SOFTWOOD LUMBER SUBSIDIES REPORT

TO THE CONGRESS

U.S. Department of Commerce

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TABLE OF CONTENTS

I. Background and Reporting Methodology

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

As in past reports, for this, the 29th Softwood Lumber Subsidies Report to Congress, we are relying on a six-month period (*i.e.*, January 1, 2022, through June 30, 2022) to identify the countries subject to review. Given the large number of countries that export softwood lumber and softwood lumber products to the United States, it is impractical to find subsidy information for every country that exports softwood lumber or softwood lumber products to the United States.[1] Instead, to provide a report that reflects subsidies which have a significant impact on the U.S. softwood lumber industry, we analyzed U.S. imports of softwood lumber and softwood lumber products to determine which countries were the largest exporters of such products to the United States. Based on data published by the United States International Trade Commission's DataWeb, we have included in this report subsidies provided by Austria, Brazil, Canada, Germany, Romania, and Sweden, the only countries with exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) codes 4407.1100, 4407.1200, 4407.1300, 4407.1400, and 4407.1900,[2] during the period January 1, 2022, through June 30, 2022.[3]

Under U.S. countervailing duty (CVD) law, a subsidy will be found if a government authority: (i) provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section 771(5)(B) of the Tariff Act of 1930, as amended (the Act). Because the statute does not impose a limitation on the subsidies subject to the reporting requirement, this report, like previous reports, includes subsidy programs, some of which may have expired. *See* section 809(b) of the Act.

II. Identification of Subsidies

The U.S. government investigates and monitors the provision of subsidies by other countries through various means, including the enforcement of U.S. trade laws, participation at the World Trade Organization (WTO), the implementation of bilateral trade agreements, as well as public comment. Therefore, we examined subsidies identified in those areas, specifically: (A) CVD

[1] For the period January 1, 2022, through June 30, 2022, 52 countries exported softwood lumber and softwood lumber products to the United States.
[2] We previously queried HTSUS codes 4407.1001, 4407.1905, 4407.1906, 4407.1910. However, those codes were deactivated and replaced by codes included in the import data query for the period January 1, 2022, through June 30, 2022.
[3] During the period, Canada accounted for 83.72 percent, Germany 6.00 percent, Sweden 2.53 percent, Brazil 1.57 percent, Austria 1.23 percent, and Romania 1.19 percent of total U.S. imports.

investigations and reviews; (B) WTO reporting by member countries and WTO monitoring; (C) subsidies identified in the course of enforcing bilateral agreements regarding softwood lumber and softwood lumber products; and (D) comments from the public.

A. CVD Proceedings

To identify subsidies on softwood lumber or softwood lumber products provided by Canada, we analyzed the most recently completed CVD proceedings involving exports to the United States of softwood lumber or softwood lumber products from Canada and have included in this report any subsidies identified in relevant proceedings.[4]

On November 2, 2017, the U.S. Department of Commerce (Commerce) issued its final determination in the CVD investigation of certain softwood lumber products from Canada (*Lumber V*).[5] We have included in this report the subsidies identified in *Lumber V Final Determination*. We have also included subsidies to softwood lumber production identified in the final results of the expedited review, and the final results of the first, second, and third administrative reviews of *Lumber V*.[6]

Prior to *Lumber V*, in 2002, Commerce issued a CVD order on certain softwood lumber products from Canada (*i.e.*, *Lumber IV*).[7] Because there are some subsidies that were identified in that proceeding (including the last administrative review of the *Lumber IV* order) that were not investigated in *Lumber V*, we have included subsidies that were found in the administrative review of *Lumber IV* covering the period April 2003 through March 2004.[8] In 2006, the United States and Canada signed the Softwood Lumber Agreement (SLA), a bilateral accord between the United States and Canada, which resulted in the U.S. government terminating the *Lumber IV* order on imports of Canadian softwood lumber. On October 12, 2015, the SLA expired.

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[4] As stated above, this report presents public information on subsidies in place during the period January 1, 2022, through June 30, 2022, as identified in the following areas, specifically: (A) U.S. CVD proceedings; (B) WTO reporting by member countries and WTO monitoring; (C) subsidies identified in the course of enforcing bilateral agreements regarding softwood lumber and softwood lumber products; and (D) comments from the public.

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

[6] *See Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121 (July 5, 2019) (*Lumber V Expedited Review Final Results*), and accompanying IDM; *Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review; 2017-2018*, 85 FR 77163 (December 1, 2020) (*Lumber V First Review Final Results*), and accompanying IDM; and *Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review; 2019*, 86 FR 68467 (December 2, 2021) (*Lumber V Second Review Final Results*), and accompanying IDM; and *Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review; 2020*, 87 FR 48455 (August 9, 2022) (*Lumber V Third Review Final Results*), and accompanying IDM.

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

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

This report also includes subsidies that appear to be applicable to softwood lumber production that were found in two other CVD proceedings involving Canada: *Supercalendered Paper*[9] and *Uncoated Groundwood Paper.*[10]

B. WTO Notifications and Monitoring

We identified two sources of information from the WTO: Subsidies Notifications and Trade Policy Reviews (TPR). The Subsidies Notifications is the primary source of information under the WTO framework for each member country's subsidy programs. WTO member countries are required to notify the WTO of specific subsidies, in accordance with Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). This portion of the SCM Agreement requires that members notify all specific subsidies, at all levels of government and covering all goods sectors, to the SCM Committee. Notifications are due every two years and are available on the WTO's website.[11] The European Union (EU) has not issued a new subsidy notification for Germany, Romania, or Sweden since the 28th lumber subsidies report. However, since the 27th lumber subsidies report (the most recent report to include Austria), the EU issued a new subsidy notification for Austria.

Pursuant to the WTO's TPR Mechanism, each WTO Member's trade policies and practices are subject to periodic review by the Membership. As part of each TPR, the WTO Secretariat and the Member under review each draft a report. The Secretariat Report provides information on each Member's subsidy programs. The frequency of each country's TPR varies according to its share of world trade. The EU is subject to review every two years. Canada and Brazil are subject to review every four years. The TPR documents for each Member are available from the WTO Secretariat and are available on the WTO's website.[12] Since the prior lumber subsidies report, only Brazil underwent a TPR.

C. Monitoring and Enforcement Related to Bilateral Trade Agreements

We have also included in this report subsidies identified in the course of administering and enforcing the SLA.[13]

D. Public Comment

On October 27, 2022, Commerce published a notice in the *Federal Register* soliciting public

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[9] *See Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper Final Determination*), and accompanying IDM. Subsidies identified are unchanged in *Supercalendered Paper from Canada: Countervailing Duty Order*, 80 FR 76668 (December 10, 2015) (collectively, *Supercalendered Paper*); *see also Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper Expedited Review Final Results*), and accompanying IDM. Subsidies identified are unchanged in *Supercalendered Paper from Canada: Amended Final Results of the Countervailing Duty Expedited Review*, 82 FR 25244 (June 1, 2017).

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

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

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

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

comment on subsidies provided by Austria, Brazil, Canada, Germany, Romania, and Sweden on softwood lumber or softwood lumber products for inclusion in this report.[14] On November 28, 2022, Commerce received a comment filing from Conseil de l'industrie forestière du Québec and the Ontario Forest Industries Association, which is attached as an appendix.

III. <u>Subsidies Provided</u>

In each report issued to Congress, we listed all known subsidies provided by the exporting countries under consideration, identified using the methodology described above. The chart below shows the countries which were included in prior reports.

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

*Current report.

[14] *See Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment*, 87 FR 65031 (October 27, 2022).

CANADA

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

A. Subsidies Identified in CVD Proceedings

Commerce determined that the following programs benefited Canadian softwood lumber producers in the *Lumber V Final Determination*; *Lumber V Expedited Review Final Results*; *Lumber V First Review Final Results*; *Lumber V Second Review Final Results*; *Lumber V Third Review Final Results*; *Lumber IV 2nd Review Final Results*;[15] *Supercalendered Paper Final Determination*; *Supercalendered Paper Expedited Review Final Results*; and *Uncoated Groundwood Paper Final Determination*.

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

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

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

In Canada, the vast majority of standing timber used by softwood lumber producers originates from lands owned by the Crown. In the *Lumber IV 2nd Review Final Results*, *Lumber V Final Determination*, *Lumber V First Review Final Results*, *Lumber V Second Review Final Results*, and *Lumber V Third Review Final Results*, Commerce found that the provincial governments provided a countervailable subsidy to softwood lumber producers by selling the key input for softwood lumber production, timber, to the Canadian producers in each of the provinces listed above for LTAR.[16] Each of the Canadian provinces has established programs through which it charges certain license holders "stumpage" fees for standing timber harvested from Crown lands.

- British Columbia (BC) Log Export Restraints

[15] During the conduct of the *Lumber IV* investigation and three subsequent administrative reviews, Commerce investigated a large number of programs, not all of which were in use, or evaluated, during the second administrative review. Because the second administrative review was the most recently completed administrative review of the *Lumber IV* order, we have used it as the most current and accurate measure of our findings in *Lumber IV.*

[16] *See Lumber IV 2nd Review Final Results* IDM at 8-16; *see also Lumber V Final Determination* IDM at 9-10; *Lumber V First Review Final Results* IDM at 12-14; *Lumber V Second Review Final Results* IDM at 11-12; and *Lumber V Third Review Final Results* IDM at 13-14.

The Forest Act states that all timber harvested in BC is required to be used or manufactured in BC into wood products. Logs cannot be exported unless they meet certain criteria, the most common of which is that they are surplus to the needs of the BC timber processing industry. The Government of BC (GOBC) requires private log suppliers to offer logs to BC mill operators, and they may export the logs only if there are no purchasers in the province. The GOBC's actions require private suppliers of BC logs to sell to, and satisfy the demands of, BC consumers, including mill operators. The export exemption process discourages log suppliers from considering opportunities in the export market by encumbering their ability to export, especially where there is uncertainty as to whether their logs may be found to be surplus to the requirements of BC mills.[17]

- Non-Stumpage Programs Determined To Confer Subsidies

Programs Administered by the Government of Canada (GOC)

1. Canada—New Brunswick Job Grant Program

This program is part of a joint effort between the GOC and its provinces and territories, under six-year agreements, in which the GOC provides federal funding to provincial or territorial governments for the purposes of increasing labor market participation of groups that are underrepresented in Canada's labor force and enhancing the employability and skills of Canada's labor force. The New Brunswick aspect of the program was launched in January 2015 pursuant to the Canada-New Brunswick Job Fund Agreement, and is administered by the Department of Post-Secondary Education, Training and Labour (PETL). The Government of New Brunswick (GONB) designed the program, and the GOC contributes two-thirds of the eligible training costs, up to a maximum amount of C$10,000 per participant, per fiscal year (FY).[18]

2. Canada-Alberta Job Grant Program/Alberta Workforce Development Agreement

The Canada-Alberta Job Grant is a federal-provincial partnership administered by the Alberta Ministry of Labour and Immigration. The GOC provides funding to the GOA to increase participation in the labor force by helping workers develop essential skills. The program was originally funded through the Canada-Alberta Job Fund Agreement, an agreement between the GOC and the GOA. The agreement was subsequently replaced in 2018 by the Canada-Alberta Workforce Development Agreement. Employers in Alberta determine the type of training necessary for new and existing employees, and are required to use a third-party training provider to deliver formal training. Under the program, the GOC provides up to $10,000 for existing employees and up to $15,000 for unemployed trainees per fiscal year. To be eligible for funding under the program, a business must be operating in the province of Alberta.[19]

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

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

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

4. Apprenticeship Job Creation Tax Credit (AJCTC)

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

5. Atlantic Investment Tax Credit (ITC)

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

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[20] *See Lumber V Final Determination* IDM at 13-14; *see also Lumber V Expedited Review Final Results* IDM at 7-8; *Lumber V First Review Final Results* IDM at 24; *Lumber V Second Review Final Results* IDM at 20; and *Lumber V Third Review Final Results* IDM at 22.
[21] *See Lumber V Final Determination* IDM at 14; *see also Lumber V First Review Final Results* IDM at 24.
[22] *See Lumber V Final Determination* IDM at 14; *see also Lumber V Expedited Review Final Results* IDM at 8; *Lumber V First Review Final Results* IDM at 25; *Lumber V Second Review Final Results* IDM at 21; and *Lumber V Third Review Final Results* IDM at 22.

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

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

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

The ACOA was established by the GOC to support and promote opportunity for economic development of the Atlantic Region of Canada, pursuant to the Atlantic Canada Opportunities Agency Act. The AIF program is administered by ACOA and was established by the GOC in 2000 with the following objectives: (1) to increase activity in and to build capacity for innovation, research and development (R&D) which leads to technologies, products, processes, or services which contribute to economic growth in Atlantic Canada; (2) to increase the capacity for commercialization of R&D outputs; (3) to strengthen the region's innovation capacity by supporting research, development and commercialization partnerships and alliances among private sector firms, universities, research institutions, and other organizations in the Atlantic System of Innovation, and to increase their critical mass; and (4) to maximize benefits from the national R&D programs. Under the AIF, recipient companies operating in the Atlantic Region of Canada can receive transfer payments that are conditionally repayable, repayable, or non-repayable.[24]

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

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

During the 2003-2004 period covered by the most recently completed administrative review of the *Lumber IV* order, the WDP provided grants to softwood lumber producers or associations with two "sub-programs," *i.e.*, the International Trade Personnel Program (ITPP) and "Other WDP Projects." Under the ITPP and "Other WDP Projects," companies were reimbursed for certain salary expenses in Alberta, British Columbia, Manitoba, and Saskatchewan.[25]

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[23] *See Lumber V Final Determination* IDM at 14; *see also Lumber V Expedited Review Final Results* IDM at 9; *Lumber V First Review Final Results* IDM at 26; *Lumber V Second Review Final Results* IDM at 21; and *Lumber V Third Review Final Results* IDM at 22.
[24] *See Lumber V Final Determination* IDM at 18; *see also Lumber V Third Review Final Results* IDM at 26.
[25] *See Lumber IV 2nd Review Final Results* IDM at 16-17.

9. Natural Resources Canada (NRCan) Softwood Marketing Subsidies

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

The VWP is a five-year research and technology transfer initiative supporting the value-added wood sector through partnerships with academic and private non-profit entities. During the 2003-2004 period of review of *Lumber IV*, NRCan entered into research contribution agreements with Forintek Canada Corp. (Forintek) to do research on efficient resource use, manufacturing process improvements, product development, and product access improvement. The VWP is still available. *See* "Subsidies Identified from Canada's WTO Notification" for additional information.

The NRII is a two-year program that provides salary support to three national research institutes: Forest Engineering Research Institute of Canada (FERIC), Forintek, and Pulp & Paper Research Institute of Canada. In the 2003-2004 administrative review of *Lumber IV*, Commerce found that FERIC's research covers harvesting, processing, and transportation of forest products, silviculture operations, and small-scale operations and, thus, government-funded R&D by FERIC benefits, *inter alia*, producers of softwood lumber. Similarly, Commerce found that Forintek's operations are done in collaboration with the GOC under NRII, which pertain to resource utilization, tree and wood quality, and wood physics.[26] The NRII is periodically reinstituted.[27]

10. Federal Logging Tax Credit (FLTC)

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

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

The TISQFE was created in 2010, by the Canada Economic Development of Québec Regions (CED) to strengthen and increase economic activity in areas of Québec affected by the forestry

[26] The area of wood science is concerned with the physical and mechanical properties of wood and the factors which affect them.
[27] *See Lumber IV 2nd Review Final Results* IDM at 17-18.
[28] *See Lumber V Expedited Review Final Results* IDM at 8; *see also Lumber V First Review Final Results* IDM at 25; and *Lumber V Second Review Final Results* IDM at 21.

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

12. Sustainable Development Technology Canada (SDTC)

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

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

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

14. CCA for Class 43.2 Assets

The Class 43.2 CCA provides an accelerated depreciation for specified clean energy generation and energy conservation property. Class 43.2 assets, listed in Schedule II of the ITR, include certain capital costs of systems that produce energy by using renewable energy sources or waste, or conserve energy by using fuel more efficiently, which were acquired after February 22, 2005, and before 2025. Equipment classified under Class 43.2 are depreciated at the CCA rate of 50 percent per year on a declining balance basis, rather than a 30 percent rate on a declining basis under Class 43.1.[32]

15. Green Jobs Program

Employment and Social Development Canada (ESDC) administers and provides funding for the Green Jobs Program through ESDC's Youth Employment and Skills Strategy (YESS) program.

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[29] *See Lumber V Expedited Review Final Results* IDM at 11.
[30] *See Lumber V First Review Final Results* IDM at 14; *see also Lumber V Third Review Final Results* IDM at 15.
[31] *See Lumber V First Review Final Results* IDM at 25; *see also Lumber V Second Review Final Results* IDM at 20-21; and *Lumber V Third Review Final Results* IDM at 22.
[32] *See Lumber V Second Review Final Results* IDM at 21.

YESS provides funding to third-party organizations such as Project Learning Tree Canada (PLT), a charitable organization. PLT Canada provides services to help young people develop skills and knowledge to pursue sustainable green jobs. Specifically, PLT Canada's Green Jobs Program provides wage-matching funds to employers who provide opportunities for young Canadians to develop skills on the job. Program funds match up to 50 percent of an employee's salary, up to a maximum of CAD $5,712. The program is limited to jobs that support sustainability in the forest and conservation sectors, such as positions involved in forest management, silviculture, and forest products operations.[33]

Programs Administered by the Government of Alberta (GOA)

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

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

Provided the applicant applied during an open call for applications and met the program eligibility criteria, an applicant would be approved under BPCP 2011-2016. The payments under the BPCP were made on a quarterly basis, and if a company initially met the guidelines to receive BPCP payments and continued to meet the guidelines going forward, then the company could continue to expect to receive payments under BPCP until the program ended in 2016.[34]

2. Alberta Tax-Exempt Fuel Program for Marked Fuel

The Marked Fuel Tax Exemption program, which is part of the GOA's larger Tax-Exempt Fuel Use program, provides a tax exemption of nine cents per liter to eligible companies and municipalities when fuel is used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities. Eligibility for this program is limited in Alberta's *Fuel Tax Regulation* to those entities that have a valid fuel tax exemption certificate. Only consumers that intend to purchase marked fuel for specific purposes or uses set forth in section 8(3) of the *Fuel Tax Regulation* are eligible for a fuel tax exemption certificate to purchase marked fuel.[35]

[33] *See Lumber V Third Review Final Results* IDM at 14.
[34] *See Lumber V Final Determination* IDM at 11; *see also Lumber V First Review Final Results* IDM at 15.
[35] *See Lumber V Final Determination* IDM at 14-15; *see also Lumber V First Review Final Results* IDM at 26; *Lumber V Second Review Final Results* IDM at 22; and *Lumber V Third Review Final Results* IDM at 23.

