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The Honorable Penny Pritzker
Secretary of Commerce
Attn: Enforcement and Compliance
APO/Dockets Unit, Room 18022
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Re: ***Certain Softwood Lumber from Canada*:**
Submission of Consultations Paper

Dear Madame Secretary:

We hereby file Canada's Consultations Paper, submitted today to the Department of Commerce during the scheduled consultations meeting. A copy of this submission has been served as indicated on the attached service list. Should the Department have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joanne Osendarp, hereby certify that a copy of the foregoing public submission has been served this day, by first class mail, or via email where indicated with an asterisk , upon the following persons:

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Dated: December 7, 2016

DOC Inv. No. C-122-858

ITC Inv. No. 701-TA-566
Investigation

**BEFORE THE INTERNATIONAL TRADE ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE AND THE
UNITED STATES INTERNATIONAL TRADE COMMISSION**

CONSULTATIONS PAPER OF THE GOVERNMENT OF CANADA

December 7, 2016

CONSULTATIONS PAPER OF THE GOVERNMENT OF CANADA

I. Introduction

The dispute underlying the Petition before the Department of Commerce has been ongoing for over 30 years. The Petition seeks, for the fifth time in that period, imposition of countervailing duties on imports of softwood lumber from Canada.

Before the case is initiated, the Department must be satisfied that the requirements for standing are met. It must ensure that the minimum standards for the initiation of an investigation are adhered to. Thus, for each claim, the Petition must make specific allegations of subsidies as they are defined in U.S. law and the *SCM Agreement*, and those allegations must be supported by the evidence reasonably available to the Petitioner.

The Petition does not remotely approach the required minimum standards for initiation of an investigation. Section 702(c)(1)(A)(i) of the *Tariff Act*, 19 U.S.C. § 1671a(c)(1)(A)(i), provides that in deciding whether to initiate a CVD investigation, *as well as which programs to include in that investigation*, the Department must first determine whether the Petition "alleges the elements necessary for the imposition of the duty imposed by section 1671a(a) of this title, and contains information reasonably available to the petitioner supporting the allegations."

The U.S. statute tracks the obligations agreed to by the United States under the WTO Agreement on Subsidies and Countervailing Measures ("*SCM Agreement*"), which, *inter alia*, requires "sufficient evidence of the existence of (a) a subsidy and, if possible, its amount" before an investigating authority may initiate a countervailing duty investigation, and further provides that "{s}imple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph."[1]

The Petition does not include sufficient evidence of the existence of subsidies. Petitioner provides no evidence of a financial contribution, benefit or specificity. The Government of Canada strongly believes that the Department should not initiate unless and until there is a properly filed petition that meets the initiation standards. This is clearly not the case here.

In order to facilitate the Department's review of the alleged countervailable programs, this paper addresses the programs in the order in which they are listed in the Petition. This paper also addresses fundamental aspects regarding the Department's overall consideration of this case. Specifically, this paper will cover the following:

[1] *SCM Agreement* Art. 11.2

Standing

- The Petition fails to demonstrate that it was filed by an interested party as defined by the statute or that it was filed on behalf of the U.S. softwood lumber industry – The Petition fails to disclose whether the COALITION is an interested party, because the Petition lacks any information regarding the composition of one of its members, the U.S. Lumber Coalition, Inc. Additionally, Petitioner's calculation of industry support suffers from a number of methodological flaws. These flaws include the failure to provide value data, the use of data from 2015 to calculate industry support despite the availability of much more recent data, the possible failure to fully capture the entirety of U.S. production of the domestic like product, and the use of data collected based on scope language that Petitioner now seeks to clarify and modify.

Stumpage

- The Petition fails to support its benefit allegation with lawful benchmarks – First, the Petition asserts that in-province benchmarks for each of the provinces are not usable because the market has been distorted, but has not even attempted to support this allegation with the analysis the WTO has repeatedly said is required to reject in-jurisdiction benchmarks. And because the Petition fails to calculate any benefit compared to an in-province benchmark, it has failed to support its benefit allegation. Second, the Petition relies on out-of-province benchmarks that in no way reflect the prevailing market conditions within the provinces allegedly providing stumpage for less than adequate remuneration. The Petition has failed to make any attempt to adjust for the differences in market conditions, again showing that the benefit allegation in the Petition is unsubstantiated. Additionally, the Department must conduct an upstream subsidy analysis to determine whether any lumber produced by sawmills or remanufacturers that purchased log or lumber inputs from unaffiliated entities benefited from the alleged subsidies on stumpage.

Log Export Restraints

- The Petition fails to show that private parties were specifically entrusted or directed to provide a good to softwood lumber producers - In making its allegation for both British Columbia and Québec, the Petition ignores the legal standard for establishing entrustment and direction and completely distorts the facts as to the role that the respective governments play in authorizing the export of logs.

- British Columbia – The Petition contains none of the empirical analysis that the Department has previously said is necessary to show that domestic and world market prices diverged because of the alleged restraints.

- Québec – The Petition fails to offer any new facts that would cause the Department to deviate from its prior findings that Québec has no effective log export restraint system.

Bioenergy Programs

- Bioenergy Program relating to downstream non-subject merchandise – A number of the "bioenergy" programs included in the Petition fail to contain allegations, let alone facts, that could support a finding that the claimed assistance provides a benefit with respect to the manufacture, production, or export of softwood lumber. Instead the Petition claims that alleged assistance, which benefits downstream non-subject merchandise products that are made from non-subject co-products of softwood lumber production can be the subject of an investigation against softwood lumber. Nothing in the countervailing duty law or the *SCM Agreement* would countenance countervailing, let alone initiating an investigation on such allegations. Bioenergy allegations that fall within this category are the following

    - Sustainable Development Technology Canada – The Petition provides information on a grant for a "LignoForce" recovery plant for pulp mill waste, but fails to provide a sufficient basis for finding that such a grant would provide a benefit to a softwood lumber producer.

    - BC Hydro's Load Displacement Program – The Petition alleges that this program provides benefits to pellet plants, but fails to provide a sufficient basis for finding that this would benefit lumber production. There are also factual inaccuracies in the Petition in that lumber production is not downstream from pellet production and the sawmill at issue did not use pellets.

- BC Hydro's Electricity Purchase Agreements – Petitioner alleges that softwood lumber producers somehow benefit from Electricity Purchase Agreements ("EPAs") signed by their cross-owned independent power producers. Petitioner fails to provide sufficient evidence that the electricity is being purchased at more than adequate remuneration. This is particularly the case since the Department recently declined to initiate on this identical program in *Supercalendered Paper from Canada*. Also, Petitioner fails to provide a sufficient basis for finding that such EPAs would provide a benefit to softwood lumber.

- Ontario Northern Industrial Electricity Rebate ("NIER") Program – There is no basis to initiate on this program because the NIER explicitly excludes softwood lumber facilities from program eligibility and, therefore, NIER could not have provided a benefit to softwood lumber facilities.

- Quebec Power Purchase Program – The Petition fails to identify a financial contribution and benefit during the POI. The companies that contract with Hydro-Quebec are unrelated to any lumber producing entities. Petitioner fails to provide any evidence of a benefit during the POI, as all identified contracts are not scheduled to come on line until after the POI.

Tax Programs

- BC Motor Fuel Tax Refund – Petitioner fails to provide sufficient evidence of a countervailable benefit. The tax refund program is nothing more than a mechanism to ensure that a purchaser does not pay higher tax rates than that to which the purchaser is already entitled to pay under separate provisions of the Act. To the extent that there was a benefit arising from the tax refund program, any such benefit would accrue to those third-party contractors, not the sawmills producing lumber.

- Alberta's Fuel Tax Exemption – Petitioner's allegations regarding Alberta's fuel tax exemption program are likewise deficient, in particular–

    - Prescribed Off Road Percentage Program ("PROP") – Petitioner fails to provide a sufficient allegation with respect to benefit. Alberta eliminated PROP in 2011, and Petitioner's allegation that PROP should be treated as a non-recurring subsidy is inconsistent with the Department's regulations.

    - Marked Fuel Tax Exemption and Clear Fuel Rebate – Petitioner has failed to provide any evidence that indicates these programs are either *de jure* or *de facto* specific under U.S. countervailing duty law.

Additional Programs

- Export Development Canada-Export Guarantee Program – The Petition fails to provide sufficient facts to support its allegation that this program provides a benefit.

Issues in the Conduct of the Investigation

- The Investigation should be conducted on an Aggregate basis – The Department conducted prior lumber investigations on an aggregate basis. Because an even larger number of exporters and producers are potentially involved in this investigation, the Department should again exercise its authority to conduct this investigation on an aggregate basis. Canadian law establishes that the provinces have exclusive jurisdiction over the forest lands and resources within their borders. A company specific investigation, in which only a few companies would be examined, could not account for the diversity of forest pricing and management systems that result from the province-specific nature of Canadian forestry.

- The Department should allow Canadian importers to post bonds in lieu of cash deposits during the provisional measures period – Canadian importers should be permitted the option to post bonds instead of cash deposits during the provision measures period because: (1) the United States faces no genuine risk of not being able to recover potential duties should Canadian importers post bonds instead of cash deposits; and (2) requiring cash deposits could result in the payment of interest back to Canadian importers (if final margins are lower than preliminary margins), and therefore a loss of revenue to the U.S.

- Atlantic Provinces – Canada supports the exclusion of the Atlantic provinces from this countervailing duty investigation.

- Company Exclusions – If the Department initiates an investigation, Canada urges the Department to promptly adopt fair and workable procedures for the submission and review of company exclusion applications.

- The Provinces of Saskatchewan, Manitoba and the Territories should not be investigated – These provinces and the Territories represent an extremely small share of lumber production. The administrative burdens on the Department posed by this case could be reduced by limiting the investigation to the largest lumber-producing provinces.

- Scope and Product Exclusions – The Government of Canada intends to file a number of product and species exclusions requests should the Department initiate an investigation. In particular, the Government of Canada will file a request to exclude eastern white pine, wooden bed frame components, lumber made from U.S. origin logs, lumber made from private land or First Nations logs, high value products, and western red cedar from the scope of the investigation.

- Timetable of the Proceedings – The Government of Canada urges that, if an investigation is initiated, the Department promptly recognize the nature of the proceeding and place it on an "extraordinarily complicated" timetable.

II. The Petition Has Not Been Filed by or on Behalf of a U.S. Industry

Section 702 of the *Tariff Act*, 19 U.S.C. § 1671a, requires that the Petition be filed by an "interested party" "on behalf of an industry."[2] The Petition fails to establish that it was filed by an "interested party" or that it was filed "on behalf of" the U.S. softwood lumber industry.

There is insufficient evidence that the Petition was filed by an "interested party." The party that filed the Petition is the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations ("COALITION"), which claims to be an interested party as a "trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States" under Section 771(9)(F) of the *Tariff Act*, 19 U.S.C. § 1677(9)(F).[3] The COALITION asserts that eight of its thirteen members are manufacturers, producers, or wholesalers of the domestic like product, which would appear to constitute a majority of the membership. However, the COALITION also lists the U.S. Lumber Coalition, Inc., as a member, which itself is supposedly a trade association, a majority of whose members manufacture, produce, or wholesale a domestic like product. There is absolutely no evidence in the Petition, however, of the membership of the U.S. Lumber Coalition, Inc. to support this

[2] 19 U.S.C. § 1671a(b)(1).

[3] Petition Vol. I at 2–3.

assertion. And without this information, the Department cannot adequately address whether the COALITION has standing. The COALITION should not be able to claim that a majority of its members would qualify as interested parties if one of those members is potentially comprised of a much larger number of parties that would not in fact have independent standing. This simply encourages gamesmanship and allows the real parties in interest to hide behind front organizations when filing petitions.

The Department should not allow trade associations to claim interested party status when one of the members of the association itself is a trade association without an inquiry into the identity of the membership of the subsidiary association. For example, an association that would not otherwise qualify as an interested party could simply lump all of its members who are not producers, manufacturers, or wholesalers of the domestic like product into a single new subsidiary association, and then claim that all of those members now constitute only a single member of the original association. This would clearly run afoul of the spirit of the statute requiring manufacturers, producers, and wholesalers of the domestic like product to comprise the majority of an association in order for the association to have standing. Indeed, the regulations address this treat by requiring that a petition contain "the name, address, and telephone number of the petitioner *and any person the petitioner represents*."[4] The Petition fails to do this with respect to the U.S. Lumber Coalition, Inc., thus depriving the Department of its ability to determine the standing of Petitioner. The U.S. Lumber Coalition, Inc. should be required to disclose the names, addresses, and telephone numbers of its members and identify whether each member is a manufacturer, producer, or wholesaler of the domestic like product; failing that, the Petition should be dismissed.

The Petition also fails to show that it was filed "on behalf of" the U.S. softwood lumber industry. A petition is filed "on behalf of the industry" if (i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and (ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.[5] Importantly,

> {i}f the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority *shall* –
>
> > (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

[4] 19 C.F.R. § 351.202(b)(1) (emphasis added).

[5] Section 702(c)(4)(A) of the *Tariff Act*, 19 U.S.C. § 1671a(c)(4)(A).

> (ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.[6]

In the Petition, as subsequently corrected, Petitioner claims to have the support of at least 55.14 percent of U.S. softwood lumber production.[7] Specifically, Petitioner claims to have the support of producers that produced 17,489 million board feet of softwood lumber in 2015, out of a total U.S. production volume of 31,719 million board feet for 2015. For the reasons that follow, the Department should not accept this calculation of industry support.

First, Petitioner has failed to follow the Department's regulation requiring a petition to contain the value of U.S. production and the value of the domestic like product produced by the supporters of the petition.[8] Because the amount of industry support as represented by Petitioner in terms of volume is relatively close to 50 percent, it is not unreasonable to believe that value figures for the producers supporting the Petition could be below 50 percent.[9] Because Petitioner has failed to provide this critical data, Petitioner's allegations of industry support should be rejected, and the Department at the very least should poll the industry, requesting both volume and value data.

Second, the 12-month period used by Petitioner is not reasonable for purposes of determining industry support for the Petition. Petitioner relies on calendar year 2015 ("CY2015") data and refers to this as the "presumptive period of investigation."[10] But the actual

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[6] Section 702(c)(4)(D) of the *Tariff Act*, 19 U.S.C. § 1671a(c)(4)(D) (emphasis added).

[7] *See* Petitioner's Response to the Department's Supplemental Questions (Dec. 1, 2016) at 9.

[8] 19 C.F.R. § 351.202(b)(3).

[9] Petitioner argues that the Department should disregard any potential opposition by West Fraser Timber Co. Ltd., Canfor Corporation, and International Forest Products, because they are related to Canadian producers. *See* Petition Vol. I at 9–10. Petitioner's argument, however, is a non-sequitur at this point, as it is not a relevant factor in determining whether polling is required. The statute says that the Department "shall" poll "if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production." Section 702(c)(4)(D) of the *Tariff Act*, 19 U.S.C. § 1671a(c)(4)(D). It is not respondents' burden to show that more than 50 percent of the domestic industry would oppose the Petition – rather, the Petition must show that more than 50 percent of the domestic industry actually supports the Petition. *See* Petition Exhibit 11 (*Passenger Vehicle and Light Truck Tires* AD Investigation Initiation Checklist, Attach. II) at 12 ("The statute does not direct us to consider whether any producers publicly oppose the Petitions in the press or whether some producers may be related to or import from Chinese producers of subject merchandise in determining whether or not to poll the industry."). As explained below, the Petition does not do so.

Moreover, determinations of whether the opposition of related parties should be made on a case-by-case basis, taking into account the producer's interests as a domestic producer. *See* 19 C.F.R. § 351.202(e)(4)(i). Notably, according to the data relied upon by Petitioner, these three companies account for over 15 percent of U.S. domestic production by volume, indicating that they have a significant stake in the case as U.S. producers.

[10] Petition Vol. I at 2–7.

periods of investigation suggested by Petitioner are April 1, 2015 through March 31, 2016 for the countervailing duty case and October 1, 2015 through September 30, 2016 for the antidumping case. The CY2015 data do not line up with either of these periods of investigation. More crucially, when the Department proposed the regulation regarding its determinations of industry support, the Department explained that "normally the Secretary will use the most recent twelve-month period for which data are available."[11] The Department did not indicate any change in policy in finalizing the regulation.[12] This makes sense, as relief via antidumping and countervailing duty orders is prospective in nature, and thus the measure of support should reflect the most current situation within the U.S. industry. Petitioner has total U.S. production data through at least August 2016,[13] and there does not appear to be any reason why the firms filing letters could not have provided production data through August 2016. Assuming that the Department uses a 12-month period for its industry support determination, the Department should use September 2015 through August 2016 data. Because Petitioner has provided only total production data for CY2015, and not production data for the producers supporting the Petition, the Department should poll the industry, requesting volume and value data regarding their production during the period of September 2015 through August 2016. Alternatively, the Department should poll the industry, requesting production data from one of the two periods of investigation proposed by Petitioner (i.e., April 1, 2015 through March 31, 2016 or October 1, 2015 through September 30, 2016).

Third, the adjustments made to the *Lumber Track* production data in an attempt to capture the entirety of the production of the domestic like product do not appear to be sufficient. Petitioner makes a small adjustment for siding and flooring that may not be captured by the *Lumber Track* data.[14] But Petitioner also claims that "{c}omponents or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition {of softwood lumber as described in the Petition}" should be included within the scope of this case.[15] Among the examples of these unfinished products listed in the Petition potentially meeting the definition of softwood lumber are truss components, pallet components, and window frame parts.[16] Petitioner does not explain why these component parts would be picked up in *Lumber Track* data and why an adjustment to the *Lumber Track* data is not needed to account for the production of these unfinished items. The Government of Canada notes that in the 2012 Economic Census, the total value of truss manufacturing (NAICS code 321214), wood

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[11] *Notice of Proposed Rulemaking: Antidumping Duties; Countervailing Duties*, 61 Fed. Reg. 7308, 7314 (Dep't of Commerce Feb. 27, 1996).

[12] *See Final Rule: Antidumping Duties; Countervailing Duties*, 62 Fed. Reg. 27,296, 27,307–27,308, 27,358 (Dep't of Commerce May 19, 1997).

[13] *See* Petition Exhibit 2.

[14] *See* Petition Vol. I at 6 and Exhibit 56.

[15] *Id.* at 16.

[16] *Id.* at 17.

window and door manufacturing (NAICS code 321911), and wood container and pallet manufacturing (NAICS code 321920) was $19,170,903,000, which is significantly more than the $11,232,312,000 of softwood lumber that Petitioner claims represents the total of lumber produced by sawmills and remanufacturers.[17] Even if the unassembled and unfinished parts and components of the final products (and others referenced in the Petition) make up only a small portion of the total production reported in the Census data for these NAICS codes, the total volume of those components and parts could still be enough to reduce the support for the Petition to a percentage less than 50 percent of the total production of the domestic like product. The Department accordingly should ensure that all producers of the domestic like product are captured in determining the level of industry support by polling the industry.

Finally, as the Department's questions to Petitioner illuminate, the scope of the Petition as originally described by Petitioner was unclear and confusing.[18] Petitioner has since attempted to clarify the language, but the producers filing letters of support reported their production based on the scope as originally described in the Petition. It is not clear whether the producers supporting the Petition would have reported the same production amounts if they had been presented with the narrower language that Petitioner now proposes as the scope of these proceedings.

In conclusion, there is a significant need to poll the industry in this case and the Department accordingly should extend the time for initiation by 20 days in order to conduct a poll.

III. The Petition's Allegations of Stumpage Subsidies Do Not Meet the Minimum Standards for Initiation

A. The Petition Fails to Substantiate a Stumpage Benefit

The Petition asserts that there are no usable internal benchmarks in any of the provinces for determining the existence, and measurement, of a benefit provided to lumber producers under each province's stumpage regime. For Alberta, Saskatchewan, Manitoba, Ontario, Québec and New Brunswick, Petitioner offers as a benchmark prices charged for private stumpage in Nova Scotia, as reported in a survey prepared by Deloitte for the Nova Scotia Department of Natural Resources. Alternatively, Petitioner proposes that the Department use U.S. cross-border benchmarks that were used in the *Lumber IV* original investigation to determine and measure the benefit in each of these provinces. For British Columbia, Petitioner proposes that log prices in the Pacific Northwest be used as a benchmark.

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[17] *Compare* Exhibit A (2012 Economic Census of the United States, Economy-Wide Key Statistics: 2012, U.S. Census Bureau) *with* Petition Exhibit 56. Note that to avoid confusion with exhibits submitted with Petition, exhibits attached to this paper are labelled using letters instead of numbers.

[18] *See* Department's Supplemental Questions to Petitioner (Nov. 30, 2016).

Under section 771(5)(E) of the *Tariff Act* and Article 14(d) of the *SCM Agreement*, there is no benefit from an alleged provision of a good unless the good is provided for "less than adequate remuneration." The Act and Agreement provide that adequacy of remuneration shall be determined in relation to the prevailing market conditions for the good being provided in the country of provision (including price, quality, availability, marketability, transportation, and other conditions of sale). Only benchmarks reflecting prevailing market conditions for the good being provided may therefore be used. The language requiring that the benchmark be "in the country of provision" is there for a reason.

In order to accurately determine whether a benefit has been provided, the prevailing market conditions must be the same in the original and comparator jurisdictions. This is necessary to determine whether any price differential between the goods is the result of a conferral of a benefit by the government, and not of differences in prevailing market conditions between the jurisdictions. The fact that the price in one jurisdiction is lower than in the other does not mean that a subsidy is being provided in the first, unless all the factors that affect the price of the good are adjusted for. Accordingly, if market conditions in the jurisdiction where the good subject to the investigation is provided differ from those in the jurisdiction where proposed benchmark sales occur, adjustments must be made to account for all of these differences.

Intra-jurisdictional comparisons reduce the number of adjustments that must be made for the comparison to be valid.

There have been a number of significant WTO decisions in the last five years interpreting when an investigating authority can go outside the jurisdiction to find a benchmark to determine whether a program has provided a benefit. The two most recent are *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India*[19] and *United States – Countervailing Measures on Certain Products from China*.[20]

In these two cases, the Appellate Body reviewed the current state of WTO law as it applies to market distortion. First, the AB reiterated that proper benchmark prices would normally emanate from the market for the good in question in the country of provision and that such in-country prices could emanate from a variety of sources, including private and public related entities. Second, the AB very clearly stated that investigating authorities bear the responsibility of conducting the necessary analysis in order to determine, on the basis of information supplied by petitioners and respondents in a countervailing duty investigation, whether the proposed benchmark prices are market determined such that they can be used to determine whether remuneration is less than adequate. Third, the AB concluded that although a government's predominant role as a supplier in the market makes it likely that prices will be

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[19] Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India*, (WT/DS436/AB/R).

[20] Appellate Body Report, *United States – Countervailing Measures on Certain Products From China*, (WT/DS437/AB/R).

distorted, the distortion of in-country prices must be established on the basis of the particular facts underlying each countervailing duty investigation. Fourth, the AB emphasized that what allows an investigating authority to reject in-country prices is price distortion, not the fact that the government, as a provider of goods, is the dominant supplier *per se*. And finally, the AB clarified that its reasoning in *US – Softwood Lumber IV* excluded the application of a *per se* rule according to which the investigating authority could properly conclude in every case that the fact that the government is the predominant supplier establishes that there is price distortion.

The Court of International Trade remanded the Department's use of out-of-country benchmarks in the recent case of *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States ("Borusan")*[21]. There the Court found that the Department had not adequately supported its decision to disregard tier one pricing in the countervailing duty investigation of oil country tubular goods (OCTG) from Turkey. In the underlying case the Department had found that the Turkish government's portion of the hot rolled steel (HRS) (input to OCTG) market was "substantial" (the percentage was unclear) making the HRS market "significantly distorted." Thus, again, the Department had employed its *per se* test of distortion and disregarded the Tier One benchmark pricing submitted by the respondents.[22]

In finding that the Department's determination was not supported by adequate evidence of market distortion, the Court relied heavily on the Preamble to the CVD regulations:

> While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.[23]
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> The Court went on to state that:
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> The straightforward reading of the Preamble is that a "substantial portion" finding implies "significant distortion" in certain circumstances, and in the absence of clarification of what those "certain circumstances" are, an explanation of why the Turkish HRS market being examined for purposes of this OCTG investigation is one of those, Commerce's finding that the Turkish HRS market is significantly distorted, based solely on its finding

[21] 61 F. Supp. 3d 1306 (Ct. Int'l Trade 2015)

[22] 61 F. Supp. 3d at 1330.

[23] *Preamble, Countervailing Duties: Final Rule*, 63 Fed. Reg. 65348, 65377 (Nov. 25, 1998 ("Preamble"), cited in *Borusan* 61 F. Supp. 3d at 1328.

> that the Turkish government provided a "substantial portion" of it, amounts, as argued by Borusan, to application of a *per se* rule.[24]
>
> The fact that Commerce itself stated that it was necessary to measure the "level" of distortion and that it did not have the required information therefor, namely production and consumption information of HRS in Turkey, means that the "significant" distortion finding is *per se* as applied....From the fact that Commerce denies that its ruling is *per se*, even as applied, the court must conclude this is at least indication that further explanation or analysis of the record is necessary, in order to explain those circumstances where "substantial portion of the market" results in minimal distortion and where it results in substantial or significant distortion and explain its reasoning on its categorization of the matter at bar and the record evidence that supports it.[25]
>
> The Preamble allows for the possibility of a level of "minimal" distortion even where there is "substantial portion" government involvement, and simply asserting that "significant distortion" was determined from the "totality of the record" does not explain why or how that determination could have been reached on the basis of a record that Commerce itself admits was incomplete on the issue of the level of distortion.[26]

The Court, as a result, remanded back to the Department to provide further explanation to support its significant distortion finding. *Id.* at 1331. [27]

Notwithstanding the developments in the jurisprudence over the last fifteen years, Petitioner relies entirely on the evidence presented with respect to each of the province's internal benchmarks in the *Lumber IV* investigation and administrative reviews, and on the Department's reasoning in that case, to assert that none of the benchmarks in the provinces are "usable." According to Petitioner, government involvement in each of the provinces *per se* distorts the market such that external benchmarks must be used.[28] Petitioner provides no evidence whatsoever of such distortion. Rather, it assumes distortion based on government involvement in each of the jurisdictions – exactly what the Appellate Body has instructed against. In sum, this rejection out of hand by Petitioner of all internal benchmarks and its use of the Nova Scotia

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[24] *Borusan* 61 F. Supp. 3d at 1328-1329.

[25] *Id*. at 1330.

[26] *Id*. at 1331.

[27] *Id.* at 1331.

[28] Petitioner asserts that "{b}ecause government-owned timber sales account for the vast majority of timber sold in most Canadian provinces, timber prices in those provinces will generally not be a viable benchmark." Petition Volume III at 8.

and U.S. cross-border benchmarks to establish "benefit" provides no basis on which the Department may, consistent with U.S. and WTO legal requirements, initiate an investigation.

B. Neither the Stumpage Price for the Right to Harvest Standing Timber in Nova Scotia, Nor the U.S. Benchmarks Proposed by Petitioner, Reflect Prevailing Market Conditions in British Columbia, Alberta, Manitoba, Saskatchewan, Ontario, Québec or New Brunswick

Petitioner offers the stumpage price reportedly paid to harvest softwood standing timber in Nova Scotia as the benchmark for Alberta, Saskatchewan, Manitoba, Ontario, Québec and New Brunswick to determine whether these provinces' stumpage regimes provide a benefit to Canadian softwood lumber producers. Leaving aside the illegality of using an out of jurisdiction benchmark to establish benefit absent evidence of market distortion, the prevailing market conditions in Nova Scotia do not reflect the prevailing market conditions in any of these provinces, as they must, if the Department is to use Nova Scotia stumpage prices as a benchmark.

A wide variety of factors affects stumpage and log prices – factors that vary significantly between regions. These include, *inter alia*, locational characteristics (such as topography and distance to sawmills and markets), climatic characteristics, timber characteristics, harvesting conditions, operating costs, and other economic conditions. Any attempt to compare stumpage prices between different jurisdictions must consider all relevant factors and either determine that the factors are the same in both areas, or adjust for differences that have nothing to do with alleged subsidization.

Even if the differences in spruce, pine, and fir ("SPF") timber characteristics between these jurisdictions were "minor" (and they are not with respect to any of the provinces for which the Nova Scotia benchmark is used), adjustments would have to be made for density, quality, size, age, accessibility, terrain, climate, and all the additional factors affecting comparability – such as differences in regulatory regimes, capital and labor costs, and business climate.

There is no doubt that significant differences in prevailing market conditions exist between provinces. For example, much of the species harvested in Nova Scotia are comprised of species that in Alberta do not exist at all, and if they do exist, are rare, of poor quality and inaccessible for harvesting. In Ontario the forests are primarily boreal, while all of Nova Scotia's forests are Acadian forests. The climate is wetter, warmer and milder and the growing season is longer in the Acadian forests, as compared to the boreal forest in Ontario.

The same is equally true for the U.S. cross-border benchmarks that Petitioner proposes, in the alternative, for all provinces except for British Columbia and for British Columbia exclusively. As stated, the statute requires that adequacy of remuneration be determined in relation to *prevailing market conditions* for the good or service being provided … *in the country which is subject to the investigation or review*. The Department's regulations support this in-country requirement.

All the benchmarks listed in the Regulations are internal to the country at issue: (1) actual transactions within the jurisdiction; (2) a world market price for the good, provided it

is commercially available within the jurisdiction; and (3) a market-principles analysis of the process the providing government charges for the goods.[29] Again, the common-sense reason for this requirement that the benchmark reflect the prevailing market conditions in the jurisdiction of provision is plain: that the domestic price in one jurisdiction is lower than the domestic price in another jurisdiction does not mean that the first jurisdiction is providing a subsidy, because a wide range of complex factors may account for the differences in price. As the Appellate Body explained, "the countervailing measures may be used only for the purpose of offsetting a subsidy bestowed upon a product"; they cannot be applied to counteract basic differences in market conditions. The Department has, in fact, acknowledged that it is impossible, as a practical matter, to adjust cross-border benchmarks for all differences in prevailing market conditions.[30]

There are distinct differences between the cross-border U.S. jurisdictions suggested by Petitioner and the stumpage regimes that exist in the provincial jurisdictions for which Petitioner offers those benchmarks: differences in timber characteristics and operating conditions, in stumpage arrangements and in governmental policies and economic conditions. In rejecting cross-border comparisons in *Lumber I*, the Department noted that "each individual stand of timber is unique due to a variety of factors such as species combination, density, quality, size, age, accessibility, and terrain and climate." The Department has also recognized that tenures and long term licenses in Canada, but not short-term cutting rights in the United States, impose extensive forest management duties that ensure that the forest resources are managed in the public interest, as well as extensive silviculture, road building and infrastructure that the government itself would otherwise carry out.[31]

Cross-border stumpage comparisons are complicated by differing political and economic conditions. These differences are particularly significant and impossible to quantify when comparisons are made across international borders. The border is relevant not only because the statute and Regulations require the Department to determine adequacy of remuneration in relation to market conditions "in" the jurisdiction in question, but political boundaries also matter from a practical standpoint because they correspond with differences in government regulatory regimes, tax regimes, investment regimes, capital and labour costs, exchange rates, banking and financial systems and business climate.

The Petition offers these U.S. cross-border benchmarks as an alternative because they were used in *Lumber IV*. The reasons provided by Petitioner for using out of jurisdiction benchmarks to determine and measure benefit are no more valid today than they were at that time. Petitioner has not provided any evidence of market distortion in any of the provinces that

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[29] 19 C.F.R. § 351.511(a)(2).

[30] Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada, from Bernard Carreau to Faryar Shirzad (Mar. 21, 2002) ("Issues and Decision Memo") at 43 (cross-border comparisons "would become inoperable if adjustments had to be made for all government policies").

[31] *See Certain Softwood Lumber Products from Canada*, 66 Fed. Reg. 43,186, 43,201 (Dep't of Commerce Aug. 14, 2001) (prelim. determination) ("*Lumber IV Prelim*.").

would warrant the Department using benchmarks outside the provincial jurisdictions. The evidence of benefit provided by Petitioner, therefore, is impermissible under the *Tariff Act* and the *SCM Agreement*. As a result, there is no basis on which the Department may initiate an investigation into provincial stumpage programs.

C. The Department Can Neither Investigate the Petition's Stumpage Claim Nor Find Subsidies to Remanufacturers Without Conducting an Upstream Subsidy Investigation

The right to cut standing timber results in harvested timber, which is an input to softwood lumber. In *Lumber IV*, Canada argued that the Department should be required to conduct an upstream subsidy analysis,[32] before attributing any stumpage benefit to subject merchandise produced by sawmills and remanufacturers that purchased the allegedly subsidized input logs and lumber from unaffiliated entities.

The Department, in response, concluded that the stumpage subsidy was: (1) "a subsidy to the production of lumber, not the production of timber or logs"; (2) that the governmental provision of timber was "the vehicle (i.e. financial contribution) by which a subsidy is provided to lumber producers"; and (3) that softwood lumber producers were the "direct recipients" of the subsidy.[33] As a result, the Department determined that an upstream subsidies investigation was not required.

Canada appealed the Department's decision to a NAFTA Panel and the WTO. The NAFTA Panel found that a pass-through analysis is required with respect to sales by independent loggers to sawmills.[34] The WTO Appellate Body found that in circumstances where an alleged subsidy is received by a producer of an input product and the investigated product is a different downstream product produced by an unrelated producer a pass through analysis is required.

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[32] An upstream subsidy is a countervailable subsidy, other than an export subsidy, on an input product that is used in the same country as the subject merchandise is produced, bestows a benefit on the merchandise, and has a significant effect on the cost of its production. Section 771A(a) of the *Tariff Act*, 19 U.S.C. § 1677-1(a) (2010). A competitive benefit is bestowed "when the price for the input product … is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction." Section 771A(b) of the *Tariff Act*, 19 U.S.C. § 1677-1(b) (2010).

[33] *Certain Softwood Lumber Products from Canada*, 67 Fed. Reg. 15,545, 15,548 (Dep't of Commerce Apr. 2, 2002) (final determination) ("*Lumber IV Final*"), and accompanying Issues and Decision Memo at 18-19.

[34] *Certain Softwood Lumber Products from Canada*, Final Affirmative Countervailing Duty Determination, USA-CDA-2002-1904-03, Decision of the Panel (Aug. 13, 2003) at 63. In addition, while concluding that domestic processing requirements did not exist in Saskatchewan and Manitoba, the Panel affirmed the determination of the Department not to undertake an upstream subsidy analysis in those provinces because it accepted the Department's argument that the record lacked evidence of the extent of arm's length transactions in sales by independent loggers to sawmills. *Id.* at 65.

