employed in the real estate and mortgage finance sectors that are all contributing to our economic recovery.

While the housing sector has considerable room to grow given population and household growth, the ongoing recovery has seen month-to-month volatility. Rising building material prices are both a challenge and a sign of the recovery and growth in residential construction. Gypsum prices have risen by 10% to 20% at the beginning of the last three years. Softwood lumber and oriented strandboard (OSB) prices have also risen significantly over the last three years, with occasional spikes in prices when demand exceeds manufacturing capacity. Some easing in building material prices has been seen when new factories and material sources come online, but the rising cost of construction is a factor that keeps some building projects from proceeding.

Because Canada is the source of approximately one quarter of the lumber used in U.S. home construction, NAHB is particularly sensitive to the harmful effects of artificial price increases. NAHB remains strongly opposed to border measures such as quotas, tariffs, or export fees that restrict imports of Canadian lumber and contribute to volatile swings in the lumber market.

<u>Lumber in Housing</u>

Lumber is one of the most volatile-priced products, and it is common for wide price swings to occur over a short period of time. This has a direct effect on the affordability of homes.

NAHB research shows lumber and wood products account for 15% of the cost of construction for a single family house. As such, lumber price increases have severe effects on our nation's housing market. While rapid price escalations have somewhat eased recently, the prices of these materials have soared as the housing recovery gained momentum in 2012. For example, OSB and lumber prices are 24% and 27% above their average 2011 levels before the housing recovery began in earnest. NAHB economists estimate that a 10% increase in the price of framing lumber per 1,000 board feet adds approximately $660 to the price of an average new home.

The rising cost of inputs drives up the cost of construction, which in turn, drives up the price of a new home. The impact is of particular concern in the affordable housing sector where relatively small price increases can have an immediate impact on low- to moderate-income home buyers who are more susceptible to being priced out of the market. Many aspiring homeowners are just on the edge of being able to qualify for a mortgage and make the required payments. Even a small change in home prices or interest rates can determine whether they can buy a home.

A 2012 priced-out analysis done by NAHB illustrates the number of households priced out of the market for a median priced new home due to a $1,000 price increase. Nationally, this price difference means that when a median new home price increases from $225,000 to $226,000, 232,447 households can no longer afford that home.[1] An increase of 10% in the average wholesale price of framing lumber would mean that about 160,000 families would not be able to qualify for a mortgage on a average first-time home.

Because of the harmful effects of artificial price increases, NAHB is strongly opposed to border measures such as quotas, tariffs, or export fees that restrict imports of Canadian lumber. At present, Canada is the source of approximately one quarter of the lumber used in U.S. home building. Trade restrictions on imported lumber cause artificial price increases and volatile swings in the lumber market, both of which hurt housing affordability.

Industry Headwinds

The nation's housing markets are beginning to see widespread consistent, sustainable growth. To track this level of improvement, NAHB created the Leading Markets Index (LMI), which compares the current levels of employment, home prices, and building permits to their normal, sustainable levels. Of the 351 metro markets measured, 300 have seen year-over-year economic gains. The index currently shows that 59 metros have fully returned to or even exceeded their last normal levels of economic and housing activity. This means that based on current permit, price and employment data, the nationwide average is running at 88 percent of normal economic and housing activity.

However, economic and policy headwinds remain that have slowed builders' ability to build and prospective home buyers' ability to make a home purchase. If these headwinds are reduced, then housing's contribution to economic growth would be larger and the overall economic recovery more robust.

The home building industry is uniquely large and decentralized. Currently, the industry employs 659,000 individuals in the builder category and 1.598 million as residential specialty contractors, for an industry total of 2.257 million. These workers and entrepreneurs are spread out across the nation.

Like most of the construction sector, home building is dominated by small firms. The median gross receipts for NAHB members is just under $1 million. Approximately 80 percent of our builders build 10 or fewer homes per year and employ 10 or fewer employees.