3. SR&ED – GOA

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

The GOA reports that the SR&ED – GOA credit applies to eligible R&D expenditures. The credit is available for all expenditures incurred by corporations in Alberta after December 31, 2008, that are also eligible for the SR&ED – GOC credit, which is a program addressed separately above. The SR&ED – GOA tax credit is calculated according to sections 26.6 through 26.91 of the Alberta Corporate Tax Act, equal to 10 percent of a company's eligible expenditures up to C$4 million, for a maximum credit of C$400,000 per tax year. Once corporations show that their expenditures were incurred in Alberta and are eligible for the federal SR&ED tax credit, such corporations can claim the provincial tax credit.[36]

4. Alberta Bio Future (ABF)

The ABF is administered by the provincial government corporation, Alberta Innovates. Alberta Innovates was established pursuant to the *Alberta Research and Innovation Act* and the *Alberta Public Agencies Governance Act*. Launched in March 2015, the ABF provides grants in three strategic priority areas: (1) research and innovation, (2) product and technology commercialization, and (3) equipment utilization. The program focuses on projects that enhance value to biomass in agriculture and forestry and create new bio-industrial products and bio-industrial technologies.[37]

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

Property tax abatement benefits are provided in the form of property tax allowances reflecting diminished economic value for certain facilities and relate to the value for property tax purposes only. The depreciation for machinery and equipment in Alberta is governed by the Alberta Machinery & Equipment Minister's Guidelines. The Guidelines provide that an assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists for any depreciation not reflected in normal schedules. This additional depreciation is commonly referred to as economic obsolescence. Each individual property tax abatement is determined through discussions with municipal assessors.[38]

6. Schedule D Depreciation

Under Alberta's property assessment and taxation system, the value of a property determines the amount of property tax owed, and valuation assessments of industrial property take place annually. Regulations in the Municipal Government Act detail how Schedule D depreciation

[36] *See Lumber V Final Determination* IDM at 15; *see also Lumber V First Review Final Results* IDM at 26; *Lumber V Second Review Final Results* IDM at 22; and *Lumber V Third Review Final Results* IDM at 23.
[37] *See Lumber V First Review Final Results* IDM at 15.
[38] *See Lumber V First Review Final Results* IDM at 27; *see also Lumber V Second Review Final Results* IDM at 23; and *Lumber V Third Review Final Results* IDM at 23.

allows additional depreciation to be factored into the valuation of the industrial property. Such allowances are limited to highly unusual site-specific circumstances such as catastrophic physical failure and are only allowed on a case-by-case basis when evidence is documented and approved by the assessor.[39]

7. Custom Energy Solutions (CES) Program

The CES program is administered by Energy Efficiency Alberta, a crown corporation established under the 2016 *Energy Efficiency Alberta Act*. The CES program offers financial incentives designed to improve the energy efficiency of industries with high energy needs. Commercial, institutional, and industrial organizations that emit more than 5,000 tons, but less than 100,000 tons, of greenhouse gases (GHG) per year are eligible for funding. The CES Implementation Program provides technical support and funds for scoping audits and engineering studies to assess a facility's energy usage in order to determine energy efficiency upgrades. This subprogram also offers financial support and incentives to implement the upgrades. The On-site Energy Manager Program provides funds that cover up to 90 percent of an on-site energy manager's first-year salary. The energy manager's role is to provide expertise to support decision-making for energy efficiency improvements.[40]

8. Load Shedding Services for Imports

Load shedding is a system reliability tool deployed by an Independent System Operator (ISO) as a means to preserve system reliability when demand and supply electricity imbalances create frequency drops that threaten the system. Alberta's ISO is the Alberta Electric System Operator (AESO). To restore balance when generation and load demand are out of alignment, a system can either decrease the load demand or increase generation. However, Alberta's electric system does not have the ability to increase generation quickly enough to respond to a sudden loss of imported power generation. Thus, to decrease the load demand, the AESO trips the loads of electricity market participants that have made their facilities available to immediately disconnect from the electrical system. Market participants submit bids to make their facilities available for load tripping, and the AESO evaluates and selects providers on a competitive basis, from lowest to highest price. Customers that provide load shedding to AESO are compensated for the costs they incur during load tripping. The AESO pays load shedding providers based on the amount of availability offered and for the tripping of electricity pursuant to contracts between the AESO and the providers.[41]

9. Carbon Levy Rebate

The GOA imposes two tax regimes related to GHG emissions. The first regime, the Specified Gas Emitters Regulation (SGER), in effect since 2007, requires that companies that emit more than 100,000 tons of GHG per year, or Large Final Emitters (LFE), to either pay a per-ton fee for GHG emissions, purchase and use emissions offsets or performance credits, and/or reduce

[39] *See Lumber V First Review Final Results* IDM at 27; *see also Lumber V Second Review Final Results* IDM at 22; and *Lumber V Third Review Final Results* IDM at 23.
[40] *See Lumber V Second Review Final Results* IDM at 13; *see also Lumber V Third Review Final Results* IDM at 15.
[41] *See Lumber V Second Review Final Results* IDM at 13; *see also Lumber V Third Review Final Results* IDM at 15.

emissions below a specified level. The second regime, the provincial carbon levy, effective 2017, applies to all fossil fuel purchases. To avoid double taxing companies, the GOA exempted facilities subject to the SGER from the carbon levy. The GOA subsequently amended the SGER to allow certain facilities that were not subject to the SGER to opt in to the SGER and thus claim an exemption for the carbon levy. To be eligible to opt in, a facility must emit less than 100,000 tons of GHG per year and compete directly with an LFE that is subject to the SGER (*i.e.*, sell the same product). During the SGER opt-in approval process, facilities continue to purchase fuel with the carbon levy included. Once approved to opt in to the SGER, facilities are eligible to apply for a rebate of the total carbon levy paid.[42]

10. TIER Emissions Offsets

The GOA manages an GHG emissions trading system for industrial facilities through the *Technology Innovation and Emissions Reduction Regulation* (TIER), which imposes emissions reduction obligations on large emitters, (*i.e.*, facilities that emitted 100,000 tons of GHG). These facilities must reduce their emissions to meet facility-specific emissions benchmarks. To comply, facilities can either pay a per-ton fee for GHG emissions over the facility benchmark, purchase and use emissions offsets or emissions performance credits (EPC) towards such fees, and/or reduce emissions below the specified level.

To earn EPCs, a TIER-regulated facility may undertake projects that reduce its emissions below its mandated reduction target. Each EPC is equivalent to a one-ton reduction below its facility emissions benchmark. To generate emissions offsets, a company that is not regulated under TIER may voluntarily implement a project that reduces its GHG emissions. Once a project is completed and verified, emissions offsets are registered with the Alberta Emissions Offset Registry (*i.e.*, serialized) and are available to be purchased and sold at a market-determined price. By virtue of creating this mechanism in which entities can earn, use, and sell emissions offsets, the GOA provides a fiscal allowance or certificate that has value at the time of bestowal.[43]

Programs Administered by the GOBC

1. BC Hydro Power Smart: Energy Manager

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

[42] *See Lumber V Second Review Final Results* IDM at 22.
[43] *See Lumber V Third Review Final Results* IDM at 15.

fund an employee dedicated to identifying energy conservation opportunities for a two-year term.[44]

2. BC Hydro Power Smart: Load Curtailment

BC Hydro operates the BC Hydro Power Smart program to comply with British Columbia's Clean Energy Act. This program includes subprograms under which industrial customers may qualify for a variety of grants as incentives for companies to lower their electricity usage. From November 2015 to March 2016, BC Hydro undertook a pilot program to determine whether large industrial customers could curtail their load during times when the demand on BC Hydro's electricity system was at its peak. Under the Load Curtailment Pilot subprogram, BC Hydro paid customers on a monthly basis based on the number of megawatts (MW) bid into the program at a fixed dollar per MW price.[45]

3. BC Hydro Power Smart: Incentives

BC Hydro operates the BC Hydro Power Smart program to comply with British Columbia's Clean Energy Act. This program includes subprograms under which industrial customers may qualify for a variety of grants as incentives for companies to lower their electricity usage. Under the Incentives subprogram, BC Hydro provides funding to support capital projects that achieve greater energy efficiency or displace the electrical load purchased from BC Hydro.[46]

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

The *Motor Fuel Act* of British Columbia permits the GOBC to charge different tax rates for clear and colored fuel. Colored fuel is taxed at a lower rate than clear fuel; however, certain conditions must be met to purchase colored fuel. In particular, purchasers must complete a Coloured Fuel Certification (FIN-430) certifying that they are eligible to purchase colored fuel and selecting on the form the reasons why, as colored fuel may only be used for certain authorized purposes. The authorized uses for colored fuel are primarily limited to off-highway applications under BC's *Motor Fuel Tax Act*. The form FIN-430 must be provided to any suppliers of colored fuel before making a purchase. Companies may then purchase colored fuel at the reduced motor fuel tax rate.[47]

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[44] *See Lumber V Final Determination* IDM at 11-12; *see also Lumber V First Review Final Results* IDM at 16; and *Lumber V Third Review Final Results* IDM at 16.
[45] *See Lumber V Final Determination* IDM at 12.
[46] *See Lumber V Final Determination* IDM at 12; *see also Lumber V First Review Final Results* IDM at 16; and *Lumber V Second Review Final Results* IDM at 14.
[47] *See Lumber V Final Determination* IDM at 15; *see also Lumber V First Review Final Results* IDM at 27; *Lumber V Second Review Final Results* IDM at 24; and *Lumber V Third Review Final Results* IDM at 24.

5. SR&ED – GOBC

The SR&ED tax credit is administered by the CRA on behalf of the GOBC. The program is designed to encourage R&D that will lead to new, improved, or technologically advanced products or processes. Corporations with permanent establishments in British Columbia that conduct qualifying SR&ED activities in British Columbia during a particular tax year may claim a BC tax credit on their qualifying expenditures.[48]

6. Revitalization Property Tax Exemption – Quesnel

The city of Quesnel, in the province of British Columbia, passed a bylaw in September 2005 to establish the Revitalization Tax Exemption program. The bylaw established a revitalization area within the municipality providing tax exemptions for land, improvements, or both land and improvements. To be eligible under the bylaw, the landowner must own property classified as Class 4 "Major Industrial" or certain qualifying Class "Business and other" property or alter an existing Class 4 or Class 6 improvement. The construction or alteration must result in an increase in assessed value of the property of at least C$16 million.[49]

7. BC Hydro Electricity Purchase Agreements (EPAs)

BC Hydro is a vertically integrated electric utility that owns and operates more than 30 generating facilities, 78,000 kilometers of transmission and distribution lines, and approximately 300 substations to provide electricity service to approximately 1.9 million customers representing about 4 million people. BC Hydro, a provincial Crown corporation, purchases energy from independent power producers (IPPs) pursuant to long-term EPAs. Through its EPAs with IPPs, BC Hydro secures long-term supply with long-term price certainty, avoids market price volatility, and avoids project development risks.[50]

8. Forestry Innovation Investment Program (FIIP)

The FIIP came into effect on April 1, 2002. On March 31, 2003, FIIP was incorporated as Forestry Innovation Investment Ltd. (FII). FII funds are used to support the activities of universities, research and educational organizations, and industry associations producing a wide range of wood products. FII's strategic objectives are implemented through three sub-programs addressing: research, product development, and international marketing. FII grants support product development and international marketing for Canadian softwood lumber producers.[51]

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[48] *See Lumber V Final Determination* IDM at 15; *see also Lumber V First Review Final Results* IDM at 28; and *Lumber V Second Review Final Results* IDM at 24.
[49] *See Lumber V Final Determination* IDM at 15-16.
[50] *See Lumber V Final Determination* IDM at 18; *see also Lumber V First Review Final Results* IDM at 33; *Lumber V Second Review Final Results* IDM at 27; and *Lumber V Third Review Final Results* IDM at 27.
[51] *See Lumber IV 2nd Review Final Results* IDM at 18.

9. British Columbia Private Forest Property Tax Program

British Columbia's property tax system has two classes of private forest land – Class 3, "unmanaged forest land," and Class 7, "managed forest land" – that incurred different tax rates from the 1990s through the 2003-2004 period of review. Various municipal and district (*a.k.a.*, regional) level authorities imposed generally lower rates for Class 7 than for Class 3 land. The tax program is codified in several laws, of which the most salient is the 1996 Assessment Act (and subsequent amendments). Section 24(1) of the Assessment Act contains forest land classification language expressly requiring that, *inter alia*, Class 7 land be "used for the production and harvesting of timber."[52]

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

The BC ETG program is the successor program to the Canada – BC Job Grant program, which provides funding to increase participation in the labor force by helping workers develop necessary skills. In 2018, the GOBC replaced the Canada – BC Job Grant program with the BC ETG via the joint Workforce Development Agreement between the GOC and the GOBC, and the program continues to be administered by the Ministry of Advanced Education, Skills, and Training. The BC ETG successor program operates in effectively the same manner as the Canada – BC Job Grant program.[53]

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

11. Carbon Offset Grants

Under the *Climate Change Accountability Act*, the GOBC requires BC public sector organizations to achieve carbon neutrality from 2010 onwards. For qualified projects, the GOBC estimates a monetary value representing the amount of carbon reduction realized by a project and issues Offset Units representing that value to the BC Carbon Registry. Once Offset Units are issued to the BC Carbon Registry, the recipient company can freely transfer Offset Units to other parties or sell them to the GOBC, which purchases Offset Units to meet the carbon neutrality requirement for the provincial public sector.[54]

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

Taxpayers in Canada generally pay provincial and federal income taxes on their income. However, taxpayers in the forestry industry are also subject to provincial logging taxes based on their logging income, in addition to the provincial and federal income taxes on their total income. A portion of the tax (one third) is rebated through a credit against income tax owed to the

[52] *See Lumber IV 2nd Review Final Results* IDM at 18-19.
[53] *See Lumber V First Review Final Results* IDM at 15; *see also Uncoated Groundwood Paper Final Determination* IDM at 12.
[54] *See Lumber V First Review Final Results* IDM at 16; *see also Lumber V Second Review Final Results* IDM at 14; and *Lumber V Third Review Final Results* IDM at 16.

GOBC, and the remainder (two thirds) is rebated through a credit against income tax owed to the GOC using the FLTC (*see* GOC section above). The FLTC and the GOBCs PLTC fully reimburse the respective taxpayer's net income tax on net logging income thus reducing the taxpayer's provincial logging tax to zero.[55]

13. Industrial Property Tax Credit (IPTC)/School Tax Credit

The GOBC establishes the tax rates applicable to non-residential taxable property within the province. For properties classified under Class 4 – Major Industry, the tax collecting authority is required to apply the IPTC on the tax collection notice, and the taxpayer then pays the net amount. Industries eligible for property classification under Class 4 – Major Industry include coal mining, petroleum and natural gas, manufacturing of lumber products, chemicals, synthetic resins, cement, insulation, and glass, ship building, and cargo loading/storage. Pursuant to sections 119 and 120 of the *School Act*, the IPTC is set to 60 percent of the provincial school tax payable. This credit is automatically applied to all properties classified as Class 4 – Major Industry.[56]

14. Training Tax Credit

Under the Industry Training Act, a tax credit is provided to employers participating in eligible apprenticeship programs administered through the Industry Training Authority. This BC tax credit functions as a corollary to the Apprenticeship Job Creation Tax Credit administered by the GOC.[57]

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

West Fraser performed work on certain project activities for BC Hydro related to energy production between 2011 and 2016. BC Hydro reimbursed West Fraser for expenditures related to the activities that West Fraser performed, or subcontracted to perform, for BC Hydro.[58]

16. CleanBC Program for Industry – Industrial Incentive Program

The CleanBC Program for Industry, administered by the Ministry of Environment and Climate Change Strategy's Climate Action Secretariat, is funded via revenue from the provincial carbon tax to promote reductions in GHG emissions. The program is comprised of the subprogram CleanBC Industrial Incentive Program which returns a portion of the provincial carbon tax paid by industrial emitters to the companies that meet emissions-reporting requirements under the *Greenhouse Gas Industrial Reporting and Control Act*. Large industrial operations with facilities that emit more than 10,000 tons of carbon dioxide per year are eligible. To qualify for a payment, a large industrial facility must have an emissions intensity below the eligibility threshold and meet a performance-based threshold. The eligibility threshold is the maximum

[55] *See Lumber V First Review Final Results* IDM at 28; *see also Lumber V Second Review Final Results* IDM at 24.
[56] *See Lumber V First Review Final Results* IDM at 28-29; *see also Lumber V Second Review Final Results* IDM at 23.
[57] *See Lumber V First Review Final Results* IDM at 29; *see also Lumber V Second Review Final Results* IDM at 24.
[58] *See Lumber V First Review Final Results* IDM at 17.

emissions intensity each industrial product or activity may reach. The performance-based threshold is an emissions intensity benchmark based on industry standards for the given sector. The program incentivizes cleaner operations by refunding up to 75 percent of the provincial carbon tax paid by such industrial facilities that meet the lower GHG emissions standards.[59]

17. Class Managed Forest Lands Assessment Rates[60]

The BC Assessment Authority (BCAA) classifies property and assesses property taxes throughout British Columbia. The BCAA classifies land and buildings into a number of classes, in which each class has a different taxation rate and is governed by a different section of the *Assessment Act*. The Class 7 Managed Forest Land classification applies to privately owned forest land for which certain forest management commitments (such as, reforestation activities, protection and preservation of water sources, and environmentally sound harvesting methods) have been made to the Managed Forest Council. Eligibility criteria include a minimum forest land size of 25 hectares, and landowners must harvest a certain percentage of the land. Pursuant to the *Taxation (Rural Area) Regulation*, a different tax rate is assigned to each property classification. Land and property under the Class 7 Managed Forest Land is assigned a rate of CAD $0.46 per CAD $1,000 of actual land value. The Class 5 Light Industry, defined as property used or held for extracting, manufacturing or transporting products, represents the most applicable alternative land classification for forestland if the province did not designate a separate classification solely for forestland. Class 5 properties have a rate of CAD $3.10 per CAD $1,000 of actual land value.[61]

18. CleanBC Industry Fund

The CleanBC Industry Fund, which is part of the CleanBC Program for Industry and administered by the BC Ministry of Environment and Climate Change Strategy's Climate Action Secretariat, encourages industrial operations in BC to reduce GHG emissions by funding emission reduction projects with carbon tax revenue. The program directs a portion of the provincial carbon tax paid by industrial emitters to the companies that meet emissions reporting requirements under the *Greenhouse Gas Industrial Reporting and Control Act*. Large industrial operations with facilities that emit more than 10,000 tons of carbon dioxide per year are eligible. The program that provides up to 50 percent of eligible project costs, up to CAD $8 million. Recipients must contribute at least 25 percent of the costs of the project to be eligible for funding.[62]

19. BCAA Section 9 Closure Allowance

The *Prescribed Classes of Property Regulation* provides nine class designations for which BCAA designates property pursuant to the *Assessment Act*. Class 4 Major Industry properties consist of land used in the operations of industrial improvements. There are 11 divisions of industrial facilities within Class 4 properties, including sawmills and pulp and paper mills.

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[59] *See Lumber V Second Review Final Results* IDM at 23; *see also Lumber V Third Review Final Results* IDM at 24.
[60] The program is also known as the Property Tax Program for Private Forest Land.
[61] *See Lumber V Second Review Final Results* IDM at 23.
[62] *See Lumber V Third Review Final Results* IDM at 16.