Consequently, whether an alleged stumpage benefit has been passed through to a downstream producer of softwood lumber can only be determined by conducting an upstream subsidy investigation. This basic requirement is clear in the statute and has been confirmed by the WTO.

IV. The Petition's Allegations of Log Export Restraint Subsidies Do Not Provide a Basis for Initiation

A. British Columbia

The Department should reject Petitioner's allegation that the log export permitting process ("LEP process") applicable to logs from private lands in British Columbia confers countervailable benefits to producers and exporters of subject merchandise, because it is fatally flawed on both legal and factual grounds.

Specifically, Petitioner has failed to make an adequate showing that: (1) this system constitutes a "financial contribution" within the meaning of the statute; or (2) provides a benefit. In addition, Petitioner's claims are based on a mischaracterization of the system in effect in with respect to B.C. logs.

Petitioner mischaracterizes the system in B.C. as a "prohibition" on exports.[35] This is incorrect. There is no "ban" or "prohibition" on the exportation of logs in British Columbia. Rather, there is a LEP process that applies to the export of logs from British Columbia, which are routinely exported from the Province in vast quantities. In the context of the SC Paper Expedited Review, evidence on the record indicates that during the 2014 time-period, 99.6 percent of logs under federal jurisdiction[36] and 97.4 percent of logs under B.C. jurisdiction were approved.[37] In considering whether to initiate on this program the Department should take these facts into account.

1. Petitioner Has Failed to Satisfy Its Evidentiary Burden with Respect to Financial Contribution

The B.C. LEP process cannot be countervailed as a matter of law because they cannot confer a financial contribution. No further analysis should be necessary. Petitioner acknowledges that in the case of the LEP process there is no direct financial contribution from an "authority," and that, as a result, the principal question in determining whether B.C.'s log "export restrictions" can be investigated as a subsidy is whether British Columbia or Canada

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[35] Petition Vol. III at 115.

[36] *SC Paper* Expedited Review, GOC's New Subsidy Response at GOC-NS-5 (May 27, 2016), as modified by Letter from Hughes Hubbard & Reed LLP to the Hon. Penny S. Pritzer, DOC Case No. C-122-854, (Oct. 17, 2016) ("GOC's Pre-Verification Minor Corrections").

[37] *SC Paper* Expedited Review, GBC's Verification Exhibit BC-VER-6.

"entrusts or directs" private parties to provide the logs to B.C. domestic processors, within the meaning of section 771(5)(B) of the Act.[38] Petitioner has failed to provide a sufficient evidence that such "entrustment or direction" has occurred.

As the Department has explained, entrustment or direction exists when "a government affirmatively causes or gives responsibility to a private entity or group of private entities to carry out what might otherwise be a governmental subsidy function."[39] For entrustment or direction of a private entity to exist, the government must give responsibility to a private body or exercise its authority over a private body in order to effectuate a financial contribution.[40] "Entrustment" or "direction" "cannot be inadvertent or a mere by-product of governmental regulation."[41] The WTO Appellate Body has described the process of determining "entrustment" or "direction" as determining "whether an unbiased and objective investigating authority" would have found that there is "adequate evidence tending to prove or indicating" that the government gives responsibility to, or exercises authority over, an entity to carry out the function of providing a good to domestic users of that good.[42] Petitioner has not cited to any evidence supporting these elements, and there is no such evidence in this case.

WTO panels have determined that alleged "export restraints" do not constitute government-entrusted or government-directed provision of good under Article 1.1(a)(1(iv) of the Agreement on Subsidies and Countervailing Measures ("*SCM Agreement*"). The WTO did so initially in *US – Export Restraints*, a dispute between the United States and Canada, in which the WTO panel concluded that an "export restraint" does not constitute a government-entrusted or government-directed provision of good because, through an "export restraint," the government does not explicitly entrust or direct (i.e., delegate or command) a private entity to provide goods.[43]

Petitioner acknowledges the panel's decision in *US – Export Restraints*, but contends that in this case the "GOC and the GBC do far more than simply restrain the export of logs."[44] There are two fundamental problems with this argument: (1) the log export permitting process that was at issue in the *US – Export Restraints* case was more restrictive than the permitting process at

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[38] Petition Vol. III at 124.

[39] *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 Fed. Reg. 37122 (Dep't of Commerce June 23, 2003) and accompanying Issues and Decision Memorandum at 47.

[40] Appellate Body Report, *US – DRAMS*, ¶ 113, WTO Doc. WT/D5296/AB/R (adopted June 27, 2005).

[41] *Id.* ¶ 114.

[42] *See id.*

[43] Panel Report, *United States-Measures Treating Exports Restraints as Subsidies*, WT/DS194/R, circulated June 29, 2001 ("Panel Report, *US – Export Restraints*"), ¶¶ 8.17, 8.44, 8.75.

[44] Petition Vol. III at 126.

issue here; and (2) the Petitioner never explains or provides any support for the proposition that the GOC and the GBC "do far more than simply restrain the export of logs."

Subsequent WTO decisions such as *China – GOES*[45] and *U.S. – Large Civil Aircraft* (Second Complaint)[46] have endorsed the Panel's conclusion in *US – Export Restraints* that the nature of the government action – not the effect of the action – determines whether it constitutes a financial contribution.

Thus, Petitioner cannot simply rely on the alleged effect of the LEP process on market prices to claim that it is a countervailable subsidy. Rather, Petitioner must show that the LEP process is an entrustment or direction to a private body to provide goods. Here there has been no such demonstration and the Department, as a result, should decline to initiate on this program.

In previous cases where the petitioner has provided no evidence of entrustment or direction with respect to export restraints, the Department has chosen not to initiate an investigation into these restraints. For example, in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China* the Department found that "{t}he petitioners have not adequately shown how these particular export taxes and licenses constitute entrustment or direction of private entities by the GOC to provide a financial contribution to producers of the subject merchandise."[47] As a result, the Department decided not to include China's restraint on exports of wire rod in its investigation. The Department similarly decided not to initiate an investigation with respect to export restraints in *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China*[48] and *Certain Oil Country Tubular Goods ("OCTG") from the People's Republic of China*[49] for the same reason.

In the Department's recent Section 129 *Determination Regarding Export Restraints*,[50] the Department agreed with the WTO Panel in *United States – Countervailing Duty Measures on*

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[45] Panel Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, ¶ 7.85, WTO Doc. WT/DS414/R (June 15, 2012).

[46] Panel Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, ¶ 7.959, WTO Doc. WT/DS353/R (Mar. 31, 2011)

[47] *See* "Countervailing Duty Initiation Checklist: *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*," C-570-942 (Dep't of Commerce Aug. 22, 2008) at 29.

[48] *See* "Countervailing Duty Initiation Checklist: *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China*," C-570-946 (Dep't of Commerce June 22, 2009).

[49] *Certain Oil Country Tubular Goods ("OCTG") from the People's Republic of China*, 74 Fed. Reg. 64,045 (Dep't of Commerce Dec. 7, 2009) and accompanying Issues and Decision Memorandum at 113.

[50] Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "*Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437)*: Preliminary Determination Regarding Export Restraints," (Feb. 23, 2016); *affirmed* in Final Determination on the Initiation of Allegations of Export Restraints in Magnesia Bricks," C-570-955, dated April 25, 2016; *and*

(Continued)

Certain Products from the People's Republic of China regarding the lack of evidence supporting the petitioners' allegations with respect to export restraints. Finding that the petition lacked evidence that a government gave responsibility to, or exercised authority over domestic producers to carry out the function of providing goods to domestic users in the PRC,[51] the Department rescinded its decision to initiate on the petitioners' allegations of export restraint subsidies.

Here, just as in *Magnesia Bricks from China* and *Seamless Pipe from China*, Petitioner has provided no evidence that any government authority gave responsibility to or exercised authority over private forestry and harvesting companies "specifically to carry out the function of providing" BC-sourced logs to any softwood lumber producer. Consequently, the Department has no basis on which to initiate an investigation into the alleged restraints on the export of logs from British Columbia.

2. Petitioner Has Not Satisfied Its Evidentiary Burden for Showing an Export Restraint-Related Benefit to Softwood Lumber Producers

In addition to failing to identify a financial contribution, Petitioner has failed to satisfy the evidentiary threshold established by the Department to support allegations that a supposed export restraint program with respect to an input provides a benefit to producers of subject merchandise.

As the Department has repeatedly explained, any such allegation must be supported by empirical evidence demonstrating a clear linkage between the export restraint at issue and a divergence of prices in the domestic and world markets. In *OCTG from China*, the Department did not countervail an alleged export restraint on coke on the following grounds:

> {T}here is no record evidence in this investigation, such as independent studies, demonstrating that the PRC's export restraints could be linked to the divergence between Chinese domestic prices and world prices for coke over a period of time…. Furthermore, there is no long-term pricing data on the record demonstrating a clear link between the imposition of export restraints and the divergence of Chinese and world market prices of coke....[52]

Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceeding; United States – Countervailing Duty (CVD) measures on Certain Products from the *People's Republic of China (WTO/DS437)*: Final Determination for Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China (Seamless Pipe from the PRC)," C-570-957, dated April 25, 2016.

[51] Section 129 Preliminary Determination Regarding Export Restraints at 8.

[52] *Certain Oil Country Tubular Goods ("OCTG") from the People's Republic of China*, 74 Fed. Reg. 64,045 (Dep't of Commerce Dec. 7, 2009) and accompanying Issues and Decision Memorandum at 113. *See also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China*: *Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 Fed.

(Continued)

Similarly, in *Pre-Stressed Concrete Steel Wire Strand from China*, the Department did not initiate an investigation into alleged government restraints on wire rod exports because "petitioners have not adequately shown how these particular export taxes and licenses constitute entrustment or direction of private entities."[53] The Department noted further that the petitioners also failed to provide "sufficient data regarding historic price and export trends" demonstrating a correlation with the imposition of export restraint."[54] And, in *Certain Kitchen Appliance Shelving and Racks from China*, the Department refused to initiate an investigation into alleged government restraints on exports of wire rod and nickel for similar reasons. The Department noted that the petitioners "have not adequately shown how these particular export taxes and licenses constitute entrustment or direction of private entities" and failed to provide "sufficient data regarding historical price trends demonstrating a correlation with the imposition of the alleged export restraint."[55]

Petitioner here has supplied none of the empirical analysis that the Department explained in the above-cited cases is required to establish that the alleged export restraint has caused BC domestic and world market prices to diverge. Petitioner, for example, has provided no data linking any alleged divergence of domestic and export prices over time to the LEP process, nor has it provided any long-term pricing data. Petitioner has failed to show how alleged export restraints in British Columbia (which, as explained above, function only as an export permitting process) have any impact on the fiber prices paid by producers and exporters of subject merchandise. Petitioner's proffer of isolated U.S. log prices at a single point in time, following its concession that grade-specific prices are not available,[56] comes nowhere close to satisfying the high evidentiary standard required by the Department for alleged export restraints. The limited and irrelevant evidence that Petitioner did supply leaves the Department with no choice but to conclude that Petitioner has failed to meet the evidentiary standard articulated by the Department.

Reg. 57,444 (Dep't of Commerce Sept. 21, 2010) and accompanying Issues and Decision Memorandum at Comment 31.

[53] *See* "Countervailing Duty Initiation Checklist: *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China*," C-570-946 (Dep't of Commerce June 22, 2009).

[54] *Id.* at 33.

[55] *See* "Countervailing Duty Initiation Checklist: *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*," C-570-942 (Dep't of Commerce Aug. 22, 2008) at 28.

[56] Petition Vol. III at 129.

3. Petitioner's Allegations Concerning Logs Harvested from Private Lands Fails Equally on the Facts

The Petition asserts that the B.C. LEP process contain "only limited exceptions."[57] That is simply not correct. Under British Columbia's LEP process, a massive volume of logs is in fact exported pursuant to the surplus test, and virtually all export requests are granted.

Petitioner claims that the LEP process and the fee-in-lieu prevent logs from private lands from being exported. Both claims are factually incorrect. British Columbia's LEP process in fact did not impose any meaningful constraints on the export of private land logs from British Columbia during the POI. Indeed, during the POI, approximately 56 percent of the Coastal private land harvest (both federal and provincial jurisdiction private lands) was in fact exported, totaling more than 2.6 million cubic meters of logs permitted for export.[58] It is simply absurd to claim that the LEP process restrains log exports on private lands when over half the harvest is exported.

Also with respect to the fee-in-lieu, the vast bulk – about 85 percent – of private land harvest on the Coast is under federal jurisdiction for purposes of log export policy. There is no fee-in-lieu imposed on exports of logs harvested from private lands. As a result, approximately 92 percent of logs exported from private lands during the POI required no fee-in-lieu.

Petitioner is likewise factually wrong concerning the supposed ban on the export of cedar, cypress, and high-value logs.[59] There is in fact no ban on the export of cedar, cypress, and high-value logs harvested from private land under federal jurisdiction – the vast bulk of private land on the Coast. Such logs can be – and in fact were – exported during the POI pursuant to the federal LEP process.

In addition, there are numerous other equally strong indicia demonstrating that the LEP process on private lands does not meaningfully impede export activity. For example, during the POI, approximately 99 percent of B.C. private land log packages advertised under federal jurisdiction were approved for export.[60] Of the 3.1 million cubic meters of federal jurisdiction private land logs advertised for export during the POI, less than one percent of the total volume advertised for export was not approved for export.[61] This astonishingly high approval percentage for federal jurisdiction private land log exports is also representative of the approval level for private land logs under provincial jurisdiction.

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[57] Petition Vol. III at 116.

[58] Data derived from British Columbia's Harvest Billing System ("HBS") and Log Export Information System ("LEXIS").

[59] *Id*. at 118.

[60] Data derived from HBS and LEXIS.

[61] *Id*.

Petitioner's allegation rests on other factual errors as well. For example, Petitioner's claims rest heavily on its assertion that domestic log buyers who offer to purchase advertised log packages are not required to purchase the logs for which they submit offers.[62] This statement is simply not correct. Buyers offering to purchase advertised logs are contractually obligated to purchase those logs upon acceptance by the seller of the offer.

Petitioner also errs in its reliance on the letter from a former CEO of TimberWest,[63] one of British Columbia's largest exporters of logs harvested from private land. The Department should discount TimberWest's supposed grievance about its ability to export logs, as the company has voluntarily entered into contractual long-term commitments to supply substantial quantities of logs to certain domestic log buyers.

In addition, aside from its substantial domestic supply commitments, TimberWest during the POI exported a substantial portion of its private land harvest.[64] In these circumstances, TimberWest's claims that it is harmed because of alleged export restraints ring hollow.

Petitioner alleges that "only harvested logs may be considered for export."[65] This is wholly incorrect. Under federal jurisdiction, standing timber in the B.C. interior can be considered for an export permit.[66]

Finally, Petitioner asserts that each sort for which export is to be considered must conform to minimum and maximum volume rules.[67] However, as established at the SC Paper verification, the lower limit has not been applied since 2007 and the maximum limit applies only to application to advertise so therefore exporters can submit multiple applications to advertise on the biweekly list.[68]

The above facts amply demonstrate that British Columbia's system for permitting exports of private land logs does not meaningfully constrain export activity. In light of these facts, the Department has insufficient evidence before it upon which to initiate an investigation. Canada emphasizes that the Department has applied a high evidentiary burden in recent cases involving alleged export restraints, and has refused to initiate where, as here, Petitioner fails to provide

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[62] Petition Vol. III at 119.

[63] *Id*. at 128.

[64] Data derived from HBS and LEXIS.

[65] Petition Vol. III at 122.

[66] *SC Paper* GOC Verification Report at 6.

[67] Petition Vol. III at 122.

[68] *Id*. at 7.

empirical evidence linking the imposition of the supposed export restraint to a divergence between domestic and world market prices.

B. Québec

The Petition alleges that the Government of Québec provides a financial contribution and a benefit to softwood lumber producers "to the extent that" it restricts the exportation of logs originating on private land.[69] Citing no specific restraint, the Petition supposes that Québec induces wholly private and voluntary agricultural cooperatives ("marketing boards") to sell logs exclusively to Québec sawmills, thereby indirectly restricting the export of those logs. A benefit is alleged to be conferred by these voluntary associations of landowners "to the extent" that the Government of Québec requires ("entrusts or directs") these voluntary associations to sell logs to Québec sawmills at prices alleged to be below those obtainable in international markets. The Petition provides no direct evidence that Québec directs or entrusts anything and its suppositions fail when examined on their own and even more so when examined against the Department's past experience with these same entities.

The Department is familiar with the private forest marketing boards in Québec having met with them in prior proceedings in which the Department specifically found there to be no log export restrictions in Québec. The Petition points to no new facts and offers nothing but supposition. Supposition divorced from facts of public record readily available to Petitioner does not meet the statute's requirement that allegations be "accompanied by information reasonably available to the petitioner supporting those allegations."[70]

Because Petitioner ignores prior Department findings and relevant, dispositive evidence readily available to it, the Department should not initiate an investigation of the Petition's allegation of an imaginary, indirect log export restriction.

1. The Department's Documented History with the Private Forest Marketing Boards and Alleged Log Export Restrictions in Québec Shows Those Boards Are Antithetical to Sawmills and the Alleged Export Restrictions to Be Nonexistent

In *Lumber III*, the Department determined that alleged log export restrictions in Québec were ineffective and did not provide a countervailable subsidy to softwood lumber producers.[71] As in the current Petition, the petitioner argued log exports were suppressed by the presence of a restriction, not any lack of export demand for Québec logs.[72]

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[69] Petition Vol. III at 131.

[70] Section 702(b)(1) of the *Tariff Act*, 19 U.S.C. §1671a(b)(1).

[71] *Certain Softwood Lumber Products from Canada*, 57 Fed. Reg. 22,570, 22,592 (Dep't of Commerce May 28, 1992) (final affirmative CVD det.) ("*Lumber III*").

[72] *Id.*

After investigating the allegation, the Department concluded that the petitioner provided "nothing beyond anecdotal evidence" to support its claims, including the assertion that there was a large export demand for logs from Québec.[73] Pointing to the long history of log trade from the United States into Québec, the Department found that the petitioner failed to provide a credible reason why mills in Québec, which supposedly benefitted from significantly underpriced domestic logs, would buy, instead, a significant volume of expensive U.S. logs.[74]

More than a decade later in *Lumber IV*, the Department again had occasion to examine Québec's private forest and in both the investigation and first review met with representatives of the private forest marketing boards. The Department's verification report in the First Administrative Review described its lengthy dialogue with the marketing boards:

> We met with officials representing three syndicates/marketing boards from the regions of Québec City, Estrie and Beauce. The officials explained the history and purpose of the syndicates. In the early 1950's, borrowing a concept from the United Kingdom, the GOQ enacted legislation facilitating the creation of Syndicates. *The Syndicates are a means for private woodlot owners to jointly market their timber*. (Emphasis added)
>
> For all regions, the Syndicate office is responsible for develop {sic} a joint marketing plan for that region. The role of the Syndicates in the marketing of timber from private lands varies among the 15 Syndicates. In some cases, the Syndicate negotiates terms and conditions for sale of timber by a woodlot owner to a sawmill. In other cases, the Syndicate not only negotiates terms and conditions of sale, but also arranges for payment to the woodlot owner. In some cases, the Syndicate actually negotiates a minimum price for timber. The official from the Québec City region explained how his Syndicate office, like other Syndicates actually negotiate prices with the Québec Lumber Manufacturers Association. The Syndicates explained that the Syndicates provide other services such as expertise on scaling, collecting payments, and regional newsletters where sawmills can advertise for purchase of logs in the region.
>
> The Syndicate representatives also explained the organizational structure of the Syndicates. The Syndicates have a governing charter and by-laws. We took a copy of the Québec City Syndicate's By-Laws and it is located at VE-15. Each syndicate has a board of directors which oversees the development of the joint plan and ensures that required documents are sent to the Regie. The Board of Directors consists of 18 members and has a President, Vice-President, Executive Council and committees *that make marketing and administrative decisions*. (Emphasis added)

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[73] *Id.*

[74] *Id.*

> The officials from the Syndicates also detailed the eligibility for members of the Board of Directors. Directors must own a woodlot. An individual with an interest that would conflict with the purpose of the Syndicate is barred from serving as a Director (i.e. owning a sawmill, sharing a corporate office with a sawmill that holds a TSFMA or being involved in the transportation of wood.
>
> We asked the Syndicate representative if large integrated wood product companies such as … that owned private woodlots could be members of the Syndicates. The officials stated that these companies typically were not members because the wood they sourced from their private forests supplied their own mills.[75]

This publicly available background on the marketing boards, written by the Department, shows that Québec has been examined and found not to have effective log export restrictions, and that the Marketing Boards (or Syndicates) were designed specifically to provide pro-competitive opposition to sawmills and to set their own rules, regulations, and plans.

2. The Petition Mischaracterizes Its Own Evidence and Authorities

The Petition's description of the role Québec's marketing boards or "syndicates" play in restricting log exports is misleading at best.[76] Acknowledging that privately owned woodlots account for approximately 10 percent of forest land in Québec,[77] the Petition asserts – without citation – that "most" of these private forest landowners participate in a number of regional "marketing boards" or "syndicates" established pursuant to the Act Respecting the Marketing of Agricultural, Food and Fish Products.[78] To support this assertion the Petition states that "nearly 69 percent of logs harvested from private land (including hardwood and pulpwood) in the fiscal year 2013-2014" was sold through the private forest marketing boards.[79] Even though the Petition mixes in irrelevant hardwood and pulpwood to arrive at support for "most," of necessity nearly one-third of all private forest logs are sold outside the marketing boards.

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[75] Memorandum to Melissa G. Skinner, "Verification of the Questionnaire Responses Submitted by the Government of Quebec (GOQ)" at 14-15 (June 2, 2004). A similar summary of Commerce's discussion with an official "from the Quebec private woodlot owners association" appears in the verification report for the investigation, noting among other points: "The official stated that the syndicates administer collective marketing plans and that each one follows a set of self-designed regulations" and "The official stated that the main goals of the syndicate are to analyze market access and wood prices as well as to promote the interests of private wood lot owners." Memorandum to Melissa G. Skinner, "Verification of the Questionnaire Responses Submitted by the Government of Quebec (GOQ)" at 28 (February 15, 2002).

[76] Petition Volume III at 132.

[77] *Id*.

[78] *Id*. at 132-133.

[79] *Id*. at 133.

Disingenuously, the Petition uses the word "private" to argue that Québec encourages membership in the marketing boards by connecting that membership to registration with the Ministry of Forest, Fauna, & Parks as a "certified forest producer."[80] Even a cursory review of the cited materials shows this to be a false assertion. None of those materials – including the governing law – ties membership in a marketing board to any government measure. In fact, the next section of the Sustainable Forest Development Act makes clear that the regional entities to whom registration is made are agencies of the MFFP, not the private marketing boards.[81] There simply is no support in the Petition – or in the real world – for the assertion that Québec ties government benefits of any kind to membership in the private marketing boards. What emerges instead as the lone accurate statement in this section of the Petition is that participation in the private forest marketing boards is entirely voluntary.[82] Voluntary private activity is not a sufficient basis upon which to initiate an investigation.

3. Publicly Available Marketing Plans and Past Statements by Petitioning Interests in Maine Prove That Québec Does Not Restrict the Export of Private Land Logs

The Petition understands how thin its claim is by twice qualifying its log export allegation with the phrase "to the extent that."[83] This is a prudent caution because available and controlling public evidence establishes that there are no restrictions on the export of private land logs "to any extent."

A simple web search will reveal at least a half dozen approved marketing plans on the web sites of various private forest marketing boards in Québec. Review of those plans demonstrates that there is no factual support for Petitioner's assertion that the Government of Québec restricts exports of private logs.[84] There is no language in any of the plans that could be construed as the Government of Québec, or the boards themselves, limiting the export of logs. To the contrary, Section 1.m of the "Joint Plan of the Wood Producers of Beauce," the marketing board covering private lands closest to the Maine border and included in the Petition as a

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[80] *Id.* at 133, citing Section 131 of the Sustainable Forest Development Act.

[81] *Id.*; *see* Section 132 et al of the Sustainable Forest Development Act, Petition Exhibit 198.

[82] *Id*. at 134

[83] Petition Vol. III at 131 and 136.

[84] Joint Plan of Gaspésie Wood Producers, available at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/M-35.1,%20r.%2091/; Joint Plan of Mauricie Wood Producers, available at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/M-35.1,%20r.%20106; Joint Plan of Côte-du-Sud Wood Producers, available at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/M-35.1,%20r.%2073; Joint Plan of Abitibi-Témiscamingue Wood Producers, available at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/M-35.1,%20r.%2036; Joint Plan of South Québec Wood Producers, available at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/M-35.1,%20r.%2082/; Joint Plan of Québec Wood Producers, available at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/M-35.1,%20r.%20124/; Joint Plan of Beauce Wood Producers, available at http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/M-35.1,%20r.%2057/.

marketing board that sells pulp logs to the U.S.,[85] states as one of its purposes "to cooperate with any organization on the provincial or national level for product marketing within ***and outside Québec***."[86] (Emphasis added)

Even more damning than the language of the plan cited in the Petition is a public affidavit submitted by the Petitioner with the *Lumber IV* petition explicitly stating that U.S. mills have imported logs from private lands in Québec with ease on many occasions, reaching as much as approximately 17 million board feet of private logs in 2000.[87]

Petitioner has presented no credible evidence that the Government of Québec has imposed restrictions on the export of private logs. The self-interested confidential declaration submitted by Petitioner from one alleged U.S. buyer and the accompanying analysis of alleged price offers[88] do not begin to answer the plain language of the very marketing plans the Petition targets in its allegation, much less the Department's own long history with the marketing boards and evidence previously provided by Petitioner demonstrating that there are no log export restrictions in Québec. Petitioner's claim is pure conjecture and does not establish that there are export restrictions on logs.

4. The Log Export Allegation Against Québec Fails to Meet the Statutory Standard by Not Providing a Sufficient Allegation of Government Action, Financial Contribution, or Benefit Supported by Information Reasonably Available to Petitioner

The Petition's log export allegation against Québec fails because it rests on suppositions and assertions that require an active misreading of the governing law and ignorance of the publicly available marketing plans that are alleged to constitute both the relevant government action and the financial contribution. The allegation also fails because it swims against the tide of the Department's own experience and verified examination of the marketing boards including the fact that they – not Québec – author their own marketing plans. Finally, decades of real world economics defeats this allegation. By the Petition's own admission roughly one-third of the private forest logs in Québec are sold outside the Marketing Boards. Those logs do not flow to the Petition's imagined high-price U.S. market. Instead, decades of trade experience (reflected in the Department's own analysis in prior proceedings) shows the log flow to be heavily north from the alleged high-priced U.S. market to the allegedly low-priced Québec

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[85] Petition Vol. III at 135-136 and Exhibit 268.

[86] *See* Exhibit B, Joint Plan of Wood Producers of Beauce, Law on the marketing of agricultural, food and fisheries (Chaper M-35.1, s. 81) (Nov. 1, 2016) (English Translation).

[87] *See* Exhibit C, Affidavit of C. Charles Lumbert, Exhibit IV I-2 to the Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Softwood Lumber Products From Canada (Apr. 2, 200l) ("*Lumber IV Petition*"); *see also* Gouvernement of Quebec's February 6, 2004 Supplemental Questionnaire Response at QC-13-QC-14 and Exhibit QC-S-118, in the First Administrative Review (Mar. 8, 2004).

[88] Petition Exhibits 269 & 270. It is noteworthy that the declarant's conclusion supposes two explanations for non-sales but makes no statement of actual cause based on personal knowledge. These musings are not evidence.

market. The Petition's misstatements of fact and of law cannot overcome that long, well known history. The Department should therefore refuse to initiate against Québec's alleged log export restrictions.

V. Bioenergy Programs

A cardinal limiting principal of countervailing duty law is that to be countervailable, government assistance that meets the definition of countervailable subsidy must be provided, directly or indirectly, with respect to the manufacture, production, or export of the merchandise under investigation.[89] A number of the "bioenergy" programs included in the Petition fail to contain even allegations, let alone facts, that could support a finding that the claimed assistance is with respect to the manufacture, production, or export of softwood lumber. Instead, the Petition claims that alleged assistance, which benefits downstream non-subject merchandise products made from non-subject coproducts of softwood lumber production (wood chips, or wood pellets made from sawdust), can be the subject of an investigation against softwood lumber itself because of the effect on the bottom line of the corporate family that includes the sawmill in which the coproducts are produced. Petitioner's arguments also suggest that assistance to pulp and paper mills can be attributed to lumber mills merely by virtue of corporate affiliations. Nothing in the countervailing duty law or the *SCM Agreement* would countenance initiating an investigation on such allegations, let alone countervailing such a measure.

A. Sustainable Development Technology Canada

A prime example of a program alleged by Petitioner that does not provide assistance directly or indirectly to the manufacture, production or export of softwood lumber is the allegation regarding Sustainable Development Technology Canada ("SDTC").[90] The only instance of an alleged SDTC benefit in the forest sector identified by Petitioner is a reported grant to West Fraser Mills Ltd. for a plant to recover lignin from pulp waste produced at West Fraser's pulp mill in Hinton, Alberta. This is not a petition against lignin from Canada, however, but against softwood lumber.

Petitioner attempts to bridge the gap in its logic by noting that pulp waste results from the production of pulp, which is made from wood chips, can be a coproduct of lumber production. Thus, Petitioner argues, the assistance to lignin would be an incentive to make more pulp which would be an incentive to increase the production of lumber, so as to generate more wood chips for the pulp plant.

Apart from the utter lack of any economic basis for this allegation (suggesting that a program, adding value to what otherwise would be a low value waste product, would actually drive increased production of high value softwood lumber three levels upstream from the pulp

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[89] Section 701(a)(1) of the *Tariff Act*, 19 U.S.C. § 1671(a)(1). *See also* General Agreement on Tariffs and Trade, Art. VI.3, and Agreement on Subsidies and Countervailing Measures ("*SCM Agreement*"), Art. 10.

[90] Petition Vol. III at 144-148.

waste), the Petition identifies no legal basis for such attribution – because there is none. Clearly, this would not be a direct subsidy to lumber. Indirect subsidies could include, for example, subsidies to a cross-owned company that produces a product primarily dedicated as an input into the subject merchandise. Petitioner's allegation goes far beyond that, however, stretching the indirect subsidy concept to an absurd result. The Department would not consider countervailing in a lumber case a government tax incentive for home buyers because increased demand for houses would increase the demand for lumber. Here, the nexus to lumber is even more remote, since the assistance is downstream from a lower value coproduct of the subject merchandise. Further, it is unclear what the Department would use as the denominator in any calculation of a countervailable subsidy. The Department would have to allocate the subsidy over the value of lignin, pulp waste, pulp, paper, wood chips, and lumber – an exercise impossible to carry out in practice. For all these reasons the Department should decline to initiate an investigation on this allegation.

Petitioner makes similarly flawed allegations regarding several provincial bioenergy programs. The details are discussed at greater length below in the provincial program discussions, but a common theme of those allegations is government assistance for power generation projects that use wood chips, or wood pellets made from sawmill residues, as a source of biomass to fuel the energy production. While vague on the specifics, these allegations appear to argue that since lumber mills are often part of integrated operations that may produce a number of forest products (such as lumber, pulp, paper, and wood pellets), assistance to any component of the corporate group that is associated with energy production using biomass is an indirect benefit to all components of the corporate group, including sawmills. There is not, however, any clear allegation that a government has subsidized the production of energy actually used by a sawmill as an input to producing softwood lumber. Absent such allegation and supporting evidence, there is no basis to initiate an investigation of these claimed subsidies.

B. British Columbia Bioenergy Programs

1. BC Hydro's Load Displacement Program

Petitioner fails to adequately articulate an alleged subsidy provided by BC Hydro to producers and exporters of subject merchandise through BC Hydro's Load Displacement Program.[91] As an initial matter, Petitioner's response of December 5, 2016 to the Department's deficiency questionnaire even further confirms that Petitioner's allegation is limited to the BC Hydro Load Displacement Program. As made clear in Petitioner's Exhibit 310, at page 4, the Load Displacement Program is distinct from other PowerSmart activities. Petitioner's clarified allegation nevertheless still fails.

BC Hydro, as the major electric utility in the Province, is required by law to ensure that its operations receive an adequate return and that it does not discriminate against any particular class of customer. B.C. law requires that BC Hydro, as a regulated utility, "must not make,

[91] *See* Petition Vol. III at 153-62.

demand or receive an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia."[92]

The core principles set forth in this statutory mandate underlie the Load Displacement Program, which BC Hydro designed to encourage customer-based power generation projects across a broad spectrum of its customer base, regardless of customer size and industry. This broad applicability is confirmed by BC Hydro's webpage introducing the program, attached at Exhibit E. The Petitioner is therefore incorrect when it asserts that the Load Displacement Program is geared towards the "forest and wood products industry." The program contains no such limitation, either in its structure or in its use.

Moreover, Petitioner's allegation identifies only a small number of producers of subject merchandise in British Columbia that allegedly participate in the Load Displacement Program.[93] In fact, no other B.C. lumber producer participated in the program. If the Department conducts any investigation in this proceeding on an aggregate basis – as it always has in the past – it would be inappropriate to investigate alleged facts pertaining to only two specific individual producers. As the Department explained in its previous countervailing duty investigation of softwood lumber from Canada:

> …we are conducting this investigation on an aggregate basis. Therefore, we must examine and determine whether there is any benefit conferred on production and exportation of subject merchandise from Canada from this company-specific subsidy allegation. This company-specific allegation involves a set of complex financial transactions between Tembec, its subsidiaries and SDI. Although this program may provide a benefit to Tembec, we must analyze this allegation in the context of the larger aggregate nature of this investigation. Consistent with section 777A(e)(2)(B) of the Act, we are conducting this investigation on an aggregate basis because of the extraordinarily large number of Canadian producers. This program is not available to softwood lumber producers, it is only available to one specific company. Because we are not calculating company-specific subsidy rates and this allegation is only applicable to one specific company, we determine that it is not appropriate to analyze this program in the context of an aggregate final determination.[94]

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[92] *See* Exhibit D, Utilities Commission Act of British Columbia, [RSBC 1996] Chapter 473, Section 59 (Nov. 23, 2016).

[93] *See* Petition Vol. III at 152.

[94] *Certain Softwood Lumber Products*, 67 Fed. Reg. 15,545 (Dep't of Commerce Apr. 2, 2002) ("*Lumber IV*"), Issues and Decision Memorandum at 130-131 (emphasis added). The Department cited a materially identical rationale to determine that it was not appropriate to include alleged subsidies to Skeena Cellulose Inc. ("Skeena") in the *Lumber IV* investigation. *Id*. at 131. The Department continued this same approach with respect to Skeena in the first administrative review. *See* Issues and Decision Memorandum: Final Results of Administrative Review: Certain Softwood Lumber Products from Canada (December 13, 2004), at 149, stating: "{a}s this allegation is

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Consistent with its precedent and the logic articulated above in its previous investigation of softwood lumber from Canada, the Department likewise should reject Petitioner's company-specific allegation here, which on its face applies to only two producers and exporters of subject merchandise.

