

HOGAN & HARTSON

L.L.P.

MARK S. McCONNELL
PARTNER
(202) 637-5796
MSMCCONNELL@HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

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The Honorable Grant D. Aldonas
Under Secretary for International Trade
Central Records Unit
Room 1870, U.S. Department of Commerce
Pennsylvania Avenue and 14th Street, N.W.
Washington, D.C. 20230

Attention: Softwood Lumber Policy Bulletin

Dear Secretary Aldonas:

On behalf of the Government of Ontario ("Ontario"), we hereby submit the following rebuttal comments with respect to the Proposed Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber from Canada (C-122-839), 68 Fed. Reg. 37,456 (Dep't Commerce June 24, 2003) (the "Proposed Policy Bulletin"). The rebuttal comments submitted by Ontario are not intended to be comprehensive or all-inclusive comments on either the Proposed Policy Bulletin or the numerous comments filed by the various Parties involved in the softwood lumber dispute. Rather Ontario's comments pertain solely to certain comments enumerated in the attached document.

Ontario welcomes the Department's initiative to develop the Policy Bulletin and to clarify certain aspects of the changed circumstance review process. The Proposed Policy Bulletin constitutes an important advance towards a long-term solution to the trade dispute involving the softwood lumber products of the United States and Canada.

The following comments are formatted in compliance with the directions provided in the Proposed Policy Bulletin. 1/ An electronic copy of these comments is also being provided, as requested by the Department. If there are any questions about the following comments, please do not hesitate to contact any of the undersigned.

Respectfully submitted,
HOGAN & HARTSON L.L.P.

By: Mark S. McConnell / J.T.S.
Mark S. McConnell
H. Deen Kaplan
Jonathan T. Stoel

Counsel for the Government of Ontario

1/ Ontario's comments are structured as follows: (1) a reiteration of the Department's statement in the Proposed Policy Bulletin; (2) a restatement of the comment being addressed; and (3) Ontario's comment.

**REBUTTAL COMMENTS OF THE GOVERNMENT OF ONTARIO ON THE
PROPOSED POLICIES REGARDING THE CONDUCT OF CHANGED
CIRCUMSTANCE REVIEWS OF THE COUNTERVAILING DUTY ORDER
ON SOFTWOOD LUMBER FROM CANADA (CV-122-839)**

Proposed Policy Bulletin Rebuttal Comment 1

Proposed Policy Bulletin Text: I.A.5. Long-Term Non-Transferable Tenure

An important aspect of long-term, non-transferable tenure is the degree to which the security of supply it affords also inhibits the responsiveness of tenure holders to changes in the market.

Coalition's Comment

Long-term, guaranteed access to supply lowers input costs and the cost of capital. Companies frequently secure financing transactions with timber provided under tenures. Tenures have distorted the investment decisions of Canadian producers and fueled their subsidy-induced capacity growth over time. The continuation of long-term tenures will require provinces to adjust for this value if comparing to short-term auction sales. 2/

Summary of Ontario's Rebuttal Comment

The Coalition's comment does not provide a factual basis for the Department either to agree with its assertions regarding input costs and capital costs or to entertain adjustments of the kind proposed. No such adjustments are warranted with respect to Ontario, where the tenure system offers neither security of supply nor security of price.

2/ Comments of the Coalition for Fair Lumber Imports at 13 (Aug. 8, 2003) ("Coalition Comments").

Ontario's Rebuttal Comment

The Government of Ontario ("Ontario") understands that the Proposed Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber from Canada (C-122-839), 68 Fed. Reg. 37,456 (Dep't Commerce June 24, 2003) (the "Proposed Policy Bulletin") offers a process in which the complexities of timber pricing can be addressed on a sound factual basis, with a view toward achieving a lasting solution of the Canada-U.S. lumber dispute. Ontario respectfully notes that no factual basis has been advanced for the conclusions and adjustments proposed in the comment of the Coalition for Fair Lumber Imports (the "Coalition"). The documentation in the comment itself consists of press quotations, none of which appear to involve Ontario.

Specifically, no factual basis is advanced for the assertion that "guaranteed access to supply lowers input costs and the cost of capital." 3/ The Department examined a similar assertion in the underlying investigation and concluded that the allegations lacked a factual basis of support. 4/ There is nothing in the comments on the Proposed Policy Bulletin that justifies a different view.

It is likewise important for the Department to recognize that Crown tenure in Ontario confers neither long-term security of timber access nor long-term

3/ Id.

4/ Final Issues and Decision Memo in Certain Softwood Lumber Products from Canada at 161 (Dep't Commerce Mar. 21, 2002).