Section 9 of the *Depreciation Regulation* governs depreciation rates and methodology for Class 4 major industrial plants and industrial improvements that have closed during the past year. The closure allowance provided under Section 9 allows industrial plants and improvements that have shut down in the previous year to be depreciated by 90 percent regardless of actual age, in contrast to industrial plants and improvements that remain operational and are not eligible for depreciation.[63]

Programs Administered by the Government of Manitoba (GOM)

1. SR&ED – GOM

SR&ED – GOM, also known as the Research and Development Tax Credit is administered by the CRA. The GOM provides a tax credit of 20 percent of all eligible research and development expenditures to corporations with a permanent establishment in Manitoba. The Manitoba *Income Tax Act* defines eligible expenditures and provides the authority for the tax credit. Credits may be carried forward for 20 years and carried back for three years. Additionally, if the credit cannot be applied against taxes payable, 50 percent of the credit is refundable, with the remainder being eligible to be carried forward.[64]

2. Manufacturing and Processing Tax Credit

Manitoba's Manufacturing Investment Tax Credit (MITC) provides corporations with a 10 percent tax credit on purchases of qualified property to be used for manufacturing or processing that can be applied against corporate income tax payable in the year earned. Unused credits are eligible to be carried forward for 10 years and carried back three years. Furthermore, since 2013 this credit is 80 percent refundable. The MITC is administered by the CRA on behalf of the GOM. The Manitoba *Income Tax Act* provides for the MITC and defines qualifying property as property that is to be used by the corporation in Manitoba primarily for the manufacturing or processing goods for sale or lease.[65]

Programs Administered by the GONB

1. New Brunswick Provision of Silviculture Grants

The *Crown Lands and Forest Act* specifies silviculture activities that qualify for reimbursement under a licensee's applicable Forest Management Agreement (FMA), including site preparation, pre-commercial thinning, planting, and plantation cleaning. The GONB reimburses licensees at pre-established rates for the activities.[66]

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[63] *See Lumber V Third Review Final Results* IDM at 24.
[64] *See Lumber V Final Determination* IDM at 16.
[65] *See Lumber V Final Determination* IDM at 16.
[66] *See Lumber V Final Determination* IDM at 12; *see also Lumber V First Review Final Results* IDM at 17; *Lumber V Second Review Final Results* IDM at 14; and *Lumber V Third Review Final Results* IDM at 16.

2. New Brunswick License Management Fees (LMF)

Companies can receive payments in the form of LMFs from the GONB for non-silviculture activities required as part of their FMA for their license to harvest Crown-origin standing timber. Under the terms of its FMA, a company is obligated to perform certain management activities and reimbursed for the costs associated with these activities. The reimbursements are provided on a flat fee basis per cubic meter of standing timber harvested from the Crown land for which the company is a licensed tenure-holder. These payments are described as reimbursement for the responsibilities that companies undertake as the license holder. These responsibilities are outlined in the FMA, and they include road maintenance and construction costs, as well as the costs of administering all forestry-related activities, including submitting scale information (*i.e.*, reporting the volume harvested) to the GONB and conducting all invoicing of the sub-licensees on behalf of the GONB. The GONB establishes the rate at which it reimburses the company.[67]

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

The FAIP provides funding from the GONB for viable capital expenditures, working capital, and workforce expansion to enable the establishment, expansion, or maintenance of companies in eligible industries. Assistance may be provided in the form of a loan guarantee, direct loan, payroll rebate, or non-repayable contribution. The payroll rebate program provides rebates on a percentage of salaries. The FAIP was previously administered by New Brunswick's Department of Economic Development. In April 2015, the former Invest NB and the Department of Economic Development were merged into Opportunities New Brunswick, a Crown corporation, pursuant to the Opportunities New Brunswick Act. Eligible industries include six priority sectors, although other industries may also receive assistance under the program. The priority sectors include value-added food, value-added wood, industrial fabrication, aerospace and defense, information & communications technology, and biosciences.[68]

4. New Brunswick Workforce Expansion Program – One Job Pledge

The GONB reported that this program is administered under the Employment and Continuous Learning Services Branch of the GONB's Department of PETL. The One Job Pledge aspect of the New Brunswick Workforce Expansion Program provides financial assistance to eligible New Brunswick businesses in the form of wage subsidy rebates for new hires that are recent post-secondary graduates. The employer must create a new position for the new hire and must demonstrate that such a position would be sustainable after one year.[69]

5. New Brunswick Workforce Expansion Program – Youth Employment Fund

The Youth Employment Fund was launched in April 2015 pursuant to the Employment Development Act and provides an entry point to long term employment for unemployed individuals between 18-29 years of age, who are then matched with eligible employers for a

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[67] *See Lumber V Final Determination* IDM at 12; *see also Lumber V First Review Final Results* IDM at 17; *Lumber V Second Review Final Results* IDM at 14; and *Lumber V Third Review Final Results* IDM at 17.
[68] *See Lumber V Final Determination* IDM at 13.
[69] *See Lumber V Final Determination* IDM at 13; *see also Lumber V First Review Final Results* IDM at 18.

26-week work experience. Under the program, which is administered by the Department of PETL, 100 percent of the employee's minimum wage for 30 hours a week will be paid to employers participating in the program.[70]

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

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

The LIREPP program is available to any large industrial company that produces renewable energy and owns and operates a facility that has an electrical energy requirement of not less than 50 Gigawatt hours (GWh) per year, that obtains all or a portion of its electricity on a firm basis (vs. interruptible basis) from NB Power, and that exports at least 50 percent of its primary products to another province or territory within Canada or outside the country.[71]

7. New Brunswick R&D Tax Credit

This program provides a credit against GONB provincial taxes equal to 15 percent of eligible expenditures to carry out experimental development, applied research and basic research work, to any corporate or individual business taxpayers in New Brunswick. The objective of the program is designed to mirror the operation of the federal Scientific Research and Experimental Development Tax Incentive Program, and both programs are administered by the CRA. The provision of the credit is authorized under section 59 of the New Brunswick Income Tax Act. The credit is fully refundable; therefore, if the corporation did not owe provincial taxes, it can receive the credit in the form of a refund. Furthermore, because the credit is fully refundable, the eligible company receives the credit regardless of whether it has a tax obligation to which it can apply the credit (*i.e.*, regardless whether the company owes the GONB provincial tax).[72]

8. GONB Gasoline & Fuel Tax Exemptions and Refund Program

Administered by the Revenue Administration Division of New Brunswick's Department of Finance pursuant to the Gasoline and Motive Fuel Tax Act, this program provides users with the option of receiving point-of-sale tax exemptions or applying for refunds of taxes paid for gasoline and motive fuel for consumers operating vehicles and equipment on non-public highways. Use of the program is limited to certain categories of consumers, including aquaculturists, farmers, silviculturists, producers of electricity for sale, persons consuming fuel

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[70] *See Lumber V Final Determination* IDM at 13.

[71] *See Lumber V Final Determination* IDM at 16; *see also Lumber V First Review Final Results* IDM at 29; *Lumber V Second Review Final Results* IDM at 14-15; and *Lumber V Third Review Final Results* IDM at 17.

[72] *See Lumber V Final Determination* IDM at 16-17; *see also Lumber V First Review Final Results* IDM at 29; and *Lumber V Second Review Final Results* IDM at 25; and *Lumber V Third Review Final Results* IDM at 24.

in the preparation of food, lighting and heating of premises or heating of domestic hot water, wood producers, forest workers, manufacturers, mining or quarrying operators, and registered vessels operators.[73]

9. Innov8

Launched in 2013, the Innov8 program (formerly known as the Technical Adoption and Commercialization Program) allows companies and the GONB to share costs associated with developing intellectual property, specialized software, hardware, equipment, or performing research and development or prototyping. Funding is available only to those projects that fall under Priority Growth sectors, which include the value-added wood sector.[74]

10. New Brunswick Property Tax Incentives for Private Forest Producers

Property owners in New Brunswick pay property taxes based on the GONB's assessed value of the property in accordance with the New Brunswick Assessment Act. Specifically, section 15 of the New Brunswick Assessment Act stipulates that, in general, all real property shall be assessed at its real and true value as of January 1st of the year for which the assessment is made. However, section 17(2) of the New Brunswick Assessment Act also states that all land holdings classified as freehold timberland are to be assessed at a rate of C$100 per hectare.[75]

11. Subsidies Provided by Opportunities New Brunswick

This program was created to continue the economic development initiatives pursued by the Miramichi Regional Economic Development Innovation Fund. The funding for the latter expired in 2015 and new funding was approved under Opportunities New Brunswick until 2021. This program is focused on continuing to support economic opportunities in the Miramichi region by allocating funding to support new initiatives that can help diversify the local economy and create new jobs. The focus areas for funding are: Growth and Development Capital; Adoption of Information and Communication Technology; Research and Development; Improving Strategic Infrastructure; and Advanced Workforce Development. Under the program, an enterprise may receive up to C$500,000 in funding towards the project.[76]

12. New Brunswick Department of Trade and Infrastructure (DTI) Settlement

In 2017, DTI announced plans to close a road used to transport lumber by J.D. Irving, Limited (JDIL). JDIL had assisted with constructing and repairing the road under a 2008 agreement with DTI. When DTI announced the road closure, the GONB provided a reimbursement to JDIL as compensation for the costs JDIL incurred building the road.[77]

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[73] *See Lumber V Final Determination* IDM at 17; *see also Lumber V First Review Final Results* IDM at 30; *Lumber V Second Review Final Results* IDM at 25; and *Lumber V Third Review Final Results* IDM at 25.
[74] *See Lumber V Expedited Review Final Results* IDM at 6.
[75] *See Lumber V Expedited Review Final Results* IDM at 9; *see also Lumber V First Review Final Results* IDM at 30; *Lumber V Second Review Final Results* IDM at 25; and *Lumber V Third Review Final Results* IDM at 25.
[76] *See Lumber V First Review Final Results* IDM at 18.
[77] *See Lumber V Second Review Final Results* IDM at 15.

Program Administered by the Government of Nova Scotia (GONS)

1. Nova Scotia Provision of Silviculture Grants

Under its silviculture program, the GONS provides funding for specific silviculture work to Registered Buyers (*i.e.*, entities that acquire more than 5,000 cubic meters of wood per year from private forestlands in Nova Scotia) which enter into a Forest Sustainability Agreement with the GONS' Department of Lands and Forestry (DLF). Under the agreement, the Registered Buyer submits invoices and claim forms to the DLF to document the silviculture work that was performed, and the DLF reimburses the company for eligible expenses.[78]

Programs Administered by the Government of Ontario (GOO)

1. SR&ED – GOO

Under Ontario's SR&ED program, a qualifying corporation (*i.e.*, one with a permanent establishment in the province) can claim a non-refundable tax credit on eligible scientific research and experimental development expenditures (*e.g.*, salary and wages, materials, overhead, and contracts) performed in Ontario to reduce the corporation's income tax payable. The SR&ED tax credit is administered by the CRA, a federal agency, on behalf of the GOO.[79]

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

Provided under the *Ontario Taxation Act 2007*, the OTCMP supports activity in manufacturing and processing, farming, fishing, logging, and mining, as well as the generation of electrical energy for sale, or the production of steam for sale. During 2017 and 2018, OTCMP tax credit rate was 1.5 percent and the corporate tax rate was 11.5 percent. The OTCMP effectively reduced the Ontario corporate income tax rate on a corporation's income to 10 percent.[80]

3. TargetGHG Industrial Demonstration Program

Designed in 2016, under Ontario's climate change action plan, TargetGHG helped the province meet its 2020 GHG reduction targets. TargetGHG was established through an agreement between the GOO and the Ontario Centres of Excellence (OCE), an independent, not-for-profit organization. The GOO provided funding to the OCE for the administration of the program. TargetGHG encouraged Ontario-based large industrial emitters, working with technology solution providers, to adopt and implement technologies to reduce their emissions and demonstrate the potential of those solutions for the broader marketplace. To each project, a maximum of C$5 million could be granted and the funding recipient was the industrial emitter.[81]

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[78] *See Lumber V First Review Final Results* IDM at 18; *see also Lumber V Second Review Final Results* IDM at 15.
[79] *See Lumber V First Review Final Results* IDM at 30.
[80] *See Lumber V First Review Final Results* IDM at 31; *see also New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/N/343/CAN (July 10, 2019) (*Canada N343*) at 62-63.
[81] *See Lumber V First Review Final Results* IDM at 19; *see also Lumber V Second Review Final Results* IDM at 16; and *Lumber V Third Review Final Results* IDM at 18.

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

In 2007, under the Ontario Forest Sector Prosperity Fund, Resolute's pre-bankruptcy predecessor, Abitibi Bowater Inc., and its wholly owned affiliate, Bowater Canadian Forest Products Inc. (together, Abitibi-Bowater), were approved for a C$22.5 million grant under a Conditional Funding Agreement (CFA) for the construction of a biomass co-generation plant at the Fort Francis pulp and paper mill. The funding was conditional on the continuous operation of the mill for at least three years after the final grant disbursement, which was in March 2012. In May 2014, Resolute permanently closed the mill. Pursuant to the terms of the CFA, in October 2014, the Ministry of Natural Resources and Forestry of Ontario directed Resolute to repay the full amount of the grant. On June 29, 2017, through a Settlement and Release Agreement between Resolute and the GOO, Resolute was not required to repay the C$22.5 million debt it owed to the Ontario government. There was a forgiveness of money owed when Resolute broke the terms of the CFA with the GOO.[82]

5. Independent Electricity System Operator (IESO) Demand Response

IESO is a government-designated independent system operator that operates Ontario's electricity grid, administers the region's wholesale electricity markets, and provides reliability planning for the region's bulk electricity system. IESO, an agency of the Ontario Ministry of Energy, was created and its activities are governed by the Electricity Act of 1998. IESO administers the Demand Response (DR) program, whereby firms alter their electricity consumption patterns in exchange for availability payments. The purpose of the procurement of DR capacity is to ensure the reliability planning for the region's bulk electricity system by reducing the overall regional demand for electricity in response to IESO's reliability mandate.[83]

6. GOO's Provision of IESO Industrial Electricity Incentives

IESO provides rebates to companies for meeting various contractual obligations to conserve energy, including energy operating, management, and metering plans. Recipients are limited to large industrial customers, including those classified under North America Industry Classification System code 321110 Sawmills and Wood Preservation.[84]

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[82] *See Lumber V First Review Final Results* IDM at 34; *see also Lumber V Second Review Final Results* IDM at 27; and *Lumber V Third Review Final Results* IDM at 27.

[83] *See Lumber V First Review Final Results* IDM at 18; *see also Lumber V Second Review Final Results* IDM at 15; *Lumber V Third Review Final Results* IDM at 17; and *Uncoated Groundwood Paper Final Determination* IDM at 14.

[84] *See Lumber V First Review Final Results* IDM at 18-19; *see also Lumber V Second Review Final Results* IDM at 15-16; *Lumber V Third Review Final Results* IDM at 17; and *Uncoated Groundwood Paper Final Determination* IDM at 14.

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

Electricity providers that can produce renewable energy, such as biomass producers, sell biomass-cogenerated electricity to the Ontario power grid operated by IESO, for more than adequate remuneration.[85]

8. IESO Retrofit

Implemented in 2015, the Retrofit is an electricity conservation program through which the IESO reimburses a portion of the cost of electrical efficiency upgrades that will reduce electricity consumption at commercial spaces, industrial facilities, institutional buildings, multi-family residential buildings, and agricultural facilities. Projects eligible for financial assistance under the Retrofit are those that provide sustainable and measurable reductions in peak electricity demand and consumption.[86]

9. Ontario Forest Roads Funding Program (OFRFP)

As part of forest management operations, companies have agreements with the GOO to maintain certain eligible roads identified in the Forest Management Plan (FMP) on behalf of the Crown under the OFRFP. Specifically, harvesters of Crown timber incur obligatory road costs in order to meet a wide variety of provincial road construction and maintenance obligations. As part of the agreement, grant payments are made under the OFRFP as partial reimbursement for constructing and maintaining certain eligible roads. Recipients of the grants are limited to companies which have approved FMPs.[87]

Programs Administered by the Government of Québec (GOQ)

1. Financial Aid for the Development of Private Woodlots[88]

The program provides grants and technical assistance to certified forest producers to carry out logging activities in privately owned forests, with a view to protecting and enhancing registered forest land. Canada reported in recent WTO notifications that this program was created in the early 1970s under the authority of the *Ministère des Forêts, de la Faune et des Parcs*, and that it

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[85] *See Lumber V First Review Final Results* IDM at 33; *see also Lumber V Second Review Final Results* IDM at 21; *Lumber V Third Review Final Results* IDM at 27; and *Uncoated Groundwood Paper Final Determination* IDM at 18 (program name "GOO Purchase of Electricity for MTAR").

[86] *See Lumber V Second Review Final Results* IDM at 16.

[87] *See Lumber V First Review Final Results* IDM at 19; *see also Lumber V Second Review Final Results* IDM at 16; *Lumber V Third Review Final Results* IDM at18; and *Uncoated Groundwood Paper Final Determination* IDM at 14.

[88] While this program was included in the *Lumber V Final Determination*, it was found not to provide a benefit to the companies investigated. This program has also been notified to the WTO by Canada, most recently in *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures,* G/SCM/N/372/CAN (July 8, 2021) (*Canada N372*) at 120-121; *see also New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/N/315/CAN (July 12, 2017) (*Canada N315*) at 47.

remains an ongoing program.[89] The maximum amount of financial assistance and the type of eligible work can change, depending on the cooperating regional agencies. Canada reported that the assistance is generally limited to 80 percent of the costs of eligible initiatives, but certain targeted work gets 100 percent funding, *i.e.*, first and second plantations, first commercial thinning of a plantation and first thinning of a natural stand. No aggregate value of assistance and identity of beneficiaries are provided in the notifications.[90]

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

Hydro-Québec is engaged in the generation of power from hydroelectric sources and the transmission, distribution, and sale of such power to wholesale and retail customers in Québec. Hydro-Québec has two separate, independent divisions: Hydro-Québec Production, which generates electricity to supply to the market and buys and sells electricity for its own account; and Hydro-Québec Distribution, which is responsible for the supply of electricity to customers in Québec. Under the PAE 2011-01, Hydro-Québec Distribution purchases electricity generated from biomass at a set contractual price.[91]

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

Implemented in 1985 and administered by Revenu Québec, this property tax refund supports landowners investing in forest management on private lands. Private forest producers who are certified under the Sustainable Forest Development Act (SFDA) and hold a certificate issued from the Ministry of Forests, Wildlife and Parks (MFFP) can apply for a refund equal to 85 percent of the amount of property taxes paid in respect to each unit of assessment. Private forest producers are eligible for the property tax refund to the extent that the development expenses incurred for investment in forest management are greater than or equal to the amount of property taxes paid.[92]

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

Revenu Québec permits corporations that incurred expenses for the construction or major repair of eligible access roads or bridges in public forest areas to claim a refundable tax credit for a portion of the expenses on their income tax returns.[93]

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[89] *See Canada N315* at 47.

[90] *See New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/N/253/CAN (July 19, 2013) (*Canada N253*) at 48; *see also New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/N/284/CAN (July 9, 2015) (*Canada N284*) at 50; *Canada N315* at 47; and *Canada N343* at 68-69.

[91] *See Lumber V Final Determination* IDM at 18; *see also Lumber V First Review Final Results* IDM at 33; *Lumber V Second Review Final Results* IDM at 27; and *Lumber V Third Review Final Results* IDM at 27.

[92] *See Lumber V Expedited Review Final Results* IDM at 9; *see also Lumber V First Review Final Results* IDM at 31. This program has also been notified to the WTO by Canada, most recently in *Canada N372* at 122-123.

[93] *See Lumber V Final Determination* IDM at 17; *see also Lumber V First Review Final Results* IDM at 31; and *Lumber V Second Review Final Results* IDM at 26.

