

DEWEY & LEBOEUF

Dewey & LeBoeuf LLP
1101 New York Avenue, N.W.
Washington, DC 20005-4213

tel +1 202 346-7980
fax +1 202 346-8102
hclark@dl.com

November 26, 2008

PUBLIC DOCUMENT

BY HAND DELIVERY

The Honorable Carlos M. Gutierrez
Secretary of Commerce
Attn: Import Administration
APO/Dockets Unit, Room 1870
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).

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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 shortfall 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 Rexfor, Inc. ("Rexfor") 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. Rexfor is SGF's vehicle for assistance to the forest products industry. Rexfor 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.