SOFTWOOD LUMBER SUBSIDIES REPORT TO THE CONGRESS

U.S. Department of Commerce

December 2020

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I. Background and Reporting Methodology

On June 18, 2008, Section 809(b) of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate congressional committees a report every 180 days on any subsidies provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. This report is issued pursuant to this requirement.

As in past reports, for this, the 25th Softwood Lumber Subsidies Report to Congress, we are relying on a six-month period (*i.e.*, January 1, 2020, through June 30, 2020) to identify the countries subject to review. Given the large number of countries that export softwood lumber and softwood lumber products to the United States, it is untenable to find subsidy information for every country that exports softwood lumber or softwood lumber products to the United States.[1] Instead, 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. Based on data published by the United States International Trade Commission Tariff and Trade DataWeb, we have included in this report subsidies provided by Brazil, Canada, Germany, and Sweden, the only 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 of the United States (HTSUS) codes 4407.1001, 4407.1100, 4407.1200, 4407.1905, 4407.1906, 4407.1910, during the period January 1, 2020, through June 30, 2020.[2]

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). Because the statute does not impose a limitation on the subsidies subject to the reporting requirement, this report, like previous reports, includes subsidy programs, some of which may have expired. *See* section 809(b) of 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

[1] For the period January 1, 2020, through June 30, 2020, 43 countries exported softwood lumber and softwood lumber products to the United States.

[2] During the period, Canada accounted for 86.91 percent, Germany 4.41 percent, Brazil 1.76 percent, and Sweden 2.35 percent of total U.S. imports.

and softwood lumber products; and D) comments from the public.

A. CVD 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.[3]

On November 2, 2017, the Department of Commerce (Commerce) issued its final determination in the CVD investigation of certain softwood lumber products from Canada (*Lumber V*).[4] We have included in this report the subsidies identified in *Lumber V Final Determination*. We have also included subsidies to softwood lumber production identified in the final results of the expedited review and the final results of the first administrative review of *Lumber V*.[5]

Prior to *Lumber V*, in 2002, Commerce issued a CVD order on certain softwood lumber products from Canada (*i.e.*, *Lumber IV*).[6] Because there are some subsidies that were identified in that proceeding (including the last administrative review of the *Lumber IV* order) that were not investigated in *Lumber V*, we have included subsidies that were found in the administrative review of *Lumber IV* covering the period April 2003, through March 2004.[7] 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 *Lumber IV* order on imports of Canadian softwood lumber. On October 12, 2015, the SLA expired.

This report also includes subsidies that appear to be applicable to softwood lumber production that were found in two other CVD proceedings involving Canada: *Supercalendered Paper*[8] and

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[3] As stated above, this report presents public information on subsidies in place during the period January 1, 2019, through June 30, 2019, as identified in the following areas, specifically: A) U.S. CVD proceedings; 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.

[4] *See Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination*, 82 FR 51814 (November 8, 2017) (*Lumber V Final Determination*), and accompanying Issues and Decision Memorandum (IDM). Subsidies identified are unchanged in *Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018) (collectively, *Lumber V*).

[5] *See Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121 (July 5, 2019) (*Lumber V Expedited Review Final Results*), and accompanying IDM; and *Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review; 2017-2018*, 85 FR 77163 (December 1, 2020) (*Lumber V First Review Final Results*), and accompanying IDM.

[6] *See Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 36070 (May 22, 2002) (*Lumber IV*).

[7] *See Notice of Final Results of the Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada* 70 FR 73488 (December 12, 2005) (*Lumber IV 2nd Review Final Results*), and accompanying IDM.

[8] *See Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper Final Determination*), and accompanying IDM. Subsidies identified are unchanged in *Supercalendered Paper from Canada: Countervailing Duty Order*, 80 FR 76668 (December 10, 2015) (collectively, *Supercalendered Paper*). *See also Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper Expedited Review*

Uncoated Groundwood Paper.[9]

B. WTO Notifications and Monitoring

We identified two sources of information from the WTO: Subsidies Notification and Trade Policy Review (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. Notifications are due every two years and are available on the WTO's website.[10] There were no new subsidy notifications from Brazil, Canada, Germany, or Sweden during the period.

Pursuant to the WTO's 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. Germany and Sweden (as parts of the European Union (EU)) are subject to review every two years, Canada and Brazil every four years. The TPR for each country is available from the WTO Secretariat and are available on the WTO's website.[11] There was a new TPR for the EU during the period.[12]

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.[13]

D. Public Comment

On October 8, 2020, Commerce published a notice in the *Federal Register* soliciting public comment on subsidies provided by Brazil, Canada, Germany, and Sweden on softwood lumber or softwood lumber products for inclusion in this report.[14] On November 9, 2020, Commerce received comments from Conseil de l'industrie forestière du Québec and the Ontario Forest Industries Association, which are attached as an appendix.

Final Results), and accompanying IDM. Subsidies identified are unchanged in *Supercalendered Paper from Canada: Amended Final Results of the Countervailing Duty Expedited Review*, 82 FR 25244 (June 1, 2017).

[9] *See Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018) (*Uncoated Groundwood Paper Final Determination*), and accompanying IDM.

[10] http://www.wto.org/english/tratop_e/scm_e/scm_e.htm

[11] http://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm#bycountry

[12] *See* WT/TPR/S/395/Rev.1 (July 7, 2020).

[13] The SLA was particular to Canada. The United States does not currently have, or had in the past, a similar agreement involving softwood lumber or softwood lumber products from any other country.

[14] *See Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment*, 85 FR 63507 (October 8, 2020).

III. Subsidies Provided

In each report issued to Congress, we listed all known subsidies provided by the exporting countries under consideration, identified using the methodology described above.[15] The chart below shows for which countries we listed subsidies in each report.

Report	Brazil	Canada	Chile	France	Germany	Sweden
1	X	X	X		X	
2		X	X		X	
3	X	X	X		X	X
4		X	X			
5		X	X			
6		X	X			
7		X	X			
8		X				
9		X				
10		X				
11		X				
12		X	X			
13		X				
14		X	X			
15		X	X			
16		X	X			
17		X	X	X		
18		X				
19		X	X		X	
20	X	X			X	X
21	X	X			X	X
22	X	X			X	X
23	X	X			X	X
24	X	X			X	X
25*	X	X			X	X

*Current report.

[15] Prior 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.

CANADA

Below, we identify subsidies provided by Canada on softwood lumber and softwood lumber products through examinations of the most recently completed CVD proceedings, WTO notifications, and the implementation and enforcement of the SLA.

A. Subsidies Identified in CVD Proceedings

Commerce determined that the following programs benefited Canadian softwood lumber producers in the *Lumber V Final Determination*, *Lumber V Expedited Review Final Results, Lumber V First Review Final Results, Lumber IV 2nd Review Final Results,*[16] *Supercalendered Paper Final Determination*, *Supercalendered Paper Expedited Review Final Results*, and *Uncoated Groundwood Paper Final Determination*.

Subsidies Identified in *Lumber IV* and *Lumber V*

- Provincial Stumpage Programs (provision of standing timber for less than adequate remuneration (LTAR))

  1. Alberta
  2. British Columbia
  3. Manitoba
  4. New Brunswick
  5. Ontario
  6. Québec
  7. Saskatchewan

In Canada, the vast majority of standing timber used by softwood lumber producers originates from lands owned by the Crown. In the *Lumber IV 2nd Review Final Results, Lumber V Final Determination*, and *Lumber V First Review Final Results,* Commerce 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 LTAR.[17] Each of the Canadian provinces has established programs through which it charges certain license holders "stumpage" fees for standing timber harvested from Crown lands.

- British Columbia (BC) Log Export Restraints

The Forest Act states that all timber harvested in BC is required to be used or manufactured in BC into wood products. Logs cannot be exported unless they meet certain criteria, the most

[16] During the conduct of the *Lumber IV* investigation and three subsequent administrative reviews, Commerce 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 administrative review of the *Lumber IV* order, we have used it as the most current and accurate measure of our findings in *Lumber IV*.
[17] *See Lumber IV 2nd Review Final Results* IDM at 8-16; *Lumber V Final Determination* IDM at 9-10; and *Lumber V First Review Final Results* IDM at 12-14.

common of which is that they are surplus to the needs of the BC timber processing industry. The Government of BC (GOBC) requires private log suppliers to offer logs to BC mill operators, and they may export the logs only if there are no purchasers in the province. The GOBC's actions require private suppliers of BC logs to sell to, and satisfy the demands of, BC consumers, including mill operators. The export exemption process discourages log suppliers from considering opportunities in the export market by encumbering their ability to export, especially where there is uncertainty as to whether their logs may be found to be surplus to the requirements of BC mills.[18]

- Non-Stumpage Programs Determined To Confer Subsidies

Programs Administered by the Government of Canada (GOC)

1. Canada—New Brunswick Job Grant Program

This program is part of a joint effort between the GOC and its provinces and territories, under six-year agreements, in which the GOC provides federal funding to provincial or territorial governments for the purposes of increasing labor market participation of groups that are underrepresented in Canada's labor force and enhancing the employability and skills of Canada's labor force. The New Brunswick aspect of the program was launched in January 2015 pursuant to the Canada-New Brunswick Job Fund Agreement, and is administered by the Department of Post-Secondary Education, Training and Labour (PETL). The Government of New Brunswick (GONB) designed the program, and the GOC contributes two-thirds of the eligible training costs, up to a maximum amount of C$10,000 per participant, per fiscal year (FY).[19]

2. Accelerated Capital Cost Allowance (ACCA) for Class 29 and Class 53 Assets

Class 29 assets are machinery used in manufacturing and processing operations. Under the ACCA program, Class 29 assets can be fully depreciated at an accelerated rate, over three years, and the amount of depreciation can be claimed as a deduction to reduce the taxpayer's taxable income. Canada's Income Tax Act (ITA) provides for deductions from taxable income for the capital cost of property. Canada's Income Tax Regulations (ITR) further specify that tax deductions for depreciation of Class 29 assets are permissible deductions under the ITA; however, the ITR's definition of manufacturing and processing explicitly excludes certain industries from benefitting from this deduction. The ACCA for Class 53 Assets operates in a manner that is nearly identical to the Class 29 program. However, the Class 53 program involves property covered by Class 29 but acquired after 2015 and before 2026. Commerce is treating the tax savings provided under Class 29 and Class 53 as falling under a single program.[20]

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[18] *See Lumber V Final Determination* IDM at 10-11; and *Lumber V First Review Final Results* IDM at 14. A similar subsidy is found relating to Wood Residue Export Restriction in *Uncoated Groundwood Paper Final Determination*, *see* "Wood Residue Export Restraint," below.
[19] *See Lumber V Final Determination* IDM at 11.
[20] *Id.* at 13-14; *see also Lumber V Expedited Review Final Results* IDM at 7-8; and *Lumber V First Review Final Results* IDM at 24.

3. Apprenticeship Job Creation Tax Credit (AJCTC)

The AJCTC allows employers to claim a tax credit of 10 percent of wages for qualifying apprentices in the first two years of employment, up to a maximum of C$2,000 per apprentice per year. A qualifying apprentice is someone working in a prescribed trade in the first two years of their apprenticeship contract. This contract must be registered with the federal government or a provincial or territorial government under an apprenticeship program designed to certify or license individuals in the trade. To qualify for a tax credit under the program, the apprentice must be working in one of the 56 "Red Seal Trades."[21]

4. Atlantic Investment Tax Credit (ITC)

This program is administered by the Canada Revenue Agency (CRA) and was implemented in 1977. It provides a credit against federal income tax owed, and its purpose is to encourage investment in the Atlantic Region of Canada. It is available to businesses in the Atlantic Region of Canada, which encompasses the provinces of Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island, and Québec's Gaspé Peninsula. Taxpaying companies in the Atlantic Region can earn an ITC equal to 10 percent of the value of investments that the company has made in qualified property located in the Atlantic Region that is to be used in certain sectors. Qualified property includes machinery and equipment used for manufacturing, and for farming, logging, and fishing. The ITC can be earned in the year that the qualifying property is first put into use, regardless of the acquisition date. The ITC is available to be applied against federal taxes payable three years back and 20 years forward.[22]

5. Scientific Research and Experimental Development (SR&ED) Tax Credit

The GOC provides a tax credit on companies' eligible research and development expenditures, such as salary and wages, materials, overhead, and contracts. During 2015, the tax credit was available at a standard rate of 15 percent of the cost of these expenditures. An enhanced rate of 35 percent was offered to small Canadian businesses. There is no application to receive this tax credit; rather it is claimed on Form T661 of the taxpayer's federal tax return.[23]

6. Atlantic Canada Opportunities Agency (ACOA) Loans – Atlantic Innovation Fund (AIF)

The ACOA was established by the GOC in 1985 "to support and promote opportunity for economic development of the Atlantic Region of Canada, with particular emphasis on small and medium-sized enterprises," pursuant to the Atlantic Canada Opportunities Agency Act. The AIF program is administered by ACOA and was established by the GOC in 2000 with the following objectives: (1) to increase activity in and to build capacity for innovation, research and development (R&D) which leads to technologies, products, processes, or services which

[21] *See Lumber V Final Determination* IDM at 14; *see also Lumber V First Review Final Results* IDM at 24.
[22] *See Lumber V Final Determination* IDM at 14; *see also Lumber V Expedited Review Final Results* IDM at 8; and *Lumber V First Review Final Results* IDM at 25.
[23] *See Lumber V Final Determination* IDM at 14; *see also Lumber V Expedited Review Final Results* IDM at 9; and *Lumber V First Review Final Results* IDM at 26.

contribute to economic growth in Atlantic Canada; (2) to increase the capacity for commercialization of R&D outputs; (3) to strengthen the region's innovation capacity by supporting research, development and commercialization partnerships and alliances among private sector firms, universities, research institutions, and other organizations in the Atlantic System of Innovation, and to increase their critical mass; and (4) to maximize benefits from the national R&D programs. Under the AIF, recipient companies operating in the Atlantic Region of Canada can receive transfer payments that are conditionally repayable, repayable, or non-repayable.[24]

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

Introduced in 1987, the Western Economic Diversification Program (WDP) is administered by the 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 *Lumber IV* 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.[25]

8. 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. During the 2003-2004 period of review of *Lumber IV*, 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* "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: Forest Engineering Research Institute of Canada (FERIC), Forintek, and Pulp & Paper Research Institute of Canada. In the 2003-2004 administrative review of *Lumber IV*, Commerce found

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[24] *See Lumber V Final Determination* IDM at 18.
[25] *See Lumber IV 2nd Review Final Results* IDM at 16-17.

that FERIC's research covers harvesting, processing, and transportation of forest products, silviculture operations, and small-scale operations and, thus, government-funded R&D by FERIC benefits, *inter alia*, producers of softwood lumber. Similarly, Commerce found that Forintek's operations are done in collaboration with the GOC under NRII, which pertain to resource utilization, tree and wood quality, and wood physics.[26] The NRII is periodically reinstituted.[27]

9. Federal Logging Tax Credit (FLTC)

The FLTC is a non-refundable tax credit administered by the CRA that can be used to offset federal income taxes payable for the year. To claim the FLTC with respect to logging taxes paid during the year, taxpayers must have federal income taxes payable for the year. The FLTC is provided for under subsection 127(1) of Part 1 of the Canada Income Tax Act. Eligibility for the FLTC is limited to taxpayers paying provincial logging tax that has been declared by regulation to be a tax of general application on income from logging operations.[28]

10. Temporary Initiative for the Strengthening of Québec's Forest Economies (TISQFE)

The TISQFE was created in 2010, by the Canada Economic Development of Québec Regions (CED) to strengthen and increase economic activity in areas of Québec affected by the forestry crisis to create and preserve jobs. The CED, a federal government agency, was created in 2005 to promote the long-term economic development of Québec, where slow growth is prevalent. The CED was authorized to implement the TISQFE through the *Economic Development Agency of Canada for the Regions of Québec Act*. The TISQFE provides grants and "repayable contributions," *i.e.*, interest-free loans, to entities located in communities dependent on the forest industry.[29]

11. Sustainable Development Technology Canada (SDTC)

The Parliament of Canada established the Canadian Foundation for SDTC in 2001, as a non-profit corporation to fund sustainable development technology demonstration projects in Canada. SDTC is funded by the GOC through the government agency known as Innovation, Science and Economic Development of Canada. Projects eligible for funding must develop or demonstrate new technologies to promote sustainable development, including technologies to address issues related to climate change and the quality of air, water and soil.[30]

[26] The area of wood science is concerned with the physical and mechanical properties of wood and the factors which affect them.
[27] *See Lumber IV 2nd Review Final Results* IDM at 17-18.
[28] *See Lumber V Expedited Review Final Results* IDM at 8; *see also Lumber V First Review Final Results* IDM at 25.
[29] *See Lumber V Expedited Review Final Results* IDM at 11.
[30] *See Lumber V First Review Final Results* IDM at 14.

