



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

ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION

DEC 15 2008

The Honorable Max Baucus
Chairman
Committee on Finance

The Honorable Charles Rangel
Chairman
Committee on Ways and Means

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

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

Dear Messrs. Baucus, Rangel, Grassley, McCrery:

Under Section 809(b) of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), which was enacted into law on June 18, 2008, the Secretary of Commerce shall provide to the appropriate Congressional committees a report every 180 days on any subsidies, including stumpage subsidies, provided by countries exporting softwood lumber or softwood lumber products to the United States. Accordingly, on behalf of the Secretary, I submit the first Softwood Lumber Subsidies Report.

I. Background and Reporting Methodology

As an initial matter, given the large number of countries that export softwood lumber and softwood lumber products to the United States, we concluded that it was untenable to find subsidy information for every country that exports softwood lumber or softwood lumber products to the United States. Instead, in order to provide a report that reflects subsidies which have significant impact on the U.S. softwood lumber industry, we analyzed U.S. imports of softwood lumber and softwood lumber products to determine which countries were the largest exporters of such products to the United States. As a result, we include in this report subsidies provided by those countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001,¹ during the period January 1 through June 30, 2008. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that exports of softwood lumber from Brazil, Canada, Chile, and Germany each account for at least one percent of U.S. imports of softwood lumber products during that time period. Therefore, this report covers subsidies on softwood lumber or softwood lumber products provided by these countries.

We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1 through December 31, 2008, to select the countries subject to the next report.

¹ Imports classified under Harmonized Tariff Schedule code 4407.1001 account for the vast majority of imports of softwood lumber and softwood lumber products.

Under U.S. law, a subsidy is defined as the situation in which 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.

II. Identification of Subsidies

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

A. Countervailing Duty Proceedings

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

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

B. WTO Reporting

We identified two sources of information from the WTO -- Subsidies Notifications and Trade Policy Reviews (TPR). The Subsidies Notification is the

primary source of information under the WTO framework for each member country's subsidy programs. WTO member countries are required to notify the WTO of specific subsidies, in accordance with Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). This portion of the SCM Agreement requires that members notify all specific subsidies, at all levels of government and covering all goods sectors, to the SCM Committee. New and full notifications are due every three years with update notifications in intervening years. These documents are available from the WTO Secretariat and may be accessed through the WTO's website.²

Information on subsidy programs is also found in the TPRs of each member country. Pursuant to the WTO's Trade Policy Review Mechanism, each WTO member country's national trade policies are subject to periodic review by the WTO Secretariat, which then publishes a report. The frequency of each country's TPR varies according to its share of world trade, with Brazil and Canada subject to review every 4 years, Chile every 6 years and Germany, as part of the EU, every 2 years. The TPR reports for each country are available from the WTO Secretariat and may be accessed through the WTO's website.³

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.⁴ On September 12, 2006, the United States and Canada signed the 2006 Softwood Lumber Agreement to settle outstanding disputes regarding the importation of softwood lumber from Canada into the United States. Per the agreement, the United States terminated antidumping and countervailing duty orders on softwood lumber from Canada, refunded cash deposits, and agreed not to impose other trade remedies. In exchange, Canada agreed to impose export measures and not to take any action having the effect of reducing or offsetting the export measures. On January 18, 2008, pursuant to Article XIV of the SLA, the United States requested arbitration under the London Court of International Arbitration rules, alleging that Canada had provided grants and benefits to its softwood lumber producers and exporters and, thereby violated the anti-circumvention provisions of the agreement. We have included in this report subsidies which are and are not included in the United States' request for arbitration under the SLA.

D. Public Comment

On October 27, 2008, Commerce published a notice in the *Federal Register* soliciting public comment on subsidies provided by Brazil, Canada, Chile, and Germany

² http://www.wto.org/english/tratop_e/scm_e/scm_e.htm

³ http://www.wto.org/english/tratop_e/tp_r_e/tp_rep_e.htm#bycountry

⁴ The SLA is particular to Canada. The United States does not have in place similar agreements involving softwood lumber or softwood lumber products with Brazil, Chile, or Germany.

on softwood lumber or softwood lumber products for inclusion in this report.⁵ The programs identified in the comments received are listed in Appendix I of this report.

III. Subsidies Provided

Following is a description of all known subsidies, identified using the methodology described above, provided by Brazil, Canada, Chile, and Germany on softwood lumber or softwood lumber products exported to the United States.

Brazil

Information regarding the following programs in Brazil comes from Brazil's most recent TPR from 2004.⁶

A. Export Restraints

Export restraints are limitations imposed by a Government authority on the export of certain products through quotas or the suspension or prohibition of exports. In the case of Brazil, the most recent TPR indicates that the Government maintains the following export restraints:

- Exports of jacaranda from Bahia (HS 4407.29.90) are prohibited because this wood is becoming extinct;
- Exports of wood in the rough (HS 4403) have been suspended, except if certain conditions are met, and subject to prior approval of the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA); and
- Exports of certain woods (pine, imbuia, and virola), classified under HS headings 4407.10.00, 4407.24.10, 4407.24.20, and 4407.24.90, are subject to quotas.

B. Forestry Projects

There are several sources of public funding for forestry projects from the federal government.

- The National Development Bank (BNDES) provides low-interest credit for the cultivation of native or exotic forests that promote sustainable management. Under the BNDES's Financing for Machinery and Equipment (FINAME), producers benefit from such preferential financing in acquiring domestically manufactured machinery and equipment; and

⁵ See *Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment*, 73 FR 63695 (October 27, 2008).