In addition, the Petition is requesting an investigation of softwood lumber products – not pellets. The Petition, however, requests that the Department investigate whether a pellet operation participated in the program.[95] The Petition erroneously claims that pellets are a co-product of lumber production,[96] and that lumber production is "downstream" from pellet production.[97] Petitioner is, again, simply incorrect. Lumber production is not downstream from pellet production. Pellets are a finished good, sold as a source of fuel to power plants, primarily for export to Europe. The sawmill at issue does not burn pellets to produce energy for the sawmill. Because Petitioner's allegation concerning the pellet plant rests on erroneous factual assertions, the Department should reject the allegation on this ground as well.

For the above reasons, the Department must refuse to initiate an investigation of the Load Displacement Program.

2. BC Hydro's Electricity Purchase Agreements

In addition to its fatally flawed allegation with respect to BC Hydro's Load Displacement Program, Petitioner also alleges that BC Hydro's Electricity Purchase Agreements ("EPAs") with producers and exporters of subject merchandise are countervailable because BC Hydro purchases electricity from the participants for more than adequate remuneration.[98] This allegation is equally flawed. The Department should decline to initiate an investigation of BC Hydro's EPAs on both legal and factual grounds.

As an initial matter, the Department imposes a high evidentiary burden on petitioners for the initiation of an investigation into EPAs. The Department very recently refused to initiate an investigation into the identical program now at issue in this case in its on-going proceeding on Supercalendered Paper from Canada. As the Department explained in its decision not to investigate EPAs in that case, the allegation there "does not support an MTAR allegation,

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applicable to only one specific company, we continue to find that it is not appropriate to analyze this program in the context of an aggregate final results."

[95] Petition Vol. III at 155.

[96] Petition Vol. III at 155 ("Producers of subject merchandise … have invested in technologies for the use of their lumber coproducts (i.e., pellets) as biofuel …").

[97] *Id*. at 159 ("… benefits provided to cross-owned power plants…and the downstream lumber producers.").

[98] Petition Vol. III at 162-69.

because the electricity is being sold at market prices."[99] The same conclusion is warranted here, as further explained below. Notably, the Department also declined to initiate an investigation of an analogous energy purchase program in a different case, and again cited the absence of evidence to indicate that the electricity was being purchased at a non-market basis.[100] And, in another recent decision on point, the Department again refused to initiate on an energy purchase program given the absence of "evidence to indicate that the {government} purchases electricity from {producers} at higher than market prices."[101] Consistent with its practice, including with respect to the identical program in a different proceeding, the Department should likewise decline to investigate BC Hydro's EPAs with producers of subject merchandise.

As noted above, BC Hydro is a regulated utility with an obligation to provide electricity service to the majority of the Province of British Columbia. To do so, it must plan accordingly on a long-term basis and operate in a commercially sustainable manner. Consequently, and like all utilities in North America, BC Hydro must balance the demand forecasts for electricity loads against the power supply forecasts for electricity resources, which would include alternatives such as upgrading or constructing BC Hydro power generation facilities that can cost billions of dollars.

Accordingly, as BC Hydro has explained, "{g}iven the long lead time necessary to build new power generation facilities and transmission infrastructure, BC Hydro must plan well into the future to ensure a continued flow of clean, safe, reliable and cost-effective electricity."[102]

Careful planning is required to ensure BC Hydro's electricity supply can meet the future electricity requirements of its customers. To ensure a stable and reliable supply of electricity, BC Hydro obtains electricity from a variety of sources, including its own generating facilities, demand-side management initiatives (i.e., energy efficiency and conservation programs), short-term purchases from the market (i.e., imports of electricity from the United States or Alberta), and long-term electricity purchase agreements with Independent Power Producers ("IPPs") in British Columbia. Thus, BC Hydro's purchase of power from IPPs is part of a broader set of rational and cost-effective tools for the utility to help balance its long-term demand forecasting and supply constraints (British Columbia notes that utilities throughout North America also utilize this approach). In fact, BC Hydro's EPAs with IPPs are an integral and necessary part of

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[99] Memorandum from Dana S. Mermelstein to James Maeder, Countervailing Duty Expedited Review: *Supercalendered Paper from Canada*; Analysis of New Subsidy Allegations (April 18, 2016), at 16. *See* Petition Exhibit 326.

[100] Memorandum from Kristen Johnson to Melissa S. Skinner, Countervailing Duty Investigation on *Steel Concrete Reinforcing Bar from Turkey*; Decision Memorandum on Additional Subsidy Allegation (Nov. 25, 2013), at 3-4.

[101] Memorandum from Shane Subler to Thomas Gilgunn, Countervailing Duty Investigation: *Certain Oil Country Tubular Goods from the Republic of Turkey*; Analysis of New Subsidy Allegations (Dec. 17, 2013), at 9.

[102] *See* Exhibit F, B.C. Hydro, Draft Integrated Resource Plan 2012, A Plan to Meet B.C.'s Future Electricity Needs (July 6, 2012) at ii.

BC Hydro's long-term electricity supply strategy, accounting for approximately 25 percent of BC Hydro's electricity supply.

For the above reasons, for several decades, BC Hydro has entered into EPAs with scores of IPPs throughout the Province from a wide variety of suppliers, including wind, solar, and hydroelectric generation facilities. In fact, roughly 100 IPPs throughout the Province and in a variety of sectors sold electricity to BC Hydro during the POI pursuant to various types of power purchase agreements, as demonstrated by Petitioner's own Petition Exhibit 317. Any entity capable of producing power is able to discuss establishment of, and potentially enter into, an EPA with BC Hydro. The fact that some of these EPAs were with companies in the forestry sector in no way suggests that these EPAs are limited only to certain industries or sectors. They are not. Further, as Petitioner's own Petition Exhibit 316 documents, BC Hydro's Energy Procurement Principles emphasize, *inter alia*, fairness, transparency, and cost-effectiveness. BC Hydro's electricity procurement principles are not specific to any industry.

Finally, Petitioner's allegation against BC Hydro's EPAs suffers from the same legal defects discussed above with respect to BC Hydro's Load Displacement Program. First, the allegation on its face pertains only to a small number of specific, individual lumber companies that hold EPAs with BC Hydro. In the context of an aggregate investigation, however, the Department has acknowledged that the investigation of company-specific alleged benefits is not appropriate.[103] Second, as explained above, Petitioner has failed to provide evidence to justify the attribution to sawmills (the producers of subject merchandise) of subsidies allegedly provided to pulp or paper mills, pellet plants or producers of other non-subject merchandise. Thus, for the reasons set forth by Canada above, EPAs with pulp mills, paper mills, or pellet plants, for example, are beyond the scope of any investigation that the Department may initiate, which pertains only to softwood lumber. The Department should also dismiss Petitioner's allegation on these grounds.

For the above-discussed reasons, Petitioner has failed to meet the high evidentiary burden required for the Department to initiate an investigation into EPAs. The Department should, consistent with its prior practice, decline to initiate such an investigation.

C. Ontario Northern Industrial Electricity Rebate Program

Ontario's Northern Industrial Electricity Rate Program ("NIER") could not have provided a benefit to softwood lumber production during the period of investigation identified in the Petition or, for that matter, any period of investigation selected by the Department. This is due to a compelling, straight-forward reason: the NIER *explicitly excludes* softwood lumber facilities from program eligibility.[104] The Department thus should not initiate an investigation on NIER.

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[103] *See* Issues and Decision Memorandum *Lumber IV* (April 2, 2002) at 130-131 (emphasis added).

[104] *See* Exhibit G, Northern Industrial Electricity Rate Program (NIER Program) Program Rules, Ontario Ministry of Northern Development and Mines (2016) ("*NIER Program Rules*") at 6, *available at*

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Petitioner bears the legal burden in a CVD investigation to provide "information reasonably available" to support its allegations.[105] Petitioner's allegation that NIER benefits softwood lumber producers is entirely circumstantial and is factually inaccurate.[106] The Petition fails to provide *any* concrete evidence that softwood lumber operations could even have benefited from NIER.

The NIER Program Rules explain that Ontario manufacturing facilities are eligible for benefits, "*with the exception of facilities that are designated as Sawmills and Wood Preservation (3211) which would not be eligible for the NIER Program*."[107] Furthermore, NIER is a facility-specific program that is not generally available to Ontario companies. That is, in order to receive NIER benefits, *eligible* facilities must submit facility-specific applications; moreover, the Ministry of Northern Development and Mines then calculates and distributes NIER benefits on a facility-by-facility basis.[108] Accordingly, as a matter of both fact and law and in accordance with the Department's regulations,[109] NIER could not have benefitted softwood lumber facilities, even through indirect means. This is because all NIER benefits are explicitly tied to eligible (*i.e.*, non-softwood lumber) facilities.

The Department previously and unlawfully investigated NIER in *Supercalendered Paper from Canada*. This should have no bearing on the Department's initiation decision here. As a threshold matter, the Department was wrong to investigate NIER in *Supercalendared Paper* since no Ontario facilities manufacture supercalendared paper. Here, the case for the Department not to investigate NIER is even stronger: the program explicitly excludes sawmills from eligibility for any NIER benefits.

In sum, the Department should not investigate NIER in this investigation.[110] The Petition fails to meets its burden and initiation on this Ontario program by the Department would be inconsistent with U.S. law[111] and Article 11 of the SCM Agreement.[112]

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http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/019-0297E~2/$File/0297E_Guide.pdf (last visited Dec. 6 , 2016)

[105] 19 U.S.C. §1671a(b)(1).

[106] *See* Petition at Vol. III, p. 175.

[107] *See* Exhibit G, NIER Program Rules at 6 (emphasis and underline added), *available at* http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/019-0297E~2/$File/0297E_Guide.pdf (last visited Dec. 6 , 2016)

[108] *See* Exhibit G, NIER Program Rules at 6, *available at* http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/019-0297E~2/$File/0297E_Guide.pdf (last visited Dec. 6 , 2016)

[109] 19 U.S.C. § 351.525(b)(5)(i) ("If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.").

[110] *See e.g.*, Countervailing Duty Investigation Initiation Checklist: *Certain Steel Nails from Oman*, C-523-809 at p. 20 (June 18, 2014) ("Petitioner *did not submit an evidentiary basis that this allegation confers a benefit* to Omani

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D. Québec Power Purchase Program

The Petition alleges that Québec's Power Purchase Program 2011-01 (PAE 2011-01) (Programme d'achat d'électricité), under which Hydro-Québec Distribution purchases electricity from forestry biomass plants in Québec, results in the government purchasing a good (electricity) for more than adequate remuneration (MTAR). Included in the allegation is an assertion that under these agreements Québec is also providing steam to companies for less than adequate remuneration (LTAR).

As detailed above, government assistance must be provided, directly or indirectly, to the manufacture, production, or export of the merchandise under investigation.[113] The purchase of electricity from biomass plants does not qualify as countervailable government assistance because it is not provided for the manufacture, production, or export of softwood lumber. Regardless, the information in the Petition indicates that certain contracts were not in effect for purposes of alleged benefits during the presumptive POI (April 1, 2015-March 31, 2016). Accordingly, the Petition fails to identify a financial contribution and benefit during the POI.

As an initial matter, the Petition does not include full English translations of exhibits that allegedly support this subsidy claim. Petitioner does not provide a full translation of PAE 2011-01 in Exhibit 339, or of the documents provided in Exhibits 340, 346, 347 (which is the contract with PF Résolu Canada Inc.), 349 (which is the contract with Chantiers Chibougamau Ltée.) or 352, to name a few. The Department's regulations require that "{a} document submitted in a foreign language must be accompanied by an English translation of the entire document or of only pertinent portions, where appropriate, unless the Secretary waives this requirement for an individual document. A party must obtain the Department's approval for submission of an

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nail producers. As such, we recommend not initiating an investigation into this allegation.") (emphasis added); Countervailing Duty Investigation Initiation Checklist: *Frozen Warmwater Shrimp from Ecuador*, C-331-803 at p. 16 (Jan. 17, 2013) ("The petitioner was unable to identify any shrimp producers or processors located either in ZEDEs or in the predecessor "free zones." Therefore, we recommend not initiating an investigation with respect to this alleged subsidy program."); Notice of Initiation of Countervailing Duty Investigations: *Live Swine from Canada*, 69 Fed. Reg. 19,818, 19,821 (April 14, 2004) ("Because swine producers are not ruminant producers, this program *would not benefit subject merchandise production.* Although the petitioners contend that…this program may have been extended to swine producers, *the petitioners do not provide sufficient evidence, beyond mere speculation, to support this allegation.* Therefore, because the petitioners have not met the requirements of section 702(b) of the Act, we are not initiating an investigation of this program.") (emphasis added).

[111] 19 U.S.C. § 1671(a)(1) ("{T}he administering authority determines that the government of a country or any public entity within the territory of a country *is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise* …") (emphasis added).

[112] "An application … shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount … Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph." *SCM Agreement* Art. 11.2. "The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation." *SCM Agreement* Art. 11.3.

[113] Section 701(a)(1) of the *Tariff Act*, 19 U.S.C. § 1671(a)(1). *See also* General Agreement on Tariffs and Trade, Art. VI.3, and *SCM Agreement* Art. 10.

English translation of only portions of a document prior to submission to the Department."[114] We are unaware of the Department granting Petitioner permission to translate only portions of the documents, but regardless, the Department has not been provided with translations of the pertinent portions of certain documents, and for most of these documents (particularly the PAE 2011-01 and the contracts), the documents in their entirety should be translated. These allegations should be rejected on the basis that Petitioner has not complied with the regulations by providing the necessary English translations.

In any event, the list of contracts provided in Exhibit 338 show that the entities that have contracts with Hydro-Québec are mostly legal entities unrelated to any lumber producing entities as shown by their name such as "Energie," "Bioénergie," or "Cogénération." Or, the entities listed do not produce lumber at all. For example, Innoventé Inc. was a company that developed technologies and processes for transforming organic residues like chicken and cattle manure, municipal wastewater treatment plant sewage, food processing wastes and pulp and paper mill sludge into a dried bio-energy material.[115] Affiliation, and even cross-ownership, alone is a legally insufficient basis to attribute the alleged subsidization of electricity at biomass companies to the production of lumber by separate companies, and the Petition fails to explain much less justify any attribution of the alleged benefit to the subject merchandise.

The Petition particularly calls out Boisaco Inc. ("Boisaco"), EACOM Timber Corporation ("EACOM Timber"), and Chantiers Chibougamau Ltée. (Inc.) ("Chantiers") as lumber producers whose biomass will be used to fuel power plants.[116] The Boisaco claim relates to a project for a 9-MW cogeneration with partner Hydromega Services, an independent renewable energy producer, planned for 2019.[117] The Boisaco claim as to Sacré Coeur referenced in Exhibit 346 (which was not fully translated), indicates that the project would not be constructed until 2016 and that Boisaco's share would only be 15 percent of that entity. Regarding EACOM Timber, as shown in Exhibit 354 to the Petition (which was not fully translated), the contract is between the entity Cogénération Val d'Or S.E.C. and Hydro-Québec, not between EACOM Timber and Hydro-Québec, and Hydroméga Services, an independent renewable energy producer, will develop the project. The article also indicates that it will be mid-March 2018 before the project is functional. In the contract between Chantiers and Hydro-Québec provided in Exhibit 349 (which was not fully translated), section 4.1 states that the guaranteed date of commencement of deliveries (Date garantie de début des livraisons) is March 19, 2018 (19 mars 2018), which is after the POI.

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[114] 19 C.F.R. § 351.303(e).

[115] *See* https://www.sdtc.ca/en/portfolio/projects/shoctm-sechage-et-hygienisation-par-oxygation-controlee-or-drying-and (last visited Dec. 2, 2016). Fortress Specialty Cellulose Inc. produces a chemical refined bleached pulp (dissolving pulp). http://fortresspaper.com/company/fortress-speciality-cellulose/ Fibrek produces northern bleached softwood kraft pulp. http://www.resolutefp.com/installation_site.aspx?siteid=157&langtype=4105.

[116] Petition at 177.

[117] *See* Exhibit 353.

Petitioner downplays the post-POI timing of these projects by asserting that "{i}rrespective of delivery date, evidence reasonably available to Petitioner indicates that the GOQ's provision of financial incentives and subsidies for the cogeneration plants were an essential factor for entering into the PAE 2011-01 program."[118] But Petitioner cites to no direct evidence in support of these statement. The only citation Petitioner included in the Petition was a statement by Boisaco that a cogeneration plant would use its bark, which would in turn increase Boisaco's profitability.[119] Hopeful predictions of future profits from a future operation are not evidence of a benefit during the POI.

There is no support for the argument that, even if purchases of electricity are made at MTAR, such profit would flow to softwood lumber production. The separate entities involved in these projects have their own profit and loss statements and will be acting in their own commercial interests. The Department should not initiate any investigation of Québec's bioenergy program.

VI. Tax Programs

A. The Petition Fails to Substantiate its Allegation with Respect to the B.C. Motor Fuel Tax Refund

The Department should not initiate an investigation of the alleged motor fuel tax refund because the Petition fails to substantiate its claim that the program confers a countervailable benefit to producers and exporters of softwood lumber.

The British Columbia motor tax refund program permits purchasers of standard fuel to apply for a tax refund for the portion of the tax paid on standard fuel for which they could have used lower-taxed colored fuel. The program, by design, does not confer a benefit, because it is intended simply to rectify situations where a fuel purchaser has paid a higher fuel tax than necessary. Section 22 of the *Motor Fuel Tax Act* specifies that the tax refund is available only when the higher-taxed standard fuel was used for a purpose "for which coloured fuel is authorized to be used."[120] Therefore, the tax refund program is nothing more than a mechanism to ensure that a purchaser does not pay higher tax rates than that to which the purchaser is already entitled under separate provisions of the *Act*.

The only support that Petitioner offers to substantiate its claim that the tax refund confers a benefit is a compendium prepared by the Ontario Chamber of Commerce, entitled "Helping Ontario Businesses Emerge Stronger."[121] As indicated by the title, as well as the contents of the

[118] Petition Vol. III at 183.

[119] *See* Petition Vol. III at 184 and Exhibit 346.

[120] [RSBC 1996], Ch. 37; Petition Exhibit 387 § 22.

[121] *See* Petition Vol. III at 220 and Exhibit 393.

document, the purpose of the compendium is to provide recommendations to the Government of Ontario on ways to enhance the competitive environment for businesses in Ontario. The document bears no relation to British Columbia; nor does it rely on any data relating to the British Columbia tax refund program. In fact, British Columbia is mentioned only as an example of one of "{s}everal Canadian provinces and territories" that supposedly operate a similar tax refund system. Therefore, the compendium is simply irrelevant in establishing whether the tax refund program administered by the Government of British Columbia confers any benefit to lumber producers operating within its boundaries.

Moreover, the Petition does not provide any evidence to support its conclusory claims. For example, the Petition does not provide any explanation or data to substantiate the compendium's assertion that the tax refund program in British Columbia "translates to savings of up to 21 cents per litre for qualifying industries."[122] In light of these deficiencies, the Department cannot rely on the compendium because it provides no factual support for its claim that the tax refund program confers a benefit.

Even if the Department were to consider that the tax refund program is intended to confer a benefit, the Petition still fails to provide any evidence that any lumber producers in British Columbia actually received a benefit from the tax refund program. The Petition, astonishingly, merely provided an exhibit containing a list of all sawmills in the Province, and did not even attempt to identify whether any of those sawmills actually applied for or received a tax refund under the program.[123] Moreover, the accuracy of the list of sawmills itself is questionable, because several of the facilities listed in the "Sawmills Outside of the Metro Vancouver Area Located in British Columbia" have addresses that are not even in British Columbia.[124] The Petition provides no information on whether these sawmills operate in British Columbia, or how they would otherwise benefit from the tax refund program.

The tax refund program would also only be applicable to authorized vehicles operated by the sawmills listed in the exhibit. The Petition fails to indicate whether any of these sawmills in fact operated such vehicles, and if so, whether any of these sawmills actually applied for, or received, a tax refund during the POI.

The Department should also reject Petitioner's allegation because it disregards the structure of the lumber industry in British Columbia. As the Department is well aware through its experience with the prior investigation of Canadian softwood lumber, few, if any, lumber producers perform their own logging, processing, or transport activities. Rather, most of these services are provided by unaffiliated third-party contractors. These third-party contractors – not the sawmills – would apply for and receive any tax refund under the program. Therefore, to the

[122] *Id*. at 220 and Exhibit 393.

[123] *See id*. at 219-220 and Exhibit 392.

[124] *See id*. at Exhibit 392 (listing many sawmills in Alberta).

extent that there was a benefit arising from the tax refund program, any such benefit would accrue to those third-party contractors, not the sawmills producing lumber.

For these reasons, the Petition is deficient on its face because it fails to provide any evidence that the motor fuel tax refund program confers a benefit to producers of subject merchandise. The Department therefore should not initiate an investigation on this program.

B. The Petition's Allegations Regarding Alberta's Fuel Tax Exemption Program Do Not Provide a Basis for Initiation

Petitioner claims that Alberta provides countervailable subsidies to softwood lumber producers by providing tax exemptions and tax rebates for fuel used for off-road commercial purposes. Petitioner identifies three programs: the Prescribed Off-Road Percentage ("PROP") Program, the Tax-Exempt Fuel Program for Marked Fuel, and the Tax Rebates for Clear Fuel. All of these programs were previously part of Alberta's Tax-Exempt Fuel Use Program ("TEFU") until rebates for clear fuel used off-road in licensed vehicles, machinery and equipment (which also included PROP rebates) ended in 2011. The remaining marked fuel exemption program (which we refer to as TEFU) allows for tax exemption for marked fuel, with an allowance for rebates for clear fuel in limited circumstances, essentially where marked fuel is not available. For the reasons discussed below, Petitioner's claims are unsupported and should be dismissed as inadequate to justify initiation of any investigation with respect to these programs.

1. Alberta Eliminated PROP in 2011 and Petitioner's Allegation That PROP Should Be Treated as Non-Recurring Is Inconsistent With the Department's Regulations

As Petitioner correctly noted, the PROP program, which provided tax rebates to companies for use of clear fuel by licensed vehicles, ended in February 2011[125] – more than four years before the period of investigation requested by Petitioner. Petitioner nonetheless argues that the Department should countervail this now defunct program by allocating any benefit "over the producer's average useful life pursuant to 19 C.F.R. § 351.524."[126] Petitioner is mistaken. Such an allocation of a benefit over the average useful life under 19 C.F.R. § 351.524 is reserved for non-recurring benefits – and PROP is not a non-recurring benefit. "The Secretary will normally treat the following types of subsidies as providing recurring benefits: *Direct tax*

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[125] *See* Exhibit H (Alberta Treasury Board and Finance, Tax and Revenue Administration, Alberta Fuel Tax Act – Information Circular (PROP-1, Sept. 21, 2010), *available at* https://web.archive.org/web/20131128173147/http://www.finance.alberta.ca/publications/tax_rebates/fuel/PROP1.html (last visited Dec. 3, 2016)) ("Effective 12:01 a.m., February 25, 2011, the Tax Exempt Fuel Use (TEFU) rebate for licensed vehicles, including Prescribed Rebate Off-road Percentages (PROP), is eliminated."); Petition Exhibit 399 (same). We note that we are including Exhibit H, rather than citing to Petition Exhibit 397 because Petition Exhibit 397 is incomplete. *See* Petition Vol. III at 226 ("Based on information reasonably available to Petitioner, the PROP program may have expired on February 25, 2011.").

[126] *See* Petition Vol. III at 226.

exemptions and deductions; *exemptions and rebates of indirect taxes or import duties ….*"[127] The Alberta tax rebates provided through the PROP program fit squarely within the tax categories identified in this non-exclusive list of recurring benefits.

In contrast, "{the} Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general infrastructure, and provision of plant and equipment."[128] These types of payments listed as non-recurring are of a fundamentally different nature than the PROP tax rebate. Further, under section 351.524(c)(2), one of the factors the Department considers in determining whether a program is non-recurring is whether the program can be tied to "capital structure or capital assets of the firm."[129] The fuel rebates under PROP were plainly not tied to capital investment, capital structure, or capital assets of a beneficiary company, and Petitioner does not so allege.

Contrary to the disparate lists of recurring and non-recurring benefits above and the plain language of section 351.524, Petitioner mischaracterizes the Department's decision in *Certain Pasta from Italy* and completely ignores the Department's requirements for finding benefits non-recurring under section 351.524(c)(2)(i)-(iii). When trying to draw a comparison between Article 62 at issue in that case and PROP,[130] Petitioner claims that PROP is similar because Article 62 required authorization from the Government of Italy.[131] The Department, though, considered that the Article 62 program, first, "was dependent upon companies making specific investments" in infrastructure and, second, that the "subsidy was tied to capital assets of the firm" receiving the benefit.[132] PROP was neither dependent upon companies making any kind of specific investment relating to their fuel or any other costs, nor was it tied to any company's capital assets (and Petitioner does not so allege). Indeed, PROP and the Article 62 program are very different programs. Article 62 promoted investment in disadvantaged areas by providing tax credits for one-time equipment or building costs;[133] whereas PROP, as a part of Alberta's TEFU program, provided tax rebates for fuel for off-road activities.[134]

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[127] 19 C.F.R. § 351.524(c)(1) (emphasis added).

[128] *Id.*

[129] *Id.* § 351.524(c)(2)(iii).

[130] *See* Petition Vol. III at 226.

[131] *Id.*

[132] *Certain Pasta from Italy: Preliminary Results of the Tenth Countervailing Duty Administrative Review*, 72 Fed. Reg. 43,616, 43,620 (Dep't of Commerce Aug. 6, 2007).

[133] 72 Fed. Reg. 43,620.

[134] *See* Exhibit H (discussing the program's coverage of multiple fuel invoices).

Accordingly, since the PROP program ended in 2011 and was not a non-recurring program, there were no benefits from PROP during the 2015-2016 period of investigation, and there is no basis for initiating an investigation with respect to PROP.

2. Petitioner Does Not Allege Sufficient Facts to Warrant Investigation Of Alberta's Marked Fuel Tax Exemption and Clear Fuel Rebate

As noted above, Alberta's Tax-Exempt Fuel Program for Marked Fuel and Alberta's Tax Rebates for Clear Fuel are complementary aspects of a single program, TEFU. TEFU provides a partial fuel tax exemption of 9 cents per litre of marked fuel to eligible companies and municipalities when fuel is used in *unlicensed vehicles*, machinery, and equipment for qualifying off-road activities.[135] Companies that would otherwise receive the tax exemption for marked fuel can receive the rebate for use of clear fuel when marked fuel is not otherwise available.[136] Because this exemption and rebate constitute two aspects of the TEFU program, we address TEFU collectively, rather than as two separate programs as Petitioner did.[137]

The Department should not initiate an investigation on this program because the TEFU exemption and rebate provide no special benefits to softwood lumber producers. Further, Petitioner has not provided any evidence, either in the Petition or in its December 5, 2016 Response to Supplemental Questions, that indicates TEFU is either *de jure* or *de facto* specific under U.S. countervailing duty law.[138]

Contrary to Petitioner's allegations, particularly in the December 5th filing,[139] eligibility for TEFU does not consider the industry in which the enterprise operates. TEFU is *not* a specific forestry-related program, rather it is a broad program that can be accessed by any company or municipality that meets the eligibility criteria established in the *Fuel Tax Act* and *Fuel Tax Regulation*.[140]

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[135] *See* Exhibit I, Alberta Treasury Board and Finance, Tax and Revenue Administration, Alberta Fuel Tax Act -- Information Circular § 5 (FT-3R2, Jan. 20, 2016), *available at* http://www.finance.alberta.ca/publications/tax_rebates/fuel/ft3.html (last visited Dec. 3, 2016)) (noting the partial exemption is "$0.09 per litre").

[136] *See* Petition Exhibit 396 §§ 23(1)l, 23(5.1) (Alberta Fuel Tax Regulation, A.R. 62/2007).

[137] *See* Petition Vol. III at 227-31.

[138] 19 U.S.C. §§ 1677 (5A)(D)(i)-(iv).

[139] *See* Petitioner's Response to the Department's Supplemental Questions (Dec. 5, 2016) at 12.

[140] *See* Petition Exhibit 395 § 9 (Alberta Fuel Tax Act, S.A. 2006, Ch. F-28.1); Petition Exhibit 396 (Alberta Fuel Tax Regulation, A.R. 62/2007); Exhibit I § 5 (broadly defining consumer uses of marked fuel that meet eligibility requirements).

Indeed, TEFU applies to potentially any industry in Alberta. As Petitioner noted,[141] the "Declaration of Tax Exempt Fuel User" used by entities to claim the tax exemption certificate lists twenty-one different industries and a twenty-second catch-all category ("other").[142] The listing of industries in the Declaration is the only evidence cited by Petitioner in support of its *de jure* specificity allegation – and it does not support that allegation (Petitioner provided no new evidence in its December 5th filing).[143] The eligibility criteria for TEFU are clearly specified in the *Fuel Tax Act* and *Fuel Tax Regulation* – and there is no listing of industries and no limitation by industry.[144] While categories of industry are checked off in the application process, the declaration allows for an "other" category, and eligibility for a TEFU certificate is not limited to any specific industries.

Furthermore, Petitioner does not allege that the Alberta government has any discretion to approve or reject an applicant based upon considerations that go beyond the criteria clearly outlined in the *Fuel Tax Act* and *Fuel Tax Regulation.* Given that eligibility for TEFU is generally available to potentially any industry in Alberta and because Alberta follows specific statutory and regulatory criteria in determining eligibility, this program cannot be considered *de jure* specific under U.S. countervailing duty law.

Because TEFU is not *de jure* specific, Petitioner must allege sufficient facts that the program is *de facto* specific in order to warrant initiation of an investigation of this program. Petitioner has not alleged such facts (either in the Petition or in its December 5th filing) that even begin to show that TEFU is *de facto* specific under U.S. countervailing duty law.[145]

Petitioner asserts, based only upon a single document from September 2000 (16 years ago, which predates *Lumber IV*), that "the forestry industry is one of the largest users of fuel for off-road purposes" and "{a}s a result, the forestry industry received a disproportionately large amount of the subsidy."[146] The document cited by Petitioner says no such thing. It says only that:

> Alberta provides tax exemptions and rebates on fuel used off-road for commercial purposes, in order to remove the fuel tax on inputs to primary

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[141] *See* Petition Vol. III at 227-31.

[142] *See* Petition Exhibit 403 § 4 (Alberta Treasury Board and Finance, Tax and Revenue Administration, Declaration of Tax Exempt Fuel User).

[143] *See* Petition Vol. III at 227-31; Petitioner's Response to the Department's Supplemental Questions (Dec. 5, 2016) at 12 (referring only to information included in the Petition).

[144] The prescribed uses are listed in Section 8(3) of the Alberta Fuel Tax Regulation, A.R. 62/2007, § 8(3) (consolidated up to 3/2014), *see* Petition Exhibit 396.

[145] 19 U.S.C. § 1677(5A)(D)(iii).

[146] *See* Petition Vol. III at 299 and nn. 877-78 (referring to Petition Exhibit 405).

> resource industries, such as forestry, mining, oil and gas, and well servicing, which use large amounts of fuel off-road. TEFU is not limited to these industries.[147]

Petitioner has provided no further basis for its assertion that Alberta's forestry industry disproportionately utilizes TEFU. In fact, when asked by the Department to clarify its *de facto* specificity claim, Petitioner only cited back to this single document from September 2000.[148]

And Petitioner does not make any allegation that the actual recipients are limited in number, that an enterprise or industry is a predominant user, that an enterprise or industry is favored over others, or that recipients are limited geographically. Petitioner's December 5, 2016 Response to the Department's Supplemental Questions makes crystal clear, with its citation to sub-item III in the statute (771(5A)(D)(iii)(III)), that Petitioner claims only that "the forestry industry received a disproportionately large amount of the subsidy."[149]

The Petition did not provide any evidence that supports this claim, and Petitioner's December 5, 2016 Response to the Department's Supplemental Questions did not provide *any* new evidence supporting the TEFU allegations in the Petition. Rather, Petitioner has continued to rely only on what was included in the Petition: the TEFU certificate declaration and the September 2000 document. Nothing else.

In short, Petitioner's allegations with respect to TEFU are entirely inadequate as a basis for initiating a countervailing duty investigation on the programs identified in the Petition.

VII. Additional Programs

A. Export Development Canada – Export Guarantee Program

The Petition alleges that Export Development Canada ("EDC") provides an export subsidy through an Export Guarantee Program ("EGP") which, the Petition claims, provides a benefit "equal to the difference between the amount the recipient pays for the loan with the government-provided guarantee and the amount the recipient would pay for a comparable commercial loan that it could actually obtain in the market absent the government-provided guarantee."[150] While acknowledging that the cost of any fee for the guarantee fee must be taken into account in making this comparison, the Petition fails to make any effort to provide information on such guarantee fees, or to demonstrate how the interest rate charged on such

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[147] *See* Petition Exhibit 405 at 11 (Alberta Business Tax Review Committee, Alberta Business Tax Review -- Report and Recommendations (Sept. 2000)).

[148] *See* Petitioner's Response to the Department's Supplemental Questions (Dec. 5, 2016) at 12.

[149] *Id.*

[150] *See* Petition Vol. III at 235.

guaranteed loans, plus the guarantee fee, provides a benefit compared to the rate that commercial banks would charge for the loan without the guarantee. For that reason alone the Petition allegation is deficient and should be rejected.[151] Beyond that, when information about the EDC's guarantee fees on loans to finance foreign held inventory is taken into account, it is plain that there is no subsidy.

Put simply, use of the EGP does not "reduce costs" to exporters since the exporter benefitting from an EGP still pays the lending bank's interest rate, plus a significant guarantee fee. The combination of the interest rate plus the guarantee fee is intended to match the overall cost of a loan not guaranteed by an EGP. Indeed, the cost of an EGP guaranteed loan can be higher where the bank does not reduce its interest rate to take into account the EGP. In most cases, a loan with an EGP guarantee will be *more* expensive for the borrower than a loan without an EGP.

More specifically, EDC charges a guarantee fee for loans financing foreign held inventory at a cost to the borrower for the guarantee fee of either 50 basis points for inventory in which the lending bank has a perfected security interest, or 125 basis points for inventory where the bank does not have a security interest. These rates are higher than the rates for inventory held in Canada in order to compensate for the additional risk associated with delays in enforcing on foreign collateral.