5. SR&ED – GOQ

Established in 1983, the SR&ED tax credit is designed to stimulate R&D by providing tax credits for salaries and wages for R&D work. If a taxpayer carries on a business in Canada and carries out R&D, or has R&D carried out on its behalf, in Québec, the taxpayer can claim a tax credit for the salaries and wages, or for the consideration paid in Québec. The rate for these tax credits is 30 percent for small and medium businesses (SMBs) and 14 percent for large corporations. SMBs and large corporations can claim R&D tax credits for eligible expenditures over C$50,000 and C$225,000, respectively.[94]

6. Partial Cut Investment Program (PCIP)

Introduced in 2013, the PCIP reimburses harvesters for up to 90 percent of the increased costs associated with the MFFP mandate that certain areas be harvested applying a partial cut (*i.e.*, removing less than 50 percent of the volume of a stand). As indicated in the framework, the PCIP is intended for the forestry sector. Eligibility for the program is limited to Timber Supply Guarantee (TSG) holders; buyers on the open market; local forest delegates; forestry companies; and holders of forestry permits stipulated in section 73 of the SFDA.[95]

7. MFFP Educational Grant: Forest Industry Support

On October 18, 2006, the GOQ approved the Forest Industry Support Program by Order 946-2006. This program, administered by the MFFP, assists forest industry promoters and companies in setting up projects by supporting market surveys, feasibility studies, mill diagnoses, and business plans. Entities eligible for assistance are cooperatives associated with a wood processing enterprise, Québec promoters and enterprises or a combination of such enterprises from the primary and secondary/tertiary wood processing industry, the primary and secondary/tertiary pulp and paper processing industry, and the uses of forest biomass in the setup of a project.[96]

8. Immigrant Investor Program

On June 8, 2000, the GOQ approved the Immigrant Investor Program by Order 701-2000. The program is aimed at the economic development of Québec by providing financial assistance to Québec businesses by using income generated through investments made by immigrant investors. The program is administered by IQ Immigrants Investisseurs Inc., a subsidiary of a government corporation, Investissement Québec (IQ).[97]

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[94] *See Lumber V Final Determination* IDM at 17; *see also Lumber V First Review Final Results* IDM at 32; *Lumber V Second Review Final Results* IDM at 25; and *Lumber V Third Review Final Results* IDM at 25.

[95] *See Lumber V Final Determination* IDM at 13; *see also Lumber V First Review Final Results* IDM at 19; *Lumber V Second Review Final Results* IDM at 16; *Lumber V Third Review Final Results* IDM at 18; and *Canada N315* at 50.

[96] *See Lumber V Expedited Review Final Results* IDM at 7.

[97] *See Lumber V Expedited Review Final Results* IDM at 7.

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

In 1994, the GOQ established a tax credit for on-the-job training to encourage businesses to hire trainees to improve their professional skills. A corporation that hires a student or an apprentice, enrolled in a qualified training program, can claim a tax credit at a rate of 24 percent for: (1) the salary or wages paid to the student or apprentice; and/or (2) the salary or wages paid to an employee for the hours devoted to supervision of the students and apprentices. This tax credit can be refundable or non-refundable.[98]

10. City of Sainte-Marie Municipal Financial Assistance

Pursuant to paragraph 92.1 of the Municipal Power Act, the City of Sainte-Marie, Québec provides financial support to occupants that meet two criteria: (1) be the owner of an immovable property other than a residence; and (2) operate a private sector business. The assistance is a tax refund in the amount of municipal taxes paid to the City of Sainte-Marie. Specifically, the tax refund is equal to the "Welcome Tax" (*i.e.* the tax charged to a new occupant upon acquisition of property) owed to the City of Sainte-Marie.[99]

11. PLTC – Québec

Taxpayers in Canada generally pay provincial and federal income taxes on their income. However, taxpayers in the forestry industry are also subject to provincial logging taxes based on their logging income, in addition to the provincial and federal income taxes on their total income. Revenu Québec separately maintains a logging tax equal to 10 percent of the taxpayer's net income tax on net logging income if their net income for that year is more than C$10,000. A portion of the tax (one third) is rebated through a credit against income tax owed to the GOQ, and the remainder (two thirds) is rebated through a credit against income tax owed to the GOC using the FLTC (*see* GOC section above). The FLTC and Québec's PLTC fully reimburse the respective taxpayer's net income tax on net logging income thus reducing the taxpayer's provincial logging tax to zero.[100]

12. MPPD – Q

The MPPD-Q program, implemented June 4, 2014, provides a reduction of the general tax rate for manufacturing corporations to improve the competitiveness of small and medium-sized enterprises (SME) in Québec. An SME whose manufacturing and processing activities account for more than 25 percent of its total activities may claim up to a four percent tax reduction under the MPPD-Q program. However, for the initial tax year that this program was in place (tax year 2014), the maximum reduction was two percent.[101]

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[98] *See Lumber V Expedited Review Final Results* IDM at 10; *see also Lumber V Third Review Final Results* IDM at 25.
[99] *See Lumber V Expedited Review Final Results* IDM at 10.
[100] *See Lumber V Expedited Review Final Results* IDM at 10-11.
[101] *See Lumber V Expedited Review Final Results* IDM at 11.

13. Additional Deduction for Transportation Costs of Remote Manufacturing SMEs

Introduced by the GOQ in 2014, this program takes into consideration the higher transportation costs associated with the remoteness of certain zones from Québec's large urban centers and allows certain remote manufacturing SME's to claim a tax deduction. The rate of the additional deduction a company can claim for a taxation year is one percent for "central zones," three percent for "intermediate zones," five percent for "remote zones" and seven percent for "special remote zones." The rates are applicable on the company's gross income and are subject to caps which vary based on regions.[102]

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

The GOQ established this Economic Diversification Fund (the Fund) via Decree 379-2013 of April 10, 2013, to promote the start-up and development of innovative enterprises and forward-looking industries in the center of Québec and Mauricie regions. Under the Fund, which had a C$200 million budget for the 5-year period April 2013 – March 2018, financial assistance in the form of loans, loan guarantees, equity investments, and grants was provided. The Fund is administered by the Ministry of Economy, Science, and Innovation (MESI), a provincial government ministry, and IQ, a government corporation. MESI, which conducts an eligibility assessment of applicants, evaluates non-investment projects (*e.g.*, product or business development) and grant requests; IQ is responsible for evaluating projects when financial intervention is directed toward an investment project and makes disbursements under the Fund.[103]

15. Working Capital and Investment Fund Program (RENFORT)

The RENFORT program was approved by the Council of Ministers (Order in Council 1139-2008) on December 10, 2008. RENFORT was established to authorize IQ to provide financial support in the form of loans or loan guarantees to companies that encountered difficulty obtaining financing in the wake of the financial crisis in late 2008. The program had an initial budget of C$1 billion.[104]

16. Project Financing (UNIQ)

On January 11, 2011, IQ established the UNIQ, a project financing program, to support the economic development of Québec by providing financial intervention to commercial enterprises in the form of loan guarantees, guarantee of a financial commitment, long-term loan and equity loan, non-convertible debenture and subordinated debt.[105]

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[102] *See Lumber V Expedited Review Final Results* IDM at 11.
[103] *See Lumber V Expedited Review Final Results* IDM at 12.
[104] *See Lumber V Expedited Review Final Results* IDM at 12.
[105] *See Lumber V Expedited Review Final Results* IDM at 12.

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

The Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances, implemented in October 2014, allows for the performance of special interventions by Québec's MFFP when a natural or anthropogenic disturbance causes significant destruction of the forest, such as fire, wind-throw, or insect epidemics (*i.e.*, budworm), which increase the unit cost of harvesting because of the reduced per-hectare salvageable volume. Under the program, harvesters are compensated for the additional costs associated with performing salvage operations to preserve the health of the forest.[106]

In prior reports, the incentive for harvesting areas infested by spruce budworm was included under "Subsidies Identified in *Uncoated Groundwood Paper*" with the program title "Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance – Incentives for Harvesting Areas Infested by Spruce Budworm."[107]

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

Under the March 2016 Québec Economic Plan, the GOQ implemented an electricity rate discount to encourage large industrial power consumers (*i.e.*, Rate L customers) to undertake eligible investments to reduce electricity demand through improved efficiency and productivity, to make use of production assets otherwise in disuse, and reduce GHG. Rate L applies to an annual contract with Hydro-Québec where the minimum billing demand is 5,000 kilowatts or more. Companies billed at Rate L that carry out eligible investment projects can receive assistance in the form of reduced electricity costs in their establishments. The reduced electricity costs allow for the reimbursement of up to 50 percent of the eligible costs of an investment.[108]

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

The Gestion de la demande de puissance, as known as the GDP, is a demand response program. Under the GDP, commercial, institutional, and small and medium-sized companies are encouraged to reduced power demand during the winter peak demand periods. In exchange for curtailing power demand during the winter, Hydro-Québec provides to those electricity consumers grants in proportion to their power reduction.[109]

20. Program Innovation Bois (PIB)

The March 2016 Québec Economic Plan announced budg*et al*locations of $22.5 million, over a five-year period, for the implementation of the PIB (also known as, the Wood Innovation Program) which is administered by MFFP. The program is open to companies registered in

[106] *See Lumber V First Review Final Results* IDM at 21; *see also Lumber V Second Review Final Results* IDM at 18; and *Lumber V Third Review Final Results* IDM at 20.
[107] *See Uncoated Groundwood Paper Final Determination* IDM at 15.
[108] *See Lumber V First Review Final Results* IDM at 22; *see also Lumber V Second Review Final Results* IDM at 19; and *Lumber V Third Review Final Results* IDM at 20.
[109] *See Lumber V First Review Final Results* IDM at 23; *see also Uncoated Groundwood Paper Final Determination* IDM at 14.

Québec that use or intend to use wood or wood biomass to develop or produce a new innovative product, develop or install a new transformation process, or build a pilot or demonstration plant to demonstrate a new technology's feasibility.[110]

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

The MCRP, implemented on April 1, 2016, and administered by MFFP, provides reimbursements of up to 90 percent of the costs of construction, improvement, and repairs of multi-use public access roads in forest areas. Eligibility for the program is limited to supply guarantee holders, buyers of timber on the open market, holders of a forestry permit stipulated in section 73 of the SFDA, Rexforet, and holders of an over-the-counter contract for timber.[111]

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

Revenu Québec provides refunds of fuel taxes paid under two elements. The first element, Certain Purposes, allows businesses to receive a refund of the taxes paid on fuel used to operate motor vehicles used for farming, forest, or mining operations on private land or roads. The second element, Stationary Purposes, provides a tax refund for fuel required to operate the stationary equipment of a vehicle (*i.e.*, power shovels, cranes, drilling machines) used for commercial or public purposes.[112]

23. Rexforêt Silviculture Works: Road Construction/Maintenance

Rexforêt, a Crown corporation, enters into reimbursement contracts with timber companies for the construction and maintenance of roadwork in Québec's public forest to allow Rexforêt staff access to forest tracts where perform silvicultural work is performed.[113]

24. Hydro-Québec Interruptible Electricity Option (IEO)

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

[110] *See Lumber V First Review Final Results* IDM at 23; *see also Lumber V Second Review Final Results* IDM at 17; and *Lumber V Third Review Final Results* IDM at 21.
[111] *See Lumber V First Review Final Results* IDM at 23; *see also Lumber V Second Review Final Results* IDM at 18; and *Lumber V Third Review Final Results* IDM at 21.
[112] *See Lumber V First Review Final Results* IDM at 32; *see also Lumber V Second Review Final Results* IDM at 26; and *Lumber V Third Review Final Results* IDM at 26.
[113] *See Lumber V First Review Final Results* IDM at 23-24.

certain fixed and variable credits for the winter period.[114]

25. Paix des Braves

In 2002, the GOQ and the Cree Nation of Quèbec established an agreement (*i.e.*, the Agreement Respecting a New Relationship Between the Cree Nation and the GOQ (the Agreement)) requiring forestry companies to conduct certain additional harvesting activities on "Paix des Braves" territories covered by the Agreement. Specifically, when harvesting on the territories covered by this agreement, forestry companies are required to perform the following additional activities: (1) build additional roads; (2) cut in a patchwork of smaller blocks (*i.e.*, mosaic cutting); and (3) perform certain other activities as defined by Chapter 3 of the SFDA. In order for forestry companies to maintain their activities on these lands in spite of the increased costs, the GOQ initiated a program in 2015 which provides partial compensation to offset these costs (*i.e.*, costs not already covered by Section 120 of the SFDA) incurred when complying with the Agreement.[115]

26. Emploi-Québec Grants

Emploi-Québec is a department within the GOQ's Ministry of Work, Employment and Social Solidarity and is responsible for administering worker training grants under the Workforce Skills Development and Recognition Fund (FDRCMO) and the Manpower Training Measure (MFOR). FDRCMO funds projects related to skills development, primarily through French language courses. MFOR supports skill development for workers at risk of losing their jobs and to support low-skilled workers who want to improve basic training.[116]

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

Hydro-Québec is a utility wholly owned by the GOQ and is the sole entity responsible for the -administration of the Industrial Systems Program. All of Hydro-Québec's electric energy efficiency programs for industrial businesses are known, collectively, as the Industrial Systems Program. Any individual or corporation that owns, operates, or occupies an industrial building in Québec associated with a goods-producing industry is eligible for the program. The two main components of this Industrial Systems Program are: (1) Retrofit; and (2) the New Plant, Expansion, or Addition of Production Lines. The purpose of the Industrial Systems Program is to reduce the average amount of electricity used per unit of production by the participants.[117]

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[114] *See Lumber V First Review Final Results* IDM at 22; *see also Lumber V Second Review Final Results* IDM at 19; *Lumber V Third Review Final Results* IDM at 20; and *Uncoated Groundwood Paper Final Determination* IDM at 15.

[115] *See Lumber V First Review Final Results* IDM at 20; *see also Lumber V Second Review Final Results* IDM at 17; *Lumber V Third Review Final Results* IDM at 19; and *Uncoated Groundwood Paper Final Determination* IDM at 16.

[116] *See Lumber V First Review Final Results* IDM at 20; *see also Lumber V Second Review Final Results* IDM at 17; *Lumber V Third Review Final Results* IDM at 19; and *Uncoated Groundwood Paper Final Determination* IDM at 16.

[117] *See Lumber V First Review Final Results* IDM at 22; *see also Lumber V Second Review Final Results* IDM at 19; and *Uncoated Groundwood Paper Final Determination* IDM at 16.

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

The ÉcoPerformance program is administered by the GOQ's Ministry of Energy and Natural Resources (MERN). The ÉcoPerformance program was launched in October 2013, to provide financial assistance to businesses, institutions, and municipalities to reduce GHG emissions through the implementation of measures or projects. The applicants must satisfy the following criteria: (1) located in Québec; (2) consume fossil fuel; (3) invest more than 25 percent of project cost in the project; (4) reduce GHG; (5) meet energy rate of return requirements; and (6) respect ISO14064 for quantification of GHG reductions.[118]

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

A highly destructive outbreak of the spruce budworm defoliated spruce-fir stands covering over 7 million hectares in Québec. Companies approached the GOQ requesting financial assistance in response to the increased costs required to harvest certain forests affected by this epidemic. In response, the GOQ and industry parties established a fixed rate reduction in electricity rates (*i.e.*, modify Hydro-Québec's L-rate price structure), through Hydro-Québec, to mitigate the increased electricity costs affecting all companies operating in the region.[119]

30. Fees and Dues Paid to a Research Consortium

Under the Federal Research Consortium, to enhance funding for non-profit private research centers, the GOQ provides a tax credit for a company's eligible R&D expenditures paid to a research consortium. If a taxpaying corporation conducts business in Canada and is a member of an eligible research consortium, it can claim a tax credit for fees and dues paid to the consortium. The rate for these tax credits is 14 percent for expenditures made with respect to a taxation year starting after December 2, 2014, which can increase to 30 percent for corporations with assets of C$50 million or less for the previous taxation year. This increased rate is only applicable to the first C$3 million of qualified expenditures. Corporations with assets of C$50-75 million and C$75 million or more in the previous taxation year can claim these tax credits for eligible expenditures over C$50,000 and C$225,000, respectively.[120]

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

The GOQ provides a tax credit for investment in manufacturing or processing equipment. This credit was implemented in order to stimulate investments in such equipment and to support certain regions with struggling economies. To qualify for the tax credit, property must, among

[118] *See Lumber V First Review Final Results* IDM at 21; *see also Lumber V Third Review Final Results* IDM at 19; and *Uncoated Groundwood Paper Final Determination* IDM at 16.
[119] *See Lumber V First Review Final Results* IDM at 21; *see also Lumber V Second Review Final Results* IDM at 19; *Lumber V Third Review Final Results* IDM at 20; and *Uncoated Groundwood Paper Final Determination* IDM at 17.
[120] *See Lumber V First Review Final Results* IDM at 32; *see also Lumber V Second Review Final Results* IDM at 26; *Lumber V Third Review Final Results* IDM at 26; and *Uncoated Groundwood Paper Final Determination* IDM at 11.

other things, be manufacturing or processing equipment, be hardware used primarily for manufacturing or processing, or have been acquired after March 20, 2012, for purposes of smelting, refining, or hydrometallurgy activities related to ore extracted from a mineral resource located in Canada. Where the qualified property was acquired after December 2, 2014, the tax credit for investment is calculated on the portion of eligible expenses that exceeds C$12,500. The basic rate of the tax credit for investment is four percent. The rate is increased where the property is acquired to be used primarily in a resource region and based on the size of the business that acquires it.[121]

32. Côte-Nord Wood Residue Program

Since July 2017, the Ministry of Forests, Wildlife, and Parks (MFFP) has administered the Côte-Nord Wood Residue Program to improve the profitability of Côte-Nord sawmills and the region's forest industry. The program supports projects to diversify market opportunities for wood residue in the Côte-Nord region; reduce the production of by-products from Côte-Nord sawmills; and reduce the transportation costs of by-products from Côte-Nord sawmills. The program is open to Québec companies that intend to use wood residue from the Côte-Nord region or intend to reduce the production of by-products from Côte-Nord sawmills.[122]

33. Private Forest Development Assistance Program (PAMVFP)

Since the 1970s, the PAMVFP has provided financial and technical assistance to private forest producers to carry out forest management activities in the private forests in Québec. The MFFP and its 17 regional agencies across Québec administer the program which is funded by the government, industry, and forest producers with the majority of the funds provided by the MFFP.

Only certified private forest producers, under section 130 of the SFDA, may use this program. Depending on a regional agency's policies, a payment under the PAMVFP can be made to the certified private forest producer or directly to the accredited forestry advisor, *i.e.*, the entity that performs silviculture on the private forest producer's land.[123]

34. Hydro-Québec's Industrial Revitalization Rate (IRR)

Effective April 1, 2018, Hydro-Québec made a discounted, supplemental electricity rate available to Rate L customers who return to productive use all or part of an industrial plant's unused capacity, or who convert one or more industrial processes to use electricity. Hydro-Québec discloses the terms of the IRR and the electricity savings provided in its "Electricity Rates" annual publication. To be eligible for the IRR, an applicant must have a Rate L contract or become eligible for Rate L with the implementation of the project.[124]

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[121] *See Lumber V Expedited Review Final Results* IDM at 9; *see also Lumber V Second Review Final Results* IDM at 26; *Lumber V Third Review Final Results* IDM at 25; and *Uncoated Groundwood Paper Final Determination* IDM at 11.
[122] *See Lumber V Second Review Final Results* IDM at 18; *see also Lumber V Third Review Final Results* IDM at 21.
[123] *See Lumber V Second Review Final Results* IDM at 18; *see also Lumber IV 2nd Review Final Results* IDM at Private Forest Development Program.
[124] *See Lumber V Second Review Final Results* IDM at 20.