⁶ See *Trade Policy Review of Brazil*, Report by the Secretariat, WT/TPR/S/140, dated November 1, 2004, Part 3, paras. 181-182 and Part 4, paras. 71-72, which is available from the WTO Secretariat.

- The Constitutional Financing Funds for the North, Northeast, and Midwest Regions (FNE, FNO, FCO) provide general financing schemes that benefit the production of forestry-related industries.

There were no subsidies provided by Brazil on softwood lumber or softwood lumber products identified in CVD proceedings.

Canada

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

Subsidies Identified in CVD Proceedings

Commerce determined that the following programs benefited Canadian softwood lumber producers in the second administrative review of imports under the CVD order, which was the last review completed before the order was terminated. The second administrative review investigated Canadian subsidy programs in effect between April 2003 and March 2004.⁷

- A. Provincial Stumpage Programs (provision of lumber for less-than-adequate remuneration)
 - 1. Alberta
 - 2. British Columbia
 - 3. Manitoba
 - 4. Ontario
 - 5. Quebec
 - 6. Saskatchewan

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

⁷ During the conduct of the investigation and three different administrative reviews, the Department investigated a large number of programs, not all of which were in use, or evaluated, during the second administrative review. Because the second administrative review was the most recently completed review with a final determination, we have used it as the most accurate and current measure of our findings.

B. Non-Stumpage Programs Determined To Confer Subsidies

Programs Administered by the Government of Canada

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

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

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

2. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies

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

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

The NRII is a two-year program that provides salary support to three national research institutes: the Forest Engineering Research Institute of Canada (FERIC), Forintek, and the Pulp & Paper Research Institute of Canada. In the 2003-2004 administrative review, the Department found that research undertaken by FERIC constitutes a government financial contribution to commercial users of Canada's forests. Further, the Department found that FERIC's research covers harvesting, processing, and transportation of forest products, silviculture operations, and small-scale operations and, thus, the Department determined that government-funded R&D by FERIC benefits, *inter alia*, producers of

softwood lumber. Similarly, the Department found that Forintek's NRII operations, which pertain to resource utilization, tree and wood quality, and wood physics, also constitute a government financial contribution. The Department also reconfirmed its earlier determination that because grants offered under the NRII are limited to Forintek and FERIC, institutions that conducted research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry, the program is specific to that industry. The NRII is periodically reinstated and is currently in effect.

Programs Administered by the Government of British Columbia

1. Forestry Innovation Investment Program (FIIP)

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

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

2. British Columbia Private Forest Property Tax Program

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

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

Programs Administered by the Government of Quebec

1. Private Forest Development Program

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

Subsidies Identified Through WTO Participation

The following subsidy program in Canada was identified in Canada’s two most recent Subsidies Notifications,⁸ which are available from the WTO Secretariat.

1. Softwood Industry and Community Economic Adjustment Initiative (SICEAI)

This program, created in 2002, was administered under the Department of Industry Act and the Western Economic Diversification Act, and was aimed at assisting forest-dependent communities and regions to adjust to the effects of the softwood lumber dispute with the United States by helping such communities undertake strategic development and diversification projects to facilitate their transition from primary reliance on softwood lumber production. It provided C\$24.6 million in 2003-2004 and C\$66.9 million in 2004-2005 in the form of repayable and non-repayable contributions through March 31, 2005, after which no further government commitments were made. Federal funding could not exceed 50 percent of the total project funding for all projects approved within a region over the life of the program. Financial assistance was delivered through Western Economic Diversification Canada, Canada Economic Development for

⁸ New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)), G/SCM/N/123/CAN, dated August 1, 2005, and G/SCM/N/155/CAN, dated October 11, 2007.

Quebec Regions, the Federal Economic Development Initiative for Northern Ontario and Community Futures Development Corporation.

Subsidies Identified in Connection with the SLA Upon Which Arbitration has been Requested

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

1. Ontario Forest Sector Loan Guarantee Program

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

2. Ontario Forest Sector Prosperity Fund

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

3. Ontario Forest Access Road Construction and Maintenance Program

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

4. Forest Industry Support Program

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

5. 15% Capital Tax credit

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

6. Forest Management Measures

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

Additional Subsidies Identified in Connection with the SLA

1. Wood Promotion Program

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

2. North Ontario Grow Bonds Program

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

3. Forest Industry Long-Term Competitiveness Initiative

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

Chile

No relevant lumber industry subsidies found.

Germany

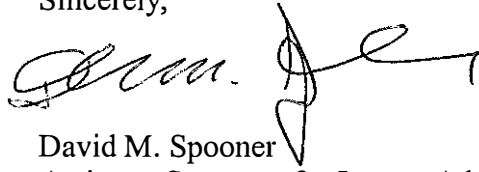
No relevant lumber industry subsidies found.

IV. Conclusion

The subsidies reported and described above reflect the best publicly available information related to subsidies on softwood lumber or softwood lumber products provided by countries of export that were the largest suppliers of these products to the United States. We note that this report covers all subsidies identified following the reporting methodology described above and does not constitute a finding regarding the countervailability of the listed subsidies under U.S. law or their status under the SLA. We also note that this report only includes subsidies identified pursuant to the described reporting methodology. A subsidies 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.

If you have any questions or would like additional information, please contact me or Lori Harju, Director of Legislative and Intergovernmental Affairs, at (202) 482-3015.

Sincerely,

A handwritten signature in black ink, appearing to read "D. M. Spooner", with a stylized flourish extending to the right.