The Petition fails to address this guarantee fee or otherwise show how the interest rate charged on an EGP guaranteed loan, plus the EDC guarantee, results in the borrower receiving any benefit compared to what it would have to pay on a comparable commercial loan without the EDC guarantee.

Because the Petition fails to properly allege that the EDC EGP is countervailable, an affirmative critical circumstances finding is precluded. In order for the Department to make an affirmative critical circumstances finding in a countervailing duty case, the Department must find both a massive increase in imports over a relatively short period of time and that there is a reasonable basis to believe or suspect that one of the programs under investigation is inconsistent with the Subsidies Agreement.[152] Petitioner alleges only one subsidy as being inconsistent with the Subsidies Agreement – the EGP.[153] If the Department declines to initiate on this program, then the requirement of a countervailable subsidy that is inconsistent with the Subsidies Agreement would not be met, and thus critical circumstances cannot be justified.

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[151] While not dispositive of anything even if true, we note that the reference at page Petition 233 to a $200 million aid package for the forestry industry in 2009 has nothing to do with EDC or the EGP – the aid package does not expressly include EDC's EGP, but merely lists it as a program that EDC offers. In fact, the EGP program is not funded by federal budgetary outlays at all, as EDC funds its operations from revenues generated from its programs.

[152] *See* Section 703(e)(1) of the *Tariff Act*, 19 U.S.C. § 1671b(e)(1).

[153] *See* Petition Vol. I at 106–07.

VIII. Issues in the Conduct of the Investigation

A. The Investigation Should Be Conducted on an Aggregate Basis

Under 777A(e)(2)(B) of the Act, the Department is authorized to conduct countervailing duty proceedings on an aggregate basis, where it is not practicable to determine individual countervailable subsidy rates that would be meaningful and representative of all the subject merchandise because of the large number of exporters or producers involved in the investigation. The Department used this authority in its prior *Lumber* proceedings and conducted those proceedings on an aggregate basis.[154] Because an even larger number of exporters and producers are potentially involved in this investigation, the Department should exercise its authority to conduct this investigation on an aggregate basis.

The Department completed two administrative reviews under the *Lumber IV* countervailing duty order. Each review was conducted on an aggregate basis because it was not practicable to conduct meaningful company-specific reviews given the number of producers and exporters and the material differences in the forest management systems across Canada. The Department was asked to review an estimated 290 individual companies in the first administrative review and an estimated 263 individual companies in the second review.[155] In comparison, the Petition in this proceeding has identified approximately 545 individual companies across the seven Canadian provinces for which specific countervailing duty allegations are made.[156] Considering that the Petition in this proceeding implicates nearly twice the number of producers and exporters at issue as in the Department's most recent softwood lumber proceedings, the only practicable course of action is to conduct an aggregate investigation.

Although the statute focuses on the number of producers and exporters as the basis for invoking aggregate case authority under §777A(e)(2)(B), the Department's long history and past experience in *Lumber* proceedings reveal additional facts that provide substantive support for a decision to conduct an aggregate investigation. Most importantly, Canadian law establishes that the provinces have near exclusive jurisdiction over the forest lands and resources within their borders.[157] A company specific investigation, in which only a few than a handful of companies

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[154] *Certain Softwood Lumber Products from Canada*, 57 Fed. Reg. 22,570, 22,574 (Dep't of Commerce May 28, 1992*) (*final aff. CVD det.*). ("Lumber III")*; *see also Certain Softwood Lumber Products from Canada*, 66 Fed. Reg. 43,186, 43,190-91 (Dep't of Commerce Aug. 17, 2001*) (*prelim. aff. CVD and crit. circ. det.*). ("Lumber IV").*

[155] *Certain Softwood Lumber Products From Canada*, 69 Fed. Reg. 33,204 (Dep't of Commerce June 14, 2004) (prelim. results of CVD review); *Certain Softwood Lumber Products From Canada*, 70 Fed. Reg. 33,088, 33,089 (Dep't of Commerce June 7, 2005) (prelim. results of CVD review); *see also Honey from Argentina*, 70 Fed. Reg. 36,563 (Dep't of Commerce June 24, 2005) (final results of admin. review) (conducting review on aggregate basis).

[156] Petition Exhibit 61.

[157] Constitution Act of 1867, 30 & 31 Victoria, c. 3. (U.K.), R.S.C. 1985, App. II, No. 11, 2.109; S.C. 1930, c. 3 [Alta.]; S.C, 1930, c. 37 [B.C.]; S.C. 1930, c. 29 [Man.]; S.C. 1930, c. 41 [Sask.].

would be examined, could not account for the diversity of forest pricing and management systems that result from the province-specific nature of Canadian forestry. This reality is well known to the Department.

Consistent with its established practice in prior proceedings involving this product and industry, the large number of producers and exporters, and the fact that provincial governments own and control most of the public timber in Canada, the Department should conclude that it is not practicable to determine individual company rates in this proceeding and conduct the investigation on an aggregate basis.

B. The Department Should Allow Canadian Importers to Post Bonds in Lieu of Cash Deposits During the Provisional Measures Period

In the event of an affirmative preliminary determination, the Department of Commerce would instruct Customs and Border Protection (CBP) to suspend liquidation on each entry of subject merchandise and to require importers to post security for eventual duty liability at the preliminary calculated rates. Although the regulation states that the Department "will normally order the posting of cash deposits to ensure payment if … duties ultimately are imposed," the Department has recognized that "{t}he use of the term 'normally' provides the Department flexibility to address those . . . circumstances that the Department may find warrant the acceptance of bonds" and that it "intends to make such exceptional determinations on a case-by-case basis."[158] The unique circumstances of this case warrant the Department authorizing the posting of bonds for imports of softwood lumber from Canada that are entered during the provisional measures period. Canadian importers should be permitted the option to post bonds instead of being required to make deposits because: (1) the United States faces no genuine risk to recovering potential duties should Canadian importers post bonds instead of cash deposits; and (2) requiring cash deposits in this particular case is likely to result in the payment of interest back to Canadian importers.

1. There Is No Genuine Risk That Canadian Importers Will Default on any Potential Duties Owed if They Are Permitted to Post Bonds

In amending its regulations to establish cash deposits as the default form of security following affirmative preliminary determinations, the Department's primary concern was ensuring importers are "responsible for the payment of AD and CVD duties they may owe." This concern was a direct result of the U.S. Government Accountability Office (GAO) Report to Congress on Antidumping and Countervailing Duties, which stated that when importers who had posted bonds defaulted, it was a difficult process for CBP to collect owed duties from bonding agents. At the time a disproportionate share – 90 percent – of all uncollected AD/CVD debt involved imports from China. More recent statistics from CBP show that China now accounts for 93 percent of AD/CVD debt. Yet since its Modification, the Department has nevertheless

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[158] *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 Fed. Reg. 61,042, 61,045 (Dep't of Commerce Oct. 3, 2011).

allowed certain importers – including some importing from China – the option of posting bonds. In comparison to China, Vietnam, and India, Canadian importers of softwood lumber present a very low risk of defaulting on any potential duties owed as a result of AD/CVD litigation.

First, the largest Canadian producers and importers have significant assets in the United States; Interfor, Canfor, West Fraser, Maibec, and Resolute have invested over $300 million combined in tangible plant and equipment in the U.S. in recent years. Interfor Corporation owns nine mills in the southern U.S., which have a total production greater than the company's overall Canadian production. West Fraser Timber Co. Ltd., Canada's largest forestry company, owns 15 sawmills in the southern United States. Canfor Corporation also significantly expanded its presence in the U.S., acquiring Scotch Gulf, Beadles & Balfour, Southern Lumber, and Anthony Forest Products. Maibec started its expansion in 2015 with its first U.S. mill acquisition in Maine, bringing significant investment and employment opportunities to the area. J.D. Irving, Ltd. also has numerous investments in Maine. Finally, Resolute Forest Products Inc., the largest lumber producer and importer in eastern Canada, not only owns numerous U.S. pulp and paper mills but is a U.S. company incorporated in Delaware.

Second, any potential U.S. judgments against Canadian importers made on account of outstanding duties owed can easily be enforced in Canada. Canadian courts will recognize and enforce foreign judgments as long as the foreign judgment was issued by a court that properly assumed jurisdiction, and acted according to due process, the foreign judgment is final and conclusive in the original jurisdiction, and the judgement is for a definite and ascertainable sum of money. Therefore, there is no genuine risk that even in the case of a default, the U.S. would not be able to recover what it is owed.

The U.S. is heavily dependent on Canada's lumber: U.S. demand consistently exceeds U.S. domestic supply. Historically, Canada has been the largest foreign supplier of softwood lumber in the United States, accounting for 95 percent of imports since 1965. In *Lumber IV*, the International Trade Commission noted that Canada accounted for 33.2 percent of apparent domestic consumption of softwood lumber in 1999, 33.6 percent in 2000, and 34.3 percent in 2001. This dependency on Canadian lumber has remained at similar levels.

Fourth, all Canadian importers currently have valid continuous entry bonds in place in order to ensure that all customs duties, fees, and other charges assessed by CBP will be paid, regardless of whether the merchandise is subject to AD/CV duties. These bonds have already been reviewed for sufficiency and adequacy, and therefore merely increasing the bonds' value would not impart any burden on CBP. In light of these circumstances, cash deposits are not necessary to secure any payment of duties on Canadian imports of softwood lumber, and the Department should instruct CBP to accept bonds as security for unliquidated imports that enter the United States.

2. Requiring Canadian Importers to Make Cash Deposits Instead of Posting Bonds Will Likely Result in Loss of Revenue

In both *Lumber III* and *Lumber IV* the Department's calculated final margins were much lower than the preliminary margins upon which the provisional measures were based. Yet, because in both instances importers could post bonds instead of cash deposits, there was no

interest liability on importer deposits. Were the Department however to allow the posting of bonds, it would not face the risk of having to pay interest to the Canadian importers.

C. Atlantic Provinces

The Petition makes no allegation of provincial subsidies with respect to Nova Scotia, Newfoundland and PEI. The Department excluded the Atlantic Provinces, including New Brunswick, in *Lumber III* and *IV* and agreed to special provisions for producers in those provinces during the SLA. Canada supports the exclusion of the Atlantic provinces from this countervailing duty investigation.

D. Company Exclusions

The Government of Canada believes that company exclusions are of central importance to these proceedings. If the Department initiates an investigation, we would urge the Department to promptly adopt fair and workable procedures for the submission and review of company exclusion applications. The need for such procedures was made paramount, *inter alia*, by modifications to the Department's Regulations, introduced subsequent to the Department's last investigation of Lumber, which eliminated the possibility for companies to seek company-specific revocation from antidumping or countervailing duty orders.[159]

Canada believes that the procedures for company exclusion should be founded on developing criteria for categories of eligible companies. This reflects the approach adopted by the Department in both the *Lumber III* and *Lumber IV* investigations. For example, producers that sourced softwood timber primarily from U.S. and/or Canadian private lands are almost certain to have a zero or *de minimis* benefit. These companies, as a result, would form one category. In addition, remanufacturers that purchase lumber in arm's length transactions from unaffiliated companies could form a second category. In the event that the Department does initiate an investigation, Canada requests that the Department meet as soon as possible thereafter to discuss these proposed categories.

Canada and the provincial and territorial governments, with the assistance of accountants, intend to gather, review, certify, and categorize the individual company's exclusion applications based on the categories agreed to by the Department, so as to simplify and streamline the process for the Department.

E. The Provinces of Saskatchewan, Manitoba and the Territories Represent an Extremely Small Share of Lumber Production and Should Not Be Investigated

The administrative burdens on the Department posed by this case could be reduced by limiting the investigation to the largest lumber-producing provinces. Petition Exhibit 135 shows

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[159] *Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 77 Fed. Reg. 29, 875 (Dep't of Commerce, May 21, 2012).

that these provinces represented 97-98 percent of Canadian production in 2013-2015. All other provinces and territories together represented 2 percent or less. Of these other provinces and territories, only Saskatchewan, Manitoba are included by name in the Petition.

The Department can investigate almost all Canadian production by investigating the remaining provinces. The Government of Canada therefore requests that if the Department decides to initiate an investigation, the provinces of Saskatchewan and Manitoba and the Northwest Territories, the Yukon Territory and Nunavut not be investigated.

F. Scope and Product Exclusions

The Government of Canada intends to file a number of product and species exclusions requests should the Department initiate an investigation. In particular, Canada will file a request to exclude eastern white pine, wooden bed frame components, lumber made from U.S. origin logs, lumber made from private land or First Nations logs, high value products, and western red cedar from the scope of the investigation. Arguments related to each of these product and species exclusions can be found at Attachment 1 (Eastern White Pine), Attachment 2 (Wooden Bed Frame Components), Attachment 3 (Lumber Made From U.S. Origin Logs), Attachment 4 (Private FN Lands Logs), Attachment 5 (High Value) and Attachment 6 (WRC). Canada asks that the Department seriously consider, and favorably act upon, these requests.

G. The Statutory Requirements for an Affirmative Critical Circumstances Finding Have Not Been Met

As explained above, if the Department does not initiate an investigation into the EDC loan guarantee program, there would be no basis for an affirmative critical circumstances finding in the countervailing duty case, because there are no other programs alleged to be inconsistent with the *SCM Agreement*. Canada and the Canadian parties intend to file a separate submission addressing the critical circumstances allegation more fully, and plan to address the data relied upon in the Petition at that time.

H. Timetable of the Proceedings

As the Department likely recognizes from prior history with lumber, and from the Petition filed in this case, this will be an extraordinarily complicated proceeding. Under the normal CVD schedule, Canada will have less than 60 days to respond to the Department's questionnaire. The Petition is voluminous, the allegations are broad, and the issues are extremely complex.

Canada believes that it is important that the Department take the time to properly develop a complete and adequate record, and to allow parties sufficient time to adequately respond to questionnaires, allegations, and statements on the record. It is already apparent that, in order to properly administer and respond in this case, reasonable extensions will be necessary.

The Government of Canada therefore urges that, if an investigation is initiated, the Department promptly recognize the nature of the proceeding and place it on an "extraordinarily complicated" timetable.

Finally, Canada requests that the Department clarify when expert reports should be submitted under section 351.301(c).

ATTACHMENT 1

EASTERN WHITE PINE MUST BE EXCLUDED FROM ANY COUNTERVAILING DUTY OR ANTIDUMPING INVESTIGATION OF SOFTWOOD LUMBER

Eastern White Pine ("EWP") is a separate like product and a separate class or kind of merchandise from softwood lumber. Although the Petition mentions EWP and includes the HTSUS numbers that cover EWP, the Petition does not allege any of the elements necessary for the imposition of countervailing or antidumping duties with respect to EWP as required by Sections 702(b) and 732(b) of the Tariff Act of 1930, as amended (the "Act"). Furthermore, the Petition was not filed on behalf of the domestic EWP industry and Petitioner does not represent that industry. The Petition does not contain any evidence from which the Department could determine that the levels of industry support, required by Sections 702(c)(4) and 732(c)(4) of the Act for the Department to initiate an investigation, exists for EWP. Consequently, the Department must exclude EWP from the scope of any countervailing or antidumping duty investigation it might initiate on softwood lumber from Canada.

Should the U.S. industry that produces EWP believe it is injured by imports of EWP from Canada, then that EWP industry should submit its own separate countervailing duty or antidumping Petition. The product about which that industry would have standing to complain is similar to softwood lumber only through botany and is commercially a plainly different product.

A. EWP Is a Separate Domestic Like Product Made By a Separate Domestic Industry

The ultimate determination of the domestic like product and the domestic industry is the responsibility of the U.S. International Trade Commission ("ITC"). Nonetheless, for purposes of deciding whether to initiate an investigation and to determine the scope of any such investigation, the Department also must make an assessment of the like product and the domestic industry.[160] For example, were the scope of the requested investigation as set out in the Petition to cover two like products, the Department would have to assess the allegations of injury and the domestic industry's support for the Petition with respect to two separate industries. If the Petition were not to meet the statutory requirements for initiation with respect to one of those industries, the imported product corresponding to that domestic like product would have to be excluded from the scope of the investigation.

The ITC generally considers the following factors in its like product analysis: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perception of the products; and (6) price.[161] EWP, for the reasons discussed below,

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[160] *See* Sections 702(c)(4)(a) and 732(c)(4)(a) of the *Tariff Act*. As the Department notes in its Antidumping Manual, "{a} single investigation involves a single like product." Enforcement and Compliance Antidumping Manual, Chapter 2 at 12.

[161] *See* United States International Trade Commission, *Antidumping and Countervailing Duty Handbook*, 14th Edition, USITC Pub. No. 4540 (June 2015) at II-34; *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 n.4 (1995). Although the ITC's practice is not legally binding upon the Department, the Department does consider these *(Continued)*

is a separate like product under the ITC's six factor test and, therefore, U.S. EWP producers comprise a separate domestic industry. The Petition does not provide any evidence demonstrating that the domestic EWP industry supports the Petition. The evidence it does provide is with respect to softwood lumber, not EWP producers. There is virtually no overlap between the two industries. For example, the website of the Northeastern Lumber Manufacturers Association ("NELMA") lists 32 member mills that produce EWP and 9 member mills that produce SPF lumber. Only one of those mills produces both.[162] Without the requisite support from the domestic EWP industry, the Department must exclude EWP from the scope of any countervailing or antidumping duty investigation it might initiate on softwood lumber.

1. The Physical Characteristics and End Uses of EWP Distinguish It From Softwood Lumber

EWP is a discrete specie, *Pinus strobus Linneaus*, with unique physical characteristics that distinguish it from softwood lumber. EWP is a lightweight softwood product that readily and uniformly seasons, and when air-dried, has low shrinkage. It is easy to work by hand and machine tools, easy to glue, and has good nailing and screw-holding properties. The heartwood of EWP is moderately durable but very permeable (*i.e.*, it carries fluids easily through the wood); its permeability is nearly seven times higher than that of balsam fir and almost fourteen times higher than that of red spruce. EWP must be treated with preservatives where conditions are favorable to decay.

EWP is valued primarily for its overall attractive appearance. For that reason it often is processed in hardwood mills. The wood is light gray with a moderate sheen, straight grained, with inconspicuous growth rings and a distinctive knot configuration. It has relatively few knots, which are smaller, solid, high quality and tightly-configured. Unlike softwood lumber that has a high strength to weight ratio, EWP is weaker and softer than other pines and has fairly low resistance to impact. EWP has greater dimensional stability than softwood lumber and therefore resists cracking, twisting, expanding, contracting and swelling.

EWP is cut to unique and distinct sizes. For example, EWP is frequently sold in 15/16" or 7/8" thickness, while dimension lumber is not available in those thicknesses. Shipments of EWP frequently contain a variety of lengths and sizes within a single shipment because EWP is often cut to secondary manufacturers' precise specifications. In addition, Canadian EWP producers manufacture a consistently thicker product, sawing their EWP to 1/8" over nominal thickness.

As a result of its high price and unique physical characteristics, EWP has limited and unique uses. It is used primarily in the manufacture of furniture and other specialty products such as toys, carvings, and woodenware. When used in construction, it is used sparingly for window sashes and frames, doors, shelving, cabinetwork and other items that require

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factors in its own like product analysis for purposes of initiation and assessing domestic industry support. *See* Enforcement and Compliance Antidumping Manual, Chapter 2 at 13-14.

[162] *See* Exhibit J.

dimensional stability, but do not bear substantial loads. In the industry jargon, it is a non-structural product.

EWP is particularly suited uniquely for furniture applications because it is more workable and malleable than other softwoods, and its moisture content is critical to furniture production. Furniture grade lumber generally calls for moisture content in the range of 6-8 percent. Unlike most softwood lumber mills, which will not dry beyond a uniform moisture content of 15 percent, most EWP mills perform custom drying to match customers' order specifications, including appropriate furniture grade ranges. As a result, EWP is used, largely to the exclusion of other softwood species, in furniture applications.

Because of its resistance to decay when treated, and its dimensional stability, EWP is better suited than other softwood lumber species for exterior applications like siding, trim, doors, windows, and fences. Due to its fine appearance and unique cuts, it is also used for interior trimming, paneling and millwork.

EWP is heavily favored for crafts because it can be molded and worked by machine tools more easily, sands more easily, and is less destructive to equipment because of its low sap content.

EWP has unique and distinct primary uses. It is not a suitable substitute for dimension lumber. Trying to use it as such would be negligent from a safety and liability perspective. Similarly, no species of softwood lumber has the right combination of physical characteristics to substitute for EWP in its primary, specialized applications.

2. EWP Is Not Interchangeable as a Commodity

EWP is treated by the lumber industries as a separate and unique product. It is not a "highly substitutable, commodity product" that ''competes mainly on the basis of price" with other softwood species, which are terms used by the Petition to describe the subject merchandise. The lumber industries distinguish EWP from softwood lumber by giving EWP its own grading system.[163] EWP grading rules are developed for appearance. By contrast, for example, the rules for dimension lumber are based on structural uses. The differences in grading rules reflect the wide recognition that EWP's end uses are directly related to its natural beauty, rather than strength and resistance to impact. In these and many other respects, EWP is more like hardwoods than softwoods.

EWP generally is not used in strength applications. Given its relative weakness and high cost, EWP is unsuitable for the general construction uses (studs and dimension lumber) of other softwoods, such as the home construction that the Petition identifies as the use for which demand for softwood lumber is derived. Strong softwood species such as SPF, Southern Yellow Pine, Douglas Fir, Larch and Hemlock are predominantly used for construction. *Random Lengths*

[163] *See* Northeastern Lumber Manufacturers Association, "2013 Standard Grading Rules for Northeastern Lumber" available at http://www.nelma.org/library/2013-standard-grading-rules-for-northeastern-lumber/.

includes products from all of these species, but not any EWP products, in its price composites for framing lumber, dimensional lumber and studs.[164] Over the last four fiscal quarters the monthly Random Lengths Framing Lumber Composite Price varied from a low of $297/MBF in September 2015 to a high of $367/MBF in August 2016.[165] By contrast, prices for EWP Premium 1x8 have been steady at $875/MBF for that same 12 month period.[166] EWP simply cannot serve as a substitute for the softwood lumber used in construction.

The heartwood of EWP is moderately durable but very permeable. The mean permeability for EWP is nearly seven times higher than that of balsam fir, and almost fourteen times higher than that of red spruce. The average service of untreated EWP fence is six years, compared to twenty-seven for eastern cedar. EWP, thus, must be treated with preservatives where conditions are favorable to decay. Given these qualities, more wood and more highly treated wood would have to be used if EWP were to be employed in general construction, which, of course, makes it impractical for those purposes.

The focus of the Petition is on the commodity lumber used predominantly in new residential, repair and remodeling, and nonresidential construction applications, comprising roughly 75 percent of all softwood lumber end uses in recent years.[167] Only about 25 percent of softwood lumber was consumed for all other uses combined. EWP is not interchangeable with the dimension lumber principally at issue in this case, nor with any other species of softwood.

3. EWP Is Sold Through Different Channels of Distribution From Other Softwoods

EWP is sold differently than softwood lumber, through different channels of distribution. It is most often delivered directly to furniture, window and other specialty product manufacturers that make use of its exceptional appearance and high dimensional stability, whereas softwood lumber is delivered to retailers or distribution centers for subsequent delivery to retailers. In retail centers, EWP boards are segregated and handled carefully to avoid stains and dents that would otherwise diminish its unusually high value. In light of EWP's fine appearance, knowledgeable consumers do not regard any other softwood lumber as comparable.

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[164] *See* Random Lengths Composite Price Item Descriptions available at http://www.randomlengths.com/In-Depth/Composite-Item-Descriptions/#LCHC.

[165] *See* Random Lengths Framing Lumber Composite Price - by Month, available at http://www.randomlengths.com/In-Depth/Monthly-Composite-Prices/.

[166] *See* Random Lengths.

[167] François Robichaud, The role of communications in emerging markets for wood products : the case of structural wood products in nonresidential construction, University of British Columbia, 2009-05-19T13:32:09Z ("Over the past decade, housing construction and remodeling consumed, on average, 71 percent of all lumber used in North-America (RISI, 2008). Estimates of lumber used in nonresidential construction vary, but RISI (2008) estimated this share to be as low as 4 percent during the same period. Industrial uses, such as packaging and furniture, accounted for the remaining 25 percent of lumber use in the past 10 years.").

Distribution systems are also geographically divided. EWP is sold predominantly in the eastern United States while, for example (and not surprisingly), the Western Pines are sold in the West. In addition, Western Pines are usually transported by rail, while EWP is moved almost exclusively by truck.

4. EWP's Manufacturing Facilities, Production Processes and Employees Are All Distinct From Other Softwoods

EWP producers use manufacturing methods designed to maximize the quality and appearance of the wood, similar to hardwood producers. There is an enormous difference in price between low value and high value EWP products encouraging EWP producers to sacrifice volume in order to maximize quality. By contrast, softwood lumber mills seek to maximize the total value of lumber produced, which often means making lower value products out of a log in order to maximize the volume of lumber produced from that log.[168] EWP is almost never made in the same mills as softwood lumber. For example, NELMA's website lists 32 member mills that produce EWP and 9 member mills that produce SPF lumber. Only one of those mills produces both.[169]

EWP mills are much smaller than softwood lumber mills. For example, a large SPF mill in Eastern Canada would have a capacity of well over 100 million board feet, whereas a large EWP mill would have a capacity of around 10-15 million board feet.

EWP mills use different equipment, perform different production processes and train employees differently. The licensing agencies even issue different licenses for EWP. EWP production requires vastly different sawing equipment and techniques than production of softwood lumber. In order to maximize the grade, quality, and value of the lumber, EWP mills use the carriage method, where each EWP log is sawn individually on a carriage saw. EWP saw operators must make sophisticated decisions – such as when and how much to turn each log and how thick to make each cut. This technique permits the sawyer to remove as much high-grade material as possible from around the heart of each log. Due to these many individual cuts, EWP saws are generally smaller and slower than those found in softwood lumber mills. The EWP production process is similar to, if not exactly like, hardwood lumber production, but it is vastly different from softwood production.

Softwood lumber mills use a single-pass method, where logs are passed through slabbing head cutters to flatten the sides, then immediately cut to width and thickness, usually using multiple saws. Further down the conveyor, one or two saws trim the logs for length. The sawing patterns are identical for all logs within each given log-diameter range, and the logs are sawn to

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[168] For example, a SPF 2x4 #2&btr is a better quality higher value product than a SPF 2x3 stud but the mill can make more 2x3s than 2x4s from the same log. Depending upon the relative prices in a given week, the sawmill would readily chose to make more of the cheaper product. An EWP producer would never make that kind of trade off because of the substantially higher prices it could obtain for the higher quality product.

[169] *See* Exhibit J.

patterns of prescribed uniform sizes. In the sawing process, one log is generally cut the same as every other, with little emphasis on product quality and variability. Employees are not required to make instantaneous decisions as the logs pass rapidly through the mills at extremely high production speeds, using extensive automation.

Because they are geared towards high volume production, softwood lumber mills are large, automated, and capital intensive. EWP mills, by contrast, are smaller in size and less automated. Mills that produce most softwood lumber are usually integrated with pulp and paper mills; EWP mills are not because EWP chips are not suitable for paper making. As a consequence, EWP has a different cost structure than other softwood lumber, and the productivity levels for EWP mills are substantially lower than other mills.

EWP is typically dried at lower temperatures than softwood lumber, and for longer periods of time. EWP is also dressed in a unique way, planned to achieve the highest quality finish. This technique dictates a planning process that is slow and exacting.

Due to the sophisticated sawing process, EWP producers are more dependent upon skilled employees than are producers of softwood lumber. Carriage saws used for EWP are much more elaborate than the twin saws or U-saws used to produce softwood lumber. EWP employees therefore receive more extensive training in a variety of skills, such as saw filing, grading and techniques of further manufacturing.

5. Customers And Producers Perceive EWP as a Distinct Product

Customer expectations for EWP are derived from its beautiful appearance and distinctive physical characteristics. EWP is prized for its dimensional stability and beauty, while species used to make softwood lumber (*e.g.*, Southern Yellow Pine and SPF) are valued for their strength and resistance to splitting. Manufacturers of furniture, window works, millwork, moldings and other interior uses requiring dimensional stability prefer EWP to Southern Yellow Pine and SPF because it is more stable and is dried to the appropriate moisture content for its intended applications. EWP has its own grading system, based on the product's appearance, distinguishing it from softwood lumber.[170]

EWP is cut to unique and distinct sizes. For example, EWP is frequently sold in 15/16" or 718" thickness, whereas softwoods such as dimension lumber are not available in those thicknesses. Random Lengths does not even quote a price for a 2x4 of EWP or a 1x8 of SPF. Shipments of EWP frequently contain a variety of lengths and sizes within a single shipment because EWP often is cut to secondary manufacturers' precise specifications.

EWP has unique physical characteristics, such as appearance; workability; moisture content and dimension; that make it distinctly suitable for certain end uses, while rendering it

[170] *See* Northeastern Lumber Manufacturers Association, "2013 Standard Grading Rules for Northeastern Lumber" available at http://www.nelma.org/library/2013-standard-grading-rules-for-northeastern-lumber/.

functionally unsuitable for others. These unique characteristics determine what the ultimate purchaser can expect from EWP: a uniquely aesthetic, workable, appearance-grade wood fiber.

6. EWP Is Much More Expensive Than SPF and Southern Yellow Pine

EWP is more valuable on average than any softwood lumber species other than Western Red Cedar. EWP has its own pricing categories, and its pricing traditionally follows its own course, unaffected by the prices of softwood lumber species, including Western Pines. For instance, EWP prices traditionally have been much higher than SPF, have not varied to the same degree as SPF, and frequently have moved in different directions than SPF.

The Random Lengths composite price for softwood products used for framing lumber, which are comprised predominantly of SPF and Southern Yellow Pine, ranged from $297/MBF to $367/MBF during the last four calendar quarters.[171] Prices for EWP held steady at much higher prices with, for example, prices for EWP Premium 1x8 at $875/MBF throughout that same period.[172] Over the last five years, EWP prices have been remarkably steady, ranging only between $727 to 875 $/MBF.[173] Softwood lumber prices have had seventy percent price swings based on the different supply and demand factors for those products.[174]

EWP is prohibitively expensive for use in general construction. As noted above, EWP Premium 1x8, a typical EWP product, sold for $875/MBF over the last year; whereas the highest framing lumber composite price during that period was only $367/MBF (56 percent lower than the price for the EWP product).[175] Similar price disparities have always existed.

B. EWP Is a Separate Class or Kind of Merchandise under the *Diversified Products* Criteria

The Department must also determine the scope of its investigation at the initiation phase. When determining whether particular products are within the scope of an investigation or subsequent order, the Department makes an assessment of whether the products in question comprise a different class or kind of merchandise. In making that assessment the Department uses the following *Diversified Products* criteria: (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the

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[171] *See* Random Lengths Framing Lumber Composite Price – by Month, available at http://www.randomlengths.com/In-Depth/Monthly-Composite-Prices/.

[172] *See* Random Lengths.

[173] Random Length Yearbook 2015 and Random Length weekly reports, vol. 72, various issues (1 to 45).

[174] The lowest price during those five years was $257/MBF in November 2011 and the highest was $437/MBF in April 2013. *See* Random Lengths Framing Lumber Composite Price – by Month, available at http://www.randomlengths.com/In-Depth/Monthly-Composite-Prices/.

[175] *See* Random Lengths Framing Lumber Composite Price - by Month, available at http://www.randomlengths.com/In-Depth/Monthly-Composite-Prices/; *See* Random Lengths.

channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed.[176] When analyzed according to these criteria, EWP distinguishes itself from softwood lumber in every respect, and consequently is a separate class or kind of merchandise.

The first four criteria essentially overlap the first five of the like product criteria and, for the reasons discussed above, EWP is a separate class or kind of merchandise under each of those four *Diversified Products* criteria. EWP is a discrete specie of high quality, high priced wood, with a unique aesthetic appearance and end uses. Because of EWP's distinct appearance, it is sold for its look. Even the U.S. lumber industry has acknowledged EWP's aesthetic uniqueness by creating a separate grading system exclusively for EWP that emphasizes the specie's distinct appearance.[177] It is sold predominately to secondary manufacturers who convert it into furniture, craft products, trim and other millwork.

The fifth *Diversified Products* criterion also shows that EWP is a separate class or kind of merchandise. EWP is advertised and displayed differently than softwood lumber. EWP producers have been more creative in marketing than Western Pine producers. EWP shipments often contain a variety of lengths and sizes because EWP is frequently cut to secondary manufacturers' precise specifications. Wholesalers have separate departments for selling EWP.

EWP is also handled and marketed differently than softwood lumber. EWP is individually packed and loaded to prevent dents or scratches that would damage the condition and appearance of the wood. Western Pines are usually transported by rail, while EWP is moved almost exclusively by truck. EWP is delivered already dried, while other pines may be delivered in green condition, and the distributor may then exercise control over drying.

C. EWP Is Not Included in the Petition and Should Be Excluded From any Countervailing Duty or Antidumping Investigation

Section 702(b)(1) of the Act prohibits the Department from initiating a countervailing duty investigation based on a petition unless the petition alleges all of the elements necessary to impose countervailing duties under Section 702(a) of the Act. Similarly, pursuant to Section 732(b)(1) of the Act, antidumping duty petitions must allege all the elements necessary to impose antidumping duties under Section 732(a) of the Act. The Petition does not contain any allegations or information with respect to EWP. Consequently, because EWP is a separate domestic like product and a separate class or kind of merchandise, but is not mentioned in the Petition, it must be excluded from the scope of any countervailing duty or antidumping investigation that the Department might initiate based on this Petition.

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[176] 19 C.F.R. § 351.225(k)(2).

[177] *See* Northeastern Lumber Manufacturers Association, "2013 Standard Grading Rules for Northeastern Lumber" available at http://www.nelma.org/library/2013-standard-grading-rules-for-northeastern-lumber/.

ATTACHMENT 2

WOODEN BED FRAME COMPONENTS MUST BE EXCLUDED FROM ANY COUNTERVAILING DUTY OR ANTIDUMPING INVESTIGATION OF SOFTWOOD LUMBER

The Department excluded radius-end cut wooden bed frame components from the scope of its antidumping and countervailing duty investigations in *Lumber IV* and should do so again for the reasons discussed below. Moreover, the Department should exclude all bed frame components, both radius-end and square-end cut components, from any new investigation, because they constitute a separate like product and a separate class or kind of merchandise from softwood lumber.

The Petition does not allege any of the elements necessary for the imposition of countervailing or antidumping duties with respect to bed frame components as required by Sections 702(b) and 732(b) of the Tariff Act of 1930, as amended (the "Act"). Furthermore, Canada understands that there is no significant production of bed frame components in the United States and, hence, no domestic industry on whose behalf the Petition could have been filed. Consequently, the Department must exclude all bed frame components from the scope of any countervailing or antidumping duty investigation it might initiate on softwood lumber from Canada.