12. Capital Cost Allowance (CCA) for Class 1 Assets

Class 1 assets, listed in Schedule II of the ITR, include most buildings acquired after 1987 and the cost of certain additions or alterations made after 1987. Buildings classified under Class 1 are usually depreciated at the CCA rate of four percent. However, if at least 90 percent of the floor space of an eligible non-residential building is used for the manufacturing or processing of goods for sale or lease, a taxpayer may apply for an additional six percent deduction (for a total depreciation rate of 10 percent). Further, if the eligible non-residential building does not qualify for the additional six percent CCA, it may still qualify for an additional two percent deduction (for a total depreciation rate of six percent).[31]

Programs Administered by the Government of Alberta (GOA)

1. Bioenergy Producer Credit Program (BPCP) / Bioenergy Producer Program (BPP)

The BPCP encourages investment in bioenergy production capacity in Alberta to reduce reliance on fossil fuels, support Alberta's Renewable Fuels Standard, and create value-added opportunities with economic benefits. The program provides funding for production of various types of biofuels for electricity and heat, produced from biomass, such as hog fuel. The 2011-2016 BPCP commenced on April 1, 2011, and was terminated on March 31, 2016, and a similar short-term replacement program, BPP, was established on October 25, 2016. The BPP builds upon the previous BPCP and provides transitional support to the bioenergy sector.

Provided the applicant applied during an open call for applications and met the program eligibility criteria, an applicant would be approved under BPCP 2011-2016. The payments under the BPCP were made on a quarterly basis, and if a company initially met the guidelines to receive BPCP payments and continued to meet the guidelines going forward, then the company could continue to expect to receive payments under BPCP until the program ended in 2016.[32]

2. Alberta Tax-Exempt Fuel Program for Marked Fuel

The Marked Fuel Tax Exemption program, which is part of the GOA's larger Tax-Exempt Fuel Use program, provides a tax exemption of nine cents per liter to eligible companies and municipalities when fuel is used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities. Eligibility for this program is limited in Alberta's *Fuel Tax Regulation* to those entities that have a valid fuel tax exemption certificate. Only consumers that intend to purchase marked fuel for specific purposes or uses set forth in section 8(3) of the *Fuel Tax Regulation* are eligible for a fuel tax exemption certificate to purchase marked fuel.[33]

[31] *Id*. at 25.
[32] *See Lumber V Final Determination* IDM at 11; *see also Lumber V First Review Final Results* IDM at 15.
[33] *See Lumber V Final Determination* IDM at 14-15; *see also Lumber V First Review Final Results* IDM at 26.

3. SR&ED – GOA

The SR&ED tax credit for expenditures on R&D was enacted by the GOA to encourage Alberta companies to conduct more R&D and to make Alberta a more attractive location for knowledge-intensive companies.

The GOA reports that the SR&ED-GOA credit applies to eligible R&D expenditures. The credit is available for all expenditures incurred by corporations in Alberta after December 31, 2008, that are also eligible for the SR&ED-GOC credit, which is a program addressed separately above. The SR&ED-GOA tax credit is calculated according to sections 26.6 through 26.91 of the Alberta Corporate Tax Act, equal to 10 percent of a company's eligible expenditures up to C$4 million, for a maximum credit of C$400,000 per tax year. Once corporations show that their expenditures were incurred in Alberta and are eligible for the federal SR&ED tax credit, such corporations can claim the provincial tax credit.[34]

4. Alberta Bio Future (ABF)

The ABF is administered by the provincial government corporation, Alberta Innovates. Alberta Innovates was established pursuant to the *Alberta Research and Innovation Act* and the *Alberta Public Agencies Governance Act*. Launched in March 2015, the ABF provides grants in three strategic priority areas: (1) research and innovation, (2) product and technology commercialization, and (3) equipment utilization. The program focuses on projects that enhance value to biomass in agriculture and forestry and create new bio-industrial products and bio-industrial technologies.[35]

5. Alberta Property Tax – Economic Obsolescence Allowance (EOA)

Property tax abatement benefits are provided in the form of property tax allowances reflecting diminished economic value for certain facilities and relate to the value for property tax purposes only. The depreciation for machinery and equipment in Alberta is governed by the Alberta Machinery & Equipment Minister's Guidelines. The Guidelines provide that an assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists for any depreciation not reflected in normal schedules. This additional depreciation is commonly referred to as economic obsolescence. Each individual property tax abatement is determined through discussions with municipal assessors.[36]

[34] *See Lumber V Final Determination* IDM at 15; *see also Lumber V First Review Final Results* IDM at 26.
[35] *See Lumber V First Review Final Results* IDM at 15.
[36] *Id*. at 27.

6. Schedule D Depreciation

Under Alberta's property assessment and taxation system, the value of a property determines the amount of property tax owed, and valuation assessments of industrial property take place annually. Regulations in the Municipal Government Act detail how Schedule D depreciation allows additional depreciation to be factored into the valuation of the industrial property. Such allowances are limited to highly unusual site-specific circumstances such as catastrophic physical failure and are only allowed on a case-by-case basis when evidence is documented and approved by the assessor.[37]

Programs Administered by the GOBC

1. BC Hydro Power Smart: Energy Manager

BC Hydro, a government-operated electricity company which services a large portion of British Columbia's population, operates the BC Hydro Power Smart program to comply with British Columbia's Clean Energy Act. Power Smart funds are disbursed among programs for each of its three categories of customers: residential, commercial, and industrial. Within the industrial category, there are subprograms under which industrial customers may qualify for a variety of grants as incentives for companies to lower their electricity usage. Under the Energy Manager subprogram, BC Hydro provides funding in the form of wage subsidies to industrial customers to fund an employee dedicated to identifying energy conservation opportunities for a two-year term.[38]

2. BC Hydro Power Smart: Load Curtailment

BC Hydro operates the BC Hydro Power Smart program to comply with British Columbia's Clean Energy Act. This program includes subprograms under which industrial customers may qualify for a variety of grants as incentives for companies to lower their electricity usage. From November 2015 to March 2016, BC Hydro undertook a pilot program to determine whether large industrial customers could curtail their load during times when the demand on BC Hydro's electricity system was at its peak. Under the Load Curtailment Pilot subprogram, BC Hydro paid customers on a monthly basis based on the number of megawatts (MW) bid into the program at a fixed dollar per MW price.[39]

3. BC Hydro Power Smart: Incentives

BC Hydro operates the BC Hydro Power Smart program to comply with British Columbia's Clean Energy Act. This program includes subprograms under which industrial customers may qualify for a variety of grants as incentives for companies to lower their electricity usage. Under the Incentives subprogram, BC Hydro provides funding to support capital projects that achieve greater energy efficiency or displace the electrical load purchased from BC Hydro.[40]

[37] *Id*.
[38] *See Lumber V Final Determination* IDM at 11-12; *see also Lumber V First Review Final Results* IDM at 16.
[39] *See Lumber V Final Determination* IDM at 12.
[40] *Id.; see also Lumber V First Review Final Results* IDM at 16.

4. Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification

The *Motor Fuel Act* of British Columbia permits the GOBC to charge different tax rates for clear and colored fuel. Colored fuel is taxed at a lower rate than clear fuel; however, certain conditions must be met to purchase colored fuel. In particular, purchasers must complete a Coloured Fuel Certification (FIN-430) certifying that they are eligible to purchase colored fuel and selecting on the form the reasons why, as colored fuel may only be used for certain authorized purposes. The authorized uses for colored fuel are primarily limited to off-highway applications under BC's *Motor Fuel Tax Act*. The form FIN-430 must be provided to any suppliers of colored fuel before making a purchase. Companies may then purchase colored fuel at the reduced motor fuel tax rate.[41]

5. SR&ED—GOBC

The SR&ED tax credit is administered by the CRA on behalf of the GOBC. The program is designed to encourage R&D that will lead to new, improved, or technologically advanced products or processes. Corporations with permanent establishments in British Columbia that conduct qualifying SR&ED activities in British Columbia during a particular tax year may claim a BC tax credit on their qualifying expenditures.[42]

6. Revitalization Property Tax Exemption – Quesnel

The city of Quesnel, in the province of British Columbia, passed a bylaw in September 2005 to establish the Revitalization Tax Exemption program. The bylaw established a revitalization area within the municipality providing tax exemptions for land, improvements, or both land and improvements. To be eligible under the bylaw, the landowner must own property classified as Class 4 "Major Industrial" or certain qualifying Class "Business and other" property or alter an existing Class 4 or Class 6 improvement. The construction or alteration must result in an increase in assessed value of the property of at least C$16 million.[43]

7. BC Hydro Electricity Purchase Agreements (EPAs)

BC Hydro is a vertically integrated electric utility that owns and operates more than 30 generating facilities, 78,000 kilometers of transmission and distribution lines, and approximately 300 substations to provide electricity service to approximately 1.9 million customers representing about 4 million people. BC Hydro, a provincial Crown corporation, purchases energy from independent power producers (IPPs) pursuant to long-term EPAs. Through its EPAs with IPPs, BC Hydro secures long-term supply with long-term price certainty, avoids market price volatility, and avoids project development risks.[44]

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[41] *See Lumber V Final Determination* IDM at 15; *see also Lumber V First Review Final Results* IDM at 27.
[42] *See Lumber V Final Determination* IDM at 15; *see also Lumber V First Review Final Results* IDM at 28.
[43] *See Lumber V Final Determination* IDM at 15-16.
[44] *Id.* at 18; *see also Lumber V First Review Final Results* IDM at 33.

8. Forestry Innovation Investment Program (FIIP)

The FIIP 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. FII grants support product development and international marketing for Canadian softwood lumber producers.[45]

9. 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. 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."[46]

10. BC Employer Training Grant (ETG) / Canada – BC Job Grant

The BC ETG program is the successor program to the Canada – BC Job Grant program, which provides funding to increase participation in the labor force by helping workers develop necessary skills. In 2018, the GOBC replaced the Canada – BC Job Grant program with the BC ETG via the joint Workforce Development Agreement between the GOC and the GOBC, and the program continues to be administered by the Ministry of Advanced Education, Skills, and Training. The BC ETG successor program operates in effectively the same manner as the Canada – BC Job Grant program.[47]

In prior reports, the Canada – BC Job Grant program was listed under "Subsidies Identified in *Uncoated Groundwood Paper*."

11. Carbon Offset Grants

Under the *Climate Change Accountability Act*, the GOBC requires BC public sector organizations to achieve carbon neutrality from 2010 onwards. For qualified projects, the GOBC estimates a monetary value representing the amount of carbon reduction realized by a project and issues Offset Units representing that value to the BC Carbon Registry. Once Offset Units are issued to the BC Carbon Registry, the recipient company can freely transfer Offset Units to other parties or sell them to the GOBC, which purchases Offset Units to meet the carbon neutrality requirement for the provincial public sector.[48]

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[45] *See Lumber IV 2nd Review Final Results* IDM at 18.
[46] *Id.* at 18-19.
[47] *See Lumber V First Review Final Results* IDM at 15; *see also Uncoated Groundwood Paper Final Determination* IDM at 12.
[48] *See Lumber V First Review Final Results* IDM at 16.

12. Provincial Logging Tax Credit (PLTC) – British Columbia

Taxpayers in Canada generally pay provincial and federal income taxes on their income. However, taxpayers in the forestry industry are also subject to provincial logging taxes based on their logging income, in addition to the provincial and federal income taxes on their total income. A portion of the tax (one third) is rebated through a credit against income tax owed to the GOBC, and the remainder (two thirds) is rebated through a credit against income tax owed to the GOC using the FLTC (*see* GOC section above). The FLTC and the GOBCs PLTC fully reimburse the respective taxpayer's net income tax on net logging income thus reducing the taxpayer's provincial logging tax to zero.[49]

13. Industrial Property Tax Credit (IPTC)

The GOBC establishes the tax rates applicable to non-residential taxable property within the province. For properties classified under Class 4 – Major Industry, the tax collecting authority is required to apply the IPTC on the tax collection notice, and the taxpayer then pays the net amount. Industries eligible for property classification under Class 4 – Major Industry include coal mining, petroleum and natural gas, manufacturing of lumber products, chemicals, synthetic resins, cement, insulation, and glass, ship building, and cargo loading/storage. Pursuant to sections 119 and 120 of the *School Act*, the IPTC is set to 60 percent of the provincial school tax payable. This credit is automatically applied to all properties classified as Class 4 – Major Industry.[50]

14. Training Tax Credit

Under the Industry Training Act, a tax credit is provided to employers participating in eligible apprenticeship programs administered through the Industry Training Authority. This BC tax credit functions as a corollary to the Apprenticeship Job Creation Tax Credit administered by the GOC.[51]

15. Payments from BC Hydro to West Fraser Mills Ltd.

West Fraser performed work on certain project activities for BC Hydro related to energy production between 2011 and 2016. BC Hydro reimbursed West Fraser for expenditures related to the activities that West Fraser performed, or subcontracted to perform, for BC Hydro.[52]

Programs Administered by the Government of Manitoba (GOM)

1. SR&ED – GOM

SR&ED-GOM, also known as the Research and Development Tax Credit is administered by the CRA. The GOM provides a tax credit of 20 percent of all eligible research and development expenditures to corporations with a permanent establishment in Manitoba. The Manitoba *Income Tax Act* defines eligible expenditures and provides the authority for the tax credit.

[49] *Id.* at 28.
[50] *Id.* at 28-29.
[51] *Id*. at 29.
[52] *Id*. at 17.