David M. Spooner
Assistant Secretary for Import Administration

Appendix I

DEWEY & LeBOEUF

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November 26, 2008

PUBLIC DOCUMENT

BY HAND DELIVERY

The Honorable Carlos M. Gutierrez
Secretary of Commerce
Attn: Import Administration
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U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Attn: Jill E. Pollack
Import Administration

Re: Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States – Request for Comment

Dear Secretary Gutierrez:

On behalf of the Coalition for Fair Lumber Imports ("Coalition"), we hereby submit one original and six copies of comments to the U.S. Department of Commerce (the "Department") on subsidies provided by Canada to producers of softwood lumber and softwood lumber products. These comments are submitted in response to the Department's request for comments published on October 27, 2008.¹ Canada is the predominant exporter of softwood lumber and softwood lumber products to the United States, accounting for roughly 91 percent of such shipments during the first six months of 2008.

¹ Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment, 73 Fed. Reg. 63,695 (Oct. 27, 2008).

The Honorable Carlos M. Guterrez

November 26, 2008

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Included in the attachment to this letter is a listing of subsidies provided by various public authorities in Canada and summary information about them. The attachment is not necessarily complete. The Coalition urges the Department to include all subsidies identified in the attachment and any others of which it becomes aware in the agency's report to the Congress under Section 805 of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), 19 U.S.C. § 1683g(b).

Please contact any of the undersigned should you require clarification of any aspect of this submission.

Respectfully submitted,

Harry L. Clark
David A. Bentley
Gregory I. Hume, Economist

DEWEY & LEBOEUF LLP
Counsel to the Coalition for Fair Lumber Imports

Attachment

ATTACHMENT

Canadian Subsidies to Softwood Lumber

I. Stumpage Subsidies

Subsidy Program #1: British Columbia Coast Stumpage

Government Authority Providing the Subsidy: British Columbia Government

Program Description:

The British Columbia ("BC") government owns roughly 95% of all harvestable timberlands within the province. Unlike private landowners (or national or state forests in the United States), the provincial government generally does not sell this timber through a competitive bidding process (with one tightly controlled quasi-exception). Instead, it has created a complex system of different "tenure" arrangements that permit private forest products firms to harvest logs on government land for government-set fees. This subsidization system has three essential elements: a) non-market allocation of tenure rights, b) complex administered pricing mechanisms that ensure that softwood lumber producers obtain this wood at below-market prices; and c) regulations and practices that funnel the harvest of discounted timber to production of softwood lumber within British Columbia.

In the BC Coast region,¹ the BC Ministry of Forests sets softwood sawtimber stumpage prices based on the results of a complex statistical modeling exercise deemed to produce the "estimated winning bid" for the timber being harvested.² Those administratively set stumpage prices are consistently well below the market value of the softwood sawtimber being harvested on the BC Coast. Accordingly, under this program the BC Ministry of Forests provides softwood lumber producers on the BC Coast with their single largest factor input – softwood timber – at prices well below adequate remuneration.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³

¹ The BC Coast is defined to be that portion of the province encompassing the Vancouver Forest Region and the North Coast Forest District within the Prince George Forest Region.

² BC Ministry of Forests, Coast Appraisal Manual (June 1, 2007) at Sections 4.2, 4.3, 4.5 and 6.2.

³ Certain Softwood Lumber Products from Canada, 67 Fed. Reg. 15,545, 15,548 (April 2, 2002) (Final Affirmative Countervailing Duty Determination) ("Softwood Lumber Investigation Final"); Certain Softwood Lumber Products from Canada, 69 Fed. Reg. 75,917, 75,920 (Dec. 20, 2004) (Final Results of Countervailing Duty Administrative Review) ("Softwood Lumber AR 1 Final"); Certain Softwood Lumber Products from

Subsidy Program #2: **British Columbia Interior Stumpage**

Government Authority Providing the Subsidy: British Columbia Government

Program Description:

The British Columbia ("BC") government owns roughly 95% of all harvestable timberlands within the province. Unlike private landowners (or national or state forests in the United States), the provincial government generally does not sell this timber through a competitive bidding process (with one tightly controlled quasi-exception). Instead, it has created a complex system of different "tenure" arrangements that permit private forest products firms to harvest logs on government land for government-set fees. This subsidization system has three essential elements: a) non-market allocation of tenure rights, b) complex administered pricing mechanisms that make sure softwood lumber producers obtain this wood at below-market prices; and c) regulations and practices that funnel the harvest of discounted timber to production of softwood lumber within British Columbia.

In the BC Interior region,⁴ the BC Ministry of Forests sets softwood sawtimber stumpage prices based on the results of a complex statistical modeling exercise deemed to produce the "estimated winning bid" for the timber being harvested.⁵ Those administratively set stumpage prices are consistently well below the market value of the softwood sawtimber being harvested in the BC Interior. Accordingly, under this program the BC Ministry of Forests provides softwood lumber producers in the BC Interior with their single largest factor input – softwood timber – at prices well below adequate remuneration.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.⁶

The BC Ministry of Forests has expanded this subsidy program through various initiatives designed further to lower BC Interior lumber producers' wood costs. For example: First, in 2007 the BC Ministry of Forests modified its log grading practices to permit timber licensees to kiln dry their harvested logs prior to grading. Such kiln drying often results in a degrada-

Canada, 70 Fed. Reg. 73,448, 73,451 (Dec. 12, 2005) (Final Results of Countervailing Duty Administrative Review) ("Softwood Lumber AR 2 Final"); Certain Softwood Lumber Products from Canada, 71 Fed. Reg. 33,932, 33,940-959 (Jun. 12, 2006) (Preliminary Results of Countervailing Duty Administrative Review) ("Softwood Lumber AR 3 Prelim.").