A. Bed Frame Components Are a Separate Like Product

The ultimate determination of the domestic like product and the domestic industry is the responsibility of the U.S. International Trade Commission ("ITC"). Nonetheless, for purposes of deciding whether to initiate an investigation and determining the scope of any such investigation, the Department also must make an assessment of the like product and the domestic industry.[178] For example, should the scope of the requested investigation as set out in the Petition cover two like products, then the Department must assess the allegations of injury and the domestic industry's support for the Petition with respect to two separate industries. If the Petition were not to meet the statutory requirements for initiation with respect to one of those industries, the imported product corresponding to that domestic like product must be excluded from the scope of the investigation.

The ITC generally considers the following factors in its like product analysis: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perception of the products; and (6) price.[179] Bed frame components, for the reasons

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[178] *See* Sections 702(c)(4)(a) and 732(c)(4)(a) of the Act. As the Department notes in its Antidumping Manual, "{a} single investigation involves a single like product." Enforcement and Compliance Antidumping Manual, Chapter 2 at 12.

[179] *See* United States International Trade Commission, *Antidumping and Countervailing Duty Handbook*, 14th Edition, USITC Pub. No. 4540 (June 2015) at II-34; *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 n.4 (1995). Although the ITC's practice is not legally binding upon the Department, the Department does consider these

(Continued)

discussed below, constitute a separate like product under the ITC's six factor test. It is a separate like product for which there is no corresponding domestic industry to be injured or whose support for the Petition could be measured. Consequently, the Department must exclude bed frame components from the scope of any countervailing or antidumping duty investigation it might initiate on softwood lumber.

1. Bed Frame Components Have Distinct Physical Characteristics and End Use – They Are Not Interchangeable With Softwood Lumber

Bed frame components are specialty products made from softwood lumber exclusively for use in the manufacture of bed box springs. They are downstream products, not lumber. They consist of both radius-end components, which are the round-end components that produce the rounded corners on mattress box-spring sets, and the square-end components that are an equally essential part of the wooden structure of the box-spring set.

All bed frame components are manufactured to customized dimensions specified by individual bed frame manufacturers. The shapes, sizes, grades, and invoicing of bed frame components all differ from softwood lumber products. They are manufactured and sold in the size of beds. Softwood lumber products, by contrast, are mainly used in home construction. Thus, softwood lumber tends to be produced in wall length and greater sizes. As long as walls are bigger than beds, bed frame components will be distinguishable from softwood lumber, and bed frame components cannot be used as construction lumber.

The shape of many bed frame components differs from that of softwood lumber. Bed frame components include L-braces which, as their name implies, are L-shaped. Canada is unaware of any other L-shaped softwood lumber products. There are also filler blocks sold in lengths of 3.75 to 5.5 inches. There are no softwood lumber products sold in these lengths. Rails and supports are sold in thicknesses of 23/32", unlike other softwood lumber products.

Bed frame components are almost always sold together as kits. Manufacturers will not source different wooden components from different suppliers. Thus, shipments tend to include all components. In most cases, square-end components are shipped with radius-end components, further facilitating the identification of bed frame components. Moreover, the invoice specifically states that the product is bed frame components.

Finally, bed frame components are graded differently than standard construction lumber. None of the NLGA grades for softwood lumber is used in grading bed frame components. Instead, manufacturers and customers generally use two grades for bed frame components, premium and regular.

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factors in its own like product analysis for purposes of initiation and assessing domestic industry support. *See* Enforcement and Compliance Antidumping Manual, Chapter 2 at 13-14.

2. Bed Frame Components Are Sold Through Different Channels of Distribution From Softwood Lumber

There is only one market for bed frame components: bed frame manufacturers. Bed frame components also are sold directly, or through distributors, exclusively to bed frame manufacturers. Bed frame components are not sold to retailers or through the variety of channels of distribution applicable to softwood lumber.

3. The Manufacturing Facilities and Production Processes for Bed Frame Components Differ From Those of Softwood Lumber

Bed frame components are not produced in regular sawmills. As part of the manufacturing process, Resolute's facility at Chateau-Richer takes standard boards (generally green) and further processes them into the value-added components required by bed frame manufacturers through kiln drying, planning, shaping, and sizing. Because the bed frame components are manufactured to specific, non-standard dimensions, and thus cannot be produced in normal, first mill operations, Resolute incurs additional costs that are not associated with the manufacture of dimensional lumber.

Bed frame manufacturers prefer, and generally insist, that bed frame components be manufactured from SPF lumber, because of the amount of nailing and stapling into the wood. Unlike Southern Yellow Pine, the dominant softwood species found in the United States, SPF lumber tends to have smaller knots and is less likely to split during the final assembly process.

4. Customers and Producers Perceive Bed Frame Components as a Distinct Product

Bed frame components have only one use, to make box-springs sets for beds. Bed frame manufacturers purchase components that are pre-manufactured for their use and to their exact specifications.

There is no mass market for bed frame components. Bed frame manufacturers do not have the equipment necessary to transform dimensional lumber into their required dimensions. Consequently, they cannot substitute standard boards for bed frame components. Because bed frame components are manufactured in odd dimensions, short lengths, and through channels of distribution focused on bed frame manufacturers, they are not used for any other purpose. They are not sold to the same ultimate users nor for the same ultimate use as other softwood lumber products.

Bed frame components are marketed and sold as separate and distinct products. For example, Resolute's invoices clearly identify bed frame components. Promotional materials identify bed frame components as distinct products, and agreements for the sale of bed frame components are limited to bed frame components. Bed frame components are sold at higher prices than softwood lumber boards, which reflect both the cost of further manufacturing and the higher freight costs associated with shipping these products. Also, as noted above, bed frame components are graded differently than lumber. None of the NLGA grades for softwood lumber

is used in grading bed frame components. Instead, manufacturers and customers generally use two grades for bed frame components, premium and regular.

5. Pricing

Bed frame components are sold at significantly higher prices than the softwood lumber from which they are made. Square-end bed frame components generally sell for a substantial premium over standard dressed and dried boards of standard dimension, with radius-end components obtaining a further premium. Moreover, they tend to be sold under annual contracts at fixed prices, further distinguishing this product from regular softwood lumber with its highly fluctuating pricing.

B. Bed Frame Components Are a Separate Class or Kind of Merchandise under the *Diversified Products* Criteria

The Department must determine the scope of its investigation at the initiation phase. When determining whether particular products are within the scope of an investigation or subsequent order, the Department makes an assessment of whether the products in question comprise a different class or kind of merchandise. In making that assessment the Department uses the following *Diversified Products* criteria: (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed.[180] When analyzed according to these criteria, bedframe components are distinct from softwood lumber in every respect, and consequently are a separate class or kind of merchandise.

The first four criteria essentially overlap the first five of the like product criteria and, for the reasons discussed above, bed frame components are a separate class or kind of merchandise under each of those four *Diversified Products* criteria. The fifth Diversified Products criterion also shows that bed frame components are a separate class or kind of merchandise. Resolute markets and sells bed frame components as separate and distinct products. For example, Resolute's invoices clearly identify bed frame components. Promotional materials identify such components as distinct products, and agreements for the sale of bed frame components are limited to bed frame components.

C. Bed Frame Components Should Be Excluded from any Countervailing Duty or Antidumping Investigation

The Petition identifies Harmonized Tariff System of the United States ("HTSUS") codes exclusively within heading 4407, 4409 and 4418 as covering the softwood lumber products within Petitioner's proposed scope of investigation. None of those codes include radius-end bed

[180] 19 C.F.R. § 351.225(k)(2); *see also Diversified Products Corp. v. United States*, 572 F.Supp. 883 (Ct. Int'l Trade 1983).

frame components, which are classified under HTSUS sub heading 4421.90.9780.[181] Consequently, the Department should expressly exclude radius-end bed frame components, classified under HTSUS heading subheading 4421.90.9780, from the scope of any antidumping or countervailing duty investigation it may initiate based on these Petitions.

The Department must exclude all bed frame components, including square-end cut components, from any softwood lumber investigation because, for the reasons discussed above, bed frame components are a different like product and different class or kind of merchandise from construction-grade softwood lumber. Section 702(b)(1) of the Act prohibits the Department from initiating a countervailing duty investigation based on a petition unless the petition alleges all of the elements necessary to impose countervailing duties under Section 702(a) of the Act. Similarly, pursuant to Section 732(b)(1) of the Act, antidumping duty petitions must allege all the elements necessary to impose antidumping duties under Section 732(a) of the Act. The Petition does not contain any allegations or information with respect to bed frame components. Consequently, they must be excluded from the scope of any countervailing duty or antidumping investigation that the Department might initiate based on this Petition.

[181] A binding Customs ruling (NY E89886) classified radius-end cut bed frame components under HTSUS code 4421.90.9840, which provided for other (non-enumerated) articles of wood. *See* also HQ 960703 (Aug. 26, 1997), HQ 960768 (Oct. 23, 1997), NY E82957 (June 25, 1999); NY A89855 (Dec. 12, 1996). The HTSUS subsequently was amended and the merchandise previously covered under HTSUS code 4421.90.9840 was moved to the new code, 4421.90.9780. The two codes covered the same merchandise, although at different times, and the rulings cited here remain applicable to the classification of radius-end cut bed frame components.

ATTACHMENT 3

LUMBER MADE FROM U.S.-ORIGIN LOGS MUST BE EXCLUDED FROM ANY COUNTERVAILING DUTY OR ANTIDUMPING INVESTIGATION OF SOFTWOOD LUMBER

The Department, for the reasons discussed in these Consultations, should decline to initiate antidumping or countervailing duty investigations of Canadian softwood lumber. Nonetheless, at a minimum the Department should exclude softwood lumber made in Canada from U.S.-origin logs from the scope of any such investigations.

The entire history of the disputes between the United States and Canada over softwood lumber revolves around the U.S. industry's complaint that the Canadian provincial governments sell stumpage from Canadian crown lands at prices that the U.S. industry alleges are at less than adequate remuneration. There has never been any claim that logs harvested in the United States are not sold at fair market prices, a fact the Department recognized in the company exclusions process in Lumber IV.[182] Therefore, Canadian lumber manufactured from U.S. logs cannot possibly benefit from the alleged subsidies that are at the heart of the softwood lumber dispute.

The inclusion of lumber manufactured from U.S.-origin logs within the scope of any softwood lumber investigation would cause severe harm to the many U.S. businesses and their employees in the timber harvesting industry who depend on selling the logs they harvest on U.S. lands to customers across the border in Canada. By contrast, there could be no legally cognizable harm to the U.S. softwood lumber industry from a carefully crafted exclusion from the scope of any antidumping or countervailing duty investigation of lumber manufactured in Canada from U.S.-origin logs.

A. Softwood Lumber Investigations Would Cause Serious Injury to the U.S. Timber Industry in the Northeastern United States, Particularly in Maine

New antidumping and countervailing duty investigations of softwood lumber would pose serious threats to U.S. logging interests in the Northeastern United States because of their dependence on the Canadian market for their logs. Without exclusion of lumber made from U.S.-origin logs, the initiation of investigations on softwood lumber from Canada would be devastating for U.S. landowners and contractors who depend on the Canadian market to buy their logs.

The injury would be particularly acute for landowners and timber harvesters in Maine. They are the custodians and harvesters of Maine's forests and the critical links in the forest economic value chain. According to a new University of Maine study, logging contributes $882

[182] Issues and Decision Memorandum for the Countervailing Duty Investigation of Certain Softwood Lumber Products From Canada, C-122-839 (March 21, 2002) at Company Exclusions (the Department considered companies for exclusion that produced lumber from logs harvested in the Maritime Provinces, the United States, or on private lands in Canada).

million to Maine's economy, supporting more than 7300 jobs.[183] There are more people employed in Maine in logging than in sawmills, and they earn higher wages.[184] Their livelihoods would be at risk if they were to lose the Canadian market.

The spruce budworm is invading Maine's forests, making the sale of standing timber and logs urgent as part of a massive and unavoidable salvage operation. The Canadian markets immediately to Maine's north are essential: Maine's forest custodians and harvesters need to be able to sell logs freely to Canadian buyers.

The border mills in Québec have been purchasing logs from Maine, New Hampshire, New York and Vermont since long before they were excluded from the Lumber II investigation in 1986 based on their use of U.S.-origin logs.[185] They are ready, willing and able to continue that long-standing tradition, but not if the additional expense of transport and the unfavorable exchange rate were not offset by exclusion from possible duties. Canadians need incentives to buy Maine logs. Tariff restrictions on Canadian lumber made from U.S. logs will only depress, and possibly destroy, the market.

B. The Department Could Solve This Problem With a Carefully Crafted Exclusion of Canadian Lumber Made from U.S.-Origin Logs

An exclusion for lumber made from U.S. logs from the scope of the investigations and any eventual cash deposit requirements would keep the Canadian market open for Maine foresters and landowners at a critical, even decisive time. Canadian mills would have an incentive to buy logs from Maine, New Hampshire, New York and Vermont, knowing there would be an American market for the lumber they produce free of tariffs. The U.S. softwood lumber industry could have no reasonable objection to lumber fairly traded as manufactured from U.S. logs.

This solution – the exclusion of U.S. logs from the scope of investigations and possible orders – would provide some balance to the protection afforded U.S. lumber producers, on the one hand, and U.S. landowners and forest companies, particularly in Maine, on the other. With this solution, lumber produced with the logs U.S. foresters need to sell to Canada would enter the United States without tariffs, thereby giving Canadian log buyers an incentive to buy the logs U.S. foresters, particularly in Maine, need to sell. Without this solution, the Department could

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[183] *Maine's Logging Economy*, Professional Logging Contractors of Maine, http://maineloggers.com/new/wp-content/uploads/2016/09/Logging-Economic-Impact-Study-2014-brochure-FINAL-web-version.pdf (last visited Nov. 7, 2016).

[184] According to the U.S. Department of Labor the logging industry (NAICS 11331) in Maine employed 2,231 workers and paid them $100,806,000 in 2015; whereas the sawmill and wood preservation industry (NAICS 3211) employed 1,966 workers and paid them $84,998,000 in 2015. The U.S. Department of Labor – Quarterly Census of Employment and Wages Databases, http://www.bls.gov/cew/data.htm.

[185] *Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 51 Fed. Reg. 37,453, 37,454 (Dep't of Commerce October 22, 1986 (investigation).

destroy the links in the forest economic chain and, consequently, Maine's forest industry, deprived of its essential Canadian market.

C. An Exclusion for Lumber Made From U.S.-Origin Logs Would Be Limited and Readily Enforceable

The total volume of softwood lumber that would be subject to this exclusion would be very small. Total U.S. exports of softwood sawlogs to Canada during 2015 were 2,157,000 cubic meters valued at US$ 158,733,000.[186] Only a portion of that wood could have been converted into softwood lumber and not all of that softwood lumber would have been exported back to the United States. Even conservatively assuming that half of it was converted and exported to the United States, that amount would be no more than 1,078,500 cubic meters. That amount constitutes only 3.5 percent of the 31,088,000 cubic meters of softwood lumber from Canada imported into the United States in 2015.[187] This amount would be far too small to have any impact on U.S. softwood lumber producers.

The exclusion could be implemented and enforced by requiring importers claiming the exemption to provide U.S. Customs and Border Protection ("CBP") with certifications from the producer of the softwood lumber attesting to the origin of the wood fiber used in making that lumber. CBP already uses such a certification mechanism to determine whether imported goods qualify as originating goods for tariff-free entry under NAFTA Chapter Four. Each log need not be traced. Instead, the certifications could be prepared using the same inventory management methods authorized under NAFTA Article 406 for determining the origin of goods when fungible materials are used in the production of those goods.[188] Importers, exporters and CBP are very familiar with these methods as they have been used by all three for well over the two decades that NAFTA has been in effect. Hence, the exclusion is readily enforceable by CBP.

[186] U.S. International Trade Commission Interactive Tariff and Trade Database, U.S. Total Exports (HTS 4403.20.00.20 through 4403.20.00.65) to Canada 2015.

[187] U.S. International Trade Commission Interactive Tariff and Trade Database, U.S. General Imports (HTS 4407.10) from Canada 2015.

[188] These mechanisms are set out in the Uniform Regulations established pursuant to NAFTA Article 511.

ATTACHMENT 4

LUMBER MADE FROM PRIVATE LAND OR FIRST NATIONS LOGS MUST BE EXCLUDED FROM ANY COUNTERVAILING DUTY OR ANTIDUMPING INVESTIGATION OF SOFTWOOD LUMBER

Canada also requests the exclusion from the scope of softwood lumber produced from logs harvested from private land and First Nations Treaty Settlement Lands (i.e., First Nations land held in fee simple). Such an exclusion is consistent with the undisputed fact that private land harvesters in Canada are not subject to Crown stumpage fees and thus cannot benefit from the alleged subsidies.

ATTACHMENT 5

HIGH VALUED, NON-STRUCTURAL LUMBER PRODUCTS WITH A VALUE OF GREATER THAN $500/MBF MUST BE EXCLUDED FROM ANY COUNTERVAILING DUTY OR ANTIDUMPING INVESTIGATION OF SOFTWOOD LUMBER

Canada requests exclusion from the scope of certain high-value softwood lumber products that cannot be used in structural applications. These products do not compete with the dimensional commodity softwood lumber for structural applications that are the focus of the Petition's allegations. Such high-value softwood lumber products are produced for specialty applications, and are traded through distinct channels of distribution separate from those used for commodity structural softwood lumber products. Such high-value softwood lumber products are also imported into the United States in relatively small quantities.

Specifically, Canada requests the exclusion from the scope of softwood lumber products valued above $500/thousand board feet ("MBF"), consistent with the recognition in the 2006 Softwood Lumber Agreement between the Government of Canada and the Government of the United States of America ("2006 SLA"), at Article 6. Article 6 of the 2006 SLA recognized that separate treatment is warranted for high-value softwood lumber products in light of their distinct manufacturing processes and markets. These considerations apply equally today. Moreover, at current and forecast prices for commodity softwood lumber products in North America, it is not conceivable that a value-based exclusion of $500/MBF would capture any of the commodity softwood lumber products on which the Petition's allegations are focused.

ATTACHMENT 6

WESTERN RED CEDAR MUST BE EXCLUDED FROM ANY COUNTERVAILING DUTY OR ANTIDUMPING INVESTIGATION OF SOFTWOOD LUMBER

Western Red Cedar should be excluded from investigation as it is a distinct product that comprises a separate industry and the Petition alleges no injury to the Western Red Cedar industry.

Western Red Cedar is a species of wood that has distinct physical characteristics, end uses, channels of distribution, and customer expectations. Unlike most in-scope softwood lumber, Western Red Cedar is not suitable for structural applications. Instead, it is used for appearance applications because it is light weight, durable, has a low shrinkage factor, and is naturally resistant to decay. By reason of these different physical attributes and end uses, Western Red Cedar is graded differently from other in-scope products. Because of its unique properties, Western Red Cedar commands a significant price premium to other softwood lumber products and is not considered by purchasers to be interchangeable with other softwood species. Additionally, unlike other lumber products that are often sold to retailers, Western Red Cedar is sold primarily through distributors who undergo specialized training on how to store, sell, and install the product. All of this results in customers expecting Western Red Cedar to be a unique premium appearance product that is distinct from other softwood lumber products covered by the scope of the Petition.

For these reasons, Western Red Cedar should be considered a distinct like product. The absence of any allegation of injury to the Western Red Cedar industry compels the exclusion of Western Red Cedar from investigation.

Exhibit A

EC1200A1

All sectors: Geographic Area Series: Economy-Wide Key Statistics: 2012

2012 Economic Census of the United States

Table Name
All sectors: Geographic Area Series: Economy-Wide Key Statistics: 2012
Release Schedule
The data in this file are scheduled for release starting in March 2014 and ending in June 2016.
Key Table Information
The data in this file come from separate 2012 Economic Census of the U.S., Economic Census of Island Areas, and Nonemployer Statistics data files released on a flow basis from March 2014 through June 2016. As such, these data are subject to change and will be replaced when updated data are added from more recent data files. Users should be aware that during the release of this consolidated file, data at more detailed NAICS and geographic levels may not add to higher-level totals. However, at the completion of the economic census (once all the component files have been released), the detailed data in this file will add to these totals.
Universe
The universe of this file is all operating establishments with one or more paid employees (employers) as well as all operating establishments with no paid employees (nonemployers). This universe includes all establishments classified in the North American Industry Classification System (NAICS) Codes 21 through 813990.
Geographic Coverage
The data are shown for employer establishments at the US, State, Combined Statistical Area, Metropolitan and Micropolitan Statistical Area, Metropolitan Division, Consolidated City, County (and equivalent), and Economic Place (and equivalent; incorporated and unincorporated) levels for the U.S. and the Island Areas. Data for nonemployer establishments are shown for the U.S. for all levels except Economic Places and only for Puerto Rico for the Island Areas.
Industry Coverage
The data are shown at the 2- through 6-digit NAICS code levels for all economic census sectors and at the 7- and 8-digit NAICS code levels for selected economic census sectors.
Data Items and Other Identifying Records
This file contains data on:

- Number of employer establishments
- Sales, receipts, revenue, shipments, or value of business done for employer establishments
- Annual payroll of employer establishments
- Total employment of employer establishments
- Number of nonemployer establishments
- Receipts for nonemployer establishments
- Relative standard errors for the first 4 employer data items (Construction industries only)

Data are also published by Type of Operation or Tax Status for selected sectors. For Wholesale Trade, data are published for Total Wholesale Trade and for Merchant Wholesalers. For the Services sectors, data are published for All Establishments, as well as Taxable and Tax Exempt Establishments.
For additional statistics not shown in this file, see the individual data files from the Economic Census of the U.S. Industry, Geographic Area, Subjects, and Summary Series and the Economic Census of Island Areas Geographic Area Series.
Sort Order
Data are presented in ascending geography (GEO_ID) by NAICS code (NAICS2012) by Type of Operation or Tax Status (OPTAX) sequence.
FTP Download
Download the entire table at
http://www2.census.gov/econ2012/EC/sector00/EC1200A1.zip
Contact Information
U.S. Census Bureau, Economic Management Division
Dissemination Branch
Tel: (301)763-9560
econ.dissemination@census.gov
Release Date : 09/23/2016

The data in this file come from separate 2012 Economic Census of the U.S., Economic Census of Island Areas, and Nonemployer Statistics data files released on a flow basis from March 2014 through June 2016. As such, these data are subject to change and will be replaced when updated data are added from more recent data files. See the Table Notes for more information on this and for related additivity and comparability issues. For information on confidentiality protection, sampling error, nonsampling error, and definitions, see Methodology.

For information on economic census geographies, including changes for 2012, see the economic census Help Center.

Geographic area name	2012 NAICS code	Meaning of 2012 NAICS code	Meaning of Type of operation or tax status code	Year	Number of establishments	Value of sales, shipments, receipts, revenue, or business done ($1,000)
			Barcode:3527948-01 C-122-858 INV - Investigation -			
United States	321	Wood product manufacturing	Total	2012	13,741	78,123,546
United States	321113	Sawmills	Total	2012	2,928	18,785,567
United States	321114	Wood preservation	Total	2012	421	4,285,259
United States	321211	Hardwood veneer and plywood manufacturing	Total	2012	240	2,532,796
United States	321212	Softwood veneer and plywood manufacturing	Total	2012	100	4,221,047
United States	321213	Engineered wood member (except truss) manufacturing	Total	2012	107	901,798
United States	321214	Truss manufacturing	Total	2012	772	3,084,288
United States	321219	Reconstituted wood product manufacturing	Total	2012	218	6,365,849
United States	321911	Wood window and door manufacturing	Total	2012	1,139	9,196,661
United States	321912	Cut stock, resawing lumber, and planing	Total	2012	989	5,979,132
United States	321918	Other millwork (including flooring)	Total	2012	1,502	4,994,874
United States	321920	Wood container and pallet manufacturing	Total	2012	2,687	6,889,954
United States	321991	Manufactured home (mobile home) manufacturing	Total	2012	271	3,492,514
United States	321992	Prefabricated wood building manufacturing	Total	2012	615	2,323,210
United States	321999	All other miscellaneous wood product manufacturing	Total	2012	1,752	5,070,597

Geographic area name	2012 NAICS code	Meaning of 2012 NAICS code	Meaning of Type of operation or tax status code	Year	Annual payroll ($1,000)	First-quarter payroll ($1,000)
United States	321	Wood product manufacturing	Total	2012	12,520,235	N
United States	321113	Sawmills	Total	2012	2,629,715	N
United States	321114	Wood preservation	Total	2012	367,257	N
United States	321211	Hardwood veneer and plywood manufacturing	Total	2012	439,647	N
United States	321212	Softwood veneer and plywood manufacturing	Total	2012	623,881	N
United States	321213	Engineered wood member (except truss) manufacturing	Total	2012	120,672	N
United States	321214	Truss manufacturing	Total	2012	696,224	N
United States	321219	Reconstituted wood product manufacturing	Total	2012	661,850	N
United States	321911	Wood window and door manufacturing	Total	2012	1,815,229	N
United States	321912	Cut stock, resawing lumber, and planing	Total	2012	838,090	N
United States	321918	Other millwork (including flooring)	Total	2012	920,332	N
United States	321920	Wood container and pallet manufacturing	Total	2012	1,438,803	N
United States	321991	Manufactured home (mobile home) manufacturing	Total	2012	686,290	N
United States	321992	Prefabricated wood building manufacturing	Total	2012	441,883	N
United States	321999	All other miscellaneous wood product manufacturing	Total	2012	840,362	N

Geographic area name	2012 NAICS code	Meaning of 2012 NAICS code	Meaning of Type of operation or tax status code	Year	Number of employees	Number of nonemployer establishments
United States	321	Wood product manufacturing	Total	2012	338,773	24,816
United States	321113	Sawmills	Total	2012	64,743	N
United States	321114	Wood preservation	Total	2012	8,061	N
United States	321211	Hardwood veneer and plywood manufacturing	Total	2012	11,734	N
United States	321212	Softwood veneer and plywood manufacturing	Total	2012	13,739	N
United States	321213	Engineered wood member (except truss) manufacturing	Total	2012	2,854	N
United States	321214	Truss manufacturing	Total	2012	18,828	N
United States	321219	Reconstituted wood product manufacturing	Total	2012	13,531	N
United States	321911	Wood window and door manufacturing	Total	2012	46,713	N
United States	321912	Cut stock, resawing lumber, and planing	Total	2012	24,358	N
United States	321918	Other millwork (including flooring)	Total	2012	26,738	N
United States	321920	Wood container and pallet manufacturing	Total	2012	49,003	N
United States	321991	Manufactured home (mobile home) manufacturing	Total	2012	20,912	N
United States	321992	Prefabricated wood building manufacturing	Total	2012	12,012	N
United States	321999	All other miscellaneous wood product manufacturing	Total	2012	25,547	N

Geographic area name	2012 NAICS code	Meaning of 2012 NAICS code	Meaning of Type of operation or tax status code	Year	Nonemployer value of sales, shipments, receipts, revenue, or business done ($1,000)
		Barcode:3527948-01 C-122-858 INV - Investigation -			
United States	321	Wood product manufacturing	Total	2012	1,210,211
United States	321113	Sawmills	Total	2012	N
United States	321114	Wood preservation	Total	2012	N
United States	321211	Hardwood veneer and plywood manufacturing	Total	2012	N
United States	321212	Softwood veneer and plywood manufacturing	Total	2012	N
United States	321213	Engineered wood member (except truss) manufacturing	Total	2012	N
United States	321214	Truss manufacturing	Total	2012	N
United States	321219	Reconstituted wood product manufacturing	Total	2012	N
United States	321911	Wood window and door manufacturing	Total	2012	N
United States	321912	Cut stock, resawing lumber, and planing	Total	2012	N
United States	321918	Other millwork (including flooring)	Total	2012	N
United States	321920	Wood container and pallet manufacturing	Total	2012	N
United States	321991	Manufactured home (mobile home) manufacturing	Total	2012	N
United States	321992	Prefabricated wood building manufacturing	Total	2012	N
United States	321999	All other miscellaneous wood product manufacturing	Total	2012	N

N Not available or not comparable

Source: U.S. Census Bureau, 2012 Economic Census, 2012 Economic Census of Island Areas, and 2012 Nonemployer Statistics.
Note: The data in this file are based on the 2012 Economic Census, and the related programs listed above. To maintain confidentiality, the Census Bureau suppresses data to protect the identity of any business or individual. The census results in this file contain sampling and nonsampling error. Data users who create their own estimates using data from this file should cite the Census Bureau as the source of the original data only. For the full technical documentation, see Methodology link in headnote above.
Symbols:
D - Withheld to avoid disclosing data for individual companies; data are included in higher level totals
N - Not available or not comparable
For a complete list of all economic programs symbols, see the Symbols Glossary

Exhibit B

chapter M-35.1, r. 57 Updated to 1 st November 2016

Joint Plan of Wood Producers of Beauce

Law on the marketing of agricultural, food and fisheries

(Chapter M-35.1, s. 81)
RRQ 1981, c. M-35, r. 61 ; Decision 3476, s. 1 .

1 . Purpose of the Plan: The Plan is to:

a) search for, arrest and apply rational production standards could prevent the waste of woodlots and avoid overproduction;

b) search for, arrest and apply measures to maintain, expand and improve the quality standards;

c) find and use ways to improve production conditions, to lower the cost and increase performance;

d) to market the product, monitor the various phases and use the time and deemed appropriate by the most appropriate means:

i . the sale pooling and all its terms, as provided by section 98 of the Act on the marketing of agricultural, food and fish products (chapter M-35.1);

ii . the negotiation and signing of agreement by means of a representative body, with other persons also involved in the marketing of their price, the cost of services and any conditions that encourage the continuation of all items Plan;

e) seek the most advantageous opportunities and new markets;

f) seek ways to ensure equitable sharing between producers of market opportunities;

g) seek and implement ways to protect the producer against the unjustified loss of an outlet for its product and losses resulting from the insolvency of any person engaged in the marketing of its products or otherwise;

h) use the means by which, in due course, to ensure the same price to each producer for an identical product of the same quantity and of equal quality;

i) seek and implement ways to reduce expenses, other than cost of production, which are likely to influence the price paid to the producer for his product;

j) seek and implement ways to ensure each producer all relevant services in the marketing and correcting inequalities in obtaining these services;

k) seek and implement ways to establish direct relations between the product processor and the producer;

l) cooperate with any person engaged in product marketing to increase and improve the flow and in seeking solutions to conflicts;

m) cooperate with any organization on the provincial and national level for product marketing within and outside Québec;

n) conduct or conduct investigations to achieve the objects of the plan and take appropriate steps to obtain all relevant information;

o) appoint a syndicate of wealthy producers powers of a board of producers, within the meaning of the Marketing Act of agricultural, food and fisheries, care to pursue the objects of this Plan and ensure it the material means to achieve this goal.

RRQ 1981, c. M-35, r. 61, a. 1 .

2 . Designation: The Plan is designated as the Joint Plan of Wood Producers of Beauce.

The Plan covers the territory included within the boundaries of the regional county municipalities of Beauce-Sartigan, Robert-Cliche and Nouvelle-Beauce (with the exception of the Municipality of Saint-Lambert-de-Lauzon); the municipalities of East-Broughton, Sacré-Coeur-de-Jesus and St. Clothilde, the part of the Municipality of Saint-Pierre-de-Broughton included in the Broughton Township and part of the Municipality of Adstock range Adstock in the Canton regional municipality Asbestos County; Municipal de Courcelles, Lac Drolet Lambton, Saint-Ludger, Saint-Robert-Bellarmin and San Sebastian in the Regional Municipality Granite County; the municipalities of Lac Etchemin, Saint-Benjamin, Saint-Cyprien, Saint-Louis-de-Gonzague Saint-Luc-de-Bellechasse, Saint-Prosper Saint-Zacharie, Sainte-Aurélie, Sainte-Justine and St. Rose-de-Watford in the regional County municipality of Etchemins; the municipalities of Saint-Anselme, Saint-Léon, St. Malachi, St. Nazaire and St. Clair in the Regional Municipality of Bellechasse County.

RRQ 1981, c. M-35, r. 61, a. 2 ; Decision 3476, s. 2 ; Decision 7872, s. 1 .

3 . Designated Products: The plan is to put into softwood and hardwood market and biomass hemlock of the Beauce region, from the woodlands of the producers concerned.

RRQ 1981, c. M-35, r. 61, a. 3 ; Decision 3476, s. 3 ; Decision 7654, s. 1 ; Decision 8894, s. 1 .

4 . Quality required to be an interested producer: For the purposes hereof, an interested producer is any person, owner of an afforestation at least 4 ha situated within the territory described in Article 2, which commercializes hardwood and softwood and biomass hemlock from this afforestation.

RRQ 1981, c. M-35, r. 61, a. 4 ; Decision 7654, s. 2 ; Decision 7872, s. 2 ; Decision 8894, s. 2 .

5 . Legal extension: The Plan is enforceable and binding regulates all current and coming producers who possess the quality and meet the conditions defined in the preceding articles, as well as any person engaged in the development of the agricultural product market covered by the Plan.

RRQ 1981, c. M-35, r. 61, a. 5 .

6 . Monitoring and administration: The implementation, management, monitoring and administration of the Plan entrusted to the Association of Woodlot Owners of Beauce. The Association is headquartered in Saint-Georges-Ouest, Beauce.

RRQ 1981, c. M-35, r. 61, a. 6 ; Decision 3476, s. 4 ; Decision 8438, s. 1 .

7 . Agent negotiation and sale: The bargaining agent and map sales agent is the Association or his delegate.

RRQ 1981, c. M-35, r. 61, a. 7 ; Decision 8438, s. 1 .

8 . Duties, obligations and commitments of producers: The producer must:

a) comply with all the decisions and all the regulations adopted by the Board of Directors of the Association in the exercise of powers which he is invested under the Marketing Act of agricultural, food and fisheries (chapter M-35.1);

b) honor any agreement and any contract awarded by the Association, or his delegate, in the exercise of its powers and duties of administrator of the Plan;

c) notify the Association, upon request, the extent and composition of its forest reserves and its potential for cutting;

d) notify the Association of any disease affecting his product as a result of significantly reduced production or affect the quality;

e) provide the Association with any information deemed useful for the effective implementation of the Plan;

f) respect the cutting quotas and sales provided by the Association;

g) comply with the quality standards established by the competent authority and to submit to any inspection to verify the standards for the product;

h) identify the product brand adopted by the Association which designates it as a product covered by the Plan;

i) entrust the Association the exclusive right to sell the product concerned;

j) sell, upon request all or a specified portion of the product subject to the buyer or buyers, agent-buyer or buyers-agents appointed by the Association;

k) use the mode of transport and the carrier, the manner of storage and warehouse designated by the Association;

l) will ship the product subject to the place designated by the Association;

m) meet delivery quotas established by the Association;

n) pay the costs of organizing and administration of the Plan, and the costs of negotiating and marketing, according to the amount and conditions as the Association shall establish and, if necessary, authorize the Association to receive the money;

o) to pay its share of any amount due to a carrier or a warehouse designated by the Association in accordance with procedures established by the Association and to authorize, where appropriate, any buyer to deduct that part of the price sales and to remit it to the Association or to any person designated by it.