Credits may be carried forward for 20 years and carried back for three years. Additionally, if the credit cannot be applied against taxes payable, 50 percent of the credit is refundable, with the remainder being eligible to be carried forward.[53]

2. Manufacturing and Processing Tax Credit

Manitoba's Manufacturing Investment Tax Credit (MITC) provides corporations with a 10 percent tax credit on purchases of qualified property to be used for manufacturing or processing that can be applied against corporate income tax payable in the year earned. Unused credits are eligible to be carried forward for 10 years and carried back three years. Furthermore, since 2013 this credit is 80 percent refundable. The MITC is administered by the CRA on behalf of the GOM. The Manitoba *Income Tax Act* provides for the MITC and defines qualifying property as property that is to be used by the corporation in Manitoba primarily for the manufacturing or processing goods for sale or lease.[54]

Programs Administered by the GONB

1. New Brunswick Provision of Silviculture Grants

The *Crown Lands and Forest Act* specifies silviculture activities that qualify for reimbursement under a licensee's applicable Forest Management Agreement (FMA), including site preparation, pre-commercial thinning, planting, and plantation cleaning. The GONB reimburses licensees at pre-established rates for the activities.[55]

2. New Brunswick License Management Fees (LMF)

Companies can receive payments in the form of LMFs from the GONB for non-silviculture activities required as part of their FMA for their license to harvest Crown-origin standing timber. Under the terms of its FMA, a company is obligated to perform certain management activities and reimbursed for the costs associated with these activities. The reimbursements are provided on a flat fee basis per cubic meter of standing timber harvested from the Crown land for which the company is a licensed tenure-holder. These payments are described as reimbursement for the responsibilities that companies undertake as the license holder. These responsibilities are outlined in the FMA, and they include road maintenance and construction costs, as well as the costs of administering all forestry-related activities, including submitting scale information (*i.e.*, reporting the volume harvested) to the GONB and conducting all invoicing of the sub-licensees on behalf of the GONB. The GONB establishes the rate at which it reimburses the company.[56]

3. Financial Assistance to Industry Program (FAIP) – Payroll Rebate Grant

The FAIP provides funding from the GONB for viable capital expenditures, working capital, and workforce expansion to enable the establishment, expansion, or maintenance of companies in

[53] *See Lumber V Final Determination* IDM at 16.
[54] *Id*.
[55] *Id.* at 12; *see also Lumber V First Review Final Results* IDM at 17.
[56] *See Lumber V Final Determination* IDM at 12; *see also Lumber V First Review Final Results* IDM at 17.

eligible industries. Assistance may be provided in the form of a loan guarantee, direct loan, payroll rebate, or non-repayable contribution. The payroll rebate program provides rebates on a percentage of salaries. The FAIP was previously administered by New Brunswick's Department of Economic Development. In April 2015, the former Invest NB and the Department of Economic Development were merged into Opportunities New Brunswick, a Crown corporation, pursuant to the Opportunities New Brunswick Act. Eligible industries include six priority sectors, although other industries may also receive assistance under the program. The priority sectors include value-added food, value-added wood, industrial fabrication, aerospace and defense, information & communications technology, and biosciences.[57]

4. New Brunswick Workforce Expansion Program – One Job Pledge

The GONB reported that this program is administered under the Employment and Continuous Learning Services Branch of the GONB's Department of PETL. The One Job Pledge aspect of the New Brunswick Workforce Expansion Program provides financial assistance to eligible New Brunswick businesses in the form of wage subsidy rebates for new hires that are recent post-secondary graduates. The employer must create a new position for the new hire and must demonstrate that such a position would be sustainable after one year.[58]

5. New Brunswick Workforce Expansion Program – Youth Employment Fund

The Youth Employment Fund was launched in April 2015 pursuant to the Employment Development Act and provides an entry point to long term employment for unemployed individuals between 18-29 years of age, who are then matched with eligible employers for a 26-week work experience. Under the program, which is administered by the Department of PETL, 100 percent of the employee's minimum wage for 30 hours a week will be paid to employers participating in the program.[59]

6. New Brunswick Large Industrial Renewable Energy Purchase Program (LIREPP)

The New Brunswick Department of Energy and Resource Development and New Brunswick Power (NB Power), a Crown corporation, administers the LIREPP pursuant to the Electricity from Renewable Resources Regulation and with authority under the Electricity Act. The program has two main objectives: to (1) reach NB Power's mandate to supply 40 percent of its electricity from renewable sources by 2020 by buying energy from large industrial customers; and (2) bring large industrial enterprises' net electricity costs in line with the average cost of electricity in other provinces.

The LIREPP program is available to any large industrial company that produces renewable energy and owns and operates a facility that has an electrical energy requirement of not less than 50 Gigawatt hours (GWh) per year, that obtains all or a portion of its electricity on a firm basis

[57] *See Lumber V Final Determination* IDM at 13.
[58] *Id.*; *see also Lumber V First Review Final Results* IDM at 18.
[59] *See Lumber V Final Determination* IDM at 13.

(vs. interruptible basis) from NB Power, and that exports at least 50 percent of its primary products to another province or territory within Canada or outside the country.[60]

7. New Brunswick R&D Tax Credit

This program provides a credit against GONB provincial taxes equal to 15 percent of eligible expenditures to carry out experimental development, applied research and basic research work, to any corporate or individual business taxpayers in New Brunswick. The objective of the program is designed to mirror the operation of the federal Scientific Research and Experimental Development Tax Incentive Program, and both programs are administered by the CRA. The provision of the credit is authorized under section 59 of the New Brunswick Income Tax Act. The credit is fully refundable; therefore, if the corporation did not owe provincial taxes, it can receive the credit in the form of a refund. Furthermore, because the credit is fully refundable, the eligible company receives the credit regardless of whether it has a tax obligation to which it can apply the credit (*i.e.*, regardless whether the company owes the GONB provincial tax).[61]

8. GONB Gasoline & Fuel Tax Exemptions and Refund Program

Administered by the Revenue Administration Division of New Brunswick's Department of Finance pursuant to the Gasoline and Motive Fuel Tax Act, this program provides users with the option of receiving point-of-sale tax exemptions or applying for refunds of taxes paid for gasoline and motive fuel for consumers operating vehicles and equipment on non-public highways. Use of the program is limited to certain categories of consumers, including aquaculturists, farmers, silviculturists, producers of electricity for sale, persons consuming fuel in the preparation of food, lighting and heating of premises or heating of domestic hot water, wood producers, forest workers, manufacturers, mining or quarrying operators, and registered vessels operators.[62]

9. Innov8

Launched in 2013, the Innov8 program (formerly known as the Technical Adoption and Commercialization Program) allows companies and the GONB to share costs associated with developing intellectual property, specialized software, hardware, equipment, or performing research and development or prototyping. Funding is available only to those projects that fall under Priority Growth sectors, which include the value-added wood sector.[63]

10. New Brunswick Property Tax Incentives for Private Forest Producers

Property owners in New Brunswick pay property taxes based on the GONB's assessed value of the property in accordance with the New Brunswick Assessment Act. Specifically, section 15 of the New Brunswick Assessment Act stipulates that, in general, all real property shall be assessed at its real and true value as of January 1st of the year for which the assessment is made.

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[60] *Id.* at 16; *see also Lumber V First Review Final Results* IDM at 29.
[61] *See Lumber V Final Determination* IDM at 16-17; *see also Lumber V First Review Final Results* IDM at 29.
[62] *See Lumber V Final Determination* IDM at 17; *see also Lumber V First Review Final Results* IDM at 30.
[63] *See Lumber V Expedited Review Final Results* IDM at 6.

However, section 17(2) of the New Brunswick Assessment Act also states that all land holdings classified as freehold timberland are to be assessed at a rate of C$100 per hectare.[64]

11. Subsidies Provided by Opportunities New Brunswick

This program was created to continue the economic development initiatives pursued by the Miramichi Regional Economic Development Innovation Fund. The funding for the latter expired in 2015 and new funding was approved under Opportunities New Brunswick until 2021. This program is focused on continuing to support economic opportunities in the Miramichi region by allocating funding to support new initiatives that can help diversify the local economy and create new jobs. The focus areas for funding are: Growth and Development Capital; Adoption of Information and Communication Technology; Research and Development; Improving Strategic Infrastructure; and Advanced Workforce Development. Under the program, an enterprise may receive up to C$500,000 in funding towards the project.[65]

Program Administered by the Government of Nova Scotia (GONS)

1. Nova Scotia Provision of Silviculture Grants

Under its silviculture program, the GONS provides funding for specific silviculture work to Registered Buyers (*i.e.*, entities that acquire more than 5,000 cubic meters of wood per year from private forestlands in Nova Scotia) which enter into a Forest Sustainability Agreement with the GONS' Department of Lands and Forestry (DLF). Under the agreement, the Registered Buyer submits invoices and claim forms to the DLF to document the silviculture work that was performed, and the DLF reimburses the company for eligible expenses.[66]

Programs Administered by the Government of Ontario (GOO)

1. SR&ED – GOO

Under Ontario's SR&ED program, a qualifying corporation (*i.e.*, one with a permanent establishment in the province) can claim a non-refundable tax credit on eligible scientific research and experimental development expenditures (*e.g.*, salary and wages, materials, overhead, and contracts) performed in Ontario to reduce the corporation's income tax payable. The SR&ED tax credit is administered by the CRA, a federal agency, on behalf of the GOO.[67]

2. Ontario Tax Credit for Manufacturing and Processing (OTCMP)

Provided under the *Ontario Taxation Act 2007*, the OTCMP supports activity in manufacturing and processing, farming, fishing, logging, and mining, as well as the generation of electrical energy for sale, or the production of steam for sale. During 2017 and 2018, OTCMP tax credit

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[64] *Id.* at 9; *see also Lumber V First Review Final Results* IDM at 30.
[65] *See Lumber V First Review Final Results* IDM at 18.
[66] *Id*. at 18.
[67] *Id*. at 30.

rate was 1.5 percent and the corporate tax rate was 11.5 percent. The OTCMP effectively reduced the Ontario corporate income tax rate on a corporation's income to 10 percent.[68]

3. TargetGHG Industrial Demonstration Program

Designed in 2016, under Ontario's climate change action plan, TargetGHG helped the province meet its 2020 greenhouse gas (GHG) reduction targets. TargetGHG was established through an agreement between the GOO and the Ontario Centres of Excellence (OCE), an independent, not-for-profit organization. The GOO provided funding to the OCE for the administration of the program. TargetGHG encouraged Ontario-based large industrial emitters, working with technology solution providers, to adopt and implement technologies to reduce their emissions and demonstrate the potential of those solutions for the broader marketplace. To each project, a maximum of C$5 million could be granted and the funding recipient was the industrial emitter.[69]

4. GOO Debt Forgiveness for Resolute FP Canada (Resolute) – Fort Frances Mill

In 2007, under the Ontario Forest Sector Prosperity Fund, Resolute's pre-bankruptcy predecessor, Abitibi Bowater Inc., and its wholly owned affiliate, Bowater Canadian Forest Products Inc. (together, Abitibi-Bowater), were approved for a C$22.5 million grant under a Conditional Funding Agreement (CFA) for the construction of a biomass co-generation plant at the Fort Francis pulp and paper mill. The funding was conditional on the continuous operation of the mill for at least three years after the final grant disbursement, which was in March 2012. In May 2014, Resolute permanently closed the mill. Pursuant to the terms of the CFA, in October 2014, the Ministry of Natural Resources and Forestry of Ontario directed Resolute to repay the full amount of the grant. On June 29, 2017, through a Settlement and Release Agreement between Resolute and the GOO, Resolute was not required to repay the C$22.5 million debt it owed to the Ontario government. There was a forgiveness of money owed when Resolute broke the terms of the CFA with the GOO.[70]

5. Independent Electricity System Operator (IESO) Demand Response

IESO is a government-designated independent system operator that operates Ontario's electricity grid, administers the region's wholesale electricity markets, and provides reliability planning for the region's bulk electricity system. IESO, an agency of the Ontario Ministry of Energy, was created and its activities are governed by the Electricity Act of 1998. IESO administers the Demand Response (DR) program, whereby firms alter their electricity consumption patterns in exchange for availability payments. The purpose of the procurement of DR capacity is to ensure the reliability planning for the region's bulk electricity system by reducing the overall regional demand for electricity in response to IESO's reliability mandate.[71]

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[68] *Id*. at 31. *See also New and 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/343/CAN (July 10, 2019) (*Canada N343*) at 62-63.
[69] *See Lumber V First Review Final Results* IDM at 19.
[70] *Id*. at 34.
[71] *Id*. at 18; *see also Uncoated Groundwood Paper Final Determination* IDM at 14.

6. GOO's Provision of IESO Industrial Electricity Incentives

IESO provides rebates to companies for meeting various contractual obligations to conserve energy, including energy operating, management, and metering plans. Recipients are limited to large industrial customers, including those classified under North America Industry Classification System code 321110 Sawmills and Wood Preservation.[72]

7. GOO Purchase of Electricity for MTAR under Combined Heat and Power III Purchase Power Agreements

Electricity providers that can produce renewable energy, such as biomass producers sell biomass-cogenerated electricity to the Ontario power grid operated by IESO, for more than adequate remuneration.[73]

8. Ontario Forest Roads Funding Program (OFRFP)

As part of forest management operations, companies have agreements with the GOO to maintain certain eligible roads identified in the Forest Management Plan (FMP) on behalf of the Crown under the OFRFP. Specifically, harvesters of Crown timber incur obligatory road costs in order to meet a wide variety of provincial road construction and maintenance obligations. As part of the agreement, grant payments are made under the OFRFP as partial reimbursement for constructing and maintaining certain eligible roads. Recipients of the grants are limited to companies which have approved FMPs.[74]

Programs Administered by the Government of Québec (GOQ)

1. Financial Aid for the Development of Private Woodlots[75]

The program provides grants and technical assistance to certified forest producers to carry out logging activities in privately owned forests, with a view to protecting and enhancing registered forest land. Canada reported in recent WTO notifications that this program was created in the early 1970s under the authority of the *Ministère des Forêts, de la Faune et des Parcs*, and that it remains an ongoing program.[76] The maximum amount of financial assistance and the type of eligible work can change, depending on the cooperating regional agencies. Canada reported that the assistance is generally limited to 80 percent of the costs of eligible initiatives, but certain targeted work gets 100 percent funding, *i.e.*, first and second plantations, first commercial

[72] *See Lumber V First Review Final Results* IDM at 18-19; *see also Uncoated Groundwood Paper Final Determination* IDM at 14.
[73] *See Lumber V First Review Final Results* IDM at 33; *see also Uncoated Groundwood Paper Final Determination* IDM at 18 (program name "GOO Purchase of Electricity for MTAR).
[74] *See Lumber V First Review Final Results* IDM at 19; *see also Uncoated Groundwood Paper Final Determination* IDM at 14.
[75] While this program was included in the *Lumber V Final Determination*, it was found not to provide a benefit to the companies investigated. This program has also been notified to the WTO by Canada, most recently in *New and 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/315/CAN (July 12, 2017) (*Canada N315*) at 47.
[76] *See Canada N315* at 47.

thinning of a plantation and first thinning of a natural stand. No aggregate value of assistance and identity of beneficiaries are provided in the notifications.[77]

2. Purchase of Electricity for More Than Adequate Remuneration (MTAR) under Purchase Power Program (PAE) 2011-01

Hydro-Québec is engaged in the generation of power from hydroelectric sources and the transmission, distribution, and sale of such power to wholesale and retail customers in Québec. Hydro-Québec has two separate, independent divisions: Hydro-Québec Production, which generates electricity to supply to the market and buys and sells electricity for its own account; and Hydro-Québec Distribution, which is responsible for the supply of electricity to customers in Québec. Under the PAE 2011-01, Hydro-Québec Distribution purchases electricity generated from biomass at a set contractual price.[78]

3. Property Tax Refund for Forest Producers on Private Woodlands in Québec

Implemented in 1985 and administered by Revenu Québec, this property tax refund supports landowners investing in forest management on private lands. Private forest producers who are certified under the Sustainable Forest Development Act (SFDA) and hold a certificate issued from the Ministry of Forests, Wildlife and Parks (MFFP) can apply for a refund equal to 85 percent of the amount of property taxes paid in respect to each unit of assessment. Private forest producers are eligible for the property tax refund to the extent that the development expenses incurred for investment in forest management are greater than or equal to the amount of property taxes paid.[79]

4. Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas

Revenu Québec permits corporations that incurred expenses for the construction or major repair of eligible access roads or bridges in public forest areas to claim a refundable tax credit for a portion of the expenses on their income tax returns.[80]

5. SR&ED – GOQ

Established in 1983, the SR&ED tax credit is designed to stimulate R&D by providing tax credits for salaries and wages for R&D work. If a taxpayer carries on a business in Canada and carries out R&D, or has R&D carried out on its behalf, in Québec, the taxpayer can claim a tax credit for the salaries and wages, or for the consideration paid in Québec. The rate for these tax

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[77] *See New and 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 (July 19, 2013) (*Canada N253)* at 48; *see also New and 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/284/CAN (July 9, 2015) (*Canada N284*) at 50; *Canada N315* at 47; and *Canada N343* at 68-69.