Comments of the Government of Ontario

security of timber price. For instance, Crown tenures do not constitute a property right in Ontario and cannot be transferred by the holder. Additionally, Ontario has the right to amend grants of tenure and to reallocate forest resources. If a tenure holder fails to meet the terms and conditions required by the Crown, that tenure may be terminated or diminished by the Crown. Significant reallocations of tenure holdings have occurred and will continue to occur. Simply put, holding Crown tenure in Ontario does not guarantee access to supplies of Crown timber.

Ontario Crown tenures also do not convey security of price. Stumpage rates in Ontario are set by the Crown and fluctuate monthly, rather than being fixed. Current stumpage rates in Ontario vary in part with the market price for forest products. Accordingly, the prices set for Crown timber holders are extremely responsive to changes in the market and cannot be predicted very far into the future.

Proposed Policy Bulletin Rebuttal Comment 2

Proposed Policy Bulletin Text: I.B.1.b. Quality of Information

The Province must demonstrate that similar full and transparent information is available to all participants in the reference market about alternative commercial opportunities, particularly with respect to price. This is especially important in those instances in which a province intends to rely for its reference prices on a private market that is largely made up of bilaterally negotiated sales of standing timber on private lands, but would be important to the Department's assessment of any auction-based system as well.

Coalition's Comment

Transparency is particularly critical with respect to adjustments made to account for differences in the terms of sale between transactions in the reference market and administered volumes. Adjustments must be based on publicly available, objective and verifiable information. Adjustments should be limited to differences in terms quantifiable based on market-generated data. For example, if an adjustment were required for harvesting costs, a province should use arm's-length harvest and haul contracts, rather than internal data from industry surveys. ^{5/}

Summary of Ontario's Rebuttal Comment

The limited availability of publicly generated data regarding some key issues dictates that some adjustments must be grounded in data drawn from private sources. Transparency is an important goal, and can be achieved even when using private data by such steps as requiring the disclosure and verification of survey results. The wide diversity of timber qualities, harvest conditions, and other circumstances affecting harvesting can cause large variation in industry costs that

^{5/} Coalition Comments at 29 (citations omitted).

have nothing to do with the efficiency of operations. Use of broad measures of costs is essential if such diversity is properly to be reflected in adjustments. The complexity of these adjustments – compounded by the seasonality of much of the underlying activity – indicates that reliance on annual, rather than quarterly, updates is a more reasonable approach.

Ontario's Rebuttal Comment

Ontario strongly favors a transparent approach to adjustments in comparing timber prices, specifically an approach that is grounded in objective facts. Where such facts are available from public sources, they should be used. But given the values that must be measured in this set of circumstances, in many cases there is no public source of data.

Use of public data sources is not the only way to achieve reasonable transparency. Should Ontario proceed with a changed circumstances petition, Ontario will work with the Department to ensure that a combination of public data sources, publication of survey results, verification of privately generated data, and other techniques will ensure the maximum transparency that can be obtained under the circumstances. At the same time, the private parties who share cost and transaction information must be entitled to some level of confidentiality.

The Coalition's comment also suggests that the use of industry average cost data necessarily involves the averaging of inefficient competitors with efficient competitors. The comment contends that such averaging should not be used and

that some market proxy for industry costs should be used instead. Ontario respectfully disagrees with the suggestion that surveys of industry cost data necessarily reflect cost inefficiencies.

The Coalition's comment fails to take into account the wide diversity of standing timber. For example, within Ontario there are very significant variations in harvest conditions. Marshy conditions, steep slopes, long transportation distances, and difficult road building conditions all can increase costs dramatically. These cost variations are inherent in the process of accessing and harvesting timber and have nothing to do with operational efficiencies. The selection of only lower cost operators would amount to a focus on only easily accessible timber. This would defeat the purpose of obtaining objective, factual comparisons. Ontario respectfully submits that industry surveys and averages play an important role in ensuring an objective factual basis for adjustments.

Ontario agrees with the Department that there should be regular updating of adjustment data. The Coalition's comment suggests that adjustments should be made on a quarterly basis. ^{6/} While recognizing the importance of current data, Ontario is of the view that a blanket rule requiring the quarterly production of adjustment data is inadvisable. Some adjustments, such as exchange rates and reference market prices, could be adjusted quarterly, but other necessary adjustments are complex, and the information-gathering process can be

^{6/} Id. at 31.

burdensome. Furthermore, timber harvesting is a seasonal activity, meaning that quarterly data will vary significantly from period to period without reflecting any fundamental change. For these reasons, Ontario respectfully suggests that, with respect to some of the necessary adjustments, annual updates may be a more reasonable approach.