35. Hydro-Québec's Reimbursement for Road Clearing

For forestry roads used by Hydro-Québec and private companies, Hydro-Québec shares the costs of snow removal, clearing, and sandblasting with those companies. Hydro-Québec has reimbursed Resolute for costs of such maintenance performed on certain roads within Resolute's harvesting area in Québec.[125]

36. Investment Program for Forest Management (PIAF)

The PIAF, the successor program to the PCIP, commenced on April 1, 2019. Similar to the PCIP, the PIAF has the objective of implementing strategies for the sustainable management of the public forest through partial cutting silvicultural treatments. Harvesters are required, when buying Crown stumpage, to harvest according to instructions from the government (*e.g.*, partial cutting) intended to assure forest sustainability to meet future volume demand. Consequently, the Québec government compensates harvesters up to a maximum of 90 percent of the assessed additional harvesting costs.[126]

37. Additional CCA Relating to Manufacturing and Processing Equipment

Revenu Québec permits taxpayers to take an additional deduction for depreciation of qualifying equipment used in manufacturing, processing, or computer-related activities. The qualifying equipment, which must be new and used only in Québec, is property included in Class 50 (general purpose electronic data processing equipment and systems software for that equipment) or Class 53 (machine or equipment acquired primarily for use in manufacturing and processing goods intended for sale or lease) of Schedule B to the regulation respecting the Taxation Act.

The rate of the additional deduction is 35 percent for property acquired after March 28, 2017, but before March 28, 2018; 60 percent for property acquired after March 28, 2018, but before December 4, 2018; and 30 percent for property acquired after December 3, 2018. Taxpayers benefit from the additional CCA when calculating their net income for the taxation year in which the property is put into use and the following year. [127]

Program Administered by the Government of Saskatchewan (GOS)

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

Saskatchewan's M&P ITC provides corporations in Saskatchewan with a five percent tax credit on purchases of qualified capital assets, including manufacturing and processing equipment that can be applied against corporate income tax payable in the year earned. It also states that the credit is fully refundable when based on purchases of qualified property after April 2006. The M&P ITC is administered by the CRA on behalf of the GOS.[128]

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[125] *See Lumber V Second Review Final Results* IDM at 20; *see also Lumber V Third Review Final Results* IDM at 21.
[126] *See Lumber V Third Review Final Results* IDM at 18.
[127] *See Lumber V Third Review Final Results* IDM at 26.
[128] *See Lumber V Final Determination* IDM at 17.

Subsidies Identified in *Supercalendered Paper*

Programs Administered by the GONB

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

The FAIP provides funding from the GONB to eligible companies with the goal of helping companies establish or maintain their presence within the province. According to the Economic Development Act, the legislation that enacted the FAIP, eligible companies may receive various forms of assistance, including in the form of loans. The Economic Development Act designates certain industrial, commercial, and business activities that are not eligible for financial assistance under the FAIP, including (a) logging; (b) primary agriculture; (c) primary mining; (d) quarrying; (e) broadcasting; (f) transportation; (g) communications; (h) publishing of news periodicals; (i) generation of electricity; (j) retail trade; (k) food catering; (l) warehousing; and (m) provision of personal services.[129]

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

The NNBEDIF is one of the three programs administered by the New Brunswick Regional Development Corporation as reported by the GONB. The purpose of the NNBEDIF is to provide assistance to eligible companies with the goal of diversifying and growing the Northern New Brunswick economy. Under the NNBEDIF program, assistance may be provided in the form of loans, loan guarantees, or non-repayable contributions. Funding under the NNBEDIF is limited by geographic region; only companies with projects in the northern New Brunswick counties of Victoria Madawaska, Restigouche, Gloucester, Northcumberland, and parts of Kent qualify.[130]

Programs Administered by the GOBC

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

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

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

[129] *See Supercalendered Paper Expedited Review Final Results* IDM at 6.
[130] *See Supercalendered Paper Expedited Review Final Results* IDM at 6.

program is open to British Columbia customers that own and operate TMP mills within BC Hydro's service area.[131]

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

Under the Industrial Energy Manager program, BC Hydro provides funding in the form of wage subsidies to PSP-Transmission customers to fund an employee dedicated to the position of Energy Manager who works to identify energy conservation opportunities. The funding under this program is available to BC Hydro's industrial customers who use more than 10 GWh per year. According to BC Hydro officials, it provides funding for 43 energy managers out of 164 eligible sites.[132]

3. Powell River City Tax Exemption Program

In 2014, the City of Powell River passed Bylaw 2394 establishing "a revitalization tax exemption program" for a term of three years (*i.e.*, for calendar years 2015 through 2017). This bylaw specified that this program applied exclusively to Class 4 major industrial property located within the revitalization area. The 2014 bylaw provided tax certainty for eligible companies by maintaining, through 2017, the property tax amount payable at roughly C$2.75 million per year.[133]

Subsidies Identified in *Uncoated Groundwood Paper*

Programs Administered by the GOBC

1. School Tax Credit for Class 4 Major Industrial Properties

The GOBC establishes school tax rates applicable to taxable property value in each of the eight non-residential property classes within the province. For calendar year 2016, the school tax rates were set by Order-in-Council No. 267; each non-residential property class has one applicable school tax rate. Also, for 2016, the GOBC subsequently adjusted the school tax rate of C$5.40 per C$1,000 of taxable value, as indicated in the Order-in-Council, to C$2.16 per C$1,000 of taxable value for all Class 4 Major Industry properties, pursuant to the Provincial Industrial Property Tax Credit.[134]

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[131] *See Supercalendered Paper Expedited Review Final Results* IDM at 7.
[132] *See Supercalendered Paper Expedited Review Final Results* IDM at 7.
[133] *See Supercalendered Paper Expedited Review Final Results* IDM at 9.
[134] *See Uncoated Groundwood Paper Final Determination* IDM at 9.

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

1. SR&ED – GONL

The GONL provides a tax credit on companies' eligible R&D expenditures. The tax credit was available at a standard rate of 15 percent of the cost of these expenditures. The tax credit is claimed on Form T661 of the taxpayer's federal tax return.[135]

2. Waiver of Managed Forest Land Tax

The Managed Land Tax is a requirement under the Forestry Act and the Forest Land Management and Taxation Regulations when a parcel of land, or part of a parcel, is declared "managed." The rate is calculated on an annual basis and was C$1.42 per hectare in 2016. The GONL has entered into agreements dating back to 2009, to waive the payment of the annual managed land tax payable on tenure.[136]

3. Labour Market Partnership (LMP)

The GONL provides a grant to eligible companies and organizations to develop and implement labor market strategies and activities to assist companies with labor adjustments such as downsizing, upsizing, new development, relocation, impact of new technologies, labor shortages, shortage of year-round job opportunities, and lack of community and organizational capacity for human resource planning. The GONL contributes 50 percent or less of the eligible training costs and over 50 percent if the employer is unable to avoid lay-offs but willing to invest in training for affected employees.[137]

4. Forest Insect Control and Survey Assistance

Under the Forestry Act, the GONL Minister responsible for forestry has the authority to undertake all reasonable measures to provide for effective protection of the forests, whether on Crown land, public land, or privately-owned land. The Minister has entered into annual and multi-year forest insect and disease control agreements with forest companies with land tenure in the province. The GONL may waive cost share payments for all insect and disease control and monitoring costs on a land tenure.[138]

5. Productive Forest Lands Inventory Program

The GONL instituted the Forest Inventory Program in 1974, to provide a continuous, management level forest inventory in the province. This program provided timber volumes and other statistics for management planning; maintained up-to-date maps of forests; enabled planning and development of provincial resources; initiated special studies on growth, cull, decay, etc.; and benchmarked existing forest characteristics to examine change over time. In

[135] *See Uncoated Groundwood Paper Final Determination* IDM at 10.
[136] *See Uncoated Groundwood Paper Final Determination* IDM at 10.
[137] *See Uncoated Groundwood Paper Final Determination* IDM at 12.
[138] *See Uncoated Groundwood Paper Final Determination* IDM at 12.

1996, the Newfoundland and Labrador Forest Service's forest inventory program was given savings and revenue targets under the GONL Program Review initiative. As part of this initiative, companies entered into agreements to share the cost of the Forest Inventory Program and were given access to GNL's forest industry inventory data. The GNL has waived payments under such agreements.[139]

6. Canada—NL Job Grant

The Canada-NL Job Grant program is a cost-sharing program implemented as a part of the Canada-Newfoundland and Labrador Job Fund Agreement. The GONL provides up to C$15,000 per person for training costs, which includes up to C$10,000 in grant contributions. Funds provided under this program by the GOC are limited to the province of Newfoundland and Labrador, pursuant to the terms of the Canada-Newfoundland and Labrador Job Fund Agreement.[140]

7. Capacity Assistance Agreement with NL Hydro

NL Hydro is a Crown-owned electrical utility company operating in the Newfoundland and Labrador province. NL Hydro's strategic plan involves addressing the energy sector strategic directions of the Ministry of Natural Resources. NL Hydro's mission is to carry out the energy policy of the GONL. The GONL maintains capacity assistance agreements with industrial customers, whereby capacity assistance is provided to NL Hydro. Industrial customers agree to provide electrical capacity to NL Hydro though generation facilities or by curtailing their demand and reducing the load on the electrical system.[141]

8. Silviculture Assistance Program

The GONL reimburses companies for certain silviculture activities performed and provides seedlings for planting at no cost. Companies are legally obligated to ensure all that harvested sites are adequately regenerated as set forth in the Certificate of Managed Land issued annually by the GONL, in accordance with section 43 of the Forestry Act. The GONL reimburses companies for performing eligible treatments pursuant to a multi-year agreement (Silviculture Agreement). The eligible treatments include tree planting, mechanical site preparation for planting, precommercial thinning, plantation maintenance, and vegetation management.[142]

Programs Administered by the GOQ

1. Tax Credit for Private Partnership Pre-Competitive Research

The GOQ provides a tax credit based on a company's eligible expenditures in forming partnerships to carry out pre-competitive research in Québec. The tax credit rate is 30 percent for small and medium-sized enterprises (SMEs) and 14 percent for large corporations. SMEs

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[139] *See Uncoated Groundwood Paper Final Determination* IDM at 12.
[140] *See Uncoated Groundwood Paper Final Determination* IDM at 13.
[141] *See Uncoated Groundwood Paper Final Determination* IDM at 13.
[142] *See Uncoated Groundwood Paper Final Determination* IDM at 13.

can claim qualified expenditures over a C$50,000 exclusion threshold, while large corporations, can claim those over a C$225,000 exclusion threshold.[143]

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

Under the Taxation Act, the GOQ provides a tax credit for eligible training expenditures equal to the total cost of training, which can also include the salary or wages paid during the training period. For the training expenditures to qualify, the training must consist of a course related to an activity in the manufacturing, forestry, or mining sector and must be given to an enrolled eligible employee by either an accredited instructor or one at a recognized educational institution. Employees qualify as being eligible if their activities consist primarily of carrying out or supervising duties attributable to an activity in the manufacturing, forestry, or mining sectors. The tax credit is available at a rate of 24 percent of the cost of these expenditures. Companies in the manufacturing, forestry, and mining sectors can claim the credit when filing their corporation income tax return.[144]

3. PAREGES Program

PAREGES is administered by the GOQ's Ministry of Transport, Sustainable Mobility, and Transport Electrification and the Ministry of Sustainable Development, Environment, and the Fight against Climate Change. The PAREGES program provides grants to support infrastructure projects and enterprises that use rail or maritime transport solutions to foster better intermodal options and allow for reduction of GHG emissions.[145]

B. Additional Subsidies Information from Canada's WTO Notifications

Since the prior lumber subsidies report, there was no new WTO Subsidy Notification by Canada, or TPR.[146] Relevant lumber industry subsidy programs reported in Canada's prior reports are listed below.

1. Transformative Technology Program (TTP)

The TTP provides funding under the *Department of Natural Resources Act* and the *Forestry Act* in the form of contributions for pre-competitive, non-proprietary R&D for development and adaptation of emerging technologies such as forest biomass, forest biotechnology, and nanotechnology. The program was created in April 2007 and expired on March 31, 2014.[147]

2. Forest Innovation Program (FIP)

The FIP provides non-repayable contributions to support pre-competitive research, development and technology transfer in the forest sector, to help position the sector for growth and

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[143] *See Uncoated Groundwood Paper Final Determination* IDM at 11.
[144] *See Uncoated Groundwood Paper Final Determination* IDM at 11.
[145] *See Uncoated Groundwood Paper Final Determination* IDM at 16.
[146] Canada's most recent Subsidy Notification is *Canada N372*, and most recent TPR is WT/TPR/S/389/Rev.1 (August 23, 2019).
[147] This program is no longer reported in Canada's subsidy notification.

participation in areas such as bioenergy, biochemicals, nanotechnology, and advanced construction materials. Funding is provided under the authority of the *Department of Natural Resources Act* and the *Forestry Act*. The program budget was C$23 million for FY 2016-17 and C$26 million for FY 2017-18. The program started on April 1, 2012, and was set to expire on March 31, 2018. However, the program was further extended for C$63 million over three years starting in 2017 through 2020.[148]

3. Export Restrictions to Promote Further Processing in Canada

Previously, in *Canada TPR314/R1*, Canada indicated that under the *Export and Import Permits Act*, it imposes export controls on logs, pulpwood and red cedar products to promote further processing in Canada. This program is not reported in *Canada N372*.[149]

4. Forestry Funding Program[150]

Ongoing since 2004, the program, administered by La Financiére Agricole du Québec, supports certified forestry producers in acquiring wooded lots, with assistance provided in the form of loan guarantees for loans of up to C$750,000 and for a maximum term of 30 years.[151]

5. Ontario Jobs and Prosperity Fund

Launched in January 2015, the program is administered by the Ministry of Economic Development and Growth and provides grants and loans under four distinct streams, each with its own application process. Among the four is the Forestry Growth Fund, which helps value-added and bio-product forestry projects improve productivity and innovation, enhance competitiveness, support new market access, strengthen supply chains and provide socio-economic benefits.[152]

6. Wood Innovation Program

This program, administered by Québec's Ministère des Forêts, de la Faune et des Parcs, aims to stimulate investment in the undertaking of projects in the forest products industry or any other industry using forest products. Investment projects can receive funding of up to 50 percent of eligible expenses, for a total maximum amount of C$2.5 million. Studies can receive funding of up to 75 percent of eligible expenses, for a maximum amount of C$75,000, for a maximum of two studies per FY. Applied research can receive funding of up to 50 percent of eligible expenses for a maximum amount of C$200,000 per project or C$400,000 for a maximum of two projects per FY. The program will remain in effect until March 31, 2023.[153]

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[148] *See Canada N372* at 54-55.
[149] For prior notification, *see Trade Policy Review of Canada, Report by the Secretariat*, WT/TPR/S/314/Rev.1 (September 30, 2015), Section 3.2.3, pages 72-73, paras. 3.99 and 3.100, Table 3.11. (*Canada TPR314/R1*).
[150] Previously known as "Québec Forestry Financing Program."
[151] *See Canada N372* at 121-122.
[152] *See Canada N372* at 91-92.
[153] *See Canada N372* at 129-130.

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

1. Ontario Forest Sector Loan Guarantee Program

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

2. Ontario Forest Sector Prosperity Fund

This program was announced in 2005 to provide grants to the forest sector that would support and leverage new capital investment programs.[154]

3. Forest Industry Support Program

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

4. 15 Percent Capital Tax Credit

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

5. Québec's Road Tax Credit

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

6. British Columbia Sales of Grade 4 Timber

Since 2007, British Columbia has sold increasing amounts of publicly owned timber in its interior for salvage rates, providing a benefit to softwood lumber producers. While the mountain pine beetle infestation has caused extensive damage to forests in British Columbia, the majority of the damaged timber is usable for softwood lumber products.

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

D. Additional Subsidies Identified in Connection with the SLA

1. Wood Promotion Program

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

2. North Ontario Grow Bonds Program

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

3. Forest Industry Long-Term Competitiveness Initiative

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

4. Ontario Forest Access Road Construction and Maintenance Program

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

5. Reductions in Operational and Silvicultural Costs

This program was announced in 2006 and allowed the GOQ to incur costs previously borne by the forest products industry. The program includes C$210 million in measures to reduce the cost of operations and silvicultural investments.

AUSTRIA

Since the 27th lumber subsidies report (the most recent report to include Austria), there was a new WTO Subsidy Notification by Austria, but the EU has not undergone a TPR.[155] The most recent Subsidy Notification contains no relevant lumber industry subsidy programs for Austria.

BRAZIL

Since the 28th lumber subsidies report, Brazil underwent a TPR, but did not issue a new WTO Subsidy Notification.[156] The most recent TPR and Subsidy Notification contain no relevant lumber industry subsidy programs for Brazil.

GERMANY

Since the 28th lumber subsidies report, there was no new WTO Subsidy Notification by Germany, and the EU has not undergone a TPR.[157] The most recent Subsidy Notification contains no relevant lumber industry subsidy programs for Germany.

ROMANIA

Since the 28th lumber subsidies report, there was no new WTO Subsidy Notification by Romania, and the EU has not undergone a TPR.[158] The most recent Subsidy Notification contains no relevant lumber industry subsidy programs for Romania.

SWEDEN

Since the 28th lumber subsidies report, there was no new WTO Subsidy Notification by Sweden, and the EU has not undergone a TPR.[159] The most recent Subsidy Notification contains no relevant lumber industry subsidy programs for Sweden.

[155] *See* WT/TPR/S/395/Rev.1 (July 7, 2020); and G/SCM/N/372/EU/Add. 1 (December 9, 2021).
[156] *See* WT/TPR/S/432/Rev.1 (October 19, 2022); and G/SCM/N/372/BRA (July 1, 2021).
[157] *See* WT/TPR/S/395/Rev.1 (July 7, 2020); and G/SCM/N/372/EU/ Add. 11 (January 21, 2022).
[158] *See* WT/TPR/S/395/Rev.1 (July 7, 2020); and G/SCM/N/372/EU/Add. 23 (September 28, 2021).
[159] *See* WT/TPR/S/395/Rev.1 (July 7, 2020); and G/SCM/N/372/EU/Add. 27 (July 27, 2021).

IV. Conclusion

We note that this report is limited to all subsidies identified following the reporting methodology described above and does not constitute a finding regarding the countervailability of the listed subsidies under U.S. law or the WTO SCM Agreement. We also note that this report only includes subsidies identified pursuant to the described reporting methodology. A subsidy's presence in or absence from this report is not an indication of whether the subsidy is countervailable under U.S. law, is in accordance with the relevant WTO agreements, or is actionable under any other international agreement.

V. Appendix: Public Comments

BakerHostetler

Baker&Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403

T 202.861.1500
F 202.861.1783
www.bakerlaw.com

Elliot J. Feldman
direct dial: 202.861.1679
EFeldman@bakerlaw.com

November 28, 2022

Mr. Ryan M. Majerus
Deputy Assistant Secretary
for Policy and Negotiations
U.S. Department of The Department
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Comments Regarding Subsidy Programs Provided By Countries Exporting Softwood Lumber And Softwood Lumber Products To The United States (87 Fed. Reg. 65,031)

Dear Deputy Assistant Secretary Majerus:

We submit these comments on behalf of the Conseil de l'industrie forestière du Québec ("CIFQ") and the Ontario Forest Industries Association ("OFIA") (collectively, "Central Canada") in response to the request by the U.S. Department of Commerce ("the Department") for comments on Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States.[1]

The Department has prepared its Softwood Lumber Subsidies Reports to Congress in connection with its obligations under the Softwood Lumber Act of 2008 to ensure compliance with the Softwood Lumber Agreement of 2006 between Canada and the United States ("SLA 2006") and to monitor, verify, and report on export charges collected under that agreement.[2] The purpose for the Department's Softwood Lumber Subsidies Reports expired on October 12, 2015 with the expiration of SLA 2006.[3] Yet, the Department continues to solicit comments and to report to Congress.[4] Central Canada last submitted comments on May 20, 2022 and does so again here.