[78] *See Lumber V Final Determination* IDM at 18; *see also Lumber V First Review Final Results* IDM at 33.

[79] *See Lumber V Expedited Review Final Results* IDM at 9; *see also Lumber V First Review Final Results* IDM at 31.

[80] *See Lumber V Final Determination* IDM at 17; *see also Lumber V First Review Final Results* IDM at 31.

credits is 30 percent for small and medium businesses (SMBs) and 14 percent for large corporations. SMBs and large corporations can claim R&D tax credits for eligible expenditures over C$50,000 and C$225,000, respectively.[81]

6. Partial Cut Investment Program (PCIP)

Introduced in 2013, the PCIP reimburses harvesters for up to 90 percent of the increased costs associated with the MFFP mandate that certain areas be harvested applying a partial cut (*i.e.*, removing less than 50 percent of the volume of a stand). As indicated in the framework, the PCIP is intended for the forestry sector. Eligibility for the program is limited to Timber Supply Guarantee (TSG) holders; buyers on the open market; local forest delegates; forestry companies; and holders of forestry permits stipulated in section 73 of the SFDA.[82]

7. MFFP Educational Grant: Forest Industry Support

On October 18, 2006, the GOQ approved the Forest Industry Support Program by Order 946-2006. This program, administered by the MFFP, assists forest industry promoters and companies in setting up projects by supporting market surveys, feasibility studies, mill diagnoses, and business plans. Entities eligible for assistance are cooperatives associated with a wood processing enterprise, Québec promoters and enterprises or a combination of such enterprises from the primary and secondary/tertiary wood processing industry, the primary and secondary/tertiary pulp and paper processing industry, and the uses of forest biomass in the setup of a project.[83]

8. Immigrant Investor Program

On June 8, 2000, the GOQ approved the Immigrant Investor Program by Order 701-2000. The program is aimed at the economic development of Québec by providing financial assistance to Québec businesses by using income generated through investments made by immigrant investors. The program is administered by IQ Immigrants Investisseurs Inc., a subsidiary of a government corporation, Investissement Québec (IQ).[84]

9. Tax Credit for an On-the-Job Training Period

In 1994, the GOQ established a tax credit for on-the-job training to encourage businesses to hire trainees to improve their professional skills. A corporation that hires a student or an apprentice, enrolled in a qualified training program, can claim a tax credit at a rate of 24 percent for: 1) the salary or wages paid to the student or apprentice; and/or 2) the salary or wages paid to an employee for the hours devoted to supervision of the students and apprentices. This tax credit can be refundable or non-refundable.[85]

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[81] *See Lumber V Final Determination* IDM at 17; *see also Lumber V First Review Final Results* IDM at 32.
[82] *See Lumber V Final Determination* IDM at 13; *see also Lumber V First Review Final Results* IDM at 19; and *Canada N315* at 50.
[83] *See Lumber V Expedited Review Final Results* IDM at 7.
[84] *Id*.
[85] *Id*. at 10.

10. City of Sainte-Marie Municipal Financial Assistance

Pursuant to paragraph 92.1 of the Municipal Power Act, the City of Sainte-Marie, Québec provides financial support to occupants that meet two criteria: (1) be the owner of an immovable property other than a residence; and (2) operate a private sector business. The assistance is a tax refund in the amount of municipal taxes paid to the City of Sainte-Marie. Specifically, the tax refund is equal to the "Welcome Tax" (*i.e.* the tax charged to a new occupant upon acquisition of property) owed to the City of Sainte-Marie.[86]

11. PLTC – Québec

Taxpayers in Canada generally pay provincial and federal income taxes on their income. However, taxpayers in the forestry industry are also subject to provincial logging taxes based on their logging income, in addition to the provincial and federal income taxes on their total income. Revenu Québec separately maintains a logging tax equal to 10 percent of the taxpayer's net income tax on net logging income if their net income for that year is more than C$10,000. A portion of the tax (one third) is rebated through a credit against income tax owed to the GOQ, and the remainder (two thirds) is rebated through a credit against income tax owed to the GOC using the FLTC (*see* GOC section above). The FLTC and Québec's PLTC fully reimburse the respective taxpayer's net income tax on net logging income thus reducing the taxpayer's provincial logging tax to zero.[87]

12. MPPD – Q

The MPPD-Q program, implemented June 4, 2014, provides a reduction of the general tax rate for manufacturing corporations to improve the competitiveness of small and medium-sized enterprises (SME) in Québec. An SME whose manufacturing and processing activities account for more than 25 percent of its total activities may claim up to a four percent tax reduction under the MPPD-Q program. However, for the initial tax year that this program was in place (tax year 2014), the maximum reduction was two percent.[88]

13. Additional Deduction for Transportation Costs of Remote Manufacturing SMEs

Introduced by the GOQ in 2014, this program takes into consideration the higher transportation costs associated with the remoteness of certain zones from Québec's large urban centers and allows certain remote manufacturing SME's to claim a tax deduction. The rate of the additional deduction a company can claim for a taxation year is one percent for "central zones," three percent for "intermediate zones," five percent for "remote zones" and seven percent for "special remote zones." The rates are applicable on the company's gross income and are subject to caps which vary based on regions.[89]

[86] *Id*.
[87] *Id*. at 10-11.
[88] *Id.* at 11.
[89] *Id*.

14. Economic Diversification Fund for the Centre-du-Québec and Mauricie Regions

The GOQ established this Economic Diversification Fund (the Fund) via Decree 379-2013 of April 10, 2013, to promote the start-up and development of innovative enterprises and forward-looking industries in the center of Québec and Mauricie regions. Under the Fund, which had a C$200 million budget for the 5-year period April 2013 – March 2018, financial assistance in the form of loans, loan guarantees, equity investments, and grants was provided. The Fund is administered by the Ministry of Economy, Science, and Innovation (MESI), a provincial government ministry, and IQ, a government corporation. MESI, which conducts an eligibility assessment of applicants, evaluates non-investment projects (*e.g.*, product or business development) and grant requests; IQ is responsible for evaluating projects when financial intervention is directed toward an investment project and makes disbursements under the Fund.[90]

15. Working Capital and Investment Fund Program (RENFORT)

The RENFORT program was approved by the Council of Ministers (Order in Council 1139-2008) on December 10, 2008. RENFORT was established to authorize IQ to provide financial support in the form of loans or loan guarantees to companies that encountered difficulty obtaining financing in the wake of the financial crisis in late 2008. The program had an initial budget of C$1 billion.[91]

16. Project Financing (UNIQ)

On January 11, 2011, IQ established the UNIQ, a project financing program, to support the economic development of Québec by providing financial intervention to commercial enterprises in the form of loan guarantees, guarantee of a financial commitment, long-term loan and equity loan, non-convertible debenture and subordinated debt.[92]

17. Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances

The Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances, implemented in October 2014, allows for the performance of special interventions by Québec's MFFP when a natural or anthropogenic disturbance causes significant destruction of the forest, such as fire, wind-throw, or insect epidemics (*i.e.*, budworm), which increase the unit cost of harvesting because of the reduced per-hectare salvageable volume. Under the program, harvesters are compensated for the additional costs associated with performing salvage operations to preserve the health of the forest.[93]

In prior reports, the incentive for harvesting areas infested by spruce budworm was included under "Subsidies Identified in *Uncoated Groundwood Paper*" with the program title "Investment

[90] *Id*. at 12.
[91] *Id*.
[92] *Id*.
[93] *See Lumber V First Review Final Results* IDM at 21.

Program in Public Forests Affected by Natural or Anthropogenic Disturbance – Incentives for Harvesting Areas Infested by Spruce Budworm."[94]

18. Electricity Discount Program Applicable to Consumers Billed at Rate L

Under the March 2016 Québec Economic Plan, the GOQ implemented an electricity rate discount to encourage large industrial power consumers (*i.e.*, Rate L customers) to undertake eligible investments to reduce electricity demand through improved efficiency and productivity, to make use of production assets otherwise in disuse, and reduce greenhouse gases. Rate L applies to an annual contract with Hydro-Québec where the minimum billing demand is 5,000 kilowatts or more. Companies billed at Rate L that carry out eligible investment projects can receive assistance in the form of reduced electricity costs in their establishments. The reduced electricity costs allow for the reimbursement of up to 50 percent of the eligible costs of an investment.[95]

19. Hydro-Québec's New Demand-Side Management Program

The Gestion de la demande de puissance, as known as the GDP, is a demand response program. Under the GDP, commercial, institutional, and small and medium-sized companies are encouraged to reduced power demand during the winter peak demand periods. In exchange for curtailing power demand during the winter, Hydro-Québec provides to those electricity consumers grants in proportion to their power reduction.[96]

20. Program Innovation Bois (PIB)

The March 2016 Québec Economic Plan announced budget allocations of $22.5 million, over a five-year period, for the implementation of the PIB (also known as, the Wood Innovation Program) which is administered by MFFP. The program is open to companies registered in Québec that use or intend to use wood or wood biomass to develop or produce a new innovative product, develop or install a new transformation process, or build a pilot or demonstration plant to demonstrate a new technology's feasibility.[97]

21. Multi-Resource Road Cost Reimbursement Program (MCRP)

The MCRP, implemented on April 1, 2016, and administered by MFFP, provides reimbursements of up to 90 percent of the costs of construction, improvement, and repairs of multi-use public access roads in forest areas. Eligibility for the program is limited to supply guarantee holders, buyers of timber on the open market, holders of a forestry permit stipulated in section 73 of the SFDA, Rexforet, and holders of an over-the-counter contract for timber.[98]

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[94] *See Uncoated Groundwood Paper Final Determination* IDM at 15.
[95] *See Lumber V First Review Final Results* IDM at 22.
[96] *Id*. at 23; *see also Uncoated Groundwood Paper Final Determination* IDM at 14.
[97] *See Lumber V First Review Final Results* IDM at 23.
[98] *Id*.

22. Refund of Fuel Tax Paid on Fuel Used for Certain Purposes and Stationary Purposes

Revenu Québec provides refunds of fuel taxes paid under two elements. The first element, Certain Purposes, allows businesses to receive a refund of the taxes paid on fuel used to operate motor vehicles used for farming, forest, or mining operations on private land or roads. The second element, Stationary Purposes, provides a tax refund for fuel required to operate the stationary equipment of a vehicle (*i.e.*, power shovels, cranes, drilling machines) used for commercial or public purposes.[99]

23. Rexforêt Silviculture Works: Road Construction/Maintenance

Rexforêt, a Crown corporation, enters into reimbursement contracts with timber companies for the construction and maintenance of roadwork in Québec's public forest to allow Rexforêt staff access to forest tracts where perform silvicultural work is performed.[100]

24. Hydro-Québec Interruptible Electricity Option (IEO)

The Hydro-Québec is a state-owned utility, whose sole shareholder is the GOQ. Hydro-Québec is mandated to supply power and to pursue energy conversion and conservation; as part of this mandate, it operates the Hydro-Québec IEO, which is designed to help Hydro-Québec meet increased power requirements during the winter period (*i.e.*, December 1 to March 31). All participants in this program must be able to curtail power on demand, or risk penalties assessed by Hydro- Québec. According to the GOQ, power curtailment allows Hydro-Québec to "free{ } the connections with nearby networks, reducing the need for short-term markets and making it possible to act within two hours to ensure reliable management of the power capacity balance." As payment for complying with Hydro-Québec interruption notices, the participants receive certain fixed and variable credits for the winter period.[101]

25. Paix des Braves

In 2002, the GOQ and the Cree Nation of Quèbec established an agreement (*i.e.*, the Agreement Respecting a New Relationship Between the Cree Nation and the GOQ (the Agreement)) requiring forestry companies to conduct certain additional harvesting activities on "Paix des Braves" territories covered by the Agreement. Specifically, when harvesting on the territories covered by this agreement, forestry companies are required to perform the following additional activities: 1) build additional roads; 2) cut in a patchwork of smaller blocks (*i.e.*, mosaic cutting); and 3) perform certain other activities as defined by Chapter 3 of the SFDA. In order for forestry companies to maintain their activities on these lands in spite of the increased costs, the GOQ initiated a program in 2015 which provides partial compensation to offset these costs (*i.e.*, costs not already covered by Section 120 of the SFDA) incurred when complying with the Agreement.[102]

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[99] *Id*. at 32.
[100] *Id*. at 23-24.
[101] *Id*. at 22; *see also Uncoated Groundwood Paper Final Determination* IDM at 15.
[102] *See Lumber V First Review Final Results* IDM at 20; *see also Uncoated Groundwood Paper Final Determination* IDM at 16.