⁴ The BC Interior is defined to be that portion of the province not within the BC Coast region.

⁵ BC Ministry of Forests, Interior Appraisal Manual (July 1, 2008) at Sections 3 and 5.

⁶ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

tion of the logs being dried and consequently results in logs being assigned lower grades – and lower stumpage prices – than would otherwise be the case. The share of BC Interior harvested softwood logs being assigned the lowest grade (Grade 4), and consequently being assigned a stumpage rate of only C\$0.25/m³, increased dramatically between the third quarter of the 2007 and the third quarter of 2008, showing that the log kiln drying practice has resulted in a major escalation of the stumpage subsidy. Second, in April 2008, the BC government issued an order that “remitted” (forgave) stumpage payments owed by thirty BC tenureholders. As a result of the order, Tembec was relieved of more than C\$262 thousand in stumpage obligations, and Canfor was relieved of C\$40 thousand in stumpage obligations. Third, in late May 2008, the BC Ministry of Forests by fiat reduced stumpage for softwood sawtimber falling into any of three categories: (1) timber harvested under community forest agreements/associated road permits; (2) timber that is “damaged timber;” and (3) timber that is classified as “post harvest material.” Fourth, in September 2008, the BC Ministry of Forests announced a pilot initiative under which grading and pricing of public timber will be accomplished without “scaling,” physical inspection of a sample of the logs. Under this initiative, grading and pricing of softwood sawtimber apparently will be based merely on “cruises,” that is, observation of the standing timber. This would greatly exacerbate the likelihood of BC lumber producers manipulating the stumpage system to secure timber prices that are even lower than the already subsidized rates called for by BC’s system.

Subsidy Program #3: Alberta Stumpage

Government Authority Providing the Subsidy: Alberta Government

Program Description:

The Alberta government owns the vast majority of useable timberland in the province, allocates this timber on a non-market basis, charges stumpage fees or "dues" that fall far below market prices, and ensures that the benefits of these fees go to the primary forest products processing industry and the softwood lumber industry in particular.

Alberta sets stumpage fees by using a heavily modified "residual value" system. Under that system, the province starts with the price of 1000 board feet ("MBF") of Standard and Better Western Spruce, Pine and Fir 2x4's, a standard industry lumber price benchmark published in Random Lengths, converted into Canadian currency.⁷ For each level of prices, the province charges a dues rate per cubic meter according to a schedule contained in its regulations. However, the correspondence between the stumpage rate and the market price of lumber is set administratively and is not tied to the actual market value of the softwood sawtimber being harvested. Moreover, all stumpage payments are made after the timber has been processed into lumber and the lumber sold. Finally, at any given lumber price level, lower stumpage amounts are charged for smaller harvest levels than for larger harvest levels.

⁷ Alta. Timber Mgt. Reg. Schedule 3.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.⁸

Subsidy Program #4: Quebec Stumpage

Government Authority Providing the Subsidy: Quebec Government

Program Description:

The Quebec government owns the vast majority of the province's forestland and allocates the rights to harvest public timber through 25-year, renewable tenure arrangements known as Timber Supply and Forest Management Agreements ("TSFMAs") and through Forest Management Contracts ("FMCs"). The Quebec Government sets stumpage rates for timber sold under TSFMAs and FMCs through a complex, administered calculation methodology which results in payments that are far less than "adequate remuneration." The system is designed to enhance artificially economic growth in the lumber industry and to maintain employment, not to maximize the return on the timber resource.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.⁹

Subsidy Program #5: Ontario Stumpage

Government Authority Providing the Subsidy: Ontario Government

Program Description:

The Ontario government owns the vast majority of the province's forestland and allocates the rights to harvest provincial timber through 20-year, renewable tenure arrangements known as Sustainable Forest Licenses ("SFL") and through Forest Resource Licenses ("FRL"). Ontario government sets stumpage rates for timber sold under SFLs and FRLs through a complex, administered calculation methodology which results in payments that are far less than "adequate remuneration." The Ontario timber system is designed to enhance economic growth in the lumber industry, maintain employment, and promote exports.

⁸ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

⁹ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

Ontario's stumpage system produces fees that do not represent "adequate remuneration" for the resource primarily because (1) the system employs a modified "residual value" approach which, in the best of circumstances, results in below-market prices; (2) the system consistently inflates operating costs and mandates an indefensible "profit/risk" allowance for harvesters in the absence of open competition for the timber resource; and (3) the system inexplicably assigns only a fraction of the underestimated residual value that it calculates to stumpage charges.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.¹⁰

Subsidy Program #6: Manitoba Stumpage

Government Authority Providing the Subsidy: Manitoba Government

Program Description:

Manitoba's tenure system is administered by the Forestry Branch of Manitoba Conservation. It has three types of tenure arrangements: the Forest Management License ("FML"), the Timber Sales Agreement ("TSA"), and the Timber Permit. These are expressly designed to increase the province's logging and lumber production. By law, all these tenures "shall be granted in such manner, and by such means, as, in the opinion of the minister, secures the maximum benefit to the forest industry of the province."¹¹ FMLs in particular are granted "[w]here the investment in a wood using industry established or to be established is sufficient to require the security of a continuous timber supply," and are primarily or completely held by three large forest companies.¹²

FML holders generally pay timber dues based on regulations, along with ground rent and a fire protection charge. Dues are fixed at flat rates for all grades and species of timber, but vary from region to region. Cutting softwood timber on Crown land requires payment of a forest renewal charge, but that charge may be excused if the tenure holder performs silviculture work itself. Timber Sale Agreements provide renewable rights to harvest specified amounts of timber in particular locations. Timber Permits allow the holder to harvest extremely small fixed volumes (under 300m³) during a period of up to one year.