EXECUTIVE SUMMARY

Central Canada, in its comments of May 20, 2022 and in prior submissions, has reviewed the programs the Department is countervailing that are related, even tangentially or marginally, to softwood lumber from Canada (because many relate only to

[1] *See Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment*, 87 Fed. Reg. 65,031 (Dept. of The Department Oct. 27, 2022).

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

[3] H.R. Conf. Rep. 110-627, 764-65 *reprinted in* 2008 U.S.C.C.A.N. 536, 225-26 ("U.S.-Canada Softwood Lumber Agreement" is the subtitle of the conference report discussing the purpose and intent of the Softwood Lumber Act of 2008).

[4] As of this date, the proposed repeal of the reporting provision by the 117th Congress has not materialized.

the production of paper, not lumber).[5] The Department has chosen to countervail numerous and diverse provincial and federal government environmental programs addressing declared goals of Chapter 24 of the United States-Mexico-Canada Agreement ("USMCA"): to promote energy conservation and sustainable forestry; implicitly to combat climate change; and to advance the economic and social welfare of Indigenous people. In nearly every instance, the Department has found these environmental and social programs in Canada to be unlawful subsidies and has imposed duties, not only in violation of U.S. trade law (by mistaking contracts, characterized by reciprocity and valuable consideration, for gifts) but also in direct conflict with USMCA commitments and the Biden Administration's environmental policies to combat climate change, foster sustainability, and promote the well-being of Indigenous people.

The evolution of U.S. law and policy on climate change and sustainability since the last set of comments highlights even further the disconnect between the Department and the Administration, as well as the uneven treatment of U.S. trading partners. The *Softwood Lumber* dispute has become yet another instance of "rules for thee but not for me."

[5] In fact, Central Canada has been the only commenter for at least the last five calendar years. *See* "Softwood Lumber Act of 2008: Related Documents," last updated Jul. 6, 2022, available at https://enforcement.trade.gov/sla2008/sla-index.html.

I. WHY THE *SOFTWOOD LUMBER* CASE MATTERS IN THE CONTEXT OF NORTH AMERICAN COMMITMENTS ON THE ENVIRONMENT

A. USMCA Chapter 24 Is Relevant To Commerce's Countervailing Duty Determinations Subject To USMCA Chapter 10

The Department countervailed Canadian softwood lumber in the original investigation and three prior administrative reviews; a fourth review is underway.[6] The Department persists in the same errors with damaging implications for environmental policy and the fight against climate change.

Central Canada recently submitted comments to the Office of the United States Trade Representative ("USTR") in response to a *Federal Register* call for public comments on the agenda for an upcoming USMCA Environment Committee meeting.[7] Central Canada urged the Environment Committee to address the *Softwood Lumber* dispute in the wider context of USMCA environmental commitments and the inconsistencies of the Department's actions with U.S. domestic policies on fighting climate change and promoting sustainable forestry. USTR, disregarding the USMCA's emphasis on transparency, never made Central Canada's comments available to the general public[8] and, during the public session of the USMCA Environment Committee

[6] *See Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review*, *2020*, 87 Fed. Reg. 48,455 (Aug. 9, 2022) and accompanying Issues and Decision Memorandum (Aug. 3, 2022) ("AR3 IDM"); *Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2019,* 86 Fed. Reg. 68,467 (Dec. 2, 2021) as amended by 87 Fed. Reg. 1,114 (Jan. 10, 2022) and accompanying Issues and Decision Memorandum (Nov. 23, 2021) ("AR2 IDM"); *Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2017-2018*, 85 Fed. Reg. 77,163 (Dec. 1, 2020) and accompanying Issues and Decision Memorandum (Nov. 23, 2020) ("AR1 IDM"); *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination*, 82 Fed. Reg. 51,814 (Nov. 8, 2017) as amended by 83 Fed. Reg. 347 (Jan. 3, 2018) and accompanying Issues and Decision Memorandum (Nov. 1, 2017) ("Inv. IDM").The fourth administrative review was initiated earlier in 2022.

[7] *See Notice of the Second United States-Mexico-Canada Agreement Environment Committee Meeting*, 87 Fed. Reg. 53,537 (USTR Aug. 31, 2022)

[8] *See* USMCA, Art. 24.5.2. ("Each Party shall provide for the receipt and consideration of written questions or comments from persons of that Party regarding its implementation of this Chapter. Each

meeting on September 23, 2022, the U.S. representative refused to engage on the linkages between USMCA Chapter 24 and *Softwood Lumber*, or otherwise address Central Canada's comments and formally-submitted questions.[9] Central Canada now brings these issues before the Department, while reiterating the responsibility of the USMCA Parties to engage on them in parallel under the USMCA Environment Committee.

USMCA Chapter 24 encompasses an agreement of the contracting parties to protect forests, in particular, and the environment more generally. It also calls for mutual recognition and appreciation of Indigenous peoples (in Canada, "First Nations'). The Department has denied any obligations to Chapter 24, insisting that it is bound strictly to Chapter 10 and the related U.S. statute. USTR, apparently, seems to share the same misguided view.[10] By law, however, the Department cannot ignore chapters of the USMCA.[11] It is expected to harmonize chapters of the treaty whenever possible,

Party shall respond in a timely manner to these questions or comments in writing and in accordance with domestic procedures, and make the questions or comments and the responses available to the public, for example by posting on an appropriate public website.").

[9] Margaret Spiegelman, "Canadian lumber groups to USTR: U.S. duties flout USMCA environment rules," *Inside U.S. Trade*, Sept. 30, 2022, available at https://insidetrade.com/daily-news/canadian-lumber-groups-ustr-us-duties-flout-usmca-environment-rules.

[10] *See id.* ("During the USMCA Environment Committee meeting, held last Friday in Mexico City, Assistant U.S. Trade Representative for Environment and Natural Resources Kelly Milton noted that USTR had received what she described as a 'very substantial submission' related to Canadian softwood lumber and countervailing duties. Milton said the submission was under review, while recommending the groups direct 'specific questions' about CVD proceedings to Commerce.").

[11] The Department, like any instrumentality of the U.S. Government, is subject to customary rules of interpretation of public international law, as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, done at Vienna on May 23, 1969. *See, e.g.*, USMCA Art. 31 Panel Report, *Canada – Dairy TRQ Allocation Measures*, CDA-USA-2021-31-01, at p. 14 (Dec. 31, 2021) ("The first key principle applied by the Panel is that '[a]n interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility.' This can also be understood as the interpreter's obligation to 'give meaning and effect to all the terms of the treaty,' and reject interpretations that 'deprive [the provision] of effectiveness.' Effectiveness must be achieved through an interpretation that gives full meaning to all provisions of a treaty, beyond purely nominal effectiveness.") (internal citations omitted).

not to interpret them necessarily in conflict with one another,[12] and to interpret U.S. law so that it is not in conflict with international obligations.[13] .

The Department, in the most recently completed administrative review in *Softwood Lumber*, invoked USMCA Chapter 10 to dismiss the applicability of climate change and other environmental policies to antidumping and countervailing duty ("AD/CVD") proceedings.[14] In the Final Results of the third administrative review, the Department claimed:

> The USMCA cannot limit or restrict Commerce's ability to conduct a CVD proceeding in accordance with the Act. In fact, the USMCA explicitly states, at Article 10.5 (para. 1), that "Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement." Further, at Article 10.5 (para. 2), it is stated that "…nothing in this Agreement shall be construed to confer any rights or impose any obligations on the Parties with respect to antidumping or countervailing duty proceedings or measures taken pursuant to Article VI of GATT 1994, the AD agreement, or the SCM Agreement."[15]

The Department is mistaken. A proper reading of the trade law – as discussed in Part I.B below – creates no conflict between the USMCA environmental commitments and Chapter 10. An appeal overturning the Department's countervailability findings on forestry, climate change, and other environmental programs would not impose new obligations on the United States, nor create additional rights for Canada under the

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[12] *See Vienna Convention on Law of the Treaties,* Arts. 31-32.

[13] The U.S. Supreme Court has long recognized in the "*Charming Betsy* doctrine," dating from 1804, that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray v. Schooner Charming Betsy*, 6 US 64 (1804).

[14] *See* AR3 IDM at 30-31. "SCM" is the WTO Agreement on Subsidies and Countervailing Measures.

[15] *Id*. at 30.

USMCA or the World Trade Organization ("WTO") Agreements. It is the Department's concerns that are "misplaced."[16]

B. The Department's Interpretation Of The Tariff Act Disregards The Transactional Nature Of Climate And Sustainability Programs

The Department's Reports to Congress under the Softwood Lumber Act contain the disclaimer that the reference to a program as a subsidy "does not constitute a finding regarding the countervailability … under U.S. law or the WTO SCM Agreement."[17] The Department, therefore, allows that not all "subsidies" included in its report are countervailable. Subsidies that are not countervailable are presumed not to distort markets.

The Department, over the course of the *Softwood Lumber* investigation and administrative reviews, improperly has taken the view that the mere transfer of money, regardless of the obligations undertaken in exchange for that money, constitutes a "grant" or, more broadly, a direct transfer of funds, with a presumption that the benefit of the full amount of the money transferred is conferred upon the manufacture or export of softwood lumber. This interpretation of the Tariff Act, entirely detached from the climate change policy to which it is supposed to be subordinate, is unsupported by the statute and regulations, U.S. case law, elementary contract law and principles, and WTO decisions interpreting the SCM Agreement.

[16] *Id.* at 31 ("Resolute's contention that Commerce must consider the GOO {Government of Ontario} and GOQ's {Government of Québec's} policies towards environmental protection and sustainable forestry, or their obligations to Indigenous communities, or that Commerce's decisions conflict with the Administration's statements on the environment are, therefore, misplaced in the context of this administrative review.").

[17] June 2022 Softwood Lumber Subsidy Report at p. 46.

The Tariff Act defines "subsidy" as a "financial contribution" by a government or public body "to a person and a benefit is thereby conferred." [18] A subsidy must also be specific to an enterprise or industry.[19] The statutory provisions for "financial contribution" and "benefit" require the Department to determine the nature of the "financial contribution" between the government and the private party and then the appropriate method for measuring the alleged "benefit."[20] Goods or services provided by the government, other than general infrastructure, may constitute a "financial contribution."[21]

Whereas government purchases of goods may constitute a "financial contribution,"[22] a government purchase of services may never constitute a financial contribution. Where the Department finds a "financial contribution," the benefit analysis requires the Department to determine what had been given in exchange and whether "adequate remuneration" (compensation at a market price) had been paid.

The Department has countervailed multiple transactions involving measurable environmental services by treating the reciprocal transactions as unilateral "grants" or "direct transfers of funds" from provincial governments to forestry companies when they involve government payments in exchange for valuable consideration. The Department has dismissed outright any benefits realized by Ontario or Québec through climate change and other environmental and forestry programs. In the third administrative

[18] 19 U.S.C. § 1677(5) (implementing the SCM Agreement, Art. 1).

[19] *See id.*

[20] 19 U.S.C. §§ 1677(5)(D) & (E).

[21] 19 U.S.C. § 1677(5)(D)(iii).

[22] *See* 19 U.S.C. § 1677(5)(D)(iv).

review, for example, the Department concluded that "[w]hether the GOO {Government of Ontario} and GOQ {Government of Québec} implemented such programs to realize sustainable forestry policies and energy efficiencies/GHG reductions or fulfill legal obligations to Indigenous groups are not factors that Commerce's statute and regulations authorize it to take into account in its subsidies analysis."[23]

Canada exercised its WTO rights in the current dispute and prevailed before a WTO dispute settlement panel in a challenge to the countervailing duty final determination in the original investigation.[24] The WTO panel found that virtually every reason advanced by the United States for imposing duties on imports of softwood lumber from Canada was unfounded. Of particular relevance to the programs at issue here, the panel reviewed the Partial Cut Investment Program ("PCIP"), a forestry program under which Québec pays private harvesters for the performance of certain silvicultural services, such as partial cutting. The Panel ruled:

> We agree with Canada that the PCIP reimbursements are part of the bundle of rights and obligations that are exchanged when Resolute harvests non-auction Crown timber. In other words, we consider that Canada has demonstrated that Resolute's obligation to perform partial cuts and Québec's obligation to provide reimbursements for partial cuts, constitute a reciprocal exchange of rights and obligations that are stipulated simultaneously, through the same legal instrument.
>
> …
>
> We therefore consider that the USDOC improperly found that the PCIP payments made by Québec to Resolute were a grant.[25]

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[23] AR3 IDM at 31.

[24] *See* Panel Report, *United States – Countervailing Duty Measures on Softwood Lumber from Canada*, WT/DS 533/R (circulated Aug. 24, 2020) ("*DS533 Panel Report*"), available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/533R.pdf&Open=True. The United States appealed to the WTO's Appellate Body while paralyzing the Appellate Body from hearing the appeal.

[25] *Id.*, paras. 7.626, 7.628.

Contrary to the Department's argument, U.S. trade law implementing the WTO SCM Agreement does recognize that governments can and do receive benefits from transactions with industry.[26] The Department does not deny remuneration. It is supposed to question, then, only whether remuneration is "adequate."

The Department's decision to ignore the consideration received by governments from private companies distorts the trade law and regulations, making no distinctions among types of financial contributions nor ways to determine benefit. Every provision by a government of anything of value would be countervailable automatically in the amount of the value of the thing provided. Governments and the private sector would no longer do business together. There would be no public-private partnership, essential to combat climate change.

There should be a heightened concern for programs addressed to climate change and sustainability that impact the North American continent. The Department should understand the obligation to interpret the law in accordance with the United States' WTO obligations. A proper reading of the Tariff Act also is in harmony with U.S. commitments under USMCA Chapter 24; does nothing to detract from rights or add to the obligations of the Parties in Chapter 10; and aligns the Biden Administration's policies on trade, climate change, sustainable forestry, and Indigenous peoples.

[26] *See, e.g.*, 19 C.F.R. §§ 351.505, 351.507, 351.511, 351.512.

II. THE DEPARTMENT'S TREATMENT OF PRODUCERS OF CANADIAN SOFTWOOD LUMBER IS INCONSISTENT WITH THE CONTINENTAL COMMITMENT TO SUSTAINABLE FORESTS

A. The United States Has Assumed Obligations Under The USMCA For Sustainable Forestry

The USMCA expresses a shared commitment to environmental protection, including the importance of sustainable forestry. Canadian provincial governments, stewards of the Canadian forests, have adopted policies and programs to protect the forests and the environment with the help and engagement of the Canadian forest products industries. The Department sees these policies and programs only as countervailable subsidies, imposing tariffs to punish and discourage efforts designed to accomplish goals shared by USMCA Parties expressly articulated in Chapter 24.

The Department has been interpreting the Tariff Act aggressively and in conflict with USMCA objectives and obligations. The USMCA Parties, in reference to their international trade relationship, agreed to:

> RECOGNIZE their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, and protect legitimate public welfare objectives, such as health, safety, environmental protection, conservation of living or non-living exhaustible natural resources, integrity and stability of the financial system, and public morals, in accordance with the rights and obligations provided in this Agreement; …
>
> PROMOTE high levels of environmental protection, including through effective enforcement by each Party of its environmental laws, as well as through enhanced environmental cooperation, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices; {and}
>
> RECOGNIZE the importance of increased engagement by Indigenous peoples in trade and investment. . . .[27]

[27] USMCA, Preamble.

The United States, Canada, and Mexico preserved each country's sovereign right to "protect legitimate public welfare objectives . . . through mutually supportive trade and environmental policies and practices." Instead, the Department's decisions in the *Softwood Lumber* investigation and administrative reviews infringe on the sovereignty of Canadian federal and provincial governments by penalizing government programs that promote sustainable forestry. The Department, thus, denies what the United States recognized as an "inherent right," undermining shared environmental goals.

USMCA Chapter 24 on the environment contains provisions directly related to Québec's and Ontario's stewardship of Crown forests through stumpage and non-stumpage programs. The USMCA Parties "recognize the importance of conservation and sustainable use of biological diversity"[28] and "each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy."[29]

Article 24.23, which provides specifically for "Sustainable Forest Management and Trade," is particularly relevant here. The Parties under this provision "acknowledge the importance of: …the conservation and sustainable management of the forests for providing environmental, economic, and social benefits for present and future generations."[30] They further "recognize that forest products, when sourced from sustainably managed forests, contribute to fulfilling global environmental objectives,

[28] USMCA, Art. 24.15.1.

[29] *Id.*, Art. 24.15.2.

[30] *Id.*, Art. 24.23.2(a).

including…conservation and sustainable use of resources, and green growth."[31] And, "each Party commits to…maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management."[32]

The USMCA Parties expressly recognized the importance of Indigenous peoples to North America in the context of sustainable forestry. The USMCA Chapter on Exceptions and General Provisions respects the overall rights of the Parties concerning relations with native populations: "Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and investment, this Agreement does not preclude a Party from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to Indigenous peoples."[33]

Article 24.2.4 of the USMCA's Environment Chapter states: "the Parties recognize that the environment plays an important role in the economic, social, and cultural well-being of Indigenous peoples and local communities, and acknowledge the importance of engaging with these groups in the long-term conservation of the environment." Similarly, "the Parties recognize the importance of respecting, preserving, and maintaining knowledge and practices of Indigenous peoples and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity."[34]

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[31] *Id.*, Art. 24.23.3.

[32] *Id.*, Art. 24.23.4.

[33] *Id.*, Art. 32.5.

[34] *Id.*, Art. 24.15.3.

B. Contrary To USMCA Undertakings, The United States Has Countervailed Programs Designed To Benefit Sustainable Forestry

The Department imposes tariffs for Québec's sustainable and environmentally conscientious forestry policies and programs, including the PCIP; the Investment Program for Forest Management ("PIAF"); the Côte-Nord Wood Residue Program; and the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbances.[35] All these programs are used to promote sustainable forestry practices through silvicultural prescriptions and other methods. They contribute to forest health by removing diseased wood, diminishing wildfire risks, and permitting regeneration of trees. Rather than acknowledging or rewarding Canadian companies for providing valuable environmental and conservationist services when they participate in these programs, the Department has countervailed their products.[36]

The Department is countervailing a Québec program, the Paix des Braves ("PDB"), that is necessary to fulfill legal obligations that the Government of Québec incurred with the Cree Nations for sustainable forestry and harvesting on Cree land. The policy enlists the support of private parties to assist in the sustainable use of the Cree forests. Yet, the Department has not only penalized a program that serves the very goals the parties embraced in the USMCA,[37] but also has acted contrary to the Biden Administration's own policies towards Native Americans.[38] Rather than respect

[35] Additional programs in Central Canada are likewise designed to promote sound forest resource management, including the Ontario Forest Roads Funding Program ("OFRFP"), Québec's Multi-Resource Road Cost Reimbursement Program ("MCRP"), and Rexforêt's and Hydro Québec's contracts with harvesters for road construction and maintenance in Crown forests. These roads, among other uses, provide access to fight forest fires and trees infected by disease.

[36] *See* Part I, *supra*.

[37] *See, e.g.*, USMCA, Arts. 24.2.4, 24.15.3, 32.5.

[38] *See* Executive Order 14072 ("EO 14072"), "Strengthening the Nation's Forests, Communities, and Local Economies," 87 Fed. Reg. 24,851-52 (Apr. 27, 2022); *see also* The White House, "Fact Sheet:

those commitments, as the United States promised under the USMCA, the Department has continued to punish Québec and the Cree for fulfilling them.