Collectively, however, they represent a massive industry, employing millions of people and generating 17% of our nation's gross domestic product. Housing contributes to the national economy in two basic ways: through private residential investment and consumption spending on

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[1] *See* NAHB Economics, "Households Priced-Out by Higher House Prices and Interest Rates", *available at* http://www.nahb.org/generic.aspx?sectionID=784&genericContentID=40372.

housing services. Historically, residential investment has averaged roughly 5% of GDP while housing services have averaged between 12% and 13%, for a combined 17% to 18% of GDP. These shares tend to vary over the business cycle.

The Great Recession and its lingering impacts significantly reduced the production of housing. Due to these declines, the industry is operating well below historic norms. In order to meet the housing needs of a growing population and replacement requirements of older housing stock, the industry is expected to be building about 1.4 million new single-family homes each year and more than 1.7 million total housing units. In comparison, in 2012, home builders constructed only 534,000 single family homes and 247,000 multifamily units.

Over the last two years, home building has experienced significant growth. For 2013, housing starts totaled 925,000: 618,000 single-family and 307,000 multifamily units. Over the last two and half years, 274,000 jobs have been added by home builders and remodelers. More are expected with continued gains in construction activity.

According to NAHB estimates, 2,970 full-time equivalent (FTE) jobs, and $111 million in tax revenue are generated by the construction of 1,000 single family homes. Similarly, 1,000 new multifamily units results in 1,130 FTE jobs and $100 million in remodeling expenditures creates 890 jobs. Further, the building and improvement of the housing stock of a local area provides a tax base for state and local governments. While typically not included in federal analysis, the taxes attributable to housing are substantial. According to Census data and NAHB calculations, property taxes attributable to housing totaled approximately $300 billion in 2012.

The rise and fall of housing activity has been the dominant economic factor of the last decade. Housing typically leads the economy out of recession, although in the period after the Great Recession, housing has not played that role. There are many reasons why the recovery has been slower than past history would suggest.

Conclusion

Residential construction has finally turned the corner and is contributing to, rather than subtracting from, Gross Domestic Product growth and an improving labor market. Any efforts to ease escalating price pressures, help rebuild the supply chain, and support a continuing housing recovery is smart economic policy.

NAHB supports changes to make lumber supply more responsive to market demand and opposes supply constraints that contribute to volatility in lumber prices. Because housing has been a critical stabilizing factor in our nation’s faltering economy, it is imperative that our government does not act to artificially raise the cost of housing through trade restrictions.

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PICARD KENTZ & ROWE

May 30, 2014

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]

[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*, 79 Fed. Reg. 24,403 (Dep't Commerce Apr. 30, 2014).

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

Respectfully submitted,

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David A. Yocis

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Counsel to the U.S. Lumber Coalition

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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Counsel to the U.S. Lumber Coalition

May 30, 2014

SUBSIDIES TO SOFTWOOD LUMBER PRODUCTION

Submission of the U.S. Lumber Coalition to the Department of Commerce
Pursuant to Section 805 of the Softwood Lumber Act of 2008
May 30, 2014

The following comments are provided in response to the request by the Department of Commerce ("Department") to identify subsidies provided by Canada and Chile to the production or export of softwood lumber products to the United States during the period July 1, 2013 through December 1, 2013.

1. CANADA

A. Provision of Standing Timber for Less Than Adequate Remuneration

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 that higher volumes of timber are harvested in poor markets when a profit-maximizing landowner would otherwise 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 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.[3] 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.[4] But if the auction prices do not actually reflect market value, neither