¹⁰ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

¹¹ Manitoba Forest Act (C.C.S.M. ch. F150) § 11(1).

¹² Manitoba Forest Act § 18(1); Manitoba's Crown Forests.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.¹³

Subsidy Program #7: Saskatchewan Stumpage

Government Authority Providing the Subsidy: Saskatchewan Government

Program Description:

The Saskatchewan government owns the vast majority of the timberland in the province, and the provincial government allocates the overwhelming majority of its commercially available Crown forests through a tenure arrangement called the Forest Management Agreement ("FMA"). Fewer than six major companies hold FMAs accounting for most of the commercial forest land in the province. Each FMA holder must secure government approval of a forest management plan describing how their objectives for "employment and business opportunities . . . will enhance the social and economic health of communities in and around the license area."¹⁴ Regulations impose a minimum cut requirement on FMA holders, requiring a licensee to harvest the full amount designated in the license or risk reallocation of the short-fall to any other person.¹⁵

The provincial government sets timber dues (stumpage) at a flat base rate of just C\$2/m³ for all species of softwood timber greater than 14cm in diameter.¹⁶ When a lumber price index based on Random Lengths lumber prices exceeds a threshold level, stumpage dues increase by C\$0.03525/m³ for each C\$1 increase in the lumber price index – a small and wholly arbitrary rate of increase.¹⁷ Furthermore, the formula takes no account of quality or species differences, and for smaller logs does not even pretend to have any relation to market values at all. The province may also forgive dues entirely where it wishes to encourage development of sawmills that are otherwise uneconomical.

¹³ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

¹⁴ The Saskatchewan Forest Resources Management Regulations § 28(c)(ii).

¹⁵ Sask. For. Res. Mgt. Reg. §§ 15(4), 21(2). Each license must also include the requirement to use the full designated volume and the consequences of failure to do so. Id. at § 11(e).

¹⁶ Sask. Forest Resources Mgt. Regs. App. 1 Table 1.

¹⁷ Id.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.¹⁸

¹⁸ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

II. Wood Cost Subsidies Associated with Log Export Bans

Subsidy Program #8: British Columbia Log Export Ban

Government Authority Providing the Subsidy: British Columbia Government

Program Description:

British Columbia ("BC") maintains a domestic processing requirement and other log export restrictions. These measures prevent non-BC producers from obtaining BC logs and thereby reduce the demand for such logs and further reduce the domestic price of softwood sawtimber and logs throughout the province.

The BC log export restrictions have two central legislative components: 1) an in-province processing requirement (i.e., an affirmative obligation to provide logs only to BC processors); and 2) a log export tax, which is designed to remove any incentive to export sawlogs even if an exemption to the processing requirement is issued. These restrictions apply to all logs harvested from lands under provincial jurisdiction, which comprise approximately 90% of all timberland in British Columbia. Federal restrictions apply to logs not covered by provincial restrictions.

Commenting on this program, one noted BC forestry expert stated:

[E]xport restrictions reduce log values in B.C. This is not an accidental consequence, but the whole point of the exercise. The reason for the restrictions is to encourage processing of logs inside the province to provide more jobs for B.C. workers and higher profits for B.C. mill owners. . . . If you are the owner of those logs . . . the effect is to take a substantial portion of their value and give it to the workers and owners of B.C. mills.¹⁹

By largely eliminating the market impact of a strong international demand for BC logs, the domestic processing requirement causes domestic BC log prices to be far lower than they otherwise would be. A study conducted under the auspices of the BC legislature concluded: "The reduced overall demand for logs resulting from arbitrarily restricting log exports provides the domestic sector with a lower log price."²⁰ This results in more BC lumber production and employment, at the expense of U.S. production and jobs, than otherwise would be the case because BC sawmilling is permitted to operate with the benefit of undervalued logs.

¹⁹ Ken Drushka, "Log-export policy is unfair and counterproductive," Vancouver Sun D2 (Dec. 6, 2000).

²⁰ Second Report of The Select Standing Committee on Forest and Lands, Forest Act - Part 12 (Log Exports) and The Vancouver Log Market, Fourth Session, Thirty-fourth Parliament, Legislative Assembly of British Columbia 15 (Mar. 12, 1991).

The Department of Commerce found this program to be a countervailable subsidy in the 1991-94 Certain Softwood Lumber Products from Canada countervailing duty proceeding,²¹ and the determination that export restrictions can provide subsidies was upheld by a binational panel convened to review the Department's determination.

Subsidy Program #9: Alberta Log Export Ban

Government Authority Providing the Subsidy: Alberta Government

Program Description:

Section 31(1) of the Alberta Forests Act prohibits the export of logs outside of Alberta.²² The provincial government may, in its discretion, authorize the shipment outside of Alberta of logs for limited purposes (*i.e.*, to be used for research or experimental purposes) or for a limited time (*i.e.*, one year). By largely eliminating the market impact of international (primarily U.S.) demand for Alberta logs, the domestic processing requirement causes Alberta log prices to be lower than they otherwise would be. This results in more Alberta lumber production and employment, at the expense of U.S. production and jobs, than otherwise would be the case because Alberta sawmilling is permitted to operate with the benefit of undervalued logs.