U.S. countervailing duty law does not operate in a vacuum. USMCA forms the framework of the trade and investment relationships among the three Parties in North America. The Department, like any other instrument of the U.S. Government, must hold itself to the U.S. commitment to respect the rights and obligations of Canada (and Mexico).

C. The Forests Are The "Lungs Of Our Planet:" Sustainable Forestry In The Service Of The Fight Against Climate Change Must Be Rewarded, Not Penalized

Sustainable forestry may be one of the most valuable things countries can do to combat climate change. According to one estimate, deforestation is responsible for around 25 percent of greenhouse gas emissions worldwide.[39] It is not only a challenge for the Amazon.

The Biden Administration continues to emphasize the importance of forests for mitigating climate change. Yet, the Department's application of the trade law has not matched presidential rhetoric, manifest in the case of *Softwood Lumber*. Instead of rewarding Canada's sound federal and provincial forest management, the United States

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Building a New Era of Nation-to-Nation Engagement," Statements & Releases, Nov. 15, 2021, available at https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/15/fact-sheet-building-a-new-era-of-nation-to-nation-engagement/ ("President Biden has used his office to protect Tribal lands and help mitigate the devastating effect of climate change on Native communities."); Felicia Fonseca, "Tribes welcome infusion of money in infrastructure bill," *PBS Newshour,* Nov. 18, 2021, available at https://www.pbs.org/newshour/economy/tribes-welcome-infusion-of-money-in-infrastructure-bill (reporting on $11 billion in funding for Native America benefits in Infrastructure Investment and Jobs Act of 2021).

[39] *See, e.g.*, Lauren Bennett, "Deforestation and Climate Change" (Climate Institute, Apr. 18, 2017), http://climate.org/deforestation-and-climate-change/.

is punishing the exercise of Canada's "sovereign right . . . to establish its own levels of domestic environmental protection and its own environmental priorities."[40]

At the Glasgow Climate Change Conference in November 2021 the President – calling forests "indispensable" to reaching climate goals – announced "a new plan to conserve global forests, which will bring together a full range of U.S. government tools — diplomatic, financial, and policy — to halt forest loss, restore our critical carbon sinks, and improve land management."[41] Five months later, in April 2022, the Biden Administration took a further step forward when the President signed Executive Order 14072 ("EO 14072") to strengthen America's forests, build wildfire resistance, and combat deforestation on a world-wide basis.[42] EO 14072 calls for increased domestic and international action to preserve and protect forests, which "play an irreplaceable role in reaching net-zero greenhouse gas emissions."[43]

The Biden Administration is seeking to leverage billions of dollars through the Infrastructure Investment and Jobs Act to develop and implement effective wildfire mitigation strategies, science-based forest management, and other policies to promote the health of U.S. forests.[44] The Inflation Reduction Act of 2022, which became law in

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[40] USMCA, Art. 24.3.1.

[41] The White House, "Remarks by President Biden at the 'Action on Forests and Land-Use Event,'" Speeches & Remarks, Glasgow, Scotland, Nov. 2, 2021("Glasgow Speech"), available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/11/02/remarks-by-president-biden-at-the-action-on-forests-and-land-use-event/.

[42] *See* EO 14072, 87 Fed. Reg. at 24,851-55.

[43] *Id.*

[44] *See id.* at 24,851-52. According to a White House Fact Sheet on EO 14072, "[a]s a critical down payment, the Bipartisan Infrastructure Law provides $8 billion to fund forest and land management activities, and the FY 2022 Omnibus provides $5.7 billion for wildland fire management and related risk mitigation and research. USDA and DOI are mobilizing $5 billion from the Bipartisan Infrastructure Law for hazardous fuels reduction and other mitigation programs, such as a $1 billion Community Wildfire Defense Grant program and $600 million for firefighter pay…." The White House, "FACT SHEET: President Biden Signs Executive Order to Strengthen America's Forests, Boost Wildfire Resilience, and

August 2022, allots $1.5 billion for multiyear, programmatic, competitive grants for tree planting and related activities.[45]

The Administration has also emphasized the importance of job creation in the forestry sector, including the development of "community-led local and regional economic development opportunities."[46] The President has promised a forestry policy that "support[s] Indigenous traditional ecological knowledge and cultural and subsistence practices,"[47] and "honor[s] Tribal treaty rights."[48]

In connection with the recent UN COP 27 Climate Summit in Sharm El Sheikh, Egypt, the Administration announced a roadmap for nature-based solutions as a "go-to option for fighting climate change."[49] As part of this initiative, the Administration intends to spend over $25 billion in infrastructure and climate funding to support nature-based solutions, including sustainable forestry. According to the White House statement, "[t]he

Combat Global Deforestation," Statements & Releases, Apr. 22, 2022, available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/22/fact-sheet-president-biden-signs-executive-order-to-strengthen-americas-forests-boost-wildfire-resilience-and-combat-global-deforestation/.

[45] *See* Inflation Reduction Act of 2022 ("IRA"), P.L. 117-169, Aug. 16, 2022, Sec. 23003.

[46] EO 14072, 87 Fed. Reg. at 24,852-53.

[47] *Id*. at 24,851. As discussed in Part II.A, *supra*, the USMCA Parties recognized the need for policies to address the economic and social issues facing Indigenous peoples. *See also* USMCA, Arts. 24.2.4, 24.15.3, 32.5. But while the Biden Administration is pursuing such policies unimpeded, the Department continues to countervail similar programs north of the border.

[48] EO 14072, 87 Fed. Reg. at 24,851. The IRA includes enhanced tax credit incentives for "environment justice solar facilities" located in a low-income community, on Native American land, or if the facility is installed on a residential building that participates in a covered federal housing assistance program. *See* IRA, P.L. 117-169, Sec. 13103.

[49] The White House, "Fact Sheet: Biden-Harris Administration Announces Roadmap for Nature-Based Solutions to Fight Climate Change, Strengthen Communities, and Support Local Economies," Statements & Releases, Nov. 8, 2022, available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/08/fact-sheet-biden-%E2%81%A0harris-administration-announces-roadmap-for-nature-based-solutions-to-fight-climate-change-strengthen-communities-and-support-local-economies/ The White House Statement defines "nature-based solutions" as "actions to protect, sustainably manage, or restore natural or modified ecosystems as solutions to societal challenges, like fighting climate change. Examples include protection or conservation of natural areas, reforestation, restoration of marshes or other habitats, or sustainable management of farms, fisheries, or forests." *Id.*

roadmap recommends that Federal agencies do more to prioritize nature-based solutions in funding decisions; increase and ease access to this funding; and catalyze private investment."[50]

The provinces of Central Canada, stewards of vast public forests, have long pursued policies rooted in sound forest management. The United States understood the importance of sustainable forestry during USMCA negotiations and agreed to specific commitments on that very issue.

The United States should learn from Canada's contribution to forest health as the Administration continues to promote sustainable forestry as a key component of the fight against climate change. Instead, the United States is penalizing Canada for pursuing the very types of policies that the United States encouraged in the USMCA negotiations and is pursuing in connection with a variety of domestic and global initiatives.

The Department's treatment of Québec's forest management policies exposes and exemplifies the incoherence of U.S. policy. Québec frequently prescribes for forestry companies how they may cut down timber, invariably inflating the harvesting cost of alternative and commercially preferred clear-cutting. The Québec Government contributes to the inflated cost but, by law, never all of it.

Private forest owners, especially in the United States where they control most of the forest lands, typically impose no requirements for sustainable forestry. President Biden is committing billions of dollars to offset costs in the United States similar to those in Québec (for both private forest owners and harvesters in federal forests).

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[50] *Id.*

The Biden Administration already has expressed support for the economic development of the "sustainable forest product sector, including innovative materials," as part of the President's larger plan for strengthening forests.[51] Yet, the Department, again, interprets the Tariff Act to punish the same kind of policies in Canada.

Under Québec's *Programme Innovation Bois* ("PIB"), the provincial government provides research and development incentives for the creation of innovative forestry products using pulp and other materials. Funding under the program is focused on projects for new and environmentally friendly products, including regenerative materials. Yet, the Department countervails the PIB as if the government incentives were subsidies to the manufacture or export of lumber.[52] The Department not only has the wrong product. It also is attacking a measure that President Biden specifically favors at home.

The Secretary of State, pursuant to EO 14072, is required to work with trade agencies, including the Department and USTR, to develop within one year a report on how the U.S. Government can combat global deforestation and promote sustainable land use through trade agreements, foreign assistance, and other mechanisms.[53] The

[51] EO 14072, 87 Fed. Reg. at 24,852. The Infrastructure Investment Jobs Act makes USDA funding available for "financial assistance, including a low-interest loan or a loan guarantee, to an entity seeking to establish, reopen, retrofit, expand, or improve a sawmill or other wood-processing facility in close proximity to a unit of Federal land [identified] as high or very high priority for ecological restoration." Infrastructure Investment and Jobs Act ("IIJA"), P.L. 117-58, Sec. 40104(a), 135 Stat. 429, 1108, Nov. 15, 2021. State and local governments are likewise involved in the development and promotion of the forest products sector. *See, e.g.,* Frank Corder, "CLAW Forestry locating sawmill operations in Southwest Mississippi," *Y'all Politics*, Apr. 28, 2022, available at https://yallpolitics.com/2022/04/28/claw-forestry-locating-sawmill-operations-in-southwest-mississippi/.

[52] The White House, contrary to the Department, apparently sees merit in the promotion of sustainable forest products. *See, e.g.*, EO 14072, 87 Fed. Reg. at 24,852 (calling for the development of "community-led local and regional economic development opportunities to create and sustain jobs in the sustainable forest product sector, including innovative materials….").

[53] *See id*. at 24,853-54.

Secretary of State has not yet divulged what might be in his report, but USTR already has charted a punitive approach (such as putting a stop to illegal logging in Asia and South America) instead of encouraging or rewarding good conduct.

The Department, persistently and contrary to the President's agenda, has rejected the idea of "global forests," let alone "North American" ones and, therefore, application of President Biden's Glasgow commitments. USTR's leadership promised that "[w]hat we do here at home must be reflected in what we do abroad."[54] That message has been lost on the Department, which has countervailed all government engagement for sustainable forestry management in Canada. This approach also has cast doubt on the seriousness of U.S. commitments to sustainable forestry and other environmental objectives under USMCA Chapter 24.

III. THE UNITED STATES TRADE POLICY IS INCONSISTENT WITH THE ADMINISTRATION'S WHOLE OF GOVERNMENT FIGHT AGAINST CLIMATE CHANGE

A. The Department's Trade Remedy Policy Contradicts Climate Policy

USMCA Chapter 24 does not contain specific commitments on climate change, likely because of the limited disposition toward the environment of the Administration that negotiated the USMCA. Nonetheless, the USMCA's emphasis on environmental cooperation,[55] its promotion of sustainable forestry, green technology, and air quality, among other objectives,[56] provide the means to resolve differences and advance a continent-wide approach to climate change.

[54] Remarks from Ambassador Katherine Tai delivered at the Center for American Progress, Apr. 15, 2021 ("Tai Apr. 15, 2021 Speech"), available at https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/april/remarks-ambassadaor-katherine-tai-trade-policy-environment-and-climate-change.

[55] *See* USMCA, Art. 24.25.

[56] *See, e.g., id*., Arts. 24.11, 24.23, 24.24.

President Biden recognized the need for international engagement in combatting climate change in the first week of his Administration, declaring in an Executive Order that "climate considerations shall be an essential element of United States foreign policy and national security."[57] USTR has followed suit, claiming, "[t]o this end, the Administration is pursuing a new generation of trade policies that will more affirmatively promote the decarbonization necessary to limit global temperature increase to 1.5 degrees Celsius."[58]

There is no strictly American solution to climate change. The whole planet must reduce greenhouse gas emissions, conserve energy of all kinds, and develop viable economic energy alternatives. No one country is responsible for the melting of the polar ice caps and no one country can stop it. Industrial emissions everywhere contribute to global warming but industry cannot on its own solve the problem. Public-private

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[57] Executive Order 14008 ("EO 14008"), "Tackling the Climate Crisis at Home and Abroad," 86 Fed. Reg. 7,619 (Feb. 1, 2021).

[58] Office of the U.S. Trade Representative, *2022 Trade Policy Agenda and 2021 Annual Report* (Mar. 2022) ("*USTR 2022 Agenda and 2021 Annual Report*"), at 4, available at https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20(1).pdf. The Administration continues to pursue (nominally at least) trade policy objectives aimed at combatting climate change. At the Indo-Pacific Economic Framework ("IPEF") Ministerial in September 2022, the Administration joined thirteen other countries in calling for "Incentives to Enable the Clean Economy Transition":

> We recognize the critical role of both the public and private sectors in realizing clean economy goals. We intend to pursue provisions and initiatives that encourage the adoption of demand-side measures that contribute to the development of markets for low- and zero-emissions goods and services, including government and private sector procurement as well as enhance [sic] cooperation on high-integrity carbon market development and operation in the region. We also intend to enhance our cooperation on mobilizing investment and sustainable finance for low- and zero emissions projects and those projects transitioning existing assets to low- and zero-emissions futures by supporting enabling policies; promoting secure, diverse, and resilient clean energy supply chains; developing platforms to pilot initiatives; growing the pipeline of bankable projects; and mobilizing resources including private and institutional capital through public private partnerships and international blended finance instruments. . . . Ministerial Statement for Pillar III of the Indo-Pacific Economic Framework for Prosperity, Sept. 9, 2022, available at https://www.commerce.gov/sites/default/files/2022-09/Pillar-III-Ministerial-Statement.pdf

partnerships are required, all over the globe.[59] At the November 2022 UN COP 27 Climate Summit, President Biden himself reminded the delegates that "[t]he United States is acting. Everyone has to act. It's a duty and responsibility of global leadership."[60] Ironically, the Administration is punishing those who respond to the President's call.

The United States continues to address climate challenge at home with new commitments, through Executive Orders and congressional legislation, including with public-private partnerships and cooperation. However, the Department is contributing to the problem outside the United States in a form that largely is going unreported and unacknowledged, the repudiation of similar foreign efforts in pursuit of the same goals. Contrary to the Administration's public rhetoric encouraging foreign governments to assist with the reduction of greenhouse gases and the conservation of energy, the United States is instead treating such contributions as illegal subsidies to industry and is imposing tariffs on imports into the United States where foreign governments, including USMCA partner Canada, have worked with industry to mitigate climate change.

Eleven months after President Biden's Inauguration, the Department expressly continued to countervail government policies in Central Canada aimed at combatting climate change. The Department said it did not care whether government programs

[59] The United States agreed to the importance of public-private partnerships in the recent IPEF Ministerial Statement on the clean economy: "We recognize the critical role of both the public and private sectors in realizing clean economy goals." Ministerial Statement for Pillar III of the Indo-Pacific Economic Framework for Prosperity, Sept. 9, 2022.

[60] *See* Kevin Liptak & Ella Nilsen, "Biden says US is back as a leader on fighting climate change as he urges all nations to step up their ambitions," *CNN*, Nov. 11, 2022, available at https://www.cnn.com/2022/11/11/politics/joe-biden-egypt-cop27

served the challenge of climate change. It cared only about tariffs and protectionism.[61] The Department repeated this error in the Final Results of the third administrative review of the countervailing duty order on softwood lumber from Canada.[62]

The Department apparently is free to dismiss the "whole of government" approach and disregard the reciprocal nature of programs to combat climate change. Instead, the main U.S. department responsible for enforcing trade remedies laws assigns no value to the achievement of climate-related environmental objectives outside the United States.

Secretary of Commerce Gina Raimondo personally, in May 2022, confirmed her Department's detachment from the declared policy of the President. Addressing specifically the alleged subsidies to softwood lumber from Canada, she asserted that "[t]he Canadian government, through various mechanisms, subsidizes the lumber and lumber producers in ways that are just unfair to American producers."[63] She offered no recognition of the positive environmental and climate change intentions and achievements of various Canadian programs she characterized as "unfair."[64]

This international trade policy is counter-productive, contrary to U.S. trade law, inconsistent with the USMCA commitment to a sustainable environment, damaging to the planet, and hypocritical. Yet, there are abundant examples, drawn here mainly from

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[61] *See* AR2 IDM at 42 ("[W]hether the Government of Ontario and Government of Québec were able to realize energy efficiencies or advance their climate change policies are immaterial to The Department's examination. . . . Within a CVD proceeding, The Department is charged with administering and enforcing the CVD law to all subsidies under examination equally, notwithstanding the purpose or secondary effects of a program.").

[62] *See, e.g.,* AR3 IDM at Comments 4, 5, and 7.

[63] "Raimondo: Suspension of lumber duties not 'on the table,'" *Inside U.S. Trade*, May 16, 2022, available at https://insidetrade.com/trade/raimondo-suspension-lumber-duties-not-table.

[64] *Id*.

the inflationary tariffs on softwood lumber from Canada (that raise the cost of housing)[65] where the United States is condemning the same climate change policies abroad that are now celebrated in the United States.

B. Undercutting Clean And Efficient Energy

The Department has countervailed green programs that promote energy efficiency, contribute to the fight against climate change, and ensure sustainable

[65] The National Association of Homebuilders ("NAHB") has sent several letters to President Biden and Secretary Raimondo concerning the inflationary impact of softwood lumber duties on housing costs. *See* Letter to President Joseph R. Biden from the National Association of Homebuilders, Apr. 27, 2022, available at https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/biden-letter-april-2022.pdf (in letter signed by 10,000 NAHB members, charging that "[t]ariffs on Canadian lumber shipments. . . are further fueling this price volatility and acting as a tax on American home buyers at a time when housing affordability is already at a more than 10-year low"); Letter to President Joseph R. Biden from the National Association of Homebuilders, Oct. 6, 2021, available at https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/lumber/biden-lumber-letter-october-2021.pdf (asking the President to ensure that "housing remains a key component of American socio-economic opportunity, creating jobs and ensuring the U.S. economy continues to move forward" and urging removal of softwood lumber tariffs); *Administrative Review of Certain Softwood Lumber Products from Canada: Letter to Secretary Gina Raimondo by the National Association of Homebuilders*, C-122-858 (Oct. 6, 2021) (Barcode: 4171127-01); Letter to Secretary Gina Raimondo, by American Gas Association, National Association of Home Builders, National Association of REALTORS et. al. on Mar. 12, 2021, available at https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/lumber/housing-coalition-letter-to-sec-raimondo-lumber-prices-031121.pdf (reporting that tariffs from the *Softwood Lumber* dispute had raised the price of the average new home in the United States by $24,000 and new apartments by $9,000). The NAHB has also brought this issue to the attention of lawmakers in meetings on Capitol Hill. *See, e.g.*, NAHB, "More Than 600 NAHB Members Urge Congress to Take Action to Ease the Housing Affordability Crisis," Jun. 15, 2022, available at https://www.nahb.org/news-and-economics/press-releases/2022/06/more-than-600-nahb-members-urge-congress-to-take-action.