RRQ 1981, c. M-35, r. 61, a. 8 ; Decision 8438, s. 1 .

9 . Duties of the Association as a producers, bargaining agent and selling agent: The duties of the Association are:

a) perform every duty and obligation that the Law on the marketing of agricultural, food and fish products (chapter M-35.1) requires a producers;

b) devote themselves to the pursuit of the objects of the Plan;

c) as administrator of the Plan, keep separate accounts of the occupational union.

RRQ 1981, c. M-35, r. 61, a. 9; Decision 8438, s. 1.

10 . Powers and duties of the Association as a producers, bargaining agent and selling agent: The Association may:

a) stop cutting conditions, storage, handling or moving the product covered by the Plan;

b) limit the production, cutting and sale of the product concerned and prohibit the marketing in violation of the established quota or quota, and make cutting quotas and sales to producers bound by the Plan;

c) set a provisional price before the sale and prescribe the terms of payment;

d) retain sales subagents services and define their powers and duties;

e) within the limits of the powers granted by the Marketing Act of agricultural, food and fish products (chapter M-35.1), sign any contract and thus, link each producer concerned, governed by the plan;

f) stop a distinctive mark or marks identifying the product producers as to quality and as a product subject to the Plan, and impose the use of such marks;

g) ensure the quantity, standards and qualities of the product under required by buyers require producers to meet these requirements and, if necessary, use other sources to meet these commitments;

h) establish assembly stations for the delivery of the product subject to the Plan, as well as joint sales posts;

i) retain the services of carriers, warehousemen and any other intermediary whose intervention is necessary for the affected product from the market;

j) ensure the payment of services provided by carriers, warehousemen and any other intermediary whose intervention is necessary for product marketing of the contemplated and determine the share to be borne by each producer and the method of collecting;

k) require, with the authorization of the board of agricultural and food markets in Quebec, manufacturers, buyers, carriers, warehouse or any other person engaged in marketing with whom he contracts a guarantee responsibility or proof of financial solvency;

l) to negotiate with any person required to do under the Act on the marketing of agricultural, food and fisheries, all the conditions of marketing and specifically:

i . Product Sales Price target and any service required for marketing;

ii . the terms, conditions and price of transport;

iii . the terms, conditions and prices of storage or any other service related to the implementation of the product under the Plan market;

iv . assessing the quality and quantity of the product by appointed and competent representatives of the Association;

v . quality standards and inspection and measuring or weighing;

vi . the priorities to be given to producers governed by the Plan in terms of sourcing buyers, and the volumes of wood and yew biomass of Canada that they will buy producer governed by the

Plan;

vii . the application of a quota system;

viii . the retention by the purchaser modes of the contributions needed to finance the Plan and provided to the Association, and any sum required to ensure payment of services rendered by intermediaries and surrender to the Association;

ix . conditions for monitoring the payment of the product price subject to the Plan following its use, including obtaining information and documents required for such monitoring;

x . the conditions of payment of the purchase price;

xi . the length of contracts and the renewal conditions as well as allowing the reopening of negotiations;

xii . As on the occasion of the signing of an agreement in the course of its execution, settlement and arbitration procedure;

xiii . the nature of the guarantee responsibility or proof of financial responsibility;

xiv . keeping records showing transactions with producers, the use of the product received, form and frequency of reports, as well as the production of documents establishing transactions and use;

m) adopt the financial participation of each producer in the administration of the Plan, as well as the method of levying such participation;

n) establish good relations committee to study the producers of objections relating to the implementation of the Plan and determine the regulations;

o) obtain from producers all information deemed useful for the effective implementation of the Plan, such information to be kept confidential;

p) conduct or conduct any kind of investigation to help achieve the goals of the Plan;

q) cooperate with similar organizations in Canada for marketing outside Quebec, the product covered by the plan and exercise for this purpose the powers and perform the duties that result him of any law of another jurisdiction.

RRQ 1981, c. M-35, r. 61, a. 10 ; Decision 7654, s. 3 ; Decision 8438, s. 1 .

11 . Administration of the Plan:

1 . The Plan is administered by the Association of Woodlot Owners of Beauce.

2 . The directors of the Association shall be of the producers concerned within the meaning of Article 4.

3 . The replacement mode of election or appointment of directors is as provided by the regulations of the Association.

4 . The Association shall call and hold at least one time every year, a general meeting of all producers bound by the Plan, and will report its mandate.

5 . If the Association does not represent, in the opinion of the Board, the majority of producers bound by the Plan, it must declare, after hearing the parties, that a producers' board will be

responsible, on a date to the execution and administration of the Plan.

This producers' board is composed of seven directors elected by producers interested in a special general meeting called for that purpose by the Board. Subsequent directors are elected by producers during their annual meeting.

The Office of producers and directors have the powers, duties and powers that are granted to the Association hereunder, and the assets and liabilities of the Association it has obtained the administrator of the Plan are transferred to that producers' board in the manner prescribed by the Board.

If the Association can demonstrate subsequently, to the satisfaction of the Board, it is again the absolute majority of the producers concerned, the board may, by following the same procedure as above, entrust the administration and the execution of the Plan. The producer board is then abolished, and its assets and liabilities transferred to the Association in the manner prescribed by the Board.

RRQ 1981, c. M-35, r. 61, a. 11 ; Decision 3476, s. 5 ; Decision 8438, s. 1 .

12 . Financing: The administration and implementation of the Plan are financed by a contribution which must be paid by all producers bound by the Plan, in the manner specified by the Association of woodlots in the Beauce.

The amount of the contribution is determined by laws of the Association, approved by the producers in general meeting and by the Board before coming into effect.

The method of collecting the contribution is determined by laws of the Association approved by the Board before coming into effect.

Contributions to the Association, under the Act on the marketing of agricultural, food and fish products (chapter M-35.1), to be used to defray the expenses of the administration and implementation Plan.

RRQ 1981, c. M-35, r. 61, a. 12 ; Decision 3476, s. 6 ; Decision 8438, s. 1 .

REFERENCES
RRQ 1981, c. M-35, r. 61
Decision 3476 1982 GO 2, 3899
SQ 1990, c. 13, a. 217
Decision 7654, 2002 GO 2, 7405
Decision 7872, 2003 GO 2, 3835
Decision 8438, 2005 GO 2, 6271
Decision 8894 2007 GO 2, 4497

Exhibit C

AFFIDAVIT OF C.CHARLES LUMBERT

I, C.Charles Lumbert, do hereby certify and say:

1. My name is C.Charles Lumbert. I am President and co-owner of Moose River Lumber Company in Jackman, ME, a town approximately 15 miles south of the Main/Quebec border.

2. I have been President of Moose River lumber Company for 25 years, and have been in the lumber industry for 35 years. Our mill produced 100 million board feet of softwood lumber in 2000.

3. Our mill, like many other U.S. mills, has frequently needed a larger supply of logs. As a result, U.S. mills have imported logs from private land in Quebec on many occasions. For example, we purchased approximately 17 million board feet of Quebec private logs in 2000.

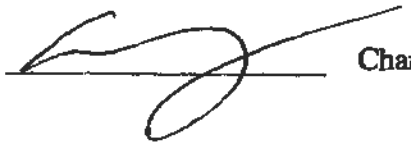
4. U.S. mills encounter extreme difficulty importing any logs from Quebec public lands, however. Partly this is because public logs are already allocated to Quebec tenure-holders who have their own local mills to process them. Yet even where a Quebec tenure-holder is willing to sell its logs, export permit requirements generally make this practically impossible.

5. Due to their cheap price, I have made a number of inquiries into purchasing logs from public lands in Quebec. When I have made inquiries into purchasing logs from public lands in Quebec, I have been told that these logs are not available for purchase by U.S. mills.

6. Our company would buy logs from public lands in Quebec if these logs were available for purchase.

7. To the best of my knowledge, there are no restrictions on the ability of Canadian purchasers to buy timber in the United States. In Maine, they can and frequently do so, both directly and also through their U.S. affiliates. I personally am familiar with a Canadian sawmill operation, which outbid a U.S. contractor who would have sold the timber to my sawmill, and the timber was shipped to Canada.

8. Canadian purchasers can purchase timber from U.S. landowners at the same market price as any other U.S. company. In addition, Canadian producers that own timber in the United States can either sell their timber to the U.S. at market price, or ship the logs to Canada without restriction.



Charles Lumbert

Sworn to me on this 16th day of March in the County of Somerset in the State of Maine.

Notary Public

My commission expires: Jan 22, 2003

Exhibit D

This Act is Current to November 23, 2016

This Act has "Not in Force" sections. *See* the Table of Legislative Changes.

UTILITIES COMMISSION ACT

[RSBC 1996] CHAPTER 473

Contents

Definitions

1 In this Act:

"appraisal" means appraisal by the commission;

"authority" means the British Columbia Hydro and Power Authority;

"British Columbia's energy objectives" has the same meaning as in section 1 (1) of the *Clean Energy Act*;

"commission" means the British Columbia Utilities Commission continued under this Act;

"compensation" means a rate, remuneration, gain or reward of any kind paid, payable, promised, demanded, received or expected, directly or indirectly, and includes a promise or undertaking by a public utility to provide service as consideration for, or as part of, a proposal or contract to dispose of land or any interest in it;

"costs" includes fees, counsel fees and expenses;

"demand-side measure" has the same meaning as in section 1 (1) of the *Clean Energy Act*;

"distribution equipment" means posts, pipes, wires, transmission mains, distribution mains and other apparatus of a public utility used to supply service to the utility customers;

"expenses" includes expenses of the commission;

"petroleum industry" includes the carrying on within British Columbia of any of the following industries or businesses:

(a) the distillation, refining or blending of petroleum;

(b) the manufacture, refining, preparation or blending of products obtained from petroleum;

(c) the storage of petroleum or petroleum products;

(d) the wholesale or retail distribution or sale of petroleum products;

(e) the wholesale or retail distribution or sale of liquefied or compressed natural gas;

"petroleum products" includes gasoline, naphtha, benzene, kerosene, lubricating oils, stove oil, fuel oil, furnace oil, paraffin, aviation fuels, liquid butane, liquid propane and other liquefied petroleum gas and all derivatives of petroleum and all products obtained from petroleum, whether or not blended with or added to other things;

"public hearing" means a hearing of which public notice is given, which is open to the public, and at which any person whom the commission determines to have an interest in the matter may be heard;

"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

(a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or

(b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,

(d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,

(e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,

(f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the *Geothermal Resources Act*, or

(g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the *Hydro and Power Authority Act*, in respect of anything done, owned or operated under or in relation to that agreement;

"rate" includes

(a) a general, individual or joint rate, fare, toll, charge, rental or other compensation of a public utility,

(b) a rule, practice, measurement, classification or contract of a public utility or corporation relating to a rate, and

(c) a schedule or tariff respecting a rate;

"service" includes

(a) the use and accommodation provided by a public utility,

(b) a product or commodity provided by a public utility, and

(c) the plant, equipment, apparatus, appliances, property and facilities employed by or in connection with a public utility in providing service or a product or commodity for the purposes in which the public utility is engaged and for the use and accommodation of the public;

"tenant" does not include a lessee for a term of more than 5 years;

"value" or **"appraised value"** means the value determined by the commission.

Part 1 — Utilities Commission

Commission continued

2 (1) The British Columbia Utilities Commission is continued consisting of individuals appointed as follows by the Lieutenant Governor in Council after a merit-based process:

(a) one commissioner designated as the chair;

(b) other commissioners appointed after consultation with the chair.

(2) The Lieutenant Governor in Council, after consultation with the chair, may designate a commissioner appointed under subsection (1) (b) as a deputy chair.

(3) The chair may appoint a deputy chair or commissioner to act as chair for any purpose specified in the appointment.

(4) [Repealed 2015-10-189.]

(4.1) Section 47 (2) of the *Administrative Tribunals Act* applies to the commission respecting an order for costs under sections 117 and 118 of this Act.

(5) The chair is the chief executive officer of the commission and has supervision over and direction of the work of the other commissioners and the chief operating officer.

Application of *Administrative Tribunals Act*

(3) The following decision and orders of the commission are of no force or effect to the extent that they require the authority to do anything for the purpose of changing revenue-cost ratios:

(a) 2007 RDA Phase 1 Decision, issued October 26, 2007;

(b) order G-111-07, issued September 7, 2007;

(c) order G-130-07, issued October 26, 2007;

(d) order G-10-08, issued January 21, 2008,

and the rates of the authority that applied immediately before this section comes into force continue to apply and are deemed to be just, reasonable and not unduly discriminatory.

(4) [Repealed RS1996-473-58.1 (5).]

(5) Subsection (4) is repealed on March 31, 2010.

(6) Nothing in subsection (3) prevents the commission from setting rates for the authority, but the commission, after March 31, 2010, may not set rates for the authority such that the revenue-cost ratio, expressed as a percentage, for any class of customers increases by more than 2 percentage points per year compared to the revenue-cost ratio for that class immediately before the increase.

Discrimination in rates

59 (1) A public utility must not make, demand or receive

(a) an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia, or

(b) a rate that otherwise contravenes this Act, the regulations, orders of the commission or any other law.

(2) A public utility must not

(a) as to rate or service, subject any person or locality, or a particular description of traffic, to an undue prejudice or disadvantage, or

(b) extend to any person a form of agreement, a rule or a facility or privilege, unless the agreement, rule, facility or privilege is regularly and uniformly extended to all persons under substantially similar circumstances and conditions for service of the same description.

(3) The commission may, by regulation, declare the circumstances and conditions that are substantially similar for the purpose of subsection (2) (b).

(4) It is a question of fact, of which the commission is the sole judge,

(a) whether a rate is unjust or unreasonable,

(b) whether, in any case, there is undue discrimination, preference, prejudice or disadvantage in respect of a rate or service, or

(c) whether a service is offered or provided under substantially similar circumstances and conditions.

(5) In this section, a rate is "unjust" or "unreasonable" if the rate is

(a) more than a fair and reasonable charge for service of the nature and quality provided by the utility,

(b) insufficient to yield a fair and reasonable compensation for the service provided by the utility, or a fair and reasonable return on the appraised value of its property, or

(c) unjust and unreasonable for any other reason.

Setting of rates

60 (1) In setting a rate under this Act

(a) the commission must consider all matters that it considers proper and relevant affecting the rate,

(b) the commission must have due regard to the setting of a rate that

(i) is not unjust or unreasonable within the meaning of section 59,

(ii) provides to the public utility for which the rate is set a fair and reasonable return on any expenditure made by it to reduce energy demands, and

(iii) encourages public utilities to increase efficiency, reduce costs and enhance performance,

(b.1) the commission may use any mechanism, formula or other method of setting the rate that it considers advisable, and may order that the rate derived from such a mechanism, formula or other method is to remain in effect for a specified period, and

Exhibit E

Customer-Based Generation & BC Hydro

Power from you, with help from us

Power production is not your core business. That's why we've developed Integrated Customer Solutions (ICS), a process that evaluates customer-based generation projects greater than 50 kilowatts and offers solutions to help deliver on their potential.

Do you have a smaller generation project? Our Net Metering Program is designed for customers who wish to connect a small electricity generating unit (50 kW or less) to the BC Hydro distribution system.

What is Integrated Customer Solutions?

ICS is the framework that BC Hydro will use to evaluate customer-based generation projects and ensure that they are directed to the appropriate offer. At the top of the list of priorities is ensuring customers displace their own electrical load first.

Through ICS, we will support customer-based generation projects with financial incentives, agreements to purchase the electricity from the project, or a combination of the two.

Embed ICS video housed on YouTube – Image to come

Alternative positioning of ICS video if it can't be placed in body of page

See also

- Distribution Generator Interconnections
- Transmission Standard Generator Interconnection Procedures
- Project Incentives: Transmission
- Project Incentives: Distribution
- Standing Offer Program

Watch this short video to learn about ICS through the experiences of Nechako Green Energy Ltd.

Why customer load displacement is the priority

Load displacement and demand side management (DSM) are the most cost-effective ways to meet British Columbia's electricity needs. By encouraging customers to displace load first, BC Hydro is able to ensure rates are kept low.

Customers will enjoy the benefits of a financial incentive plus rate savings from the power they no longer have to purchase from BC Hydro.

The basics of evaluation

The ICS project review team will evaluate each project and direct customers according to the following:

1. Eligible projects that displace all or part of the customer's site electrical load may apply for financial incentives.
2. Eligible projects that produce sufficient surplus electricity to the customer's site electrical load may apply for a financial incentive for the load displacement portion of the project and may receive an Electricity Purchase Agreement (EPA) for the surplus.
3. Projects that are not eligible for a Load Displacement incentive may be directed to apply for an Energy Procurement solution e.g. (Net Metering or Standing Offer Program).

Integrated Customer Solutions, step by step

To initiate a project through ICS, you need to take the following steps:

1. Contact your Key Account Manager or send us an email. You will need to complete the Load Displacement Pre-Screening Assessment (LDPA) [PDF, 103 KB] or equivalent to investigate the technical and financial basis for the load displacement opportunity and determine if the project should continue through ICS or apply for an Energy Procurement solution.
2. If your proposed project is going to continue through ICS, you will need to complete the requirements of a Load Displacement Feasibility Study (LDFS) [PDF, 125 KB] or equivalent. The LDFS is part of a proposal that will need to be submitted.
3. If we determine your project proposal should proceed, either through ICS or through an application for an Energy Procurement solution, you may enter into discussion of contract terms. This applies only to projects in excess of 1 MW – standard contract terms apply to projects of 1 MW or smaller.
4. Once a contract is in place, you can begin construction of the project. However, if the project has an EPA component, the EPA may need to be approved by the British Columbia Utilities Commission (BCUC) before proceeding to construction. The EPA can be terminated if it is not approved by the BCUC.

Net Metering Program (customer-based generation for projects 50 kW and less)

Are you a local government?

BC Hydro has developed a tool to support local governments in identifying and assessing their resource potential to generate electricity or offset their energy use.

Please read the *Generating Renewable Electricity: A Self-Assessment Tool for BC Local Governments* [PDF, 1.8 MB] to learn more about opportunities in your community.

For more information on this process, see the Integrated Customer Solutions Process Flowchart [PDF, 134 KB].

Connecting to the grid

Customers should be aware of the interconnection process that will need to be coordinated with the ICS process.

For more information see:

Distribution Generator Interconnections

Transmission Standard Generator Interconnection Procedures

Co-funding options and related offers

BC Hydro has co-funding options aimed at getting you expert help during the application process, plus incentives for load displacement projects and contracts for the purchase of electricity.

Load Displacement Pre-Screening Assessment (LDPA) consultation

Customers may apply to BC Hydro to co-fund a consultant to perform the LDPA. BC Hydro will pay 50% of the LDPA up to $5,000. However, if the project is directed to apply for an Energy Procurement solution without a load displacement component, BC Hydro will not be able to provide funding for the LDPA.

Load Displacement Feasibility Study (LDFS) consultation

Customers may apply to BC Hydro to co-fund a consultant to perform the LDFS. BC Hydro will pay 50% of the LDFS up to $50,000. However, if the project is directed to apply for an Energy Procurement solution without a load displacement component, BC Hydro will not be able to provide funding for the LDFS.

Load Displacement Incentive

Customers with eligible projects may apply to BC Hydro for financial incentives to displace all or part of the customer's site electrical load. These incentives will be modelled after our Project Incentives: Transmission or Project Incentives: Distribution (the $500,000 max distribution incentive cap has been removed), depending on the customer's rate class. Before providing an incentive estimate, the ICS project review team will need to discuss the project with the customer.

Electricity Purchase Agreement

Although the priority for ICS is to displace load first, if the project has sufficient surplus generation to the customer's site electrical load, BC Hydro may negotiate an Electricity Purchase Agreement (EPA) with the customer for the surplus electricity.

For more information on Integrated Customer Solutions, please contact your Key Account Manager or send us an email.

Last Modified: Nov 7, 2012

TOOL TIP TEXT

Exhibit F

DRAFT INTEGRATED RESOURCE PLAN 2012

A PLAN TO MEET B.C.'S FUTURE ELECTRICITY N

CONSULTATION DISCUSSION GUIDE & FEEDBACK

MAY 28 TO JULY 6, 2012

FEED
FO
INS

bchydro.com/irp

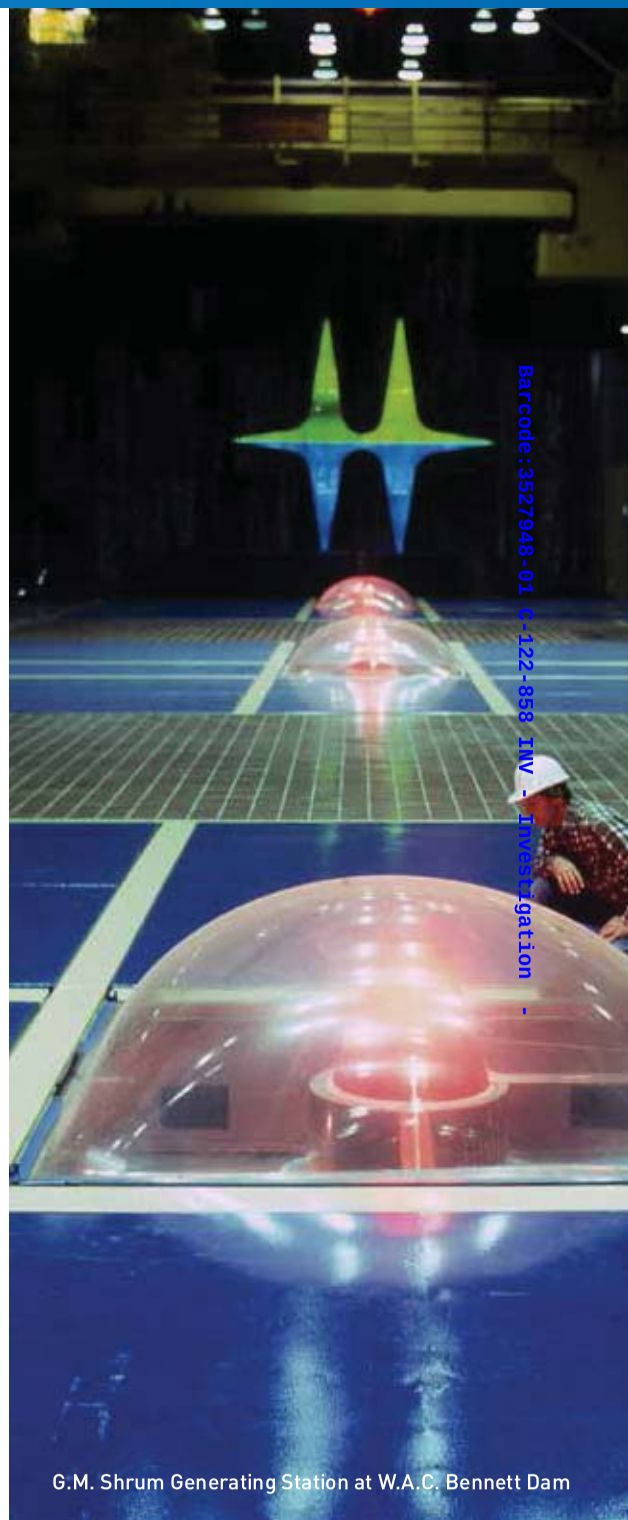
BC hydro
REGENERATION

or explains the comfort and quality of life in
ry as well as our ability to enlist external
y to do work for us. From the alarm that
e morning to the tools that animate our lives,
ning we touch is either powered by — or has
change or moved by — some form of energy.
bia has a particular wealth of electricity
ourless, odorless, safe and instantly available,
y is also endlessly renewable.

rives at the flick of a switch, electrical energy
stered with the snap of your fingers. The
heats our homes, lights our streets and
dustries, is generated in many regions of
nd delivered over thousands of kilometres
n and distribution lines. Along the way, it is
adjusted, moment by moment, to meet the
s of all British Columbians. Put too much
the system and it will overload and crash; too
ntire economy could grind to a halt.

Given the long lead time necessary to build new power generation facilities and transmission infrastructure, BC Hydro must plan well into the future to ensure a continued flow of clean, safe, reliable and cost-effective electricity.

This draft Integrated Resource Plan (IRP) describes the actions BC Hydro recommends to meet growing demand so that our customers will continue to receive affordable, clean and reliable electricity. The draft Plan includes consideration of the most recent changes in the electricity demand forecast and reflects input gathered in 2011 from First Nations, stakeholder and public consultation. Once again, we are interested in your feedback.



G.M. Shrum Generating Station at W.A.C. Bennett Dam

g Station at W.A.C. Bennett Dam

TABLE OF CONTENTS

TO HEAR FROM YOU

n guide is offered to First Nations,
nd the public as an overview of BC Hydro's
d Resource Plan (IRP) — including the key
C Hydro proposes for meeting electricity
he long term. BC Hydro is seeking feedback
cts of the draft plan.

ems are inherently complex and capital-
generally require significant lead time to
n take five to six years to plan and build a new
lity and even longer to develop transmission
structure. So, BC Hydro must plan carefully to
least-cost options and keep rates affordable,
onservation, and to acquire the right mix
nd transmission resources to meet its
eds.

of preparing the draft, BC Hydro considered
t Nations, stakeholder and public consultations
larch and April 2011. Now, BC Hydro is seeking
is draft plan. Consultation will take place
6, 2012. BC Hydro will also be holding separate
First Nations.

Consultation materials are on the BC Hydro website at bchydro.com/irp. You can provide feedback and learn more by:

- Reading more background information available online
- Completing an online feedback form
- Participating in open houses
- Participating in a webinar
- Viewing the IRP video
- Writing comments to BC Hydro

HOW YOUR FEEDBACK WILL BE USED

BC Hydro will consider feedback received through this consultation, along with technical, financial, environmental and economic development inputs, when preparing a final IRP. The plan will be submitted to the provincial government by December 2012, after which government will review the plan and decide whether to approve it.

PUBLIC OPEN HOUSES

Community	Date	Time	Location
Prince George	**Tuesday, June 5**	6:00 – 9:00 p.m.	Ramada Hotel Prince George
Fort St. John	**Wednesday, June 6**	6:00 – 9:00 p.m.	Quality Inn Northern Grand Hotel
Vancouver	**Tuesday, June 12**	6:00 – 9:00 p.m.	SFU Harbour Centre
Terrace	**Thursday, June 14**	6:00 – 9:00 p.m.	Best Western Plus Terrace Inn
Victoria	**Wednesday, June 20**	6:00 – 9:00 p.m.	Hotel Grand Pacific
Webinar	**Monday, June 25**	12:00 noon	bchydro.com/irp*
Webinar	**Tuesday, June 26**	12:00 noon	bchydro.com/irp*

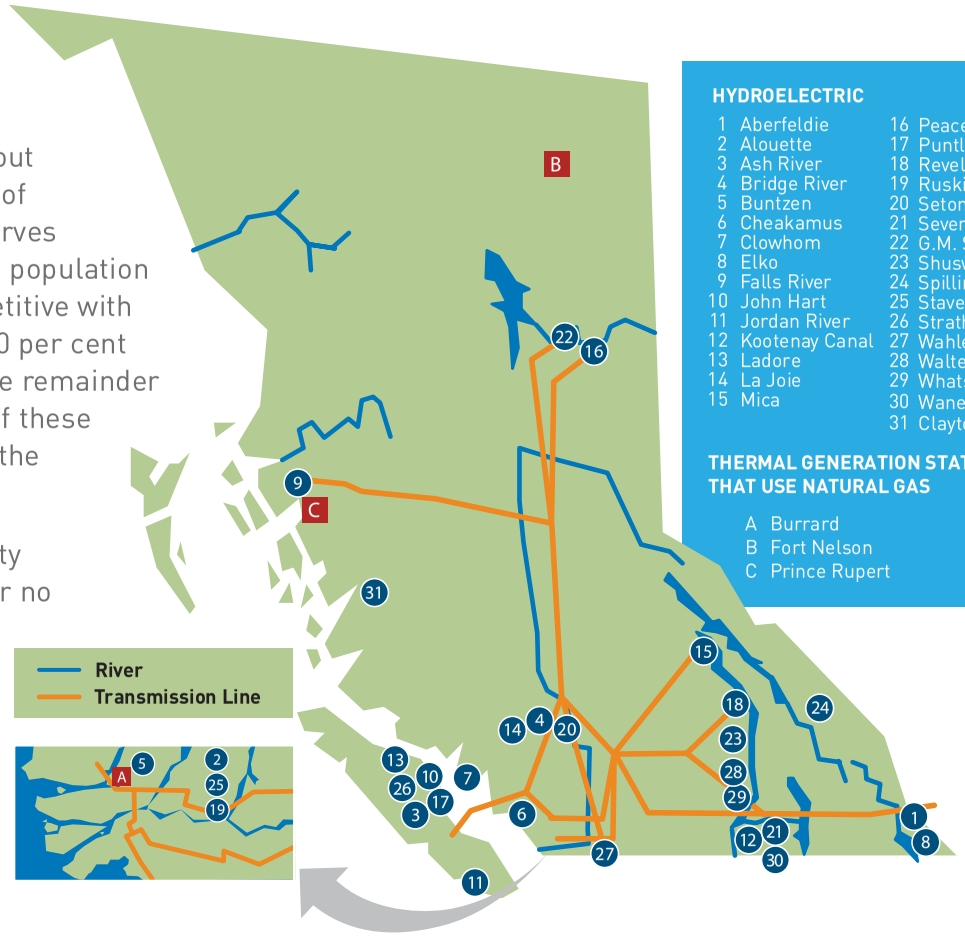
*Please check
bchydro.com/irp
for further inforn

C HYDRO

, the Province of B.C.
vn-owned utility to plan,
eliver clean and reliable
omes and businesses throughout
ovince. Today, BC Hydro is one of
ctrical utilities in Canada. It serves
tomers — 95 per cent of B.C.'s population
ply and at rates that are competitive with
cross North America. Nearly 90 per cent
ccounts are residential, with the remainder
rcial or large industrial. Each of these
onsumes roughly one-third of the
y supplied.

per cent of BC Hydro's electricity
or renewable, creating little or no
s emissions. This energy
combination of BC Hydro's
esources and from power
m independent power
generate electricity from a
rces.

ows, BC Hydro operates
ic facilities and three
ation plants that use natural gas.
roelectric facilities are located in the
umbia regions.



HYDROELECTRIC

1 Aberfeldie
2 Alouette
3 Ash River
4 Bridge River
5 Buntzen
6 Cheakamus
7 Clowhom
8 Elko
9 Falls River
10 John Hart
11 Jordan River
12 Kootenay Canal
13 Ladore
14 La Joie
15 Mica
16 Peace Canyon
17 Puntledge
18 Revelstoke
19 Ruskin
20 Seton
21 Seven Mile
22 G.M. Shrum
23 Shuswap
24 Spillimacheen
25 Stave Falls
26 Strathcona
27 Wahleach
28 Walter Hardman
29 Whatshan
30 Waneta
31 Clayton Falls

THERMAL GENERATION STATIONS THAT USE NATURAL GAS

A Burrard
B Fort Nelson
C Prince Rupert

More than 70 independent power producers also connect to the grid, contributing approximately 20 per cent of the total electrical supply. The transmission system also connects to Alberta and to Washington state, enabling BC Hydro to trade electricity for the benefit of BC Hydro ratepayers.

PROVINCIAL ENERGY GOALS

BC Hydro's mandate is to provide British Colu
reliable and affordable electricity. As a Crown
it is governed by the *Hydro and Power Authori*
regulated by the British Columbia Utilities Co
under the *Utilities Commission Act*.

The provincial *Clean Energy Act* requires BC Hyd
an Integrated Resource Plan to the Minister of E
December 2012 and every five years thereafter.
also requires BC Hydro to be self-sufficient* by
describe how it will respond to objectives in the

- Generate and deliver at least 93 per cent of
in British Columbia through clean or renew
- Keep rates among the most competitive in N
- Meet at least 66 per cent of any increase in
through conservation and efficiency by 202
- Use renewable power to help achieve provi
greenhouse gas reduction targets.
- Encourage economic development and the
retention of jobs.
- Explore and, subject to cabinet approval, pu
opportunity to develop and sell clean electr
interprovincial and international markets.
- Foster the development of First Nations an
communities through the use and developr
or renewable resources.

** In February 2012, government amended the definit
sufficiency so that BC Hydro must be self-sufficient
water conditions. The previous definition had requir
sufficiency during historically low inflows or critical*

, STAKEHOLDER AND FIRST IS CONSULTATION 2011

rch and April 2011, BC Hydro sought input Nations, stakeholders and the public oped the information and conducted the ecessary to prepare the draft Integrated Plan (IRP). During consultation, more takeholders and members of the public takeholder meetings and open houses. ts completed 400 feedback forms and ritten submissions. At the same time, held nine First Nations regional workshops attended by 121 participants representing ations, tribal councils and Aboriginal ons. BC Hydro also sought input from the cal Advisory Committee on its analysis.

nformation about the IRP Consultation nd reports summarizing the input received to bchydro.com/irp.

GRATED RESOURCE PLAN

Resource Plan (IRP) is BC Hydro's plan for esources to meet customer needs over the this is not a once-every-20-years exercise. update its long-term electricity plan at least years. As part of this process, BC Hydro asks s:

ELECTRICITY WILL BRITISH COLUMBIANS THE NEXT 20 YEARS?

on a host of factors that increase or decrease demand must also be understood in two ch energy is required in total over the course how much capacity might be needed to meet , such as seasonal and daily peaks — to ensure can keep the lights on, even on the coldest,

2. WHAT IS THE GAP BETWEEN EXISTING SUPPLY AND FORECAST DEMAND?

What is the expected output of BC Hydro's existing electricity generation, contracted energy supply and transmission assets, and to what degree might conservation and efficiency measures reduce future demand? After conservation measures are taken into account, what is the gap between existing supply and anticipated demand?

3. HOW CAN BC HYDRO CLOSE THE ELECTRICITY GAP?

What blend of additional conservation measures and additional generation and transmission resources will be needed to meet demand, reliably and cost-effectively?

By addressing these questions, BC Hydro identifies actions it must take within the next 10 years to meet its customers' future long-term electricity needs.

BC Hydro's Integrated Resource Plan does not, by itself, commit BC Hydro to any speci capital projects.