26. Emploi-Québec Grants

Emploi-Québec is a department within the GOQ's Ministry of Work, Employment and Social Solidarity and is responsible for administering worker training grants under the Workforce Skills Development and Recognition Fund (FDRCMO) and the Manpower Training Measure (MFOR). FDRCMO funds projects related to skills development, primarily through French language courses. MFOR supports skill development for workers at risk of losing their jobs and to support low-skilled workers who want to improve basic training.[103]

27. Hydro-Québec's Industrial Systems Program/Energy Efficiency Program

Hydro-Québec is a utility wholly owned by the GOQ and is the sole entity responsible for the administration of the Industrial Systems Program. All of Hydro-Québec's electric energy efficiency programs for industrial businesses are known, collectively, as the Industrial Systems Program. Any individual or corporation that owns, operates, or occupies an industrial building in Québec associated with a goods-producing industry is eligible for the program. The two main components of this Industrial Systems Program are: (1) Retrofit; and (2) the New Plant, Expansion, or Addition of Production Lines. The purpose of the Industrial Systems Program is to reduce the average amount of electricity used per unit of production by the participants.[104]

28. EcoPerformance – MERN (TEQ)/Energy Efficiency Conversion Projects

The ÉcoPerformance program is administered by the GOQ's Ministry of Energy and Natural Resources (MERN). The ÉcoPerformance program was launched in October 2013, to provide financial assistance to businesses, institutions, and municipalities to reduce greenhouse gas emissions through the implementation of measures or projects. The applicants must satisfy the following criteria: 1) located in Québec; 2) consume fossil fuel; 3) invest more than 25 percent of project cost in the project; 4) reduce greenhouse gas emissions; 5) meet energy rate of return requirements; and 6) respect ISO14064 for quantification of greenhouse gas emission reductions.[105]

29. Hydro-Québec Special L Rate for Industrial Customers Affected by Spruce Budworm

A highly destructive outbreak of the spruce budworm defoliated spruce-fir stands covering over 7 million hectares in Québec. Companies approached the GOQ requesting financial assistance in response to the increased costs required to harvest certain forests affected by this epidemic. In response, the GOQ and industry parties established a fixed rate reduction in electricity rates (*i.e.*,

[103] *See Lumber V First Review Final Results* IDM at 20; *see also Uncoated Groundwood Paper Final Determination* IDM at 16.
[104] *See Lumber V First Review Final Results* IDM at 22; *see also Uncoated Groundwood Paper Final Determination* IDM at 16.
[105] *See Lumber V First Review Final Results* IDM at 21; *see also Uncoated Groundwood Paper Final Determination* IDM at 16.

modify Hydro-Québec's L-rate price structure), through Hydro-Québec, to mitigate the increased electricity costs affecting all companies operating in the region.[106]

30. Fees and Dues Paid to a Research Consortium

Under the Federal Research Consortium, to enhance funding for non-profit private research centers, the GOQ provides a tax credit for a company's eligible R&D expenditures paid to a research consortium. If a taxpaying corporation conducts business in Canada and is a member of an eligible research consortium, it can claim a tax credit for fees and dues paid to the consortium. The rate for these tax credits is 14 percent for expenditures made with respect to a taxation year starting after December 2, 2014, which can increase to 30 percent for corporations with assets of C$50 million or less for the previous taxation year. This increased rate is only applicable to the first C$3 million of qualified expenditures. Corporations with assets of C$50-75 million and C$75 million or more in the previous taxation year can claim these tax credits for eligible expenditures over C$50,000 and C$225,000, respectively.[107]

31. Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec

The GOQ provides a tax credit for investment in manufacturing or processing equipment. This credit was implemented in order to stimulate investments in such equipment and to support certain regions with struggling economies. To qualify for the tax credit, property must, among other things, be manufacturing or processing equipment, be hardware used primarily for manufacturing or processing, or have been acquired after March 20, 2012, for purposes of smelting, refining, or hydrometallurgy activities related to ore extracted from a mineral resource located in Canada. Where the qualified property was acquired after December 2, 2014, the tax credit for investment is calculated on the portion of eligible expenses that exceeds C$12,500. The basic rate of the tax credit for investment is four percent. The rate is increased where the property is acquired to be used primarily in a resource region and based on the size of the business that acquires it.[108]

Program Administered by the Government of Saskatchewan (GOS)

1. Manufacturing and Processing Tax Credit (M&P ITC)

Saskatchewan's M&P ITC provides corporations in Saskatchewan with a five percent tax credit on purchases of qualified capital assets, including manufacturing and processing equipment that can be applied against corporate income tax payable in the year earned. It also states that the credit is fully refundable when based on purchases of qualified property after April 2006. The M&P ITC is administered by the CRA on behalf of the GOS.[109]

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[106] *See Lumber V First Review Final Results* IDM at 21; *see also Uncoated Groundwood Paper Final Determination* IDM at 17.
[107] *See Lumber V First Review Final Results* IDM at 32; *see also Uncoated Groundwood Paper Final Determination* IDM at 11.
[108] *See Lumber V Expedited Review Final Results* IDM at 9; *see also Uncoated Groundwood Paper Final Determination* IDM at 11.
[109] *See Lumber V Final Determination* IDM at 17.

Subsidies Identified in *Supercalendered Paper*

Programs Administered by the GONB

1. Financial Assistance to Industry Program (FAIP): Loans

The FAIP provides funding from the GONB to eligible companies with the goal of helping companies establish or maintain their presence within the province. According to the Economic Development Act, the legislation that enacted the FAIP, eligible companies may receive various forms of assistance, including in the form of loans. The Economic Development Act designates certain industrial, commercial, and business activities that are not eligible for financial assistance under the FAIP, including (a) logging; (b) primary agriculture; (c) primary mining; (d) quarrying; (e) broadcasting; (f) transportation; (g) communications; (h) publishing of news periodicals; (i) generation of electricity; (j) retail trade; (k) food catering; (l) warehousing; and (m) provision of personal services.[110]

2. Northern New Brunswick Economic Development and Innovation Fund (NNBEDIF)

The NNBEDIF is one of the three programs administered by the New Brunswick Regional Development Corporation as reported by the GONB. The purpose of the NNBEDIF is to provide assistance to eligible companies with the goal of diversifying and growing the Northern New Brunswick economy. Under the NNBEDIF program, assistance may be provided in the form of loans, loan guarantees, or non-repayable contributions. Funding under the NNBEDIF is limited by geographic region; only companies with projects in the northern New Brunswick counties of Victoria Madawaska, Restigouche, Gloucester, Northcumberland, and parts of Kent qualify.[111]

Programs Administered by the GOBC

1. BC Hydro Power Smart Program: Thermo-Mechanical Pulp (TMP) Program

In 1989, BC Hydro started the Power Smart program. Power Smart funds are disbursed among programs for each of its three categories of customers: residential, commercial, and industrial. Within the industrial category are the subcategories Power Smart Partners-Transmission (PSP-Transmission), for customers that are connected to the BC Hydro system at above 60 kilovolts (kV), and Power Smart Partners-Distribution (PSP-Distribution), for customers that are connected to the BC Hydro system at 60kV and below.

PSP-Transmission provides funding for energy studies and projects encouraging energy efficiency. BC Hydro's industrial customers can apply for and undertake these PSP-Transmission projects either individually or as part of larger programs, such as the TMP program. BC Hydro created this subprogram in July 2014. It targets customers who own TMP facilities and is designed to facilitate energy efficiency and load displacement. The TMP

[110] *See Supercalendered Paper Expedited Review Final Results* IDM at 6.
[111] *Id.*

program is open to British Columbia customers that own and operate TMP mills within BC Hydro's service area.[112]

2. BC Hydro Power Smart Program: Industrial Energy Managers Program

Under the Industrial Energy Manager program, BC Hydro provides funding in the form of wage subsidies to PSP-Transmission customers to fund an employee dedicated to the position of Energy Manager who works to identify energy conservation opportunities. The funding under this program is available to BC Hydro's industrial customers who use more than 10 GWh per year. According to BC Hydro officials, it provides funding for 43 energy managers out of 164 eligible sites.[113]

3. Powell River City Tax Exemption Program

In 2014, the City of Powell River passed Bylaw 2394 establishing "a revitalization tax exemption program" for a term of three years (*i.e.*, for calendar years 2015 through 2017). This bylaw specified that this program applied exclusively to Class 4 major industrial property located within the revitalization area. The 2014 bylaw provided tax certainty for eligible companies by maintaining, through 2017, the property tax amount payable at roughly C$2.75 million per year.[114]

Subsidies Identified in *Uncoated Groundwood Paper*

Programs Administered by the GOBC

1. School Tax Credit for Class 4 Major Industrial Properties

The GOBC establishes school tax rates applicable to taxable property value in each of the eight non-residential property classes within the province. For calendar year 2016, the school tax rates were set by Order-in-Council No. 267; each non-residential property class has one applicable school tax rate. Also, for 2016, the GOBC subsequently adjusted the school tax rate of C$5.40 per C$1,000 of taxable value, as indicated in the Order-in-Council, to C$2.16 per C$1,000 of taxable value for all Class 4 Major Industry properties, pursuant to the Provincial Industrial Property Tax Credit.[115]

Programs Administered by the Government of Newfoundland and Labrador (GONL)

1. SR&ED – GONL

The GONL provides a tax credit on companies' eligible R&D expenditures. The tax credit was available at a standard rate of 15 percent of the cost of these expenditures. The tax credit is

[112] *Id.* at 7.
[113] *Id.*
[114] *Id*. at 9.
[115] *See Uncoated Groundwood Paper Final Determination* IDM at 9.

claimed on Form T661 of the taxpayer's federal tax return.[116]

2. Waiver of Managed Forest Land Tax

The Managed Land Tax is a requirement under the Forestry Act and the Forest Land Management and Taxation Regulations when a parcel of land, or part of a parcel, is declared "managed." The rate is calculated on an annual basis and was C$1.42 per hectare in 2016. The GONL has entered into agreements dating back to 2009, to waive the payment of the annual managed land tax payable on tenure.[117]

3. Labour Market Partnership (LMP)

The GONL provides a grant to eligible companies and organizations to develop and implement labor market strategies and activities to assist companies with labor adjustments such as downsizing, upsizing, new development, relocation, impact of new technologies, labor shortages, shortage of year-round job opportunities, and lack of community and organizational capacity for human resource planning. The GONL contributes 50 percent or less of the eligible training costs and over 50 percent if the employer is unable to avoid lay-offs but willing to invest in training for affected employees.[118]

4. Forest Insect Control and Survey Assistance

Under the Forestry Act, the GONL Minister responsible for forestry has the authority to undertake all reasonable measures to provide for effective protection of the forests, whether on Crown land, public land, or privately-owned land. The Minister has entered into annual and multi-year forest insect and disease control agreements with forest companies with land tenure in the province. The GONL may waive cost share payments for all insect and disease control and monitoring costs on a land tenure.[119]

5. Productive Forest Lands Inventory Program

The GONL instituted the Forest Inventory Program in 1974, to provide a continuous, management level forest inventory in the province. This program provided timber volumes and other statistics for management planning; maintained up-to-date maps of forests; enabled planning and development of provincial resources; initiated special studies on growth, cull, decay, etc.; and benchmarked existing forest characteristics to examine change over time. In 1996, the Newfoundland and Labrador Forest Service's forest inventory program was given savings and revenue targets under the GONL Program Review initiative. As part of this initiative, companies entered into agreements to share the cost of the Forest Inventory Program and were given access to GNL's forest industry inventory data. The GNL has waived payments under such agreements.[120]

[116] *Id*. at 10.
[117] *Id*.
[118] *Id*. at 12.
[119] *Id*.
[120] *Id*.

6. Canada—NL Job Grant

The Canada-NL Job Grant program is a cost-sharing program implemented as a part of the Canada-Newfoundland and Labrador Job Fund Agreement. The GONL provides up to C$15,000 per person for training costs, which includes up to C$10,000 in grant contributions. Funds provided under this program by the GOC are limited to the province of Newfoundland and Labrador, pursuant to the terms of the Canada-Newfoundland and Labrador Job Fund Agreement.[121]

7. Capacity Assistance Agreement with NL Hydro

NL Hydro is a Crown-owned electrical utility company operating in the Newfoundland and Labrador province. NL Hydro's strategic plan involves addressing the energy sector strategic directions of the Ministry of Natural Resources. NL Hydro's mission is to carry out the energy policy of the GONL. The GONL maintains capacity assistance agreements with industrial customers, whereby capacity assistance is provided to NL Hydro. Industrial customers agree to provide electrical capacity to NL Hydro though generation facilities or by curtailing their demand and reducing the load on the electrical system.[122]

8. Silviculture Assistance Program

The GONL reimburses companies for certain silviculture activities performed and provides seedlings for planting at no cost. Companies are legally obligated to ensure all that harvested sites are adequately regenerated as set forth in the Certificate of Managed Land issued annually by the GONL, in accordance with section 43 of the Forestry Act. The GONL reimburses companies for performing eligible treatments pursuant to a multi-year agreement (Silviculture Agreement). The eligible treatments include tree planting, mechanical site preparation for planting, precommercial thinning, plantation maintenance, and vegetation management.[123]

Programs Administered by the GOQ

1. Tax Credit for Private Partnership Pre-Competitive Research

The GOQ provides a tax credit based on a company's eligible expenditures in forming partnerships to carry out pre-competitive research in Québec. The tax credit rate is 30 percent for small and medium-sized enterprises (SMEs) and 14 percent for large corporations. SMEs can claim qualified expenditures over a C$50,000 exclusion threshold, while large corporations, can claim those over a C$225,000 exclusion threshold.[124]

[121] *Id*. at 13.
[122] *Id*.
[123] *Id*.
[124] *Id*. at 11.

2. Tax Credit for Training in the Manufacturing, Forestry, and Mining Sectors

Under the Taxation Act, the GOQ provides a tax credit for eligible training expenditures equal to the total cost of training, which can also include the salary or wages paid during the training period. For the training expenditures to qualify, the training must consist of a course related to an activity in the manufacturing, forestry, or mining sector and must be given to an enrolled eligible employee by either an accredited instructor or one at a recognized educational institution. Employees qualify as being eligible if their activities consist primarily of carrying out or supervising duties attributable to an activity in the manufacturing, forestry, or mining sectors. The tax credit is available at a rate of 24 percent of the cost of these expenditures. Companies in the manufacturing, forestry, and mining sectors can claim the credit when filing their corporation income tax return.[125]

3. PAREGES Program

PAREGES is administered by the GOQ's Ministry of Transport, Sustainable Mobility, and Transport Electrification and the Ministry of Sustainable Development, Environment, and the Fight against Climate Change. The PAREGES program provides grants to support infrastructure projects and enterprises that use rail or maritime transport solutions to foster better intermodal options and allow for reduction of greenhouse gas emissions.[126]

B. Additional Subsidies Information from Canada's WTO Notifications

During the period for this report, there was no new WTO TPR or Subsidy Notification for Canada.[127] Relevant lumber industry subsidy programs contained within Canada's prior reports are listed below.

1. 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 and expired on March 31, 2014. This program is not reported in *Canada N343*.

2. Forest Innovation Program (FIP)

The FIP provides non-repayable contributions to support pre-competitive research, development and technology transfer in the forest sector, to help position the sector for growth and participation in areas such as bioenergy, biochemicals, nanotechnology, and advanced construction materials. Funding is provided under the authority of the *Department of Natural Resources Act* and the *Forestry Act*. The program budget was C$23 million for FY 2016-17 and

[125] *Id*.
[126] *Id*. at 16.
[127] Canada's most recent TPR is WT/TPR/S/389/Rev.1 (August 23, 2019) (*Canada TPR389/R1*), and most recent Subsidy Notification is *Canada N343*.

C$26 million for FY 2017-18. The program started on April 1, 2012, and was set to expire on March 31, 2018. However, the program was further extended for C$63 million over three years starting in 2017 through 2020.[128]

3. Export Restrictions to Promote Further Processing in Canada

Information in *Canada TPR314/R1* indicated that under the *Export and Import Permits Act*, Canada imposes export controls on logs, pulpwood and red cedar products to promote further processing in Canada. This program is not reported in *Canada N343*.[129]

4. Forestry Funding Program[130]

Ongoing since 2004, the program, administered by La Financiére Agricole du Québec, supports certified forestry producers in acquiring wooded lots, with assistance provided in the form of loan guarantees for loans of up to C$750,000 and for a maximum term of 30 years.[131]

5. Ontario Jobs and Prosperity Fund

Launched in January 2015, the program is administered by the Ministry of Economic Development and Growth and provides grants and loans under four distinct streams, each with its own application process. Among the four is the Forestry Growth Fund, which helps value-added and bio-product forestry projects improve productivity and innovation, enhance competitiveness, support new market access, strengthen supply chains and provide socio-economic benefits.[132]

6. Wood Innovation Program

This program, administered by Québec's Ministère des Forêts, de la Faune et des Parcs, aims to stimulate investment in the undertaking of projects in the forest products industry or any other industry using forest products. Investment projects can receive funding of up to 50 percent of eligible expenses, for a total maximum amount of C$2.5 million. Studies can receive funding of up to 75 percent of eligible expenses, for a maximum amount of C$75,000, for a maximum of two studies per FY. Applied research can receive funding of up to 50 percent of eligible expenses for a maximum amount of C$200,000 per project or C$400,000 for a maximum of two projects per FY. The program will remain in effect until March 31, 2023.[133]

[128] *See Canada N343* at 33. For prior notification, *see Canada N315* at 23.
[129] For prior notification, *see Trade Policy Review of Canada, Report by the Secretariat*, WT/TPR/S/314/Rev.1, dated September 30, 2015, Section 3.2.3, pages 72-73, paras. 3.99 and 3.100, Table 3.11. (*Canada TPR314/R1*).
[130] Previously known as "Québec Forestry Financing Program."
[131] *See Canada N343* at 69. For prior notifications, *see Canada N284* at 50, and *Canada N315* at 47.
[132] *See Canada N343* at 53. For prior notification, *see Canada N315* at 36.
[133] *See Canada N343* at 73.