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

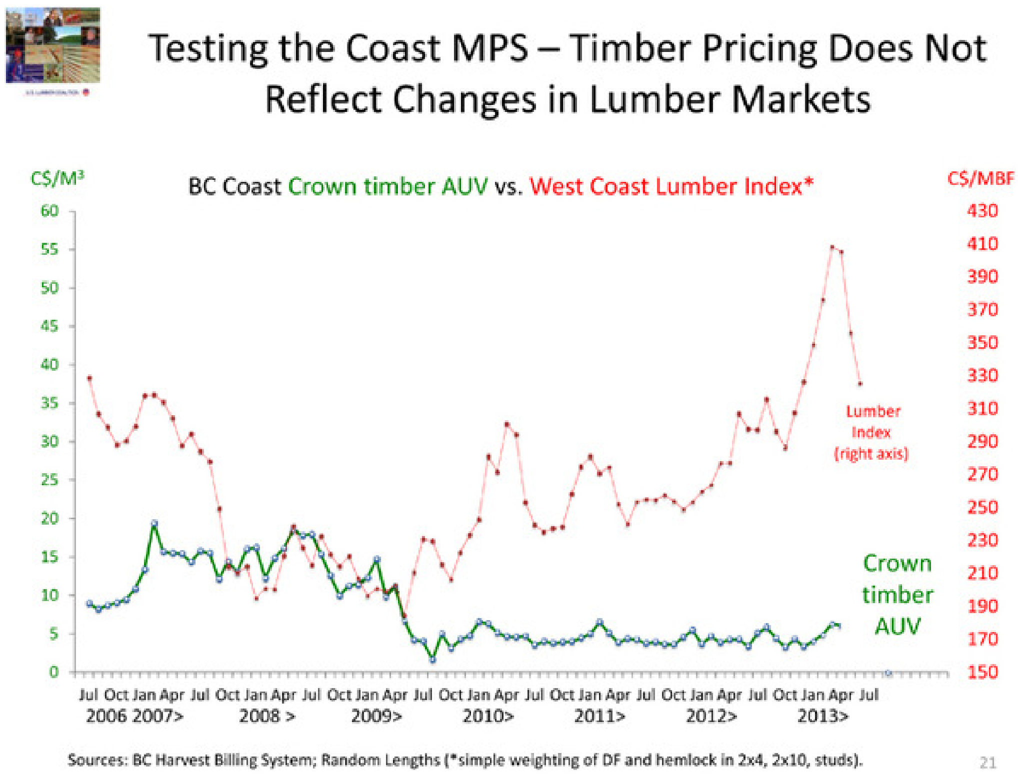
[2] The World Trade Organization (WTO) Appellate Body has confirmed that, consistent with the WTO agreements, the Department may rely on the size of the government's market share as potentially conclusive evidence that internal prices cannot be used as a reliable market benchmark. Report of the Appellate 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] In the period identified in the Department's request – July through December 2013 – about 16 percent of harvested timber on the BC Coast (1,418,590 m^3 out of 8,822,156 m^3) was harvested from auction stands, and less than 18 percent of harvested timber in the BC Interior (4,435,805 m^3 out of 25,205,494 m^3) was harvested from auction stands, according to data accessed through the BC Harvest Billing System, https://www15.for.gov.bc.ca/hbs/.

[4] 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 – 2014," Jan. 1, 2014; "Interior Market Pricing System

would the prices resulting even from a statistically valid translation of the auctions prices to these long-term "tenure" sales. And, as the Coalition has demonstrated at length in prior submissions to the Department, the translation procedures used by BC are far from statistically valid.

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.