Members of Congress have likewise complained to the President, Secretary of Commerce Raimondo, and Ambassador Tai about the lumber tariffs, explaining their adverse impact on rising housing prices and pushing for a U.S. settlement with Canada. *See* Letter from Senators Robert Menendez and John Thune to Secretary Gina Raimondo and Ambassador Katherine Tai, July 18, 2022, available at https://insidetrade.com/sites/insidetrade.com/files/documents/2022/jul/wto2022_0489a.pdf; Letter from Rep. Hern and others to Secretary Gina Raimondo, Dec. 20, 2021, available at https://hern.house.gov/uploadedfiles/hern-higgins_lumber_letter_to_sec_raimondo.pdf?source=email; Office of U.S. Rep. Kevin Hern (D-OK-1), "Hern leads bipartisan letter to USTR Amb. Tai on lumber shortage," Press Release, May 17, 2021, available at https://hern.house.gov/news/documentsingle.aspx?DocumentID=346; Letter from Senators Shaheen and Jerry Moran to Secretary Gina Raimondo, May 12, 2021, available at https://www.moran.senate.gov/public/_cache/files/2/b/2bc3bc03-54e2-4dd7-9213-2815edd8d81e/B85563D04ACD61ED95BC8ED48AA07185.ambtai-secraimondo-softwoodlumber-051221.pdf.

development of the forests.[66] The Department's findings are not only in direct conflict with President Biden's statements and actions on protecting the environment, but also contravene promises under the USMCA. That agreement provides that "the Parties recognize the importance of trade and investment in environmental goods and services, including clean technologies, as a means of improving environmental and economic performance, contributing to green growth and jobs, and encouraging sustainable development, while addressing global environmental challenges."[67] These goals will not be achieved anywhere, including in the United States, without government engagement, yet the Department penalizes foreign governments and corporations for helping to achieve them.

The USMCA Parties have agreed to "strive to facilitate and promote trade and investment in environmental goods and services,"[68] but the Department already has been countervailing programs, including demand response programs and private-public partnerships, that are dedicated to the efficiency of the power grid and the limitation of greenhouse gas emissions.[69] The Department has been countervailing provincial purchases of biomass energy, ignoring the energy market in which they compete.

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[66] Among these are demand response programs and biomass energy purchases in Ontario and Québec; Ontario's TargetGHG and Industrial Electricity Incentives Program ("IEI"); and Québec's Electricity Discount Program Applicable to Consumers Billed at L Rate ("EDL"), Industrial Systems Energy Efficiency Program ("ISEE"), and ÉcoPerformance.

[67] USMCA, Art. 24.24.1.

[68] *Id*., Art. 24.24.2.

[69] In addition to Chapter 24, the USMCA contains several other provisions intended to promote the North American energy sector. *See, e.g.,* Canada-United States Side Letter on Energy, Nov. 30, 2018 ("The Parties shall endeavor to promote North American energy cooperation, including with respect to energy security and efficiency, standards, joint analysis, and the development of common approaches."); USMCA, Ch. 12 (Sectoral Annexes), Annex 12-D: Energy Performance Standards ("The Parties shall cooperate on energy performance standards and related test procedures in order to facilitate trade among the Parties and advance energy efficiency, including through the use of fora in existence.").

In each instance, Québec and Ontario are using transactional mechanisms to encourage green growth and investment. The Department treats such programs as a one-way flow of state largesse when, in fact, they all involve governments contracting with the private sector to accomplish agreed objectives of the USMCA Parties.

The U.S. approach to energy efficiency policies – punishing trading partners like Canada who share and promote the same goals – highlights the gap between rhetoric and reality in the Biden Administration's fight against climate change. Public utilities all over the United States operate demand response programs, for example, which aim to reduce electricity demand at peak times, shifting electricity supply to assure that no one in need at times of peak demand goes without air conditioning or heat, and compensating electricity consumers who accept disruption in their access to energy to promote system-wide conservation.[70]

Both federal and state governments in the United States actively encourage the development and use of demand response programs.[71] The bipartisan Infrastructure Investment and Jobs Act of 2021, frequently cited by the Biden Administration as among its landmark accomplishments, requires electric utilities to "promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers to reduce electricity consumption during periods of unusually high demand."[72]

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[70] *See* Energy Information Administration, *Glossary*, available at https://www.eia.gov/tools/glossary/index.php?id=D.

[71] *See* Glen Andersen & Megan Cleveland, "Meeting Energy Needs with Demand Response," National Conference of State Legislatures: Legisbrief, Vol. 27, No. 25, Jul. 2019, available at https://www.ncsl.org/research/energy/meeting-energy-needs-with-demand-response.aspx.

[72] IIJA, P.L. 117-58, § 40104(a), 135 Stat. at 930-31. The law establishes specific steps and timelines that public and private utilities are to undertake in meeting these goals.

Provincial governments and utilities in Canada operate the same types of programs as in the United States[73] but, when it comes to Canada, the United States treats the compensation for interruptions as a countervailable subsidy, ignoring entirely the service consumers provide to public utilities in support of energy conservation. Rather than interpret the law as intended,[74] the Department treats payments under those programs as a type of "grant,"[75] a one-way cash infusion, as if the service interruptions the United States values so highly at home were of no value in Canada, nor for the global challenge of climate change.

As another example, the Governments of Ontario and Québec have been diversifying energy sources with environmentally friendly energy production that reduces their carbon footprint. Both provinces have encouraged electricity generated from biomass and have solicited competitive bidding from forestry and other companies with access to this resource. The Department countervails these initiatives that diversify sources of green energy.[76]

While treating Canadian contributions to the development of green energy as unfair subsidies, the United States at home recognizes and promotes the benefits of

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[73] The countervailed demand response programs are Ontario's Independent Electricity System Operation ("IESO") Demand Response program; and Hydro Québec's Interruptible Electricity Option ("IEO") and Gestion de la demande de puissance ("GDP") programs.

[74] The purchase of services by a government, such as demand response, is not countervailable. *See* 19 U.S.C. § 1677(5)(D), 5(E)(iv). *See* Part I.B, *supra*, for a detailed discussion of the trade law on this issue. No less authority than the U.S. Supreme Court has recognized that demand response is a service. *See Federal Energy Regulatory Commission v. Electric Power Supply Association et al.,* 136 S. Ct. 760, 771 (2016).

[75] *See, e.g.,* AR3 IDM at 39; AR2 IDM at 37-40.

[76] The Department has countervailed biomass power purchasing agreements under Ontario's IESO Combined Heat and Power III ("CHP III") program and Hydro Québec's Purchase Power Program 2011-01 ("PAE 2011-01").

biomass and other forms of alternative energy.[77] The Infrastructure Investment and Jobs Act of 2021 authorized up to $60 million over five years "for the purposes of creating incentives for increased use of biomass from National Forest System lands, including the Community Wood Energy Program and the Wood Innovation Grants Program."[78] The Consolidated Appropriations Act of 2022 is making up to $20 million in funding available for U.S. Forest Service grants to "create[] incentives for increased use of biomass from National Forest System lands."[79] Yet, despite federal and state emphasis on the investment in, and promotion of, such renewable energy in the United States,[80] the Department countervails utility purchases of biomass cogenerated power in Central Canada.

President Biden in December 2021 signed Executive Order 14057, committing the U.S. Government, "[as] the single largest land owner, energy consumer, and employer in the Nation," to pursue procurement and other policies that "catalyze private sector investment and expand the economy and American industry by transforming how we build, buy, and manage electricity, vehicles, buildings, and other operations to be clean and sustainable."[81] Similarly, Ontario and Québec have been encouraging all

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[77] In 2021 alone, consumption of biomass (biofuels, wood and waste) comprised 40 percent of all renewable energy consumption in the United States, more than hydropower, solar, or geothermal sources combined. *See* EIA, "U.S. primary energy consumption by energy source, 2021," available at https://www.eia.gov/energyexplained/us-energy-facts/.

[78] IIJA, P.L. 117-58, 135 Stat. at 1408.

[79] Consolidated Appropriations Act of 2022, P.L. 117-103, Mar. 15, 2022, at 343. Sec. 432 of the Act calls for a harmonized U.S. government approach to the use of biomass energy and encourages "private investment throughout the forest biomass supply chain, including in – (i) working forests; (ii) harvesting operations; (iii) forest improvement operations; (iv) forest bioenergy production; (v) wood products manufacturing; or (vi) paper manufacturing." *Id*. at 371.

[80] *See, e.g.,* EIA, "Renewable Energy Explained: *Incentives*," Nov. 5, 2021, available at https://www.eia.gov/energyexplained/renewable-sources/incentives.php.

[81] Executive Order 14057 ("EO 14057"), "Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability," 86 Fed. Reg. 70,935 (Dec. 13, 2021); *see also* The White House, "FACT SHEET:

industries to reduce greenhouse gas emissions and take other steps to fight climate change. In the forestry sector, the provincial governments have been supporting experiments and the implementation of results that reduce greenhouse gas emissions.[82]

Even programs aiming to create green jobs are not immune from the Department's inappropriate treatment. The Department countervails Project Learning Tree ("PLT"), Canada's Green Jobs program, which provides mostly disadvantaged and marginalized youth with private sector internship opportunities in forestry, climate science and other related fields.[83] At the same time, in the United States, there is a nearly identical program, and the IRA makes available $1 billion in electric vehicle grants that include funding for workforce development and training to support the maintenance, charging, fueling and operation of zero-emission vehicles.[84]

While the President continues to pursue a vigorous renewable energy and climate program at home,[85] one of his Executive Branch departments is discouraging

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President Biden Signs Executive Order Catalyzing America's Clean Energy Economy Through Federal Sustainability," Statements & Releases, Dec. 8, 2021, available at https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-president-biden-signs-executive-order-catalyzing-americas-clean-energy-economy-through-federal-sustainability/.

[82] Such programs include Ontario's TargetGHG and Québec's ÉcoPerformance and EDL.

[83] According to industry sources, PLT Canada's U.S. counterpart (www.plt.org) is considering the establishment of a similar green jobs program in conjunction with the U.S. Forest Service.

[84] *See* IRA, P.L. 117-169, Sec. 60101.

[85] *See, e.g.,* The White House, "BY THE NUMBERS: The Inflation Reduction Act," Statements and Releases, Aug. 15, 2022, available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/15/by-the-numbers-the-inflation-reduction-act/; The White House, "FACT SHEET: Biden-Harris Administration Races to Deploy Clean Energy that Creates Jobs and Lowers Costs," Statements & Releases, Jan. 12, 2022, available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/12/fact-sheet-biden-harris-administration-races-to-deploy-clean-energy-that-creates-jobs-and-lowers-costs/; Kayla J. Grant & Merrill Kramer, "Key Energy Provisions in Biden Administration $1.2 Trillion Infrastructure Investment and Jobs Act," *National Law Review*, Nov. 17, 2021, available at https://www.natlawreview.com/article/key-energy-provisions-biden-administration-12-trillion-infrastructure-investment-and; U.S. Department of Energy ("DOE"), "DOE Announces $100 Million for Transformative Clean Energy Solutions," Press Release, Feb. 11, 2021, available at https://www.energy.gov/articles/doe-announces-100-million-transformative-clean-energy-solutions.

similar efforts in Canada through the imposition of countervailing duties. The result is the same: the Department's interpretation and enforcement of trade remedy law – contrary to the letter and spirit of the USMCA – penalizes foreign manufacturers and the closest trading partner of the United States for scientific research and for participating in programs to counter the effects of climate change.

C. Solar Energy Presents Another Example Of The Department Countervailing Climate-Change Related Programs In CVD Proceedings

Although the focus of the Department's report to Congress is softwood lumber, other imported products are penalized in direct conflict with the Administration's climate change policies. The Department in each case has misused trade law remedies and ignored what President Biden has called a global fight to "avert climate hell."[86]

The Biden Administration has worked with Congress to ensure the flow of federal money to renewable energy. The IRA offers $30.6 billion in tax credits to accelerate U.S. manufacturing of solar panels in addition to batteries and critical minerals processing.[87] Incentives aim to promote U.S. production of electric vehicles, solar cells, photovoltaic wafers, solar grade polysilicon and polymeric backsheets.[88] The IRA also

[86] *See* Karen Rives, "US is racing to avert 'climate hell,' Biden tells COP27 summit in Egypt," *Forbes*, Nov. 11, 2022, available at https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-is-racing-to-avert-climate-hell-biden-tells-cop27-summit-in-egypt-72996853

[87] *See, e.g.*, IRA, P.L. 117-169, Secs. 13101, 13401. For a complete analysis, *see* J. Brian Davis, et al., "Inflation Reduction Act Becomes Law," BakerHostetler Client Alert, Aug. 8, 2022, available at https://www.bakerlaw.com/Inflation-Reduction-Act-Becomes-Law.

[88] The IRA's EV tax credit already has attracted the dismayed attention of America's trading partners. The EU and South Korea have expressed concerns that the credit is inconsistent with WTO rules. *See* Margaret Spiegelman, "Dombrovskis, in call with Tai, outlines EU concerns over U.S. EV tax credits," *Inside U.S. Trade*, Sept. 1, 2022, available at https://insidetrade.com/daily-news/dombrovskis-call-tai-outlines-eu-concerns-over-us-ev-tax-credits. Both Canada and Mexico raised concerns over the trade-restrictive nature of an earlier version of the EV tax credit in the "Build Back Better" bill. *See* Brian Platt, "'Damaging' EV Tax Credit Has Canada, Mexico Seeking United Front," *Bloomberg*, Dec. 10, 2021, available at https://www.bloomberg.com/news/articles/2021-12-10/-damaging-ev-tax-credit-has-canada-mexico-seeking-united-front.

implements numerous federal environmental policy initiatives through direct funding programs rather than tax deductions or tax credits. Incentives are aimed at electric vehicles, greenhouse gas reductions, alternative aviation fuel, and other climate-change-related matters.[89]

The Department is pursuing an anti-circumvention investigation against solar panels from Asia. Secretary of Energy Jennifer Granholm, in a rare public airing of a difference between Cabinet departments, expressed her "deep concern" over the Department's policies as they are undermining the development of the U.S. solar sector that depends on imports.[90] She recognized publicly the inconsistency of the Department's interpretation of the trade laws with Energy Department policies combatting climate change.

In a letter to President Biden on May 16, 2022, a bipartisan group of governors from eighteen states and one territory, citing Secretary Granholm's public criticism of the Department, wrote that the solar panel investigation "has created market uncertainty that threatens thousands of clean energy jobs and the deployment of solar projects across the nation."[91]

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[89] *See, e.g.,* Summary of the Energy Security and Climate Change Investments in the Inflation Reduction Act of 2022, available at https://www.democrats.senate.gov/imo/media/doc/summary_of_the_energy_security_and_climate_change_investments_in_the_inflation_reduction_act_of_2022.pdf. Using funding under the Act, President Biden has already awarded $2.8 billion in grants for 20 electric vehicle battery manufacturing and processing companies in 12 states. *See* The White House, "FACT SHEET: Biden-Harris Administration Driving U.S. Battery Manufacturing and Good-Paying Jobs," Statements & Releases, Oct. 19, 2022, available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/19/fact-sheet-biden-harris-administration-driving-u-s-battery-manufacturing-and-good-paying-jobs/

[90] Zack Budryk, "Biden energy chief voices 'deep concern' about tariff impact on US solar goals," *The Hill*, Apr. 28, 2022, available at https://thehill.com/policy/energy-environment/3470388-granholm-voices-deep-concern-about-potential-tariff-impact-on-solar-goals/.

[91] Letter from U.S. Governors to President Biden on Solar Circumvention Investigation, May 16, 2022, at p. 1 ("Governors' May 16 Letter"), available at https://insidetrade.com/sites/insidetrade.com/files/documents/2022/may/wto2022_0318a.pdf.

Apparently reacting to the mounting concern over international trade policies that contradict climate change policy, the Biden Administration has begun a more prudent course. In June 2022 the President issued a proclamation invoking emergency powers to ensure adequate supplies of solar panels.[92] The Department is now implementing that proclamation through a proposed rule that would provide for a two-year pause on duties that might otherwise arise from ongoing anti-circumvention probes into solar imports from Cambodia, Thailand, Malaysia and Vietnam.[93]

Notwithstanding the exceptional action of pausing duties, the Biden Administration has failed to alleviate concerns about the impact of a potential adverse finding in the solar panel anti-circumvention probe. On November 16, 2022, the Solar Energy Industry Association, representing more than 240 organizations and companies in the solar energy sector, wrote to Secretary of Commerce Raimondo asking that the Department issue a negative preliminary determination in the anti-circumvention cases. The SEIA letter expressed concern that a circumvention finding "would…undercut efforts to address the existential threat of climate change. With the ink barely dry on the historic [Inflation Reduction Act], to reverse course and place additional costs on U.S. solar companies would be entirely counterproductive to the ambitious decarbonization goals established by this administration."[94]

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[92] *See* Proclamation 10414, "Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia," 87 Fed. Reg. 35,067 (Jun. 9, 2022).

[93] *See* "Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414," 87 Fed. Reg. 39,426 (Dept. of The Department Jul. 1, 2022).

[94] *See* Jennifer Doherty, "Solar Industry Seeks End to Tariff Circumvention Probes," *Law360*, Nov. 16, 2022, available at https://www.law360.com/environmental/articles/1550049?nl_pk=8da0861e-d75e-4b47-a6eb-d72b8354490a&utm_source=newsletter&utm_medium=email&utm_campaign=environmental&utm_content=2022-11-17&nlsidx=0&nlaidx=7

In the context of CVD investigations, the Department has countervailed other foreign governments' programs, in addition to Canada, that are designed to achieve climate change mitigation. For example, in the CVD investigation of *Forged Steel Fluid End Blocks from Italy and Germany*, the Department countervailed the European Union ("EU") Emissions Trading System ("ETS") that provides financial incentives to companies at high risk of "carbon leakage."[95] The incentives help cover environmental costs of compliance.[96]

In the last CVD administrative review of *Crystalline Silicon Photovoltaic Cells (Solar Cells and Modules) from China*, the Department countervailed climate-related financial assistance such as Preferential Policy Lending to the Renewable Energy Industry; Supporting Fund for Transformation and Expansion Projects of Solar Cells; and National Award for Green Factory.[97] The Department did not deny in any of these instances that the programs may serve a climate-change mitigation purpose.

IV. CONCLUSION

The Administration's awakening to the self-defeating trade policy on solar panels should activate similar concerns over the impact of U.S. duties on Canadian climate change programs that are being countervailed in the case of *Softwood Lumber from*

[95] Carbon leakage refers to the situation that may occur if, for reasons of costs related to climate policies, businesses were to transfer production to other countries with laxer emission constraints. This shift could lead to an increase in their total emissions. The risk of carbon leakage may be higher in certain energy-intensive industries. *See* EU Commission, "Carbon Leakage," available at https://ec.europa.eu/clima/eu-action/eu-emissions-trading-system-eu-ets/free-allocation/carbon-leakage_en.

[96] *See* The Department's Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy (Dec. 7, 2020) at Comment 3, available at https://access.trade.gov/Resources/frn/summary/italy/2020-27336-1.pdf.

[97] *See* The Department's Issues and Decision Memorandum for the Final Results and Partial Recission of the Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2019 (Jun. 29, 2022), available at https://access.trade.gov/ (Barcode:4257920-02).

Canada. The Department's reasoning – that what matters is only what a company receives – is no reason at all. The Department's interpretation of the trade law is contrary to U.S. undertakings in the USMCA, inconsistent with the United States' WTO obligations, and detrimental to the Biden Administration's commitments to combat climate change. Central Canada urges that the Department take this opportunity to align its enforcement of the trade remedies laws with U.S. international obligations and the Administration's climate change and environmental policies. As part of this effort, Central Canada requests that the Department work with USTR to ensure the USMCA Environment Committee study, discuss, and propose solutions to promote rather than hinder continental environment and sustainability policies through the misapplication of trade measures.

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Respectfully submitted,

Elliot J. Feldman
Michael S. Snarr
Ronald J. Baumgarten
Tung A. Nguyen

Counsel to The Conseil de l'industrie forestière du Québec and The Ontario Forest Industries Association