C. Subsidies Identified in Connection with the SLA which have been Reviewed by an Arbitration Panel

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 program was announced in 2005 to provide grants to the forest sector that would support and leverage new capital investment programs.[134]

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 Québec's forest products industry.

4. 15 Percent Capital Tax Credit

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

5. Québec's Road Tax Credit

This program was announced in 2006 and allowed the GOQ to incur costs previously borne by the forest products industry. The program includes C$100 million for a refundable tax credit of 40 percent 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.

D. Additional Subsidies Identified in Connection with the SLA

1. Wood Promotion Program

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

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[134] *See also Supercalendered Paper Final Determination* IDM at 28.

2. North Ontario Grow Bonds Program

The GOO 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

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

This program was announced in 2006 and allowed the GOQ 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.

GERMANY

Since the previous lumber subsidies report, a new EU WTO TPR was issued but no new EU Subsidy Notification. Consistent with our review of past EU WTO TPRs and Subsidy Notifications, we found no relevant lumber industry subsidy programs for Germany.[135]

BRAZIL

Since the previous lumber subsidies report, no new Brazil WTO TPR or Subsidy Notification were issued. There are no relevant lumber industry subsidy programs for Brazil.[136]

SWEDEN

Since the previous lumber subsidies report, a new EU WTO TPR was issued but no new EU Subsidy Notification. Consistent with our review of past EU WTO TPRs and Subsidy Notifications, we found no relevant lumber industry subsidy programs for Sweden.[137]

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[135] *See* WT/TPR/S/395/Rev.1 (July 7, 2020) and G/SCM/N/343/EU/Add.11 (September 18, 2019).
[136] *See* WT/TPR/S/358/Rev.1 (October 18, 2017) and G/SCM/N/343/BRA (July 11, 2019).
[137] *See* WT/TPR/S/395/Rev.1 (July 7, 2020) and G/SCM/N/343/EU/Add.27 (September 18, 2019).

IV. **Conclusion**

We note that this report is limited to 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 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.

V. Appendix: Public Comments

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November 9, 2020

Mr. Joseph Laroski
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Comments Regarding Subsidy Programs Provided By Countries Exporting Softwood Lumber And Softwood Lumber Products To The United States (85 Fed. Reg. 63,507)

Dear Deputy Assistant Secretary Laroski:

We submit these comments on behalf of the Conseil de l'industrie forestière du Québec ("CIFQ") and the Ontario Forest Industries Association ("OFIA") (collectively, "Central Canada") in response to the request by the Department of Commerce ("Commerce" or "the Department") for comments on Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States. 85 Fed. Reg. 63,507 (Dep't of Commerce, October 8, 2020).

The Department has prepared its Softwood Lumber Subsidies Reports to Congress in connection with its obligations under the Softwood Lumber Act of 2008 to ensure compliance with the Softwood Lumber Agreement of 2006 between Canada and the United States ("SLA 2006") and to monitor, verify, and report on export charges collected under that agreement.[1] The purpose for the Department's Softwood Lumber Subsidies Reports[2] expired on October 12, 2015 with the expiration of SLA 2006. Yet, the Department continues to solicit comments and to report to Congress.[3]

I. CANADIAN LUMBER IS FAIRLY TRADED

The contest over Canadian exports of softwood lumber to the United States is less over economics than over public philosophy, one side defining itself as the custodian of private property rights, the other embracing a tradition of Crown lands subject to a conservative (and conservationist) patrimony. In the United States, conquest of the continent led to the Homestead Act, legislation fashioned to persuade "young men" to "go west." Land was free provided it was cleared and farmed. Much of the cleared farm land, however, did not stay in farming. Trees grew back. Public forests became private (without being bought by private parties), and the United States adopted private property as a civil religion.

In Canada, similarly endowed with great forests (but with fewer people), the Crown prevailed. Land was, from the first, in the public domain and was not destined to become private. The Crown retained rights to exploit and manage natural resources. Canadians deem

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[1] *See Softwood Lumber Act of 2008*, Pub. L. 110-246, tit. III, § 3301, 122 Stat. 1852 (2008) (codified at 19 U.S.C. § 1683); *see also* U.S. Gov't Accountability Off., *Softwood Lumber Act of 2008: Customs and Border Protection Established Required Procedures, but Agencies Report Little Benefit from New Requirements*, GAO-10-220 (Dec. 2009) ("GAO Report"); http://enforcement.trade.gov/sla2008/sla-index.html.

[2] H.R. Conf. Rep. 110-627, 764-65 *reprinted in* 2008 U.S.C.C.A.N. 536, 225-226 ("U.S.-Canada Softwood Lumber Agreement" is the subtitle of the conference report discussing the purpose and intent of the Softwood Lumber Act of 2008).

[3] Central Canada notes that the Department says its previous reports are available on its website, but the most recent three reports are the only reports currently available there. *See* U.S. Department of Commerce, *Softwood Lumber Subsidies Report To The Congress*, (June 2020) at 6 n.14 ("June 2020 Report"); https://enforcement.trade.gov/sla2008/sla-index.html.

their forests a patrimony, never to be dedicated to a single use or for a single interest. Use of the forests, like the use of all things in the public domain, is balanced among competing interests and preserved for posterity. There is a public interest in preserving the forests, and a public right to do so, whereas in the United States the public interest has been privatized and private owners generally may dispose of natural resources as they please.

American lumber interests typically own the resources and set the prices and values themselves, or amongst themselves in what they call a market. American lumber interests proselytize their civil religion and think Canadians should adopt it by privatizing the public forests. Canadians resisting the civil religion are deemed heretics. The fruits of their labor are seen to be supplemented by the state and, consequently, are to be treated as unfairly traded. American lumber interests (principally large landholders) have been trying to prove for decades, usually without success, that the playing field for trade in softwood lumber must be levelled by offsetting the impact of Crown ownership of Canadian forests.

Formal success for the U.S. industry – proving the case according to international rules – is not the industry's main objective, which is to make Canadian exports to the U.S. market costly, thereby enabling Americans to raise their own prices by squeezing supply. Continuous harassment through trade remedy actions can never stop the flow of Canadian softwood lumber into the United States because it is an essential commodity and Canadians have a lot of trees for few people while the United States has a diminishing supply of trees and a population roughly ten times greater than the population in Canada. The mismatch of people to resources creates a comparative advantage for the Canadian lumber manufacturers.

Offsetting comparative advantage is not the purpose of the U.S. trade remedy laws. Americans will always need Canadian softwood lumber, but the U.S. industry wants to undo Canada's comparative advantage by controlling the price.

Despite the portrait the U.S. industry wants to paint, of enterprising Americans on their private property individually taking on the leviathan of the Canadian state, over 40 percent of U.S. forests are public and are important providers of natural resources to lumber companies. In those forests, governments (mostly federal, some state, and county) typically pay for the roads and protection against forest fires, insects and disease. They run auctions, often with famously rigged bidding.

The United States frequently holds up these public operations as a model for Canada, while failing to acknowledge that Canadian industry pays for such services that the United States insists should not be paid by provincial governments in Canada. Even after Québec and British Columbia drew on criteria from the United States to develop auction systems, the United States has refused to acknowledge them and has rejected as self-serving any economist's analysis of the market-based stumpage prices that those auctions produce. The economics of the market are unable to change the political philosophy in Washington and U.S. timber interests perpetuate the dispute.

Nor are the forests in Canada all public. Particularly in what was once Upper and Lower Canada, significant tracts were privatized more than a century ago. Yet, even when prestigious economists demonstrate that timber is bought in functioning private markets at market prices, the United States refuses to acknowledge them as viable benchmarks for prices in the public forest.[4]

[4] *See* Government of Ontario's Questionnaire Response, C-122-854, *Certain Softwood Lumber Products From Canada: Response of the Government of Ontario to the Department's May 21, 2019 Questionnaire*, (July 15, 2019) at Exhibit ON-PRIV-2 (Expert Report of Ken Hendricks, Ph.D., *An Economic Analysis of the Ontario Timber Market and an Examination of Private Market Prices in that Competitive Market – An Updated* (July 12, 2019) ("Hendricks Report")); *see also* Letter from the Government of Quebec to The Honorable Wilbur L. Ross, Jr. Secretary of Commerce, C-122-854, *Certain Softwood Lumber Products from Canada: Submission of the Expert Report of Robert C. Marshall, Ph.D.*, (July 11, 2019) at Attachment (Expert Report of Robert C. Marshall, Ph.D. (March 10, 2017)) ("Marshall Report").

When the supply of softwood lumber from Canada is short and prices high, the cost of housing in the United States goes up, fueling inflation and depriving many Americans of the opportunity to buy new homes. In addition to housing's direct effect on Gross Domestic Product, it has cascading effects on demand for household goods and home equity loans that fuel consumer spending and support small businesses. Shrinking the supply of softwood lumber, or raising its price, restrains and damages the U.S. economy.[5] Decline in the U.S. housing market triggered the global recession of 2008.[6] Import quotas on lumber slowed down economic recovery.

The National Association of Home Builders ("NAHB") formed a consumer alliance with the National Retail Federation and the National Lumber & Building Materials Dealers Association, committed to providing American consumers access to a stable, dependable and affordable supply of lumber and building materials. This American Alliance of Lumber Consumers ("AALC") supports free trade in lumber and building materials because access to affordable softwood lumber and other readily available building materials enables home builders to provide safe, decent and affordable housing.

The AALC recognizes that both trade litigation and the possibility of a trade-distorting agreement are detrimental to the housing market. NAHB Chairman Randy Noel has observed that tariffs on Canadian softwood lumber have contributed to the increase in lumber prices since January 2017, raising the price of an average single-family home by more than $6,000.[7] NAHB

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[5] *See, e.g.*, Bipartisan Letter from Ninety-Eight Members of Congress to President Donald J. Trump (October 20, 2020) (discussing rising softwood lumber prices affecting Representatives' constituents).

[6] *See, e.g.*, JOHNSON, SIMON, AND JAMES KWAK, 13 BANKERS: THE WALL STREET TAKEOVER AND THE NEXT FINANCIAL MELTDOWN 10 (2010).

[7] Petitioners and the ITC vigorously opposed NAHB's request for *amicus curiae* status in the NAFTA Chapter 19 appeal of the ITC's final determinations, which was granted, because they do not want the voices of American consumers to be heard. Response in Opposition to the National Association of Home Builders of the United States' Motion for Leave to Participate as Amicus Curiae, *Softwood Lumber Products from Canada: Final Affirmative Injury Determinations*, Secretariat File No. USA-CDA-2018-1904-03 (May 31, 2018); Investigating Authority's Response to Notice of Motion for Leave to Appear and File a

has estimated that softwood lumber duties resulted in the net loss of 9,370 jobs in the United States in 2018: "In other words, nearly nine jobs will be lost in U.S. industries for every job gained in domestic sawmills as a result of the lumber tariffs."[8] NAHB states that "the tariffs on Canadian softwood lumber are acting as a tax on American home builders and home buyers, making housing less affordable for American families and forcing builders to look overseas to other markets, including Sweden, Germany, Brazil and Austria in order to meet demand."[9]

Facing a global recession precipitated by a global pandemic, the Department of Commerce continues to do the bidding of domestic lumber producers by zealously restricting Canadian access to the U.S. market and driving up the cost of housing. "Prices for forest products like lumber and plywood have soared because of booming demand from home builders making up for lost time, a DIY explosion sparked by stay-at-home orders and a race among restaurants and bars to install outdoor seating areas."[10] Some builders refuse projects because of the price of lumber.[11]

Randy Noel explains that certain factors compound the negative effect of increased lumber costs on construction.[12] People with secured loans are not able to increase funding to match the increased costs. Obtaining new funding or increasing existing ones is difficult because appraisal values are not keeping up with rapidly increasing costs. The sustained

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Brief as Amicus Curiae, *Softwood Lumber Products from Canada*, Secretariat File No. USA-CDA-2018-1904-03 (May 31, 2018).

[8] Randy Noel, *Results from Lumber Tariffs Highlight Folly of Protectionism*, *The Hill*, May 14, 2018, http://thehill.com/opinion/finance/387556-results-of-lumber-tariffs-highlight-the-folly-of-protectionism.

[9] National Association of Home Builders, *Canadian Softwood Lumber*, https://www.nahb.org/Advocacy/Top-Priorities/Material-Costs/Canadian-Softwood-Lumber (last visited June 3, 2020).

[10] Wall Street Journal, July 9, 2020, "America Is on a Lumber Binge," https://www.wsj.com/articles/america-is-on-a-lumber-binge-11594305886

[11] Lumber Prices Continue to Price Home Owners — and Builders — Out of the Market, http://nahbnow.com/2020/09/lumber-prices-continue-to-price-home-owners-and-builders-out-of-the-market/ (Sept. 15, 2020).

[12] *Id.*

campaign to restrict Canadian access to the U.S. market is certain to slow economic recovery yet again, this time under the severest conditions since the Great Depression of the 1930s.

Even though U.S. lumber producers have criticized the stumpage systems in Canada, they have embraced support from publicly funded programs for themselves in the United States. Although most timber harvesting in the United States is conducted on private lands, a significant volume of timber is harvested from public lands.[13] The U.S. Forest Service and the Bureau of Land Management manage about 144.9 and 37.6 million acres of forest, respectively.[14] The Forest Service engages in land use and resource management, conducts timber sales, and generates revenue.[15] In contrast, Canadian authorities in Ontario do not provide resource management services, and the Ontario industry incurs management costs for operating on Crown lands that its U.S. counterparts participating in Forest Service auctions do not. The prospect of returning a greater share of fire and insect protection services to the Government of Québec, as is done in the United States, prompts allegations from the Department of Commerce of a new subsidy.

U.S. lumber producers have benefited from various federal, state, and local government programs. The Center for Sustainable Economy ("CSE") reports that the U.S. Forest Service "sells its timber far below cost."[16] The CSE used a methodology reviewed by the Congressional Research Service. Congress appropriates national forest timber sale programs that include planning and preparation of timber sales, reforestation, elimination and containment of southern and mountain pine beetles, road construction, road maintenance, and

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[13] Congressional Research Service, *Timber Harvesting on Federal Lands* at 2 (Apr. 12, 2019) ("{I}n 2011, 88% of timber harvests were conducted on private lands.").

[14] *Id.* at 1.

[15] *Id.* at 4-6.

[16] JOHN TALBERTH & ERNEST NIEMI, CENTER FOR SUSTAINABLE ECONOMY, ENVIRONMENTALLY HARMFUL SUBSIDIES IN THE U.S: ISSUE #1 – THE FEDERAL LOGGING PROGRAM (2019).

timber research. The CSE calculated about US$1.2 billion appropriated of pubic funds for commercial logging in 2017, excluding additional off-budget funds expended in support of logging activities.