Subsidy Program #10: Quebec Log Export Ban

Government Authority Providing the Subsidy: Quebec Government

Program Description:

The Quebec Forest Act has long required that all "timber harvested in the public forest, whatever the nature or object of the management permit authorizing the harvesting, must be completely processed in Quebec."²³ Although the Quebec government may, in its discretion, authorize the shipment outside of Quebec of incompletely processed timber from public forests,²⁴ there is no evidence that any significant volume of logs is in fact authorized for export. By largely eliminating the market impact of international (primarily U.S.) demand for Quebec logs, the domestic processing requirement causes Quebec log prices to be lower than they otherwise would be. This results in more Quebec lumber production and employment, at the expense of U.S. production and jobs, than otherwise would be the case because Quebec sawmilling is permitted to operate with the benefit of undervalued logs.

²¹ Certain Softwood Lumber Products from Canada, 57 Fed. Reg. 22,569, 22,612 (Dep't Commerce May 28, 1992) (Final Affirmative Countervailing Duty Determination).

²² Alberta Forests Act, R.S.A. 1980 C. F-16, § 31(1).

²³ The Quebec Forest Act, Que.Rev. Stat. C. F-4.1 § 159.

²⁴ Id. § 161.

Subsidy Program #11: Ontario Log Export Ban

Government Authority Providing the Subsidy: Ontario Government

Program Description:

Ontario legislation mandates that trees harvested from public lands be manufactured in Canada, thus precluding the export of logs from the province.²⁵ Although the Ontario government may, in its discretion, authorize the manufacture outside of Ontario of logs originating from Crown lands,²⁶ there is no evidence any significant volume of softwood logs are in fact authorized for export. By largely eliminating the market impact of international (primarily U.S.) demand for Ontario logs, the domestic processing requirement causes Ontario log prices to be lower than they otherwise would be.

²⁵ Crown Forest Sustainability Act, S.O. 1994, c.25, § 30(1).

²⁶ See id. at § 30(3).

III. Other Subsidies

Subsidy Program #12: Nova Scotia "Transition Program"

Government Authority Providing the Subsidy: Nova Scotia Government

Program Description:

In October 2007, the provincial government announced that it would invest millions of dollars in woodlot silviculture and other forest-related initiatives as part of a new program designed to help the forest industry weather what it called a "perfect storm" of negative influences. As part of the so-called "transition program," the province announced it would invest up to an additional C\$6 million per year in wood buyers' silviculture programs for small wood lots for 2007-08 and 2008-09. The investment is reportedly due to be reassessed after the 2008-09 fiscal year and funding will then be based on an index of market conditions.

In addition, during the first quarter of 2008 the Nova Scotia government acquired 1,563 hectares of industrial timberland from various forest products companies for a total of C\$2.5 million. Those payments were expressly designed to provide working capital for mills, implying that the transactions were subsidized.

Subsidy Program #13: Provincial Tax Programs

Government Authority Providing the Subsidy: New Brunswick, Nova Scotia and Quebec Governments

Program Description:

In July 2008, the C.D. Howe Institute published a report noting that several provincial governments have implemented provincial tax policies that offer sizeable tax subsidies to forestry.²⁷ Foremost amongst those are the governments of New Brunswick, Nova Scotia and Quebec, respectively. The report notes that the marginal effective tax rates for capital investment in forestry in New Brunswick and Nova Scotia, respectively, are negative 27.5 percent and negative 21.6 percent, respectively, while the corresponding rate in Quebec is only 3 percent.²⁸ In stark contrast, the marginal effective tax rates for capital investments in all industries in aggregate in New Brunswick, Nova Scotia and Quebec, respectively, are 11.8 percent, 20.7 percent and 21.5 percent, respectively. These facts strongly suggest that the three provinces are providing tax subsidies to their forest products producers.

²⁷ C.D. Howe Institute, "Limited Horizons: The 2008 Report on Federal and Provincial Budgetary Tax Policies" (July 2008).

²⁸ Id. Table 1.

Subsidy Program #14 : Western Economic Diversification Program

Government Authority Providing the Subsidy: Canadian Federal Government

Program Description:

Introduced in 1987, the Western Economic Diversification ("WDP") program is administered by the Canadian government's Department of Western Economic Diversification, the jurisdiction of which encompasses the four western provinces of British Columbia, Alberta, Saskatchewan and Manitoba. The WDP program supports commercial and non-commercial projects that promote economic development and diversification in the region. Under this program, the federal government provides grants and conditionally repayable contributions to softwood lumber producers.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.²⁹

Subsidy Program #15: Natural Resources Canada Softwood Marketing Subsidies

Government Authority Providing the Subsidy: Canadian Federal Government

Program Description:

In 2002, the Canadian government 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 distributed to three sub-programs: Canada Wood Export Program, Value to Wood Program and the National Research Institutes Initiative.

The Department of Commerce found this program countervailable in the First, Second and Third Administrative Reviews of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³⁰

²⁹ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

³⁰ Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

Subsidy Program #16 : Federal Economic Development Initiative in Northern Ontario ("FEDNOR")

Government Authority Providing the Subsidy: Canadian Federal Government

Program Description:

FEDNOR is an agency of Industry Canada, a department of the Canadian government, which promotes investment, innovation, and trade in Northern Ontario. Under FEDNOR, a considerable portion of government assistance is provided to Community Futures Development Corporations, non-profit community organizations providing small business advisory services and offering commercial loans to small and medium enterprises. FEDNOR also provides government assistance in the form of grants. FEDNOR currently remains in effect.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³¹

Subsidy Program #17 : Forestry Innovation Investment Program ("FIIP")

Government Authority Providing the Subsidy: British Columbia Government

Program Description:

The FIIP came into effect on April 1, 2002, and was incorporated as Forestry Innovation Investment Ltd. ("FII"). FII funds are used to support the activities of universities, research and educational organizations, government ministries 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. As of April 1, 2004, the Forestry Science Program became the successor program to the FIIP.