Recommended action items will be subject subsequent approval and consultation requ

WHERE WE ARE TODAY

rated ning he ions ong- ecast nical n

Identify the gap between existing supply and forecast electricity demand
What is the gap between existing resources and forecast electricity demand?

Public, stakeholder and First Nations consultation
Input into the draft plan on key planning questions

Analyze options to close the gap
Develop the draft IRP
What is the optimal blend of new conservation, generation and transmission resources?

Public, stakeholder and First Nations consultation
Gather feedback on draft plan

Consider public, stakeholder and First Nations feedback and finalize the IRP

Submit the IRP to the government of Brtish Columbia

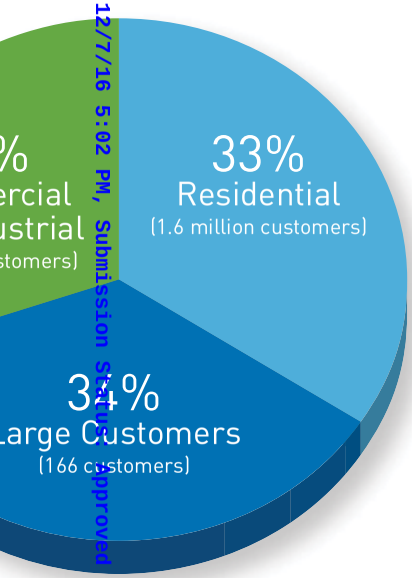
2010 2011 2012

T DEMAND: HOW MUCH ITY WILL BRITISH COLUMBIANS ER THE NEXT 20 YEARS?

one-third of BC Hydro's current electricity s from residential customers, another third ial and small industrial customers (e.g., ools and shopping malls) and the final third from rs (e.g., pulp mills, mines). Changes in any one mer segments can have significant impacts on wth in electricity demand.

NUAL ENERGY LOAD FORECAST

it has sufficient energy to meet future demand, blishes a probable forecast of how much need per year (the red line, below right).

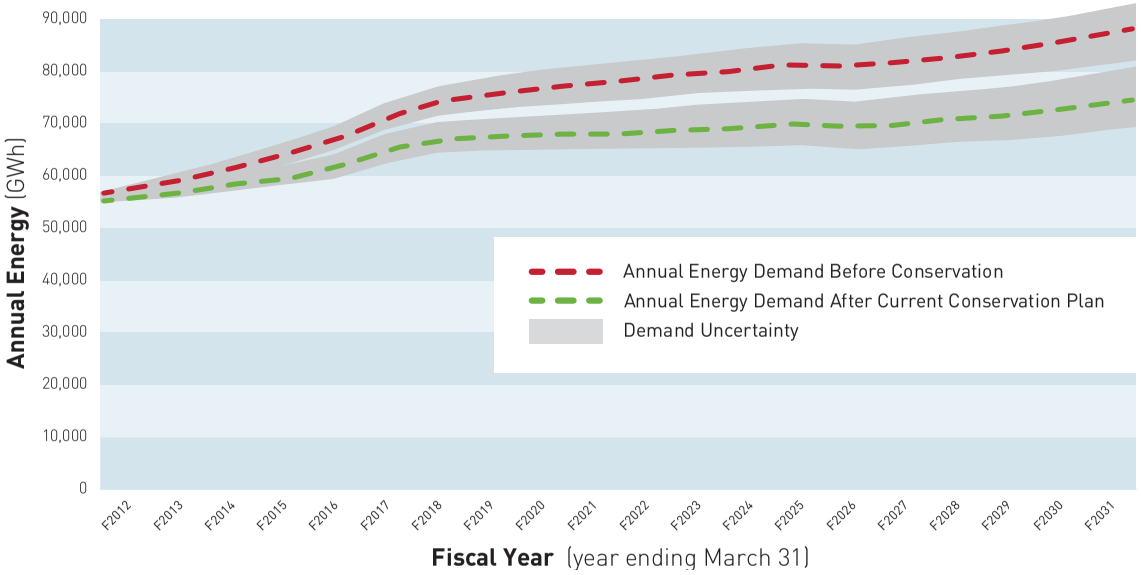


the above pie chart does not include sales to other 's own electricity use.

It also calculates the potential for higher and lower demand (the grey area around the red line). The green line indicates the anticipated demand, reduced by savings from BC Hydro's existing conservation and efficiency plans.

In its December 2011 load forecast, BC Hydro anticipated that growth in demand from the mining and oil and gas sectors will be particularly strong. BC Hydro has included the development of two new Liquefied Natural Gas facilities proposed for the north coast of the province in the demand represented in the graph below.

ANNUAL ENERGY FORECAST



Source: BC Hydro December 2011 Long-Term Load Forecast

The long-term load forecast shows that demand fo grow by approximately 50 per cent over the next 20 accounting for the savings that can be achieved by and efficiency measures.

While growth in population and general econom relatively predictable drivers of electricity dema difficult to forecast growth in demand among lar customers, as this is subject to the fluctuating g for B.C.'s natural resources.

To manage uncertainty, BC Hydro is concentrati probable forecast, but is continuing to work with and customers to manage scenarios that reflect additional demand.

ENERGY is the amo electricity produced over a period of time in gigawatt hours (o hour equals one mil hours). The average Columbian household 11,000 kilowatt hour

K CAPACITY FORECAST

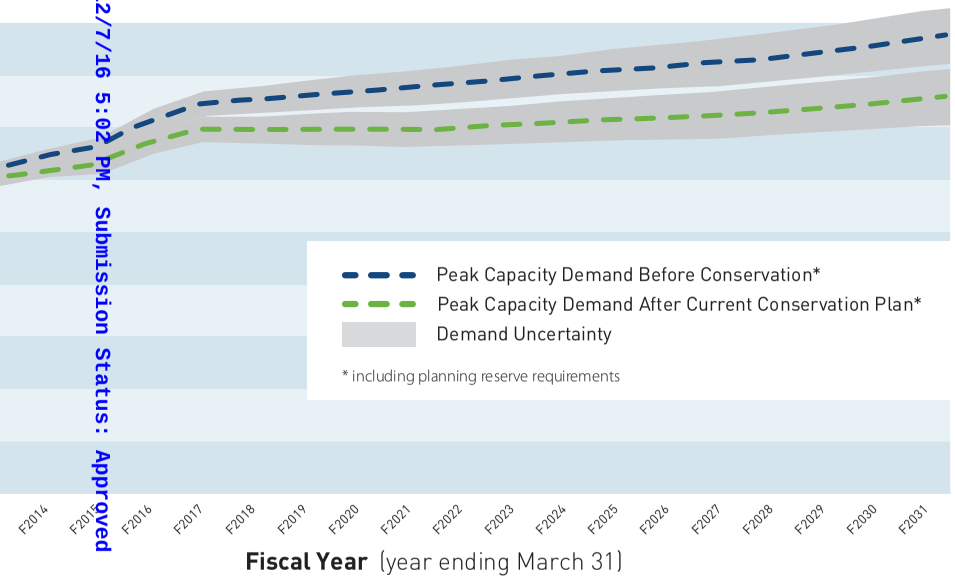
xamining the total energy that BC Hydro
d in a year, BC Hydro must also ensure that it
peak capacity to meet the moment-by-moment
ed on its system.

l forecast indicates that peak capacity demand will
imately 1,0 per cent over the next 20 years, before
he savings that can be achieved by conservation
neasures.

ectricity varies through the year. In British
peak demand typically occurs in the early
ember or January on a very cold weekday.

In the graph below, the blue line represents the projected peak capacity demand before conservation is taken into account; the green line shows the peak demand including the conservation and efficiency levels that BC Hydro believes can be delivered based on existing plans. The grey area shows the demand uncertainty.

Y FORECAST



BC Hydro December 2011 Long-Term Load Forecast

PEAK CAPACITY refers to the maximum amount of electricity that BC Hydro can supply at any one time throughout the whole province. For example, BC Hydro's system experiences seasonal and daily peaks in demand.

ELECTRIFICATION: SWITCHING FROM OTHER FUELS TO ELECTRICITY

The *Clean Energy Act* seeks "to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia." Fuel switching to clean electricity could occur across the economy. River Basin is one example of potential "ele – traditionally, industry burned fossil fuels t industrial processes; now they are consider The transportation sector is another examp automobiles from gasoline and diesel to ele could help reduce the largest source of gree emissions in B.C.

Within the IRP, BC Hydro has examined the electrification, the potential impact of electr on the system, and when electrification mig Analysis shows that future carbon prices (in regulated cost of emitting greenhouse gase have the strongest influence on the speed w transportation and industrial sectors will sw electrify. In the next 10 years, demand for el is predicted to be relatively small, due to th and cost of vehicles. In the long term, electr could become a significant component of ov demand and a source of distributed energy BC Hydro will continue to monitor carbon pr analyze potential system demand to accomm switching as the marketplace transitions.

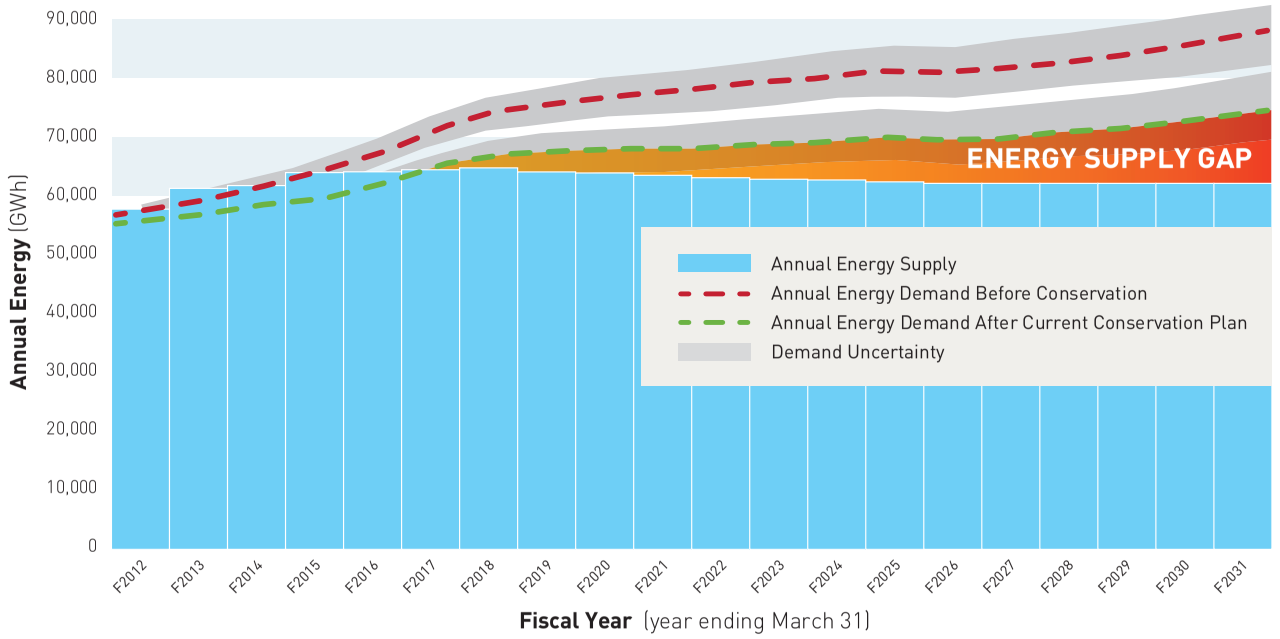
THE GAP BETWEEN EXISTING ND FORECAST DEMAND?

ng-term integrated resource planning involves energy and capacity load forecast (demand) ailable resources (supply). When forecast ds current supply, BC Hydro must fill the gap g consumers to use less and by increasing the tricity supply.

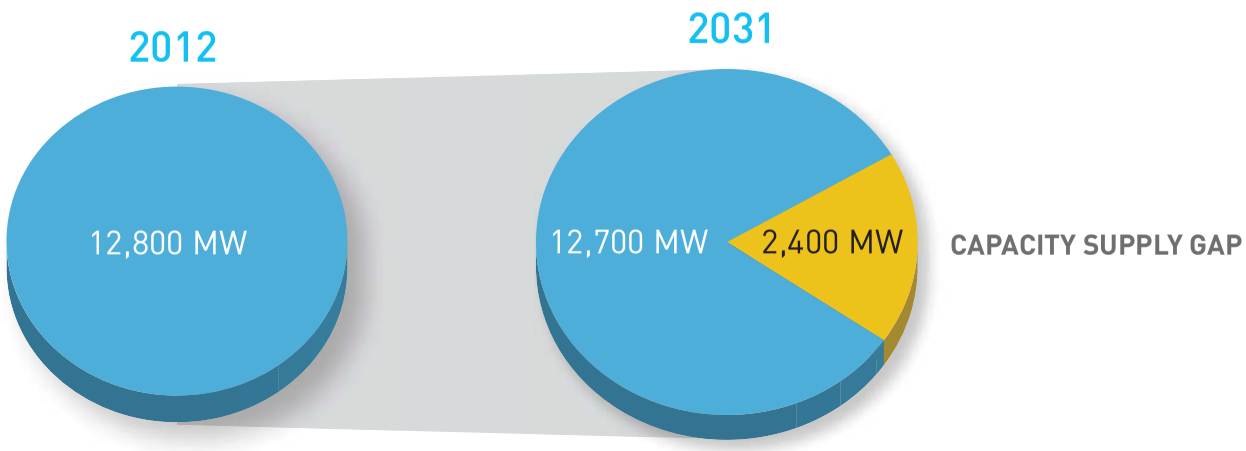
energy supply-demand outlook (right) the blue current annual supply of BC Hydro facilities and ower producers. The bars increase over the next flecting BC Hydro's own operating plans and endent power production that is coming online. he net energy supply goes down as contracts ependent power producers expire. BC Hydro p between the blue bars (the existing supply) ine (showing anticipated demand, as reduced n and efficiency measures).

capacity outlook indicates that customers will onal 2,400 megawatts of peak capacity by 2031.

THE FORECAST ENERGY GAP



THE FORECAST CAPACITY GAP (AFTER CURRENT CONSERVATION PLAN AND BEFORE IRP ACTIONS)



The decrease in capacity from 2012 to 2031 is due to some biomass-based Independent Power Producer contracts going off-line.

FT INTEGRATED RESOURCE W CAN BC HYDRO CLOSE THE ITY GAP?

rated Resource Plan describes the actions that oses to take over the next 10 years to ensure bians continue to receive low-cost, reliable the long term.

different options and identify the x of resources, BC Hydro has considered the rs:

pecifications: the potential peak capacity and h resource option offers, its earliest possible date, etc.

rovincial energy objectives: e.g., the objective t 93 per cent of energy should come from clean ble sources, at least 66 per cent of any increased met by conservation by 2020, and greenhouse ons be reduced, etc.

ntal attributes: land, water and air footprints that BC Hydro believes can be permitted.

development attributes: contributions to jobs, rovincial revenue.

ns, stakeholder, public and Technical ommittee input gathered through the 2011 n process.

On the following pages, BC Hydro recommends a set of actions to close the gap. It involves:

- **CONSERVING MORE**
- **BUILDING AND REINVESTING MORE**
- **BUYING MORE**

In addition, BC Hydro must also develop contingency plans to the address the "what ifs" such as what if demand grows more quickly than expected. BC Hydro has additional recommendations to:

- **PREPARE FOR POTENTIALLY GREATER DEMAND**

FINDING THE RIGHT MIX

Electricity sources can be divided into two c dependable capacity and intermittent energ

Dependable capacity resources, such as lar reservoirs and generating stations, pumped facilities and natural gas-fired generators, a consistent, dependable amount of power ov

Intermittent energy resources, such as win of-river hydro, and tidal and wave energy, de only when the wind is blowing, the sun is sh water is flowing.

The challenge for electric utilities is to deliv supply of electricity and operate with an app balance of cost-effective, dependable capac and intermittent renewable resources to mi environmental impacts.

BC Hydro has many dependable capacity res form of water stored behind its dams on the Columbia River systems, which can be used However, as B.C.'s capacity needs have grow years, BC Hydro is now having to look at new capacity solutions to ensure customers have they need it.

RVE MORE

ERGY CONSUMPTION

ENDED ACTION #1: CONSERVE MORE:

our energy savings target to 9,800 gigawatt year by 2020 (1,000 gigawatt hours more urrent plan) through conservation and programs, incentives and regulations.

ore codes, standards and rate options s beyond the annual target of 9,800 hours.

nd efficiency, also referred to as demand-side M), is the cleanest and least expensive way for duce the gap between future electricity demand sources.

Conservation measures can include:

- Programs that provide information, education and incentives (for example, the BC Hydro Fridge Buy-Back Program).
- Specifically designed electricity rates such as the existing residential inclining block rate that encourages conservation while collecting no additional revenue for BC Hydro.
- Government codes and standards that set minimum energy performance levels for products or systems that use, control or affect the use of energy — for example, by eliminating the sale of low-efficiency light bulbs.

BC Hydro's current conservation and efficiency plan, established in 2008, aimed to reduce current levels of consumption by 8,800 gigawatt hours per year by 2020.

In analyzing how efficiency can be improved and how much energy can be conserved over a 20-year horizon, BC Hydro compared its current approach, which emphasizes a complementary mix of programs, rates and government codes and standards, against a more aggressive approach, which would rely more on government-regulated codes and standards as well as other conservation measures. This more aggressive approach would require a shift in how British Columbians use electricity — for example, new housing would need to be built more efficiently. Mandatory time of use rates would not be part of this approach, as the government has directed BC Hydro not to introduce them.

In determining how much conservation and effic recommend, BC Hydro considered:

- How much energy savings is BC Hydro confi delivered? (Conservation levels are uncertai depend upon customers adopting new behav technologies.)
- At what cost can savings be achieved?
- What has been the consultation input to date

The recommended approach will provid BC Hyd time needed to learn more about customers' wil to accept new codes and standards. Depending o the conservation target could be increased even next Integrated Resource Plan (IRP).

By targeting 9,800 gigawatt hours per year, BC H expects to defer about 78 per cent of incrementa traditional energy loads. This target is in excess *Energy Act* objective to meet 66 per cent of new d electricity through conservation.

BC hydro
powersmart

ENCOURAGE LESS CONSUMPTION DURING PERIODS OF PEAK DEMAND

➤ **RECOMMENDED ACTION #2: Pursue voluntary conservation programs that encourage residential, commercial and industrial customers to reduce energy consumption during peak periods.**

In addition to conservation measures that target total energy savings over the course of a year, BC Hydro will improve voluntary programs designed to reduce peak demand or shift demand away from peak hours. For example, BC Hydro can work with large industrial customers to adjust their processes and equipment operations in a way that reduces consumption for short periods when needed.

For more information about BC Hydro's Power Smart programs, go to bchydro.com/powersmart.

BC hydro
powersmart

AND REINVEST MORE

tion is the first and preferred strategy to meet
ure electricity needs, made-in-B.C. power
to fill the gap between existing supply and
mand — for both the total amount of energy
rse of a year and for the peak capacity needed
f maximum consumption.

0 years, British Columbians have been able
otal energy and peak capacity that was
BC Hydro built the large dams, reservoirs and
tions on the Peace and Columbia river systems.
been able to meet rising peak demand by
ting units and making other improvements to
nerating stations on the Peace and Columbia to
advantage of the energy storage capabilities of
s.

nfrastructure is nearing its maximum potential,
need to seek other solutions to meet growing
he objectives of the *Clean Energy Act* is that
cent of B.C.'s electricity comes from clean or
rces. Run-of-river hydro and wind generation
f this demand, but these are intermittent
erefore are not solutions when needing reliable

BUILD THE SITE C CLEAN ENERGY PROJECT

➤ **RECOMMENDED ACTION #3: Build Site C to add 5,100 gigawatt hours of annual energy and 1,100 megawatts of dependable capacity to the system for the earliest in-service date, subject to environmental certification and fulfilling the Crown's duty to consult and, where appropriate, accommodate Aboriginal groups.**

The Site C Clean Energy Project is a proposed third dam and hydroelectric generating station on the Peace River, downstream from the existing BC Hydro reservoirs and the G.M. Shrum and Peace Canyon generating stations.

In preparing the Integrated Resource Plan, BC Hydro compared the efficiency, environmental attributes and cost of Site C against other renewable resources (wind, run-of-river hydro) that could meet the same annual energy and peak capacity requirements in the same time frame. BC Hydro also compared Site C against other peak capacity options, including natural gas and pumped storage. The analysis generally showed the following:

- Portfolios of resource options with Site C would have lower costs to ratepayers and would provide additional flexibility to integrate intermittent renewable resources.
- Portfolios that include Site C would generally have a greater footprint on land, with the creation of a new reservoir, although portfolios excluding Site C would require a greater number of projects with more dispersed environmental footprints.
- As the third project on the Peace River, Site C benefit from storage and regulation by upstrea For example, Site C would generate approxima cent of the annual energy produced at the W.A Dam, with five per cent of the reservoir surfac
- Portfolios including Site C generally provide hi levels of GDP and employment resulting from project construction.

With a total project cost of $7.9 billion, it would p electricity at a cost of between $87 and $95 per hour at the point of interconnection.

SITE C:

- **Supports the provincial clean energy, self-s and climate change objectives by providing capacity with low greenhouse gas emissions**
- **Projected to provide 35,000 direct and indire supporting the provincial objective of encou economic development and job creation.**
- **Facilitates the development of wind and run hydro that require backup from a dependabl flexible resource.**

of the proposed Site C Dam

he G.M. Shrum Generating Station at W.A.C. Bennett Dam

SITE C PUBLIC, STAKEHOLDER AND ABORIGINAL CONSULTATION

Site C is currently in the environmental and regulatory review stage, which includes a co-operative federal and provincial environmental assessment process, including a joint review panel. The environmental assessment process for Site C will include multiple opportunities for participation by the public, Aboriginal groups, governments and other interested stakeholders.

Separate from consultation opportunities led by the regulatory agencies as part of the environmental assessment, BC Hydro is leading several streams of public and stakeholder consultation.

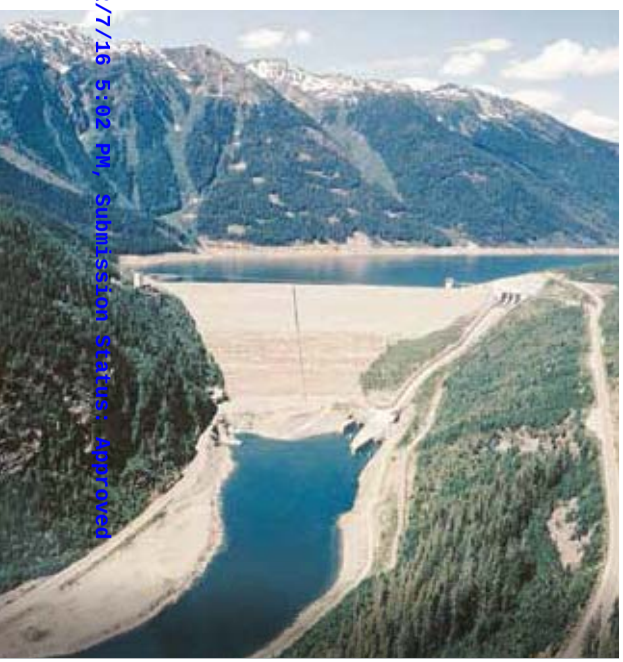
The streams of BC Hydro-led consultation are o

- **Government Liaison**
  BC Hydro is engaging key municipal, regional government stakeholders to ensure they are k on the status of the project.
- **Property Owner Liaison**
  Ongoing meetings and two-way information sh property owners is continuing throughout the
- **Local Area Consultation**
  BC Hydro will conduct area-specific consultati local issues arise. For example, consultation w community of Hudson's Hope was held in fall 2 local input about proposed berm options.
- **Aboriginal Consultation and Engagement**
  BC Hydro and Aboriginal groups are engaged i consultation and engagement process that co through all stages of the Site C Clean Energy P
- **Project Definition Consultation**
  Project Definition Consultation is designed to engage with the public and stakeholders on to to project planning and the environmental ass
  - Project Definition Consultation, Spring 2012 between April 10 and May 31, asked the pub stakeholders for input about Highway 29 Pr Realignments, Outdoor Recreation and the Industrial Lands.
  - Project Definition Consultation, planned for 2012, will include consultation topics such a accommodation and reservoir clearing.

For more information about Site C, the work of t panel and the opportunities for consultation and bchydro.com/sitec.

NTAGE OF REMAINING RESOURCE ACITY OPPORTUNITIES

ted the Resource Smart program in 1988 to plemen efficiency gains at existing BC Hydro rogram provides additional annual energy city by modifying, updating and retrofitting neratio facilities. Recently, BC Hydro began the fifth and sixth generating units at Mica tion. These investments will ensure that the r syste remains strong and reliable.



REVELSTOKE GENERATING UNIT 6

➤ RECOMMENDED ACTION #4: Begin work to allow the sixth generating unit at Revelstoke Generating Station to be built by 2018, adding 500 megawatts of peak capacity to the BC Hydro system.

The Revelstoke Generating Station, which was designed to accommodate six generating units, opened in 1984 with four units and a combined peak capacity of 1,980 megawatts. With the addition of a 500-megawatt fifth unit in 2010, Revelstoke now provides more than 20 per cent of BC Hydro's total peak capacity.

A sixth turbine in the Revelstoke Generating Station would increase BC Hydro's peak capacity, helping to ensure that electricity is available during peak hours during the coldest periods of winter.

Revelstoke Dam

W.A.C. Bennett Dam and G.M. Shrum Generating Station

PURSUE ADDITIONAL RESOURCE SMART OPPO

➤ RECOMMENDED ACTION #5: Continue t and advance cost-effective Resource Smart p utilize the remaining untapped capacity withi existing hydroelectric system.

While BC Hydro has completed a large number Smart projects over the past 20 years and has o generation refurbishment plans underway, ther some remaining ways to modify, update and retr existing generation facilities to secure additiona and peak capacity. Upgrading the existing syste the Resource Smart projects can provide additio energy production and peak capacity on the syst cost-effective way, with generally low or no incr environmental impact.

EADILY AVAILABLE RESOURCES TO HORT-TERM CAPACITY GAP

ENDED ACTION #6: Fill the short-term y gap from 2015 to 2020 with a combination rchases first, power from the Columbia second and extending the existing backup rd Thermal Generating Station, if required rized by regulation.

apacity gap emerges in 2015 before new s Revelstoke 6 and Site C come online and nal peak capacity. To fill this short-term gap e resources are developed, BC Hydro proposes -effective and readily available resources to rs' growing requirements.

period, BC Hydro plans to continue to purchase he marketplace via the **western electricity grid** customers' growing peak requirements can be considers the purchasing of out-of-province peak needs to be a prudent, low-cost choice resource like Site C coming online.

The Canadian Entitlement is a feature of the **Columbia River Treaty** between Canada and the United States, under which Canada operates its dams on the Columbia River in a way that optimizes generating potential and regulates water flow in both countries. In return, B.C. receives an "entitlement" of one-half of the extra power produced in the U.S. The actual entitlement varies annually, but is generally about 4,600 gigawatt hours of energy per year and 1,300 megawatts of capacity.

Using the Canadian Entitlement and purchasing peak capacity on the open market involves calling upon electricity from the U.S. during periods when customers' demand peaks. Transmission line constraints on U.S. connections are such that BC Hydro can rely on no more than 500 megawatts of additional peak capacity, which means that these options alone may be insufficient to fill the peak capacity gap.

Burrard Thermal Generating Station is a major generating facility located in the Lower Mainland and is valuable as an emergency backup resource. The plant is available with government approval to meet demand in the Lower Mainland in the event that peak demand exceeds available resources, or on an emergency basis. BC Hydro has, on average, called upon Burrard 12 days per year during the past three years to meet peak demand and to provide emergency backup for generation and transmission outages.

TRANSMISSION REQUIREMENTS

➤ **RECOMMENDED ACTION #7: Reinforce the existing 500-kilovolt line from Prince George to Terrace to meet new demand on the north coast.**

B.C.'s bulk high-voltage transmission system is the backbone of the grid that delivers electricity to customers across the province. It carries electricity from where it is generated to the cities, towns and industrial centres where it is largely consumed. To meet expected demand, BC Hydro has concluded that no new high-voltage inter-regional transmission lines are needed in the next 20 years. However, the existing 500-kilovolt line from Prince George to Terrace will need to be reinforced to meet new demand on the north coast. Consultation and project definition studies have begun to move forward on reinforcing this line to ensure it keeps its earliest in-service date.

In addition, BC Hydro must:

- Complete committed transmission line projects, including the Interior-to-Lower Mainland (ILM) and Northwest Transmission Line (NTL).
- Address region-specific transmission needs. For example, oil and gas industry expansion is driving rapid growth in the South Peace area.

30-YEAR TRANSMISSION PERSPECTIVE

In recent years, the provincial government a have become increasingly concerned about development of transmission infrastructure transmission lines often require long lead ti develop (10 or more years) and rights-of-wa difficult to secure.

Therefore, BC Hydro looked farther into the f 30 years out — to see if a longer perspective new conclusions. Extending the transmission horizon from 20 to 30 years validated the tra choices identified in the initial 20-year horizo new transmission options were identified as extending the planning horizon.

BC Hydro also considered whether pre-build transmission would be beneficial in areas wh number of clean generation projects were ex clustered in the next three decades. The ana only marginal economic and environmental b pre-building into areas with high generation advance of need. At the same time, pre-build cause unnecessary environmental impacts a event the transmission need does not materi

BC Hydro will continue to take a proactive ap transmission planning. In future acquisitions for new electricity, BC Hydro will identify pote opportunities to cluster generation facilities a multiple transmission lines.

ORE

tion is our first and preferred strategy to meet
re electricity requirements, made-in-B.C. power
to help close the gap between supply and demand.
a is fortunate to have a wealth of potential clean
uding hydroelectricity, biomass and wind. The
gy Act objective that at least 93 per cent of B.C.'s
ration comes from clean or renewable sources
nore than seven per cent of generation from
s natural gas-fired generation.

OM B.C.-BASED CLEAN ODUCERS

ENDED ACTION #8: Develop energy t option to acquire up to 2,000 gigawatt ar from clean energy producers for projects ome into service in the 2016–2018 time period.

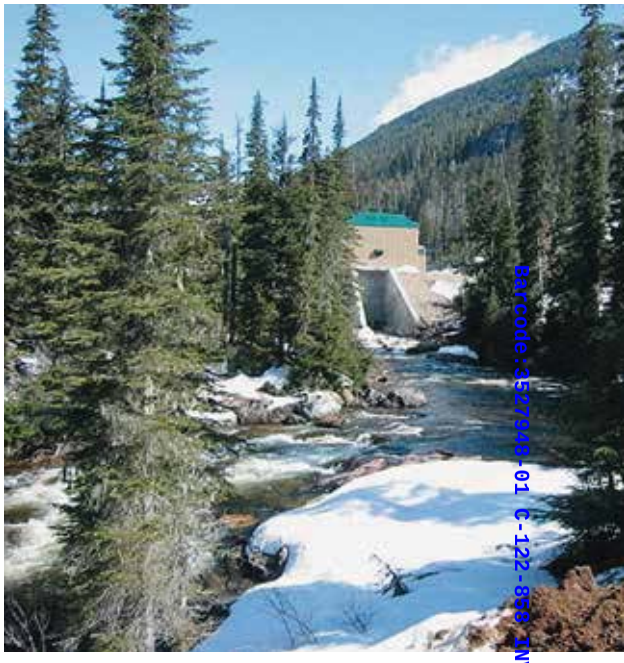
ns on the timing and the volume of energy will e there is more certainty regarding projected y loads.

BC Hydro has been purchasing power through long-term contracts with independent power producers for over 20 years. During fiscal 2011, independent power producers supplied 10,805 gigawatt hours of annual energy — about 20 per cent of all BC Hydro electricity requirements — while also contributing to the Province's self-sufficiency, clean energy generation, and greenhouse gas reduction objectives.

Independent clean energy producers can bring new projects online in five to six years and in smaller increments that match B.C.'s electricity demand growth. As BC Hydro's long-term forecast is updated in late 2012 and future demand is confirmed by customers, new energy can be acquired through acquisition processes involving affordable long-term contracts at fixed energy prices. Acquisitions from independent power producers also help to meet the *Clean Energy Act* objective of fostering the use and development of clean or renewable energy in First Nations and rural communities.

Based on its assessment of potential generation resources, BC Hydro expects the majority of new power will come from low-cost resources such as wind, run-of-river and biomass projects because these are currently the lowest-cost options. However, producers will have the opportunity to propose other forms of renewable power projects such as geothermal, wave and tidal for consideration.

BC Hydro plans to continue the Standing Offer Program for projects less than 15 megawatts as well as the Net Metering Program for small residential and commercial projects. BC Hydro also plans to assess and potentially expand the opportunities for geothermal resources as well as other distributed generation sources that are not participating in existing acquisitions programs.



RE FOR POTENTIALLY ER DEMAND

utility practice, BC Hydro must have contingency lectricity requirements grow faster than forecast, source don't come online when expected.

ying particular attention to two areas of the there is potential for greater load growth from the large industrial sector. While this new cult to forecast with certainty, it warrants careful w because of the large volumes of energy and ould be required and the unique geographic ociated with serving major new loads in

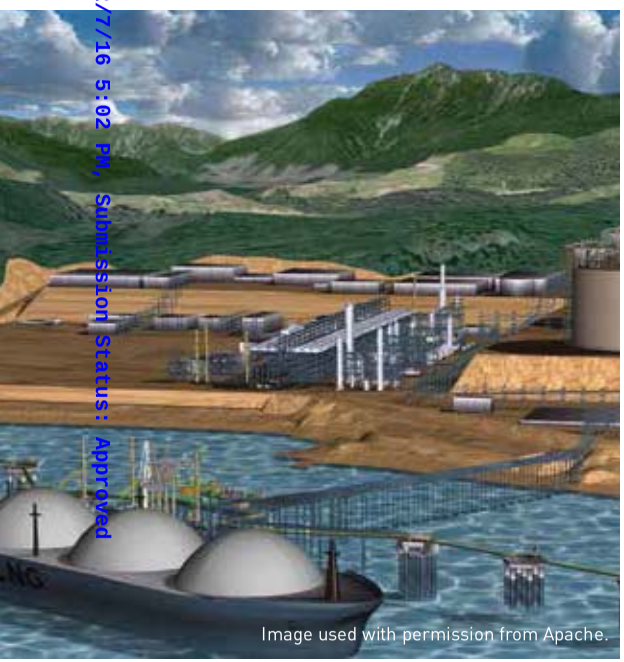


Image used with permission from Apache.