Some of the most prominent and vocal members of the U.S. Coalition protesting Canadian lumber are among the most voracious recipients of government largesse in the United States. Between 2011 and 2017, two subsidiaries of PotlatchDeltic received US$1.5 million and US$612,154 Arkansas sales and use tax credits.[17] The Potlatch Corporation was approved for about US$2.5 million sales and use tax abatement for ten years in Nevada in 2001.[18] Weyerhaeuser Company, a subsidiary of Weyerhaeuser, was approved for US$103 million in Kentucky tax credits or rebates in 1995 which the company would have received during subsequent years.[19] Between 2003 and 2019, various Weyerhaeuser subsidiaries received about US$305 million from several states and the federal government, including a US$20 million tax credit from Oklahoma in 2016; US$9,828,267 under the Business Energy Tax Credits program in Oregon in 2008; US$1,095,219 under the Timber Industry Incentives program in Washington State in 2017, and a US$905,421 federal grant in 2004.[20] Between 2006 and 2017, Stimson Lumber Company received about US$1.4 million from Oregon and

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[17] Subsidy Tracker Individual Entry, https://subsidytracker.goodjobsfirst.org/subsidy-tracker/ar-potlatchdeltic-manufacturing-llc (last visited November 4, 2020); *see also* https://subsidytracker.goodjobsfirst.org/subsidy-tracker/ar-deltic-timber-corporation-0 (last visited November 4, 2020).

[18] Fiscal Analysis Division, Legislative Counsel Bureau, *Report on Tax Abatements, Tax Exemptions, Tax Incentives for Economic Development and Tax Increment Financing in Nevada*, (February 2009) at 36 (available at https://www.leg.state.nv.us/Division/Research/Library/HotTopics/FiscalAffairs/TaxAbatementsExemptionsIncentives.pdf).

[19] Subsidy Tracker Individual Entry, https://subsidytracker.goodjobsfirst.org/subsidy-tracker/ky-weyerhaeuser-company (last visited November 4, 2020).

[20] Good Jobs First, 236 Results Found, https://subsidytracker.goodjobsfirst.org/prog.php?parent=&statesum=&fedsum=&major_industry_sum=&hq_id_sum=&company_op=word&company=Weyerhaeuser&major_industry%5B%5D=&hq_id=&free_text=&subsidy_level=&subsidy_op=%3E&subsidy=&face_loan_op=%3E&face_loan=&subsidy_type%5B%5D=&sub_year%5B%5D=&state=&federal= (last visited November 4, 2020) (many of those amounts are undisclosed).

Washington in tax credits and training reimbursements.[21] Seneca Sawmill Company received US$71,045 through an Oregon energy incentives program in 2016.[22] Hankins Inc./Hankins Lumber Company received US$1.3 million dollars in subsidized lending by the state of Mississippi in 2010 and US$100,000 in state grants and loans in 2013. Between 2007 and 2018, Swanson Group received property tax abatements and training reimbursements totaling US$497,643.[23] Pleasant River Lumber Company received US$857,690 from the State of Maine in property tax abatements and tax rebates between 2008 and 2017.[24] Additionally, in April of 2018, Pleasant River Lumber Company accepted a US$4,226,000 grant from the Maine Technology Institute (MTI) to assist with a US$12 million sawmill expansion project. The program was financed from a US$45 million bond approved by voters that MTI manages on behalf of the State of Maine.[25] Pleasant River is among the most aggressive members of the U.S. Coalition complaining of government assistance to Canadian competitors.

These figures are merely indicative and include information from publicly available sources only. They do not include subsidies with undisclosed amounts and are not the

[21] Good Jobs First, 23 Results Found, https://subsidytracker.goodjobsfirst.org/prog.php?parent=&statesum=&fedsum=&major_industry_sum=&hq_id_sum=&company_op=allwords&company=Stimson+lumber&major_industry%5B%5D=&hq_id=&free_text=&subsidy_level=&subsidy_op=%3E&subsidy=&face_loan_op=%3E&face_loan=&subsidy_type%5B%5D=&sub_year%5B%5D=&state=&federal= (last visited November 4, 2020).

[22] Subsidy Tracker Individual Entry, https://subsidytracker.goodjobsfirst.org/subsidy-tracker/or-seneca-sawmill-company (last visited November 4, 2020).

[23] Good Jobs First, 9 Results Found, https://subsidytracker.goodjobsfirst.org/prog.php?parent=&statesum=&fedsum=&major_industry_sum=&hq_id_sum=&company_op=starts&company=Swanson+Group&major_industry%5B%5D=&hq_id=&free_text=&subsidy_level=&subsidy_op=%3E&subsidy=&face_loan_op=%3E&face_loan=&subsidy_type%5B%5D=&sub_year%5B%5D=&state=&federal= (last visited November 4, 2020).

[24] Good Jobs First, 17 Results Found, https://subsidytracker.goodjobsfirst.org/prog.php?parent=&statesum=&fedsum=&major_industry_sum=&hq_id_sum=&company_op=starts&company=Pleasant+River+Lumber&major_industry%5B%5D=&hq_id=&free_text=&subsidy_level=&subsidy_op=%3E&subsidy=&face_loan_op=%3E&face_loan=&subsidy_type%5B%5D=&sub_year%5B%5D=&state=&federal= (last visited November 4, 2020).

[25] Stuart Hedstrom, *Pleasant River Lumber Awarded $4.2M Grant For $12M Project In D-F; Company Carrying Out $20M Expansion Between Two Mills*, *The Piscataquis Observer*, (April 19, 2018), https://observer-me.com/2018/04/19/pleasant-river-lumber-awarded-4-2m-grant-for-12m-project-in-d-f-company-conducting-20m-expansion-between-two-mills/.

products of a systematic investigation. Were the Department of Commerce investigating those subsidies, it could allocate benefits from earlier years to more recent periods of investigations. The conclusion of the 2006 Softwood Lumber Agreement included a US$500 million bounty divided among petitioners, while another US$450 million was set aside to fund "meritorious initiatives," including initiatives related to forest management and sustainability issues of direct benefit to private U.S. companies.[26]

Neither the petitioners nor the Department have identified any viable countervailable subsidies in Canada. The U.S. industry's 2016 petition relied heavily on prior Commerce and International Trade Commission ("ITC") investigation determinations for softwood lumber trade remedy orders that always had been reversed or terminated by NAFTA binational panels, WTO panels, and the WTO Appellate Body, Extraordinary Challenge Committees, U.S. courts, and the agencies themselves in administrative reviews and remand determinations. The resulting remand and administrative review determinations, which are effectively the final determinations of record, were negative: no countervailable subsidies, no injury, and no threat of injury caused by imports of softwood lumber from Canada.

The Department of Commerce, as in the past, issued affirmative final determinations in its antidumping and countervailing duty investigations.[27] Once again, the lawfulness of those determinations has been appealed to binational panels under U.S. law and NAFTA Chapter 19. Yet again, World Trade Organization dispute settlement panels have been asked to decide

[26] SLA 2006 at Article XIII and Annex 2C.

[27] *Certain Softwood Lumber Products from Canada*: *Final Affirmative Determination of Sales at Less than Fair Value*, 82 Fed. Reg. 51806 (Dep't of Commerce, Nov. 8, 2017); *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination*, 82 Fed. Reg. 51814 (Dep't of Commerce, Nov. 8, 2017); *Softwood Lumber Products from Canada,* Inv. No. 701-TA-566 and 731-TA-1342 (Final), USITC Pub. 4749 (Dec. 2017).

whether the Department of Commerce determinations comply with the United States' obligations under the WTO Agreements.[28]

A NAFTA Panel recently affirmed on remand the International Trade Commission's final injury determination. It is the first time in the history of the softwood lumber trade dispute that an injury determination of any kind has been upheld on appeal, and it came under new legal circumstances.[29] Despite unprecedented prosperity in the U.S. industry during the period of investigation, changes in the law permitted the International Trade Commission to find that the mere presence of "unfairly traded"[30] competition in the U.S. market meant that the U.S. industry could have performed even better than it did and, therefore, was materially injured by Canadian imports. This new legal standard produces inevitable and hazardous results, as manifest in this first trial in the dispute over softwood lumber.[31] Meanwhile, "Middle America" consumers are left to pay the (higher) price.

After the expiration of SLA 2006, the U.S. lumber industry insisted that any new agreement between Canada and the United States contain even more trade restrictions than the expired agreement. Consequently, there was no negotiating progress toward a mutually acceptable agreement that would be equitable for producers on both sides of the border, and U.S. downstream industries and U.S. consumers. Instead, the U.S. lumber industry filed petitions on Black Friday, November 25, 2016, seeking to renew litigation over softwood lumber trade and burden economic recovery.

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[28] Canada did not challenge the ITC Final Affirmative Determination at the WTO, limiting its challenge to NAFTA Chapter 19.

[29] *See* Decision of the NAFTA Panel on Remand, *In the Matter of Softwood Lumber from Canada: Softwood Lumber Injury Determinations* USA-CDA-2018-1904-03, May 22, 2020.

[30] The Department of Commerce subsidy findings labelled the Canadian imports "unfairly traded."

[31] *See* Trade Preferences Extension Act of 2015, Pub.L. No. 114-27, § 503(a), 129 Stat. 362, 384 (2015) (amending 19 U.S.C. 1677(7) to add "The Commission may not determine that there is no material injury or threat of material injury to an industry in the United States merely because that industry is profitable or because the performance of that industry has recently improved.").

II. SUBSIDY ALLEGATIONS AND MARKET DISTORTIONS

A. Subsidies And Countervailability

The Department of Commerce's Reports to Congress contain the disclaimer that the reference to a program as a subsidy "does not constitute a finding regarding the countervailability … under U.S. law or the WTO SCM Agreement."[32] The Department, therefore, allows that not all "subsidies" included in its report are countervailable. Subsidies that are not countervailable are presumed not to distort markets.

There are four critical considerations in determining whether a government program distorts trade and may be offset by a countervailing duty. First, there must be a financial contribution by a government to the production or export of a foreign good.[33] Second, the financial contribution must confer a benefit on the subject merchandise.[34] Third, the beneficial financial contribution must be specific to an enterprise or industry or group of enterprises or industries.[35] Fourth, the specific, beneficial financial contribution must cause a domestic industry to experience injury or be threatened imminently with injury.[36] This last condition – injury or threat of injury – is determined by the International Trade Commission, not the Department of Commerce.

The main alleged Canadian softwood lumber subsidy, for the last four decades, has been "stumpage," the sale of timber cutting rights by provincial governments who, by virtue of the Canadian Constitution, own most of Canada's natural resources, including the forests. According to the allegation, the provincial governments sell the cutting rights (a "financial contribution") for "less than adequate remuneration," meaning that the governments supposedly

[32] *See*, *e.g.*, June 2020 Report at 39.

[33] 19 U.S.C. § 1677(5)(B)(i).

[34] 19 U.S.C. § 1677(5)(B).

[35] 19 U.S.C. § 1677(5)(A).

[36] 19 U.S.C. §§ 1671(a)(2)(A), 1671d(b), 1677(7).

do not recover from the private forestry sector the full and fair value of the cutting rights, with the difference between what they collect and what they should collect (what ought to be a market price) representing a benefit.

B. No Subsidies In Québec Or Ontario

Canadian softwood lumber exports to the United States have been the subject of protracted legal disputes four different times, beginning in 1982. The fifth legal dispute is in several stages of appeal before dispute settlement tribunals convened under NAFTA and the WTO. Now, for the first time, under the most unlikely of circumstances (unprecedented domestic prosperity during the period of investigation), a finding of material injury has been sustained by a NAFTA Chapter 19 binational panel, provided the imports ultimately are found to be unfairly traded. Two, yet-to-be-convened NAFTA panels will consider the Department's dumping and unfair subsidy determinations.[37]

Never in this running battle has an impartial adjudication, whether of the old General Agreement on Trade and Tariffs ("GATT"), or the WTO, or NAFTA dispute resolution panels upheld the Department of Commerce's stumpage subsidy findings. Softwood lumber exported from Canada to the United States, the most critical building material for American homes, is not subsidized and is not unfairly traded, and that conclusion was confirmed once again, in a 226-page decision of an impartial, international WTO panel on August 24, 2020.[38]

The WTO panel reviewed the Department's most recent countervailing duty determination and found that virtually every reason advanced by the United States for imposing duties on imports of softwood lumber from Canada was unfounded. In the refrain of the Report, "an objective and unbiased investigating authority" would not have reached the conclusions

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[37] Should the NAFTA panels ultimately find that the Canadian imports are not unfairly traded,,the injury determination will be effectively vacated because injury must be by reason of unfair trade.

[38] *See United States – Countervailing Duty Measures on Softwood Lumber from Canada*, DS 533 Panel Report (August 24, 2020), available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds533_e.htm.

reached by the Department. On 17 of 19 issues before the WTO Panel the United States was found to be in violation of its international obligations.

According to the WTO Report, the Department repeatedly failed to provide evidence or reasoning for its decisions and, in most instances, available evidence was expressly contrary to the Department's analysis and conclusions.   The legitimate conclusion of the Panel is that, as to the international rules of trade, there should be no countervailing duty order and the United States should not be collecting cash deposits pursuant to such an order.

The WTO panel rejected for many reasons the Department's use of a Nova Scotia benchmark to measure supposed stumpage subsidies in Québec and Ontario. The benchmark was based on a commissioned survey of private forest prices.

The panel's most straightforward statement about the benchmark may have been: "{W}e have enough information to consider that the errors that the USDOC detected in the survey would have led an impartial and objective investigating authority to not find the {Nova Scotia} survey reliable for establishing benchmark prices." The Department's findings of stumpage subsidies in Québec and Ontario are entirely dependent on the Nova Scotia benchmark that the WTO panel rejected unequivocally.

The WTO panel also criticized the Department's presumptions that auctions in Québec and private stumpage and log prices in Ontario were distorted, and the failure to consider stumpage benchmarks that were available within the territories and jurisdictions of Québec and Ontario. The Panel said, "USDOC improperly rejected using the proposed auction stumpage prices in Québec as a stumpage benchmark," and added that, "the USDOC's findings pertaining to Ontario's stumpage market did not, either individually or collectively, demonstrate price distortion in that market. Further, the USDOC did not provide a reasoned and adequate basis for rejecting, as a stumpage benchmark, log prices in Ontario."

The WTO panel's report requires the Department to consider fairly and carefully the evidence regarding the prevailing market conditions for stumpage in each province. The evidence of market-oriented stumpage and log transactions in each province is longstanding and abundant.

Québec revised radically its stumpage system in 2013 to make it even more market-determined than the system in previous investigations, when no countervailable subsidy ultimately was found for Canada, including Québec.

The purpose of Québec's Sustainable Forest Development Act is to sell standing timber at market prices: Chapter A-18.1, 1, 1, 1. "This Act establishes a forest regime designed to . . . (5) govern the sale of timber and other forest products on the open market at a price reflecting their market value . . ." Only through deployment of an unlawful benchmark has Commerce found that the Québec Act does not achieve its purpose.[39]

Previously, prices in Québec's private forest, representing 20 to 23 percent of the annual harvest, were used to establish prices in the public forest. Now, responding to specific U.S. demands and experience in British Columbia (whose new auction-based stumpage system had been recognized and accepted by the United States upon entry into force of the SLA in October 2006), public forest stumpage fees are derived from public auctions.