The Department of Commerce found this program countervailable in the First, Second and Third Administrative Reviews of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³²

³¹ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

³² Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

Subsidy Program #18 : **British Columbia Private Forest Property Tax Program**

Government Authority Providing the Subsidy: British Columbia Government

Program Description:

The British Columbia Private Forest Property Tax program imposes different tax rates on the two classes of private forest land: Class 3, "unmanaged forest land," and Class 7, "managed forest land." The tax program is codified in several laws, including the 1996 Assessment Act. 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." Under the tax program, the property tax rates for Class 7 are generally lower than for Class 3 land at all levels of tax authority for most, though not all, taxes.

The Department of Commerce found this program countervailable in the First, Second, and Third Administrative Reviews of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³³

Subsidy Program #19: **Compensation for Tenure Reclamation Under Protected Areas Forest Compensation Act ("PAFCA") and Forest Revitalization Act ("FRA")**

Government Authority Providing the Subsidy: British Columbia Government

Program Description:

Both the PAFCA and FRA programs compensate tenure holders for tenure areas reclaimed for the purpose of creating identified parks, protected areas, and ecological reserves established by the BC government. Enacted on May 20, 2002, PAFCA covers tenure take backs that occurred from 1995 to the end of 2001 for which compensation claims were not otherwise settled. Under the FRA, which took effect on March 31, 2003, the BC government reduced certain areas of Crown land covered by a timber license. Although tenure holders pay little or no money for the land rights at the outset, under both PAFCA and FRA the BC government provides compensation settlements to tenure holders in the form of cash in exchange for government-reclaimed land rights.

The Department of Commerce found this program countervailable in the Third Administrative Review of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³⁴

³³ Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

³⁴ Softwood Lumber AR 3 Prelim.

Subsidy Program #20 : Private Forest Development Program

Government Authority Providing the Subsidy: Quebec Government

Program Description:

The PFDP promotes the development of private forest resources in Quebec. In particular, the PFDP provides silviculture support to private woodlot owners through payments, either made directly to forest engineers or via reimbursement to the woodlot owner for silviculture treatments executed on private land.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³⁵

Subsidy Program #21: Investment Quebec Assistance under Article 28

Government Authority Providing the Subsidy: Quebec Government

Program Description:

Assistance under Article 28 is administered by Investissement Quebec, a government corporation. This program replaced a prior program of government assistance under Article 7, which was administered by the Societe de Developpement Industriel du Quebec ("SDI"). Under Article 7, SDI provided financial assistance in the form of loans, loan guarantees, grants, assumption of interest expenses, and equity investments to projects that would significantly promote the development of Quebec's economy. Prior to authorizing assistance, the SDI would review a project to ensure that it had strong profit potential and that the recipient business possess the necessary financial structure, adequate technical and management personnel, and the means of production and marketing required to complete the proposed project. The Article 28 program operates in fundamentally the same manner as the Article 7 did.

The Department of Commerce found this program countervailable in the First, Second, and Third Administrative Reviews of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³⁶

³⁵ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

³⁶ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

Subsidy Program #22 : Assistance From Societe de Recupertion d'Exploitation et de Development Forestiers du Quebec ("Rexfor")

Government Authority Providing the Subsidy: Quebec Government

Program Description:

SGF Rex for, Inc. ("Rex for") is a corporation, all of whose shares are owned by the Societe Generale de Financement du Quebec ("SGF"). SGF is an industrial and financial holding company that finances economic development projects in cooperation with industrial partners. Rex for is SGF's vehicle for assistance to the forest products industry. Rex for receives and evaluates investment opportunities and determines whether to become an investor either through equity or participative subordinated debentures.

The Department of Commerce found this program to be a countervailable subsidy in all segments of the most recent Certain Softwood Lumber Products from Canada countervailing duty proceeding.³⁷

Subsidy Program #23: Capital Tax Credit for Primary Wood Processing Facilities

Government Authority Providing the Subsidy: Quebec Government

Program Description:

Under this program, the Quebec government accords forest sector companies a tax credit of 15 percent of the purchase price for new manufacturing and processing equipment purchased after March 23, 2006 and before December 31, 2012. The stated purpose of the capital tax credit is to reduce the cost of acquiring manufacturing and processing equipment. Quebec has estimated that the program will reduce taxes paid by forest sector companies by C\$120 million by the end of 2010. This program is clearly targeted at the forest products industry.

The U.S. government has advanced a claim that this program violates the 2006 U.S.-Canada Softwood Lumber Agreement in an arbitration proceeding (LCIA 81010).

³⁷ Softwood Lumber Investigation Final; Softwood Lumber AR 1 Final; Softwood Lumber AR 2 Final; Softwood Lumber AR 3 Prelim.

Subsidy Program #24: **Forest Management Measures**

Government Authority Providing the Subsidy: Quebec Government

Program Description:

Announced in October 2006, this program consists of more than C\$700 million in government "investments" in the various aspects of the forestry sector. The primary purposes of the program are to assist forest industry companies in modernizing their operations and to stimulate investment in the forest products industry. The program includes (1) a refundable tax credit of 90 percent for forest sector companies making investments in forest access roads and bridges, and (2) a reduction of the cost of logging operations through payments targeted at reforestation, forest fire prevention and pest control.