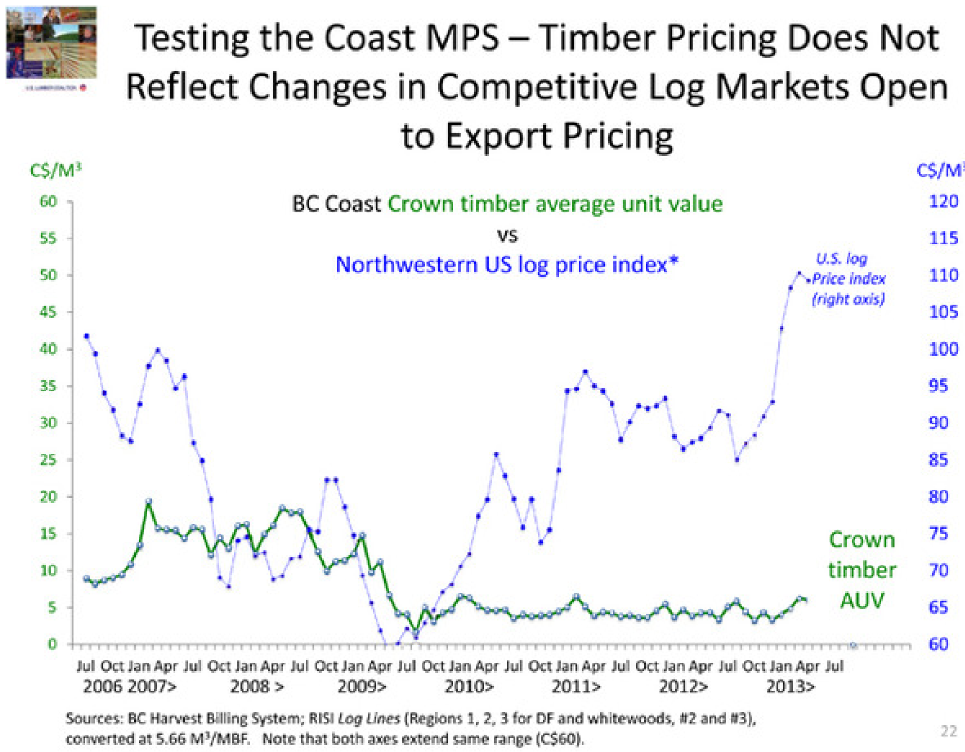
These trends have continued in recent months, with average BC Coast timber prices falling to C$5.49/$m^3$ in the July-December 2013 period.[5] This figure includes an average price of C$26.62/$m^3$ for the minority of timber sold at auction, and a mere C$1.44/$m^3$ average timber price for tenure holders, although most of these also bear additional silviculture and road building expenses.[6]

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 Apr. 1, 2014, http://www.for.gov.bc.ca/hva/manuals/coast.htm, and the "Interior Appraisal Manual," last revised May 1, 2014, http://www.for.gov.bc.ca/hva/manuals/interior.htm.

[5] Data accessed from the BC Harvest Billing System, https://www15.for.gov.bc.ca/hbs/.

[6] Id.

While Canadian BC Coast lumber producers continue to enjoy low stumpage rates, despite the large increase in lumber prices over the last two years, U.S. mills have seen their fiber costs increase along with the general trend of lumber prices, as one would expect where timber prices are set at market levels.



The gap between BC Coast and comparable U.S. fiber costs is also visible in log price markets. During the July-December 2013 period, the weighted-average price for BC Douglas fir logs sold domestically in BC was C\$105.19/m^3.[7] Prices for U.S domestic sawlog grades of Douglas fir during the same period averaged C\$122.16/m^3, or 16 percent more.[8]

With respect to the BC Interior, average stumpage rates in the July-December 2013 period were C\$16.49/m^3 for auction stands and C\$9.20/m^3 elsewhere.[9] While comparable public data on standing timber prices is not available for comparable regions of the United States, available log price data also shows a substantial gap in the Interior. During this period, BC sawmills paid an average of C\$56.73/m^3 for spruce-pine-fir (SPF) logs purchased from third

[7] BC Log Market Reports for the three-month periods ending September 30, 2013 and December 31, 2013, available at http://www.for.gov.bc.ca/hva/logreports_coast.htm?2013.

[8] RISI *Log Lines*, issues dated Aug. 2013 through Jan. 2014, simple average of monthly #2, #3, and #4 sawlog prices in Regions 1, 2, and 3, converted using monthly Federal Reserve exchange rates and a conversion factor of 5.66 m^3/MBF.