All Crown timber in Québec (100%) is sold either directly at auction or at prices derived from auction prices. Québec reserves 25% of the annual allowable cut of Crown timber for sale in auctions, in addition to the private forest harvest and timber purchased by Québec border mills from New England and New York. Nearly half of Québec's stumpage thus is priced directly by public auctions, private forest sales, and purchases of U.S. logs. The auction system has been examined thoroughly and fully endorsed as market-determined by a prominent

[39] *See Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination*, 82 Fed. Reg. 51814 (Dep't of Commerce, Nov. 8, 2017) and accompanying Issues and Decision Memorandum at Comments 35, 37, 39-40.

economist whose report the Department of Commerce has variously ignored and denied.[40] The WTO panel decided that this evidence could be ignored no longer.

The *Bureau de mise en marché de bois* ("BMMB"), allowing for variations in harvesting conditions and hauling distances (and more than a dozen other considerations impacting value), prices the remaining Crown timber based on the prices obtained at auctions of timber from the public forests. With much of the forest remote, there would be few competitive bids in many regions. The application of auction prices effectively simulates competition where otherwise there might be none.

Forestry companies who have invested in mills and rely on the availability of standing timber must pay a premium of 18% of their previous year's stumpage in an advance lump sum prior to the harvesting period and regardless whether they will proceed to harvest any timber at all, in order to obtain rights to any of the remaining public forest (approximately half the remaining harvestable forest, or 75% of the public forest). The Québec industry must pay, in addition to that 18% premium, auction prices determined by the BMMB and annual dues for established mills. The WTO panel found that these payments are remuneration that should be considered by the Department in any stumpage subsidy analysis.

Ontario's residual value system had been recognized by the Department of Commerce and an independent NAFTA arbitration panel in *Lumber IV*, after years of thorough investigation, as providing no countervailable subsidy.[41] The Ontario industry also incurs the costs of obligations from operating on Crown lands, such as the preparation of long-term forest management plans, that typically are not incurred by participants in U.S. Forest Service

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[40] *See* Marshall Report.

[41] *See* Decision of the NAFTA Panel on Third Remand, *In the Matter of Certain Softwood Lumber Products from Canada: Final Countervailing Duty Determination* USA-CDA-2002-1904-03, May 23, 2005 at 21-22.

auctions. The WTO report upheld the potential for such Ontario private stumpage and log prices to be considered as the benchmark for Ontario Crown wood purchases.

The WTO panel also rejected the Department's countervailing duty findings on transactions involving reciprocal obligations between the province and the industry, such as sales of biomass electricity to the government or reimbursements of expenses incurred for observing environmentally sustainable partial cut obligations. This decision has an important impact on other "programs" that the Department has treated as countervailable.

The industry in both Québec and Ontario provides a service to the provincial governments when industry builds and maintains roads in remote areas. These roads are deeded to the relevant governments to expand the province's infrastructure, provide for emergency vehicles, and permit a variety of recreational uses for each province's citizens. Both provinces reimburse a portion, but not all, of the expenses to build and maintain these roads. Absent these partial reimbursements, industry would be forced to bear the entire burden of building and maintaining government roads for a wide variety of uses and users. Thus, these reimbursements are not subsidies but, rather, partial payments for services rendered.

C. The Department Claims Subsidies Even Where It Found None

The Department of Commerce, although careful to disclaim countervailability, has not been careful about what its Reports have characterized as subsidies to softwood lumber. The June 2020 Report, for example, referenced a Transformative Technology Program and a Forest Innovation Program, programs of the Government of Canada, among its alleged softwood lumber subsidies. These programs are listed as programs not for the support of softwood lumber, but rather for research and development into emerging forest biomass, biochemical and nanotechnology programs. The Department examined the Forest Innovation Program in *Lumber V* and found it either not to be used by the Canadian lumber producers or not to have provided countervailable benefits.[42] Although the Department reports that the Transformative Technology Program expired on March 31, 2014, it continues to report this program to Congress as a subsidy.

The Department also spends several pages discussing alleged subsidies from the *Uncoated Groundwood Paper* investigation, but fails to acknowledge that the investigation was terminated because the ITC unanimously did not find material injury or threat of material injury from Canadian imports. An injury or threat of injury determination is required to find a subsidy countervailable.

The Department mentions softwood lumber marketing program subsidies, but some of these programs no longer exist (for example, the VWP expired in March 2011),[43] or are so old, with so little value, they serve only to give an exaggerated impression of government assistance. Although the Department reported in its June 2019 report that the VWP program expired in March 2011, it omitted that statement in its June 2020 report, claiming, without support, that the program is still available.[44]

The Department has been questioning and investigating tiny programs in Québec's private forest for more than three decades. These programs have always been found irrelevant or *de minimis*. Most of the $450 million bounty for "meritorious initiatives" in the United States, however, has gone to private tree farmers as outright grants.

The Department of Commerce repeatedly has reported to Congress "subsidies identified in connection with the SLA which have been reviewed by an arbitration panel" and "Additional Subsidies Identified in Connection with the SLA."[45] SLA 2006 and its dispute settlement mechanisms in fact neither identified nor defined "countervailable subsidies." The agreement

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[42] *See Lumber V* PDM at Appendix II; *see also Lumber V* IDM at Appendix II.

[43] June 2019 Report at 29.

[44] June 2020 Report at 10.

[45] June 2020 Report at 5, 37-38.

had no provision for identifying and offsetting countervailable subsidies. And none of the "subsidies" identified was countervailed by the Department in *Lumber V*, except for Québec Road Credits, for which the Department now seeks a double remedy by imposing duties to offset credits that previously had been offset fully by export taxes under the SLA. The credits have been discontinued; the offset was collected for all the credits ever provided. The road credits never provided a subsidy (they were fees for service), but they also no longer exist.

III. THE DEPARTMENT IS INVESTIGATING "SUBSIDIES" THAT COULD NEVER BE SPECIFIC, INCLUDING STANDARD ELECTRICITY PRACTICES FOR THE BENEFIT OF THE GRID

The Department has expanded the reach of its investigations into softwood lumber and other forestry products by examining programs that cannot be considered specific, such as general worker training and employment assistance programs. Tax programs, such as the Scientific Research and Development Tax Credit and the Acquisition of Manufacturing and Processing Equipment, likewise are being scrutinized even though they are widely available to companies from many industries. Similarly, depreciation rates for certain classes of assets, such as the Additional Capital Cost Allowance for Class 29 Assets, are not only widely available to all taxpayers, but also constitute a mandatory application of the tax law whereby fixed assets are required to be included in certain classes at certain depreciation rates.

More troubling, perhaps, is the Department's investigation of electricity programs shared by U.S. utilities that are designed to manage the operational efficiency and load balance of the electricity grid. The Ontario Independent Electricity System Operator's ("IESO") Demand Response and Québec's Interruptible Electricity Option are similar to U.S. programs, integral to provincial strategies to guarantee electricity supply to residences at times of peak demand. Rather than build more and costly infrastructure that may often be idle or underutilized, or seek to purchase shortfall from other places they may only hope will be facing less demand and, therefore, have available capacity when needed (such as New York and New England, from or to which both may sell or purchase emergency supplies), Ontario and Québec purchase guarantees of supply to be surrendered by large electricity users within their respective jurisdictions.

These programs are not countervailable subsidies because they do not involve goods; they do not provide a benefit to the companies who participate; and they are not specific to an industry or enterprise or group of industries or enterprises. To the contrary, they are common throughout North America for both industry and individuals. They are designed to enable the utilities to fulfill statutory mandates to service all customers continuously, regardless of weather conditions, by reducing consumption. Both the Ontario and Québec programs are open to all medium to large electricity customers, and both are intended to ensure that electricity is available to all provincial residents during the coldest winter months (December through March) and the warmest summer months when demand for electricity is at its peak.

Hydro Québec ("HQ") and the Ontario IESO both pay subscribers to the programs fixed credits to secure a baseline of capacity (the critical minimum the utilities must have to service peak demand), and variable credits at set rates to compensate for foregone electricity. Participating utility customers risk business disruption that can cause them significant losses, typically outweighing the value of payments they may receive for curtailed energy use.

Interruptible electricity programs are common throughout North America, no less in the United States than in Canada.[46] U.S. petitioners themselves have been reported to participate in government-sponsored energy efficiency projects that have paid extraordinary sums of money. Such programs have become essential to the rational management of electrical power.[47]

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[46] *Demand Response Compensation in Organized Wholesale Energy Markets*, 76 Fed. Reg. 16,658, 16,658-16,661, 16,660 n.21 (Mar. 24, 2011) (amending 18 C.F.R. pt. 35) ("{i}t is the policy of the United States that ... unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated.").

[47] *Demand Response Compensation in Organized Wholesale Energy Markets*, 76 Fed. Reg. 16,658, 16,660 n.15-16 (Mar. 24, 2011) (amending 18 C.F.R. pt. 35) ("Demand response tends to flatten an

There is no statutory provision for countervailing the payment of more than adequate remuneration for security of supply, nor for the service of foregoing a right to power.[48] The statute permits countervailing only the purchase of goods for more than adequate remuneration.[49] The fixed payments here, to secure electricity capacity, by definition, cannot be found to provide any benefit, and cannot be countervailed or considered to be countervailable subsidies.

Variable credits are given only when notices of interruption are issued, and the participating user curtails its electricity use. In these instances, the participant reduces or ceases business activities, incurring slowdown or shut down costs and resumption or restarting costs. Thus, the variable credits buy the service of foregone electricity use, at often a steep price for the companies.

These programs are neither *de jure* nor *de facto* specific. Use may sometimes create an illusion of disproportionality, but Hydro Québec and IESO are buying electricity interruption from companies that use the most electricity in the respective provinces. It is much easier – and, therefore, to the convenience and benefit of the utilities – to administer significant interruption from a limited number of large operations than smaller quantities of electricity from smaller operations. Pulp and paper mills are voracious consumers of electricity and, therefore, ideal candidates for utilities to find available potential supply. Utilities seek them out because they are best situated to help solve a problem for the utilities, not the other way around.

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area's load profile, which in turn may reduce the need to construct and use more costly resources during periods of high demand; the overall effect is to lower the average cost of producing energy").

[48] 19 U.S.C. § 1677(5)(E).

[49] 19 U.S.C. § 1677(5)(E)(iv); *USEC Inc. v. United States*, 411 F.3d 1355, 1364-65 (Fed. Cir. 2005) ("The statute does not contemplate the purchase of services for more than adequate remuneration to be a subsidy.") (*Quoting* 19 U.S.C. § 1677(5)(E)(iv)); *cf. Low Enriched Uranium from France: Notice of Amended Final Negative Determination Pursuant to Final Court Decision, Rescission of Administrative Review, and Revocation of the Countervailing Duty Order*, 72 Fed. Reg. 29,301 (Dep't of Commerce, May 25, 2007).

IV. SUBSIDY FINDINGS REQUIRE SUBSTANTIATED ALLEGATIONS AND THOROUGH INVESTIGATION

The Department of Commerce appears to be changing its practices to treat all countries the way that it views China: inherently cheating and deserving of punishment regardless of the facts or the Department's legal obligations. The Department appears to be carrying over that distrust into how it is treating traditional market economies such as Canada. The Department has taken to finding "subsidies" that are not even alleged, countervailing them without investigation.[50] Additionally, the Department has initiated investigations on log export restraint programs that it has previously found not countervailable.[51] These actions, if continued, could render these reports to Congress pointless.

The law for finding subsidies has not changed: it remains necessary for petitioners to allege a subsidy and to substantiate the allegation.[52] However, the Department now asks companies to report "any other forms of assistance to your company" from the federal and various provincial governments over a decade or more. The Department nowhere defines "assistance," which is a term that does not appear in the statute, nor in the Department's regulations. Nor has the Department ever defined the term. Yet, the Department also has ruled that, "The Department, not responding parties, makes the determination of whether assistance is reportable and ultimately countervailable," again without defining "assistance."[53]

The Department's question broadly implicates all merchandise. This unbounded inquiry has led to extreme diligence and extraordinary over-reporting of transactions between

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[50] *See* Section II.C *supra*.

[51] *Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 Fed. Reg. 8,800, 8,810 (March 12, 1992), unchanged in *Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 Fed. Reg. 22,570, 22,604 (May 28, 1992).

[52] 19 U.S.C. § 1671a(b)(1).

[53] Memorandum from Gary Taverman, Assoc. Deputy Assistant Sec'y for Antidumping and Countervailing Duty Operations, U.S. Dep't of Commerce, to Paul Piquado, Assistant Sec'y for Enf't and Compliance, U.S. Dep't of Commerce, C-122-854, *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Supercalendered Paper from Canada* (Oct. 13, 2015).

governments and private companies. It has made all recent countervailing duty investigations among the most voluminous trade remedy investigations in history as governments and government-owned enterprises and private companies search records for the period of investigation and for the Average Useful Life of assets ("AUL"), for virtually every transaction between and among them. Any accidental oversights or omissions are met with accusations that companies did not use their "best efforts" in responding to the Department's questionnaires and threatens that adverse inferences will be applied.

The WTO Appellate Body recently found that applying adverse facts available to the discovery of unreported assistance, while refusing to conduct any further inquiry, is inconsistent with the Agreement on Subsidies and Countervailing Measures.[54] The Appellate Body found that the Department of Commerce "must make a reasonable assessment based on evidence and cannot simply infer" that the information was "necessary" and that the Department must take into account the facts available on the record before mechanically inferring that the unreported assistance was a countervailable subsidy.[55] The Department's utilization of its "other assistance" question and application of adverse facts available was repudiated fully as a violation of the United States' international obligations.[56]

Even as the Department has demanded more expansive records, it complained (at the WTO) that the records have become greater than the Department's capacity to review and analyze them.[57] The Department warns responding companies and governments to leave

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[54] Appellate Body Report, *United States — Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/AB/R (adopted Mar. 5, 2020) pp.32-34.

[55] *Id.*

[56] *Id*.

[57] Statement of Counsel for the U.S. Trade Representative at the Public Hearing in DS533, *United States—Countervailing Measures on Softwood Lumber from Canada*, (Feb. 26-27, 2019).

nothing out, and then excuses itself for failing to examine the record and facts when it receives "too much."[58] The most recent WTO panel hearing this dispute rejected those excuses.

Congress ought to discourage the Department of Commerce from treating trustworthy allies and trade partners as dishonest, and the Department should not abandon statutory procedures in favor of suspicion and prosecution. Honest inquiry is being replaced by presumptive interrogation and considered judgment by automatic conclusions.

The Department now accepts any and all allegations from petitioners, often without any supporting evidence, demanding that respondents prove themselves innocent (or free) of countervailable subsidies.[59] The law, however, remains unchanged: Congress requires petitioners to make detailed, informed, and specific allegations.[60] The Department is required to collect information that proves there is a subsidy and that it is countervailable.

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[58] *Id.*

[59] *See Certain Softwood Lumber Products from Canada: Certain New Subsidy Allegations*, C-122-858 (August 5, 2019); *see also* Memorandum from the Team, AD/CVD Operations, Offices I and III, U.S. Dep't of Commerce, to Erin Begnal, Director, AD/CVD Operations, Office III, U.S. Dep't of Commerce, C-122-854, *Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada: Analysis of New Subsidy Allegations* (Feb. 13, 2020).

[60] 19 U.S.C. § 1671a(b)(1).

Congress has not shifted this burden, nor do the international rules countenance such a shift. The Department's departure from the law has meant enormously burdensome and unnecessary investigations, and many erroneous presumptions. The contents of the Department's periodic reports on softwood lumber testify to this legal departure.

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