The U.S. government has advanced a claim that this program violates the 2006 U.S.-Canada Softwood Lumber Agreement in an arbitration proceeding (LCIA 81010).

Subsidy Program #25: **Forest Sector Financing "Envelope"**

Government Authority Providing the Subsidy: Quebec Government

Program Description:

This program, valued at roughly C\$425 million, assists forest sector companies in financing capital projects and asset acquisition projects. Originally intended to assist forest sector companies deal with the antidumping and countervailing duties in place in early 2006, the program changed direction once the Softwood Lumber Agreement entered into force in October 2006. At that point, the program was re-designed to provide financing for working capital, consolidation projects, and investment and asset acquisition projects. Favorable, non-market financing under this program provides a benefit to softwood lumber producers and exporters within Quebec. Furthermore, the loan guarantees provided under this program by the Quebec government induce financial institutions to take actions they would not otherwise take in a declining sector.

The U.S. government has advanced a claim that this program violates the 2006 U.S.-Canada Softwood Lumber Agreement in an arbitration proceeding (LCIA 81010).

Subsidy Program #26: **Forest Sector Prosperity Fund ("FSPF")**

Government Authority Providing the Subsidy: Ontario Government

Program Description:

The FSPF provides millions of Canadian dollars in targeted grants to Ontario's forest industry. The program provides grants for approved forest sector projects of up to 30 percent of project value or C\$25 million. The Ontario Ministries of Natural Resources and Finance

possess the discretion to approve or reject any qualifying application for FSPF benefits. Eligibility under the program is tied to investment in production and exportation of forest products.

The U.S. government has advanced a claim that this program violates the 2006 U.S.-Canada Softwood Lumber Agreement in an arbitration proceeding (LCIA 81010).

Subsidy Program #27: **Forest Sector Loan Guarantee Program ("FSLGP")**

Government Authority Providing the Subsidy: Ontario Government

Program Description:

The FSLGP provides Ontario forest sector companies with loan guarantees of up to \$350 million over five years. The program is designed to boost the competitiveness of the Ontario forestry sector, and is based on the same discretionary statute, employs the same subjective criteria, and uses the same discretionary approval process as the FSPF (discussed above). Among the key features of the FSLGP are that (1) the loan guarantees are generally for a minimum of two years and a maximum of five years, (2) individual loan guarantees under the program will range from a minimum of C\$500,000 to a maximum of C\$25 million, and (3) the loan guarantees provided are for up to 100 percent of the project loan value.

The U.S. government has advanced a claim that this program violates the 2006 U.S.-Canada Softwood Lumber Agreement in an arbitration proceeding (LCIA 81010).

Subsidy Program #28: **Forest Roadbuilding Program**

Government Authority Providing the Subsidy: Ontario Government

Program Description:

This program provides approximately C\$75 million annually for construction and maintenance of primary and secondary forest access roads used for commercial timber harvesting. According to reports, the program funds 100 percent of the cost for primary road construction and maintenance and 50 percent of the cost for secondary road construction, with some support for secondary road maintenance. Ontario tenure holders initially pay the cost of building and maintaining forest roads, and this program reimburses all or part of those road building costs, thereby providing a benefit to softwood lumber producers. The Ontario Ministry of Natural Resources ("MNR") announced that this program would significantly reduce wood delivery costs for Ontario lumber producers.

Under this program, the Ontario MNR exercises discretion in deciding whether to approve requests for funds, deciding the specific types of construction work covered by the program, deciding what amounts are reasonable to claim per mile, deciding which road category a spe-

cific roads is in (primary, secondary, or non-forest), and deciding how to divide available funding among the eligible projects.

The U.S. government has advanced a claim that this program violates the 2006 U.S.-Canada Softwood Lumber Agreement in an arbitration proceeding (LCIA 81010).

Subsidy Program #29: Northern Pulp and Paper Electricity Transition Program

Government Authority Providing the Subsidy: Ontario Government

Program Description:

Ontario announced November 20, 2006 that it will provide C\$140 million in electricity rebates over three years to reduce electricity bills for northern Ontario pulp and paper mills up to 15%. Canadian sources have indicated that nine companies, with 11 mills, filed applications for benefits. Although subsidies to paper production are not inherently countervailable as lumber subsidies, in this case part of the intent was to allow sawmills to keep operating, and at least some of the funds will go to integrated lumber producers. In remote regions such as northern Ontario the existence of a pulp or paper mill is essential to keeping sawmills economically viable. Electricity is a major cost for pulp and paper mills, and many such mills have become uneconomical to operate in northern Ontario following electricity deregulation over the last several years. As the president of Buchanan Forest products, an integrated paper and lumber producer, said of Ontario's new electricity subsidy program:

This is great news for Ontario's forest sector. It helps us stay competitive. It will keep jobs in the north. This is good for our industry and a "win" for the communities in our region. Our sawmills need pulp and paper operations to use the wood chips they produce, and this helps to ensure that.

Ontario government and industry are thus using "paper" subsidies to subsidize lumber producers.

Subsidy Program #30: Northern Ontario Grow Bonds Pilot Program

Government Authority Providing the Subsidy: Ontario Government

Program Description:

A Canadian report documents a loan of C\$250,000 under this program to Manitou Forest Products to expand its mill.