[9] Data accessed from the BC Harvest Billing System, https://www15.for.gov.bc.ca/hbs/.

parties.[10] During the same period, U.S. mills paid an equivalent of $78.14/m^3, or more than 37 percent higher, for sawlog-quality logs of the same species.[11]

While traded logs in BC may not be fully representative of the full provincial Crown harvest, these comparison illustrates the significant price differential between prices generated by the BC "market pricing system" and actual market prices for similar logs, harvested from similar forests, by U.S. and Canadian producers making a commodity product to be sold into the same markets. These large differentials indicate that the timber provided to BC lumber producers by the BC government is sold for considerably less than adequate remuneration.

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. 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 the Timber Sales Office web site:

> Pursuant to the Sustainable Forest Development Act, the Timber Sales Office has the function of evaluating the Market Value {*sic*} of Standing Timber (MVST) that beneficiaries of a Supply Agreement must pay for each cubic meter of harvested wood. This value is established by the parity technique, which is applied to the market value of standing timber sold on the free market {*sic*} for Crown timber.
>
> The MVST is determined with reference to the characteristics of the timber in each of 187 pricing zones that make up the public forest. It is then indexed quarterly to take account of the evolution of the market prices for finished products (lumber, panels, pulp and paper, etc.) over the course of the year.[12]

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[10] BC Log Market Reports for the three-month periods ending September 30, 2013 and December 31, 2013, available at http://www.for.gov.bc.ca/hva/logreports_interior.htm?2013.

[11] RISI *Log Lines*, issues dated Aug. 2013 through Jan. 2014, simple average of quarterly lodgepole pine and Engelmann spruce prices in Region 7, converted using monthly Federal Reserve exchange rates and a conversion factor of 4.81 m^3/MBF.

[12] Quebec Timber Sales Office (*Bureau de mise en marché des bois*), https://bmmb.gouv.qc.ca/publications-et-reglements/tarification-forestiere/ (last visited May 29, 2014), original French text as follows:

Thus, on April 1, 2014, the first new annual standing timber prices derived from a full year of Crown auctions under the new system should have gone into effect. However, no price guide was published until May. As of May 29 – nearly two months into the current fiscal year -- only a "draft" timber price schedule for the period April 1, 2014 through March 31, 2015, dated May 7, 2014, is posted to the Timber Sales Office web site, along with the following notice:

> Consultation on the standard rates for the market value of standing timber in Crown forests for the year 2014-2015.
>
> The new reference rate chart for the market value of standing timber for the year 2014-2015 is currently subject to a consultation period. Anyone having comments on the draft chart is requested to make them known to Mr. Jean-Pierre Adam, director general of the Timber Sales Office, by e-mail to the following address: serviceclientele@bmmb.gouv.qc.ca, or by mail to 5700, 4e Avenue Ouest, local A-204, Québec (Québec) G1H 6R1. The consultation period ends May 27, 2014. [13]

Accordingly, it is safe to assume that the new Quebec timber pricing system is, at the very least, still a work in progress.

> En vertu de la Loi sur l'aménagement durable du territoire forestier, le Bureau de mise en marché des bois a pour fonction d'évaluer la valeur marchande des bois sur pied (VMBSP) que doivent acquitter les bénéficiaires d'une garantie d'approvisionnement pour chaque mètre cube de bois récolté. Cette valeur est établie par la technique de parité, laquelle s'appuie sur la valeur marchande des bois sur pied vendus sur le marché libre des forêts de l'État.
>
> La VMBSP est établie en fonction des caractéristiques des bois pour chacune des 187 zones de tarification que compte la forêt publique. Elle est, par la suite, indexée à chaque trimestre pour tenir compte de l'évolution des prix en cours d'année sur les marchés des produits finis (bois d'oeuvre, panneaux, pâtes et papiers, etc.).

[13] Id., original French text as follows:

> Consultation sur les taux unitaires de la valeur marchande des bois sur pied des forêts du domaine de l'État pour l'année 2014-2015
>
> La nouvelle grille de taux de référence de la valeur marchande des bois sur pied pour l'année 2014-2015 fait présentement l'objet d'une période de consultation. Toute personne ayant des commentaires à formuler sur le projet de grille est priée de les faire parvenir à M. Jean-Pierre Adam, directeur général du Bureau de mise en marché des bois, par courriel à l'adresse suivante : serviceclientele@bmmb.gouv.qc.ca ou par la poste au 5700, 4e Avenue Ouest, local A-204, Québec (Québec) G1H 6R1. La période de consultation se termine le 27 mai 2014.

In any event, it appears that timber prices in Quebec remain well below market levels, notwithstanding the introduction of the new pricing system. The most recently published data for the province as a whole states that the average price of spruce, pine, fir, and larch (SPF-L) timber of sawlog grade (grade B) was C$11.97/m^3 in the year from April 2012 to March 2013.[14] The simple average of the four quarterly grade B SPF-L price for the 187 pricing zones during that same period was C$10.29/m^3, or 86 percent of the actual reported average price. During the period of interest to the Department – July through December 2013 – the simple average of the two quarterly grade B SPF-L prices for the 187 pricing zones was C$12.86/m^3, so if the same relationships held as in the 2012-13 period, this would translate to an average Crown timber SPF-L price of C$14.96/m^3 during the July-December 2013 period (and C$14.79/m^3 for the "draft" 2014-15 pricing schedule).

Recent press reports attribute to Quebec forest executives the claim that Quebec wood fiber costs have increased 25 percent since 2011, which would be roughly consistent with this calculation.[15] Of course, 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 expect that, in such a pricing environment, the market value of timber to have increased by at least 25 percent.

These Quebec stumpage rates include the value of silviculture. In addition, as the Government of Canada confirmed in an LCIA dispute settlement proceeding, several of the in-kind payments made by Quebec lumber producers for which the Department made adjustments in prior countervailing duty reviews (such as the Forestry Fund, fire protection, and insect protection) are now also included in the Quebec stumpage rate.[16] As a result, only C$3.43/m^3 of the upward adjustment that the Department made to Quebec stumpage rates in its most recent countervailing duty review of Quebec stumpage pricing would still be applicable today. Accordingly, under any reasonable calculation, Quebec stumpage rates are far below those for comparable timber in Maine, where the most recent available data (for 2012) found that SPF sawtimber prices averaged C$24.10/m^3.[17]

Even still, the Quebec industry is urgently demanding that the Quebec government provide relief from these increases. According to a recent press report:

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[14] Quebec Ministry of Natural Resources, *Ressources et industries forestières: Portrait statistique édition 2013*, at 38, http://www.mffp.gouv.qc.ca/forets/connaissances/connaissances-statistiques.jsp.

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

[16] Award of the Tribunal, *United States of America v. Canada*, LCIA No. 81010 (Jan. 20, 2011), para. 228 (fire and insect prevention); para. 233 (Forestry Fund).

[17] Maine Forest Service, "2012 Stumpage Prices by Maine County," at http://www.maine.gov/doc/mfs/pubs/pdf/stumpage/12stump.pdf, converted using monthly Federal Reserve exchange rates and a conversion factor of 4.81 m^3/MBF.

> "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.[18]

Perhaps as a result of these entreaties, or threats, the Quebec government announced a substantial aid package to the forest industry on November 21, 2013.[19] 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*).[20] 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, all "timber that is used or will be used to make lumber, pulp, or roundwood timber products" is charged an identical rate that is adjusted monthly to reflect lumber prices. 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 is sufficient to demonstrate that its sawlog prices are below those that would prevail in a market. During the period of interest to the Department, the standard monthly rate varied from C$1.90/$m^3$ to C$2.65/$m^3$ for first 107,296 m^3 purchased by a licensee, and from C$1.90/$m^3$ to C$4.39/$m^3$ for higher volumes.[21] These rates are considerably lower even than those charged in the BC Interior for a similar mix of species.

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[18] Id.

[19] "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.

[20] 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.

[21] Monthly Alberta timber dues letters, *available at* http://srd.alberta.ca/LandsForests/ForestManagement/TimberDuesCrownFees/MonthlyTimberDuesLetters.aspx.

In Ontario, all SPF timber harvested by sawmills during the July-December 2013 period was charged a fixed rate of C$4.80/m^3.[22] Theoretically, this rate can (like Alberta's) increase during periods of high lumber prices, but Ontario 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,[23] 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."[24] 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.[25] 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 conform to the administered price of Crown timber, rather than the reverse.[26] 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]

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

[23] 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]. .

[24] 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.).

[25] 2011 Ontario Tenure Act at §5(4).

[26] 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.

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."[27]

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, and these combined private timber rates are used to set Crown prices in New Brunswick. The most recently available average private SPF sawtimber price in New Brunswick and Nova Scotia, for the period November 1, 2011 through October 31, 2012, was C$22.69/$m^3$.[28] This was slightly below contemporaneous Maine SPF sawtimber prices, which (as noted above) averaged C$24.10/$m^3$ in 2012.

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 has become Crown land on which companies could obtain harvesting rights.[29] Some temporary licenses for this land were granted in early 2014.

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.

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

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

[28] "Survey Results and Prices for Standing Timber Sales from Maritime Private Woodlots," summary report at 7, https://novascotia.ca/pfpmb/StumpageReport11.pdf.

[29] 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.

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.[30]

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.[31] 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. For the period of interest to the Department, therefore, the "fee in lieu" was 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 sector, to forest products manufacturing companies. In other words, manufacturers receive a subsidy at the expense of timber growers."[32] 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

[30] "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.

[31] "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.

[32] 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.

reaped by the timber products processing sector, which enjoys lower raw material costs than it would experience in the absence of such restrictions.[33]

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*).[34] 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.[35] 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 well as in other CVD determinations.[36] 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.[37]

C. Other Subsidy Programs

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

[34] Syndicat des Producteurs de Bois de l'Estrie, "Frequently Asked Questions," *at* http://www.spbestrie.qc.ca/fr/faq/ (last visited May 29, 2014).

[35] "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.

[36] *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.

[37] Id., Issues & Decision Memorandum at 12.

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.[38] This program was also found to be a subsidy in breach of the SLA by an LCIA tribunal in January 2011.

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.[39] 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

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[38] 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.

[39] *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).

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.

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.[40] This business includes "financing (including guarantees), political risk insurance to lenders, and equity transactions."[41] 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."[42]

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

2. CHILE

Most of Chile's softwood lumber exports to the United States are of radiata pine from timber plantations. These plantations were largely developed through the use of massive subsidies, including a "wildly successful" 75 percent subsidy for plantation establishment and tree care costs enacted in Decree Law 701 of 1974.[43] Although these subsidies were discontinued in 1995, given typical rotation schedules it is very likely that the plantations established with the assistance of these subsidies are the source of much of the timber used to manufacture the softwood lumber that Chile is presently exporting to the United States.

According to the World Trade Organization's most recent Trade Policy Review for Chile, the *Corporación Nacional Forestal* (CONAF), a body within the Ministry of Agriculture, "offers rebates of between 75 and 90 per cent of the net costs of afforestation and sustainable forest management activities, especially those carried out by small woodland owners."[44]

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[40] 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

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

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

[43] Roger A. Clapp, "Creating Comparative Advantage: Forest Policy as Industrial Policy in Chile," 71 Economic Geography 273 (1995).

[44] World Trade Organization, Trade Policy Review – Chile, Doc. No. WT/TPR/S/220/Rev.1 (Nov. 5, 2009), at 92 (para. 49).