NORTH COAST: LIQUEFIED NATURAL GAS AND MINING DEVELOPMENT

➤ **RECOMMENDED ACTION #9: Continue to work with LNG developers to understand their electricity requirements, and keep options open until further certainty on future requirements can be established. Specifically:**

- **Undertake work to maintain the earliest in-service date for a new 500 kV transmission line from Prince George to Terrace and Kitimat and from the Peace River region to Prince George.**
- **Develop procurement options for additional clean energy resources, backed up by gas-fired generation (located only in the north coast, or in both the north coast and across the province) for electricity that could be delivered in the 2019–2020 time frame, should it be needed.**

In addition to the two Liquefied Natural Gas (LNG) facilities that are included within the IRP's base resource plan, BC Hydro is aware of a number of other LNG and new mine developments on the north coast. If a third LNG plant requests service or a number of new mines come online, BC Hydro would need to acquire significant additional annual energy and peak capacity. BC Hydro is studying a range of options to serve additional potential need on the north coast, involving both the energy supply and the associated transmission infrastructure.

LIQUEFIED NATURAL GAS DEVELOPMENT NORTH COAST

Several proponents are currently working to establish Liquefied Natural Gas (LNG) export facilities on the north coast — a potential investment of approximately $20 billion that could also new jobs. The process of converting natural a liquefied state consumes large amounts o Usually, that energy is provided on-site by b gas. BC Hydro is working with industry and government to determine how BC Hydro co LNG industry's energy needs via clean elect up by natural gas-fired generation, thereby related greenhouse gas emissions.

The provincial government has committed t three LNG plants in operation by 2020 being clean electricity and backed up by gas. Rela goals include:

- Ensuring that B.C. is competitive in the Liquefied Natural Gas (LNG) market.
- Maintaining leadership on climate chan clean energy.
- Keeping energy rates affordable for fam communities and industry.

BC Hydro has sufficient current and planned supply to meet the energy needs of the first t potential Liquefied Natural Gas facilities. BC studying supply options to meet possible add electricity demand that could emerge if a thi is established in the longer term or if other a electricity demand emerges.

T: NATURAL GAS EXTRACTION

ENDED ACTION #10: Continue to monitor t natural gas industry and undertake ep electricity supply options open, including n connection to the integrated system, and ed generation.

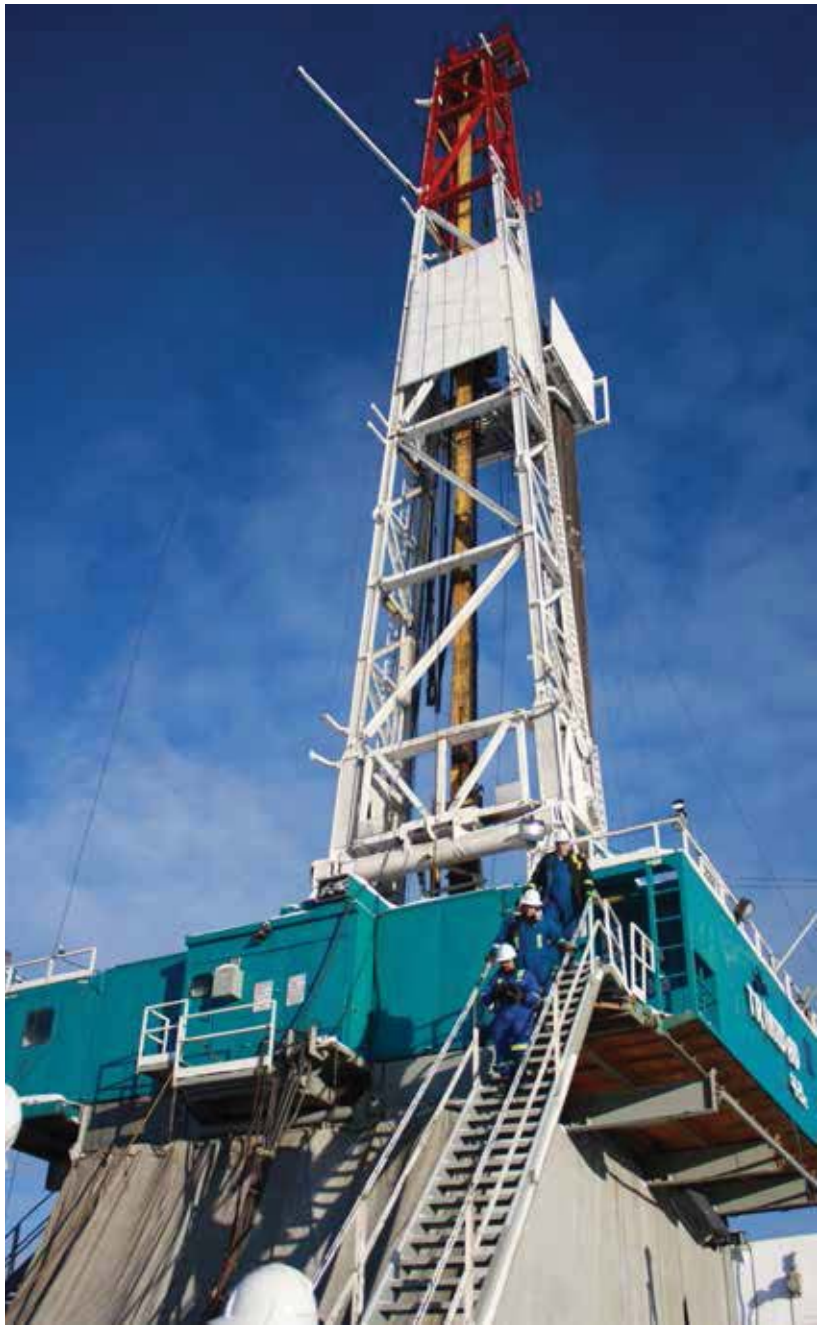
king at the potential that large new natural gas emerge in the Horn River Basin in northeast he gas industry will seek electrical power from Horn River Basin encompasses a large area rt Nelson that is not currently connected to grated transmission system. Gas production in Basin requires energy for two purposes: moving pelines, and processing the gas to remove as carbon dioxide (formation CO_2) and hydrogen Traditionally, the natural gas industry has met requirements by burning natural gas or diesel. ndustry could be electrified — thereby reducing ouse gas emissions and helping to achieve ate change goals.

rnatives to serve this potential demand are:

new northeast transmission line to bring new gy to the region via the integrated system.

as-fired electricity generated locally. Additional ration resources may also be added; however, ot displace the need for gas as a backup.

orking with the provincial government, industry ndependent power producers in assessing the ving the Horn River Basin.



PEAK CAPACITY RESOURCES

➤ RECOMMENDED ACTION #11a: Workin industry, explore pumped storage capacity o reduce the lead time to in-service dates and t an understanding of where and how to site su resources in the province, should they be nee

➤ RECOMMENDED ACTION #11b: Workin industry, explore natural gas-fired generati to reduce the lead time to in-service dates an an understanding of where and how to site su resources in the province, should they be nee

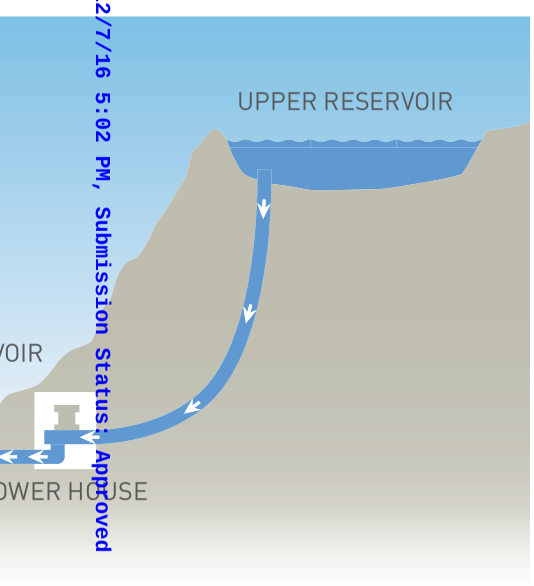
In its base resource plan, BC Hydro recommend combination of additional resources to address t growth in peak capacity requirements. As discus BC Hydro has been able to rely on additional cap its large hydroelectric system to address growin demands over the past two decades and, as part will study how it can tap into the remaining Reso opportunities on its existing facilities. Going forw additional capacity resources will be more challe Renewable resources such as wind and run-of-r options cannot store energy. This means that wh doesn't blow or rivers do not have adequate flow needs to rely on other resources to meet deman contingency planning purposes, BC Hydro must the base plan recommended actions and addres growth is even greater than expected or other re don't come online when expected.

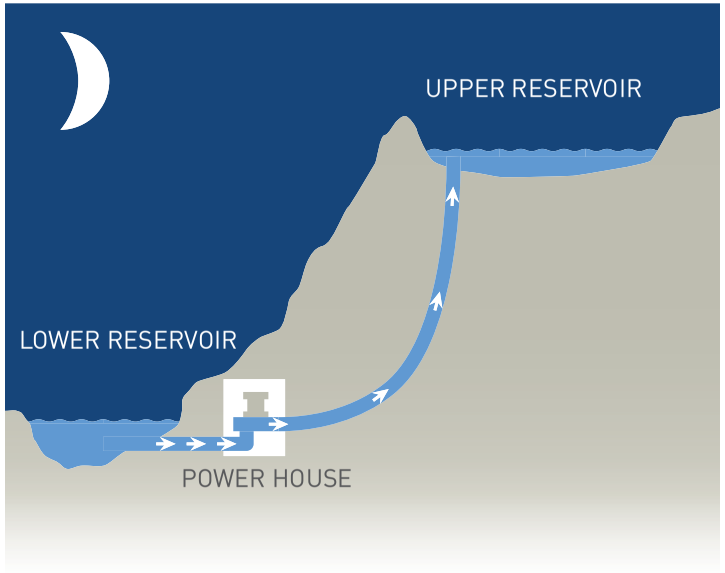
ge involves taking advantage of the fact that e excellent batteries: the water can be held for d released through generating turbines only y to meet electricity demand.

he ability to recharge these batteries by using ump water from a lower reservoir to a higher electricity is plentiful and cheap (in the ight, or at times of the year when demand is ring periods of high electrical demand (i.e., on a cold, dark day), the stored water is re- gh the turbines to produce electricity when ost. The pumping process makes the plant r of energy, but this storage of water for gives significant additional flexibility to meet ctricity requirements.

Pumped storage projects are generally sited close to high-demand centres (to minimize electricity losses and the need for transmission lines) and in locations with a significant elevation difference. With high mountains near the major load centre in the Lower Mainland and on Vancouver Island, B.C. is well suited to pumped storage. However, such projects have not been built in B.C. before and the construction time for such a large project would be significant.

After BC Hydro exhausts Resource Smart projects, **natural gas** is the next-lowest-cost alternative for adding additional capacity to the system and therefore best addresses keeping electricity rates affordable. Natural gas-fired plants can be located close to where the electricity is needed, reducing the need to build new transmission lines.





EXPORT MARKET CONCLUSIONS

As part of the *Clean Energy Act*, government BC Hydro to study the potential to acquire e the purpose of export. Through its wholly ov Powerex, BC Hydro has a long and successf record of trading electricity for the benefit o ratepayers. BC Hydro's reservoirs and its tr connections to Alberta and the western Uni made it possible to trade electricity in a way system efficiency and finds a market for ele surplus to domestic needs.

Beyond this regular electricity trading, the g asked BC Hydro to examine whether there w case for acquiring renewable energy solely of export. In response, BC Hydro examined such as:

- U.S. government energy and environme
- The potential size of the renewable elec
- The market share that B.C. could expec
- The transmission infrastructure that wo

BC Hydro's analysis shows that current mar are not conducive to building clean electrici export. B.C. electricity exports face relative including longer distances to potential mark California) and constrained transmission pa U.S. tax credits for renewable energy, decre in advancing greenhouse gas emissions reg low natural gas prices all currently create a environment for B.C. electricity exports. Ho conditions could change; therefore, BC Hyd to monitor the export market potential.

RVE MORE

RGY CONSUMPTION

ore:

our energy savings target to 9,800 gigawatt r year by 2020 (1,000 gigawatt hours more than nt plan) through conservation and efficiency s, incentives and regulations.

nore codes, standards and rate options for eyond the annual target of 9,800 gigawatt hours.

LESS CONSUMPTION DURING PEAK ODS

ntary conservation programs that encourage commercial and industrial customers to reduce umption during peak periods.

Integrated Resource Plan does not, by nit BC Hydro to any specific capital projects.

ded action items will be subject to approval and consultation requirements.

➤ BUILD AND REINVEST MORE

BUILD THE SITE C CLEAN ENERGY PROJECT

3. Build Site C to add 5,100 gigawatt hours of annual energy and 1,100 megawatts of dependable capacity to the system for the earliest in-service date, subject to environmental certification and fulfilling the Crown's duty to consult and, where appropriate, accommodate Aboriginal groups.

TAKE ADVANTAGE OF RESOURCE SMART OPPORTUNITIES

4. Begin work to allow the sixth generating unit at Revelstoke Generating Station to be built by 2018, adding 500 megawatts of peak capacity to the BC Hydro system.
5. Continue to investigate and advance cost-effective Resource Smart projects to utilize the remaining untapped capacity within BC Hydro's existing hydroelectric system.

COMBINE READILY AVAILABLE RESOURCES TO MEET THE SHORT-TERM CAPACITY GAP

6. Fill the short-term peak capacity gap from 2015 to 2020 with a combination of market purchases first, power from the Columbia River Treaty second, and extending the existing backup use of Burrard Thermal Generating Station, if required and authorized by regulation.

REINFORCE TRANSMISSION

7. Reinforce the existing 500-kilovolt line from Prince George to Terrace to meet new demand on the north coast.

➤ BUY MORE

ENERGY FROM B.C.-BASED CLEAN ENERGY PRODUCERS

8. Develop energy procurement options to acquire up to 2,000 gigawatt hours per year from clean energy producers for projects that would come into service in the 2016 – 2018 time period.

➤ PREPARE FOR POTENTIALLY GREATER DEMAND

POTENTIAL ADDITIONAL LARGE INDUSTRIAL D

9. Continue to work with LNG developers to un their electricity requirements, and keep opti until further certainty on future requirement be established. Specifically:
   - Undertake work to maintain the earliest i for a new 500-kV transmission line from P to Terrace and Kitimat and from the Peac to Prince George.
   - Develop procurement options for addition energy resources, backed up by gas-fired (located only in the north coast, or in both coast and across the province) for electric be delivered in the 2019 – 2020 time fram be needed.
10. Continue to monitor the northeast natural ga and undertake studies to keep electricity sup open, including transmission connection to t system, and local gas-fired generation.

PEAK CAPACITY RESOURCES

11. a) Working with industry, explore pumped stor options to reduce the lead time to in-service develop an understanding of where and how future resources in the province, should the

    b) Working with industry, explore natural gas generation options to reduce the lead time dates and to develop an understanding of w to site such future resources in the provinc be needed.

F ACTIONS TO CONSERVE, INVEST AND BUY MORE

actions #1 through #8 address the forecast and peak capacity gaps. This portfolio of commended based on BC Hydro's consideration quirements, cost, provincial energy objectives, and economic development attributes, and input gh consultation in 2011.

rspective, the recommended actions (or portfolio re the most cost-effective ones available that se the gap and meet provincial energy objectives, g keep rates affordable over the long term.

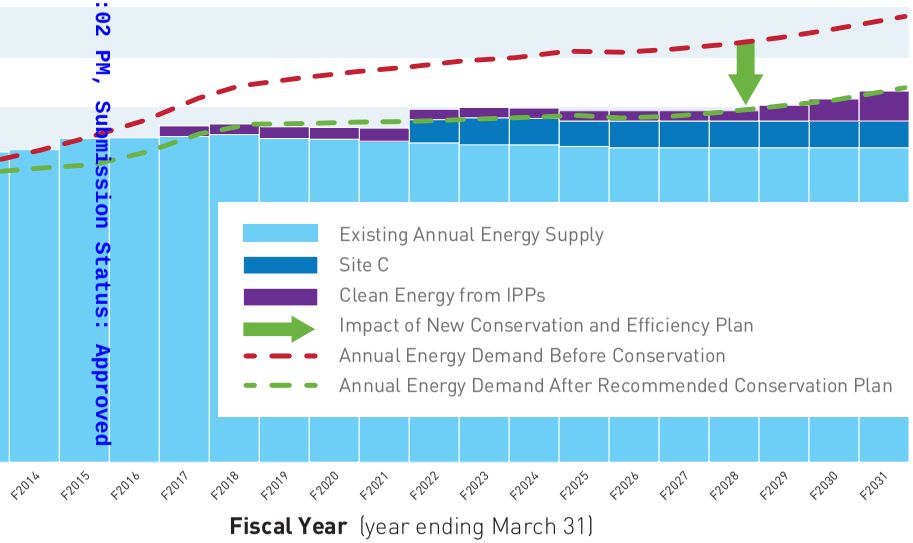
From an environmental and economic development perspective, the province's clean energy, conservation, self-sufficiency and greenhouse gas reduction policies have guided BC Hydro in this plan, minimizing environmental impacts and supporting economic development. Beyond that, BC Hydro also compared the environmental footprints and economic development attributes of different portfolios. More information on the outcomes of BC Hydro's portfolio analysis is available in Chapter 6 of the draft IRP available online at bchydro.com/irp.

The diagram below left summarizes how BC Hydro proposes to close the energy gap — first through cutting energy demand through conservation, then filling the remaining gap through a combination of energy from B.C.-based clean energy producers and Site C.

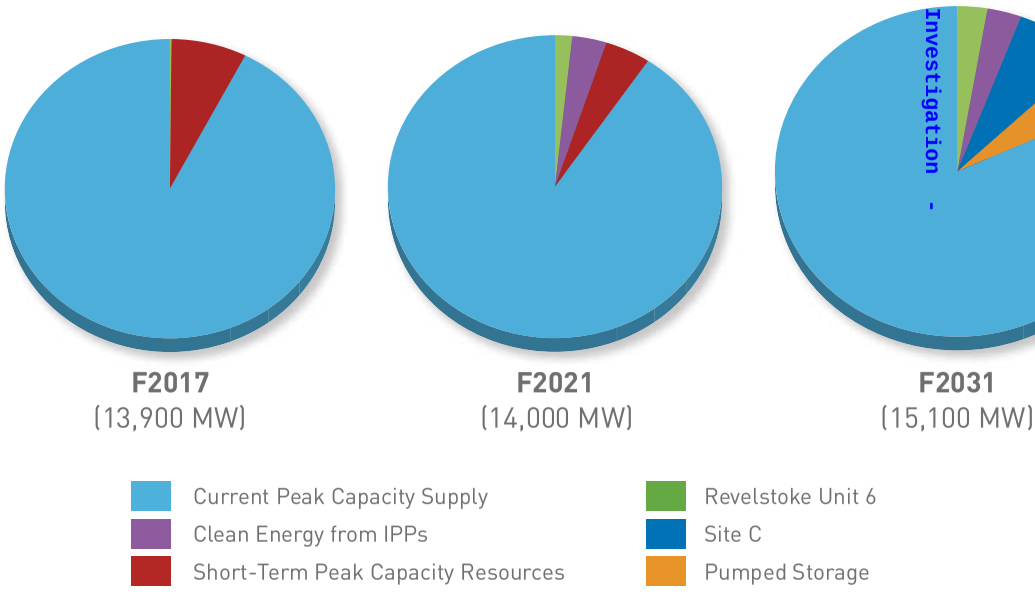
The diagram below right summarizes how BC Hy to close the gap between peak capacity requirem existing resources, both in the short-term (the 20 and the longer term (2021 and 2031).

As BC Hydro works toward fulfilling future electri requirements, it will continue to monitor emergin closely and be ready to adjust course as needed. forecast new demand from the liquefied natural g requires close attention, as new LNG demand wil substantial segments, versus growing slowly and over time.

ENDED ACTIONS WILL FILL THE PROJECTED ANNUAL ENERGY GAP.



THE RECOMMENDED ACTIONS WILL FILL THE PROJECTED PEAK CAPACITY GA



DRAFT INTEGRATED RESOURCE PLAN — 2012

A PLAN TO MEET B.C.'S FUTURE ELECTRICITY NEEDS

CONSULTATION FEEDBACK FORM

MAY 28 TO JULY 6, 2012

Turn to pages 10 – 11 for more information on this topic

recasting that demand for power will increase by about 50 per cent over the next der to meet that demand reliably, affordably and within guidelines set by the *rgy Act*, BC Hydro has created a plan to: conserve more, build and reinvest more ities, buy more made-in-B.C. energy; and prepare to meet potentially greater ired. Please provide your feedback about the following set of recommended eting B.C.'s future electricity needs.

RVE MORE

GY CONSUMPTION

O RECOMMENDS CONSERVING MORE BY:

g our energy savings target to 9,800 gigawatt hours per year by 2020 gawatt hours more than the current plan) through conservation and efficiency s, incentives and regulations.

cate your level of agreement with this recommendation.

e	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree
	☐	☐	☐	☐

icate the reasons for your level of agreement:

1. b) BC HYDRO RECOMMENDS CONSERVING MORE BY:

- **Exploring more codes, standards and rate options for savings beyond the of 9,800 gigawatt hours.**

a) Please indicate your level of agreement with this recommendation.

Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Str
☐	☐	☐	☐	

b) Please indicate the reasons for your level of agreement:

ENCOURAGE LESS CONSUMPTION DURING PEAK DEMAND PERIODS

2. BC Hydro recommends pursuing voluntary conservation programs that enc residential, commercial and industrial customers to reduce energy consum peak periods.

a) Please indicate your level of agreement with this recommendation.

Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Str
☐	☐	☐	☐	

b) Please indicate the reasons for your level of agreement:

Turn to pages 12 – 13
for more information on
this topic

Turn to page 14
for more information on
this topic

AND REINVEST MORE

E C CLEAN ENERGY PROJECT

ecommends building Site C to add 5,100 gigawatt hours of annual energy and awatts of dependable capacity to the system for the earliest in-service date, environmental certification and fulfilling the Crown's duty to consult and, where e, accommodate Aboriginal groups.

cate your level of agreement with this recommendation.

e	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree
	☐	☐	☐	☐

cate the reasons for your level of agreement:

TAKE ADVANTAGE OF RESOURCE SMART OPPORTUNITIES

4. BC Hydro recommends beginning work to allow the sixth generating unit at R Generating Station to be built by 2018, adding 500 megawatts of peak capacit BC Hydro system.

a) Please indicate your level of agreement with this recommendation.

Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	St
☐	☐	☐	☐	

b) Please indicate the reasons for your level of agreement:

Turn to page 14
for more information on
this topic

Turn to pages 14 – 15
for more information on
this topic

ecommends continuing to investigate and advance cost-effective Resource ects to utilize the remaining untapped capacity within BC Hydro's existing ric system.

cate your level of agreement with this recommendation.

e	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree
	☐	☐	☐	☐

cate the reasons for your level of agreement:

COMBINE READILY AVAILABLE RESOURCES TO MEET THE SHORT-TERM CAPAC

6. BC Hydro recommends filling the short-term peak capacity gap from 2015 t a combination of market purchases first, power from the Columbia River Tr and extending the existing backup use of Burrard Thermal Generating Stati and as authorized by regulation.

a) Please indicate your level of agreement with this recommendation.

Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Str
☐	☐	☐	☐	

b) Please indicate the reasons for your level of agreement:

Turn to page 16
for more information on
this topic

Turn to page 17
for more information on
this topic

RANSMISSION

s recommending reinforcing the existing 500-kilovolt line from Prince George to meet new demand on the north coast.

cate your level of agreement with this recommendation.

e	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree
	☐	☐	☐	☐

cate the reasons for your level of agreement:

➤ BUY MORE

ENERGY FROM B.C.-BASED CLEAN ENERGY PRODUCERS

8. BC Hydro recommends developing energy procurement options to acquire u 2,000 gigawatt hours from clean energy producers for projects that would c service in the 2016–2018 time period.

a) Please indicate your level of agreement with this recommendation.

Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Str
☐	☐	☐	☐	

b) Please indicate the reasons for your level of agreement:

Turn to page 18
for more information on
this topic

RE FOR POTENTIALLY GREATER DEMAND

dent utility practice, BC Hydro must have a contingency plan in case electricity
s faster than forecast, or one of the planned resources does not come online
l.

DDITIONAL LARGE INDUSTRIAL DEMAND

recommends continuing to work with Liquefied Natural Gas (LNG) developers and their electricity requirements, and keep options open until further n future requirements can be established. Specifically:

work to maintain the earliest in-service date for a new 500-kV transmission Prince George to Terrace and Kitimat and from the Peace River region to orge.

cate your level of agreement with this recommendation.

e	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree
	☐	☐	☐	☐

cate the reasons for your level of agreement:

- **Develop procurement options for additional clean energy resources, back fired generation (located only in the north coast, or in both the north coas the province) for electricity that could be delivered in the 2019 – 2020 tim should it be needed.**

a) Please indicate your level of agreement with this recommendation.

Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	St
☐	☐	☐	☐	

b) Please indicate the reasons for your level of agreement:

Turn to pages 19 – 20 for more information on this topic

ecomm nds continuing to monitor the northeast natural gas industry and studies to keep electricity supply options open, including transmission to the integrated system, and local gas-fired generation.

cate your level of agreement with this recommendation.

e	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree
	☐	☐	☐	☐

cate the reasons for your level of agreement:

PEAK CAPACITY RESOURCES

11. a) BC Hydro recommends working with industry to explore pumped storage options to reduce the lead time to in-service dates and to develop an und where and how to site such future resources in the province, should they

a) Please indicate your level of agreement with this recommendation.

Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	St
☐	☐	☐	☐	

b) Please indicate the reasons for your level of agreement:

Turn to pages 19 – 20 for more information on this topic

o recommends working with industry to explore natural gas-fired generation to reduce the lead time to in-service dates and to develop an understanding of nd how to site such future resources in the province, should they be needed.

ndicate your level of agreement with this recommendation.

e	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree
	☐	☐	☐	☐

cate the reasons for your level of agreement:

ADDITIONAL COMMENTS:

WILL BE USED

ived through consultation on the draft Integrated Resource Plan will be considered, along with any other final inputs, as BC Hydro prepares ed Resource Plan for submission to government for review and approval. A Consultation Summary Report summarizing feedback received ltation will be posted on BC Hydro's website at bchydro.com/irp and will be included in the plan submitted to government.

DEADLINE:

your feedback by **JULY 6, 2012**.

❑ BC Hydro customer ❑ BC Hydro employee ❑ Other

your contact information *(optional)*:

Postal Code:

Email:

e Personal Information

e use of my personal information by BC Hydro for the purpose of contacting me and keeping me updated about future consultations on ource planning. For the purposes of the above, "my personal information" includes name, mailing address, telephone number and email ovided above.

Date:

cting information for its Integrated Resource Plan in accordance with BC Hydro's mandate under the *Hydro and Power Authority Act*, the BC Hydro Tariff, the *Clean Energy* egulations and Directions. If you have any questions regarding the information collection undertaken on this form, please contact the IRP Project Team Administrator at

For further information or to submit your feedback form:

BC Hydro Integrated Resource Plan
Email: integrated.resource.planning@bchydro.com
Web: bchydro.com/irp
Mailing Address: P.O. Box 2850, Vancouver, B.C. V6B 3X2

BC hy
FOR GE

GLOSSARY (IN AL

acteristic that
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A UTILITIES
C) An independent
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e BC Hydro system,
g, management
costs, and also
from ratepayers
's service.

ION The transfer of
ajor high-voltage
m that carries the
rom the generators to
distribution systems.

LEMENT is a result
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r-generating potential
n return, Canada
f the extra power
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asured in kilowatts
(MW). A transmission
ransmit electricity at

- **CLEAN OR RENEWABLE ENERGY** is defined by the *Clean Energy Act* as including biomass, biogas, geothermal heat, hydro, solar, ocean, wind or other prescribed resources.
- **COGENERATION** The simultaneous production of electrical or mechanical energy and useful heat energy from a single fuel source.
- **COLUMBIA RIVER TREATY** A treaty signed in 1961 between Canada and the U.S. that enabled storage reservoirs to be built and operated in British Columbia to regulate Columbia River flows to the U.S. for power production and flood control.
- **CONSERVATION** Reducing energy consumption. For example, turning off unused lights to conserve resources.
- **CURTAILMENT** A reduction in demand as a result of demand-side management.
- **DEMAND** Customers' requirement for electric power.
- **DEMAND-SIDE MANAGEMENT** Actions, programs and initiatives aimed at modifying or reducing energy consumption through conservation and energy efficiency.
- **DEPENDABLE CAPACITY** The amount a plant can reliably produce when required, assuming all units are in service, measured in megawatts (MW). Factors external to the plant affect its dependable capacity. For example, streamflow conditions can restrict the dependable capacity of hydro plants and fuel supply constraints can impact thermal plant dependable capacity. Planned and forced outage rates are not included. The dependable capacity used for long-term planning is the maximum capacity that a plant/unit can reliably provide for three hours in the peak load period of weekdays during two continuous weeks of cold weather.
- **DISPATCHABLE** A resource whose output can be adjusted to meet various conditions including fluctuating customer demand, weather changes, outages, market price changes and non-power considerations.
- **DISTRIBUTION SYSTEM** Electrical lines, cables, transformers and switches used to distribute electricity over short distances from substations to the customer, generally at voltages lower than 69 kV.
- **EFFICIENCY** The effective rate of conversion of a natural resource (e.g., electricity) to usable energy; the effective rate of conversion of electricity to an end use (e.g., heating).
- **ELECTRICITY** is a type of energy fuelled by the transfer of electrons from positive and negative points within a conductor.
- **ELECTRICITY PURCHASE AGREEMENT (EPA)** The contract that defines the terms and conditions by which BC Hydro purchases electric energy from Independent Power Producers.
- **ELECTRIFICATION** is the process of switching from an alternative power source to electricity. Some examples include switching from gasoline-powered cars to electric cars, replacing diesel generators, or using electrical conveyor systems instead of diesel trucks in mining operations.
- **EMERGING TECHNOLOGIES** Technology at the first stages of development or demonstration. Not readily available in commercial markets and not in commercial use, as evidenced by at least three generation plants generating energy for a period of not less than three years, to a standard of reliability generally required by good utility practice.
- **ENERGY** The amount of electricity produced or used over a period of time, usually measured in kilowatt hours, megawatt hours and gigawatt hours.
- **ENERGY CAPABILITY** is the amount of energy that can be generated under specified conditions by a generating unit or by the electric system over a period of time, typically expressed in GWh/year.
- **FIRM ENERGY** refers to electricity that is available at all times. Resources typically providing firm energy include large hydroelectric dams, bioenergy, geothermal and natural gas.
- **GREENHOUSE GASES (GHG)** Gases that contribute to global climate change, or the "greenhouse effect," including carbon dioxide, nitrous oxide and methane.
- **GRID** A network of distribution or transmission lines.
- **GWh** stands for gigawatt hour, a unit of electrical energy equal to one billion watt hours.
- **INDEPENDENT POWER PRODUCER (IPP)** A non-utility-owned electricity-generating facility that produces electricity for sale to utilities or other customers.
- **INTEGRATED SYSTEM** An interconnected network of transmission lines, distribution lines and substations linking generating stations to one another and to customers throughout a utility's service area. Excludes customers located in remote locations who are connected via non-integrated generating plants.
- **INTERMITTENT** Electricity supply that fluctuates or is not available at all times. For example, wind energy only produces power when the wind is blowing.
- **LIQUEFIED NATURAL GAS** is natural gas that has been cooled sufficiently that it will liquefy under normal pressure.
- **LOAD** The amount of electricity required by a customer or group of customers.
- **LOAD FORECAST** The expected amount of electricity required to meet customer needs in future years.
- **MW** stands for megawatt, a unit of electrical power equal to one million watts.
- **OUTAGE** A planned or unplanned interruption of one or more elements of an integrated power system.
- **PEAK CAPACITY** The maximum amount of electrical power that generating stations can produce in any instant.
- **PEAK DEMAND** The maximum instantaneous demand on a power system. Normally, the maximum hourly demand.
- **PORTFOLIO** A group of individual resource options to be acquired in a sequence over time to fill customers' future electricity needs.
- **POWER** The instantaneous rate at which electrical energy is produced, transmitted or consumed, typically measured in watts, kilowatts (kW), or megawatts (MW).
- **POWER SMART** BC Hydro's demand-side management initiative to encourage energy efficiency by its customers. Originally launched in 1989, Power Smart includes a full range of DSM programs aimed at BC Hydro's residential, commercial and industrial customers.
- **RATE** Term used for a utility's unit price of service.
- **RATE STRUCTURE** Represents the set of rates paid by a class of customers (e.g., residential) for use of electricity.
- **REINFORCEMENT** Improvements in the transmission system to maintain or increase reliability and security of supply.
- **RELIABILITY** A mea
and security of elec
refers to the existen
facilities in the syst
load demand and sy
constraints. Securit
system's ability to r
disturbances in the
- **RESERVE** System g
beyond that require
demand ensuring s
is available if some
units are not availab
meet reliability crite
and operation.
- **RESERVOIR STORA**
availab in a reserv
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- **RESOURCE OPTION**
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hone: **1 888 747-4832**

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Exhibit G

Northern Industrial Electricity Rate Program (NIER Program)

Program Rules

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Introduction

These program rules ("Program Rules"), as amended from time to time, apply to the second extended-NIER Program ("NIER Program") for the one year period commencing April 1, 2016 and ending March 31, 2017.

The program rules for the original NIER Program, which existed for the period of April 1, 2010 to March 31, 2013 (the "Original NIER Program"), continue to apply in the form and manner in which they existed on December 14, 2012 to the rebate period from April 1, 2010 to March 31, 2013.The program rules for the first extended NIER Program which existed for the period of April 1, 2013 to March 31, 2016 (the "Extended NIER Program"), continue to apply in the form and manner in which they existed on November 14, 2013 to the rebate period from April 1, 2013 to March 31, 2016.

Current Participants will be required to enter into an agreement to amend existing conditional funding agreements entered into with the Ministry of Northern Development and Mines ("MNDM") under the Extended NIER Program, or a new conditional funding agreement at MNDM's sole discretion. Selected new applicants will be required to enter into new conditional funding agreements with the MNDM. Rebates are subject to the NIER Program Agreement's terms and conditions, as may have been amended. In the event of a conflict or inconsistency between the NIER Program Agreement and the Program Rules, the NIER Program Agreement shall prevail.

"Qualifying Participants" means collectively the Current Participants and selected new applicants.

"NIER Program Agreement(s)" means, as applicable, either an individual one of the following or collectively all of the

1) NIER Program conditional funding agreements with new selected applicants in accordance with the Program Rules, and
2) NIER Program conditional funding agreements with Current Participants as amended by agreement in accordance with the Program Rules.

"Current Participant" means an Extended NIER Program participant with whom MNDM had entered into a signed Extended NIER Program agreement prior to March 31, 2016 or sub-metered indirect Extended NIER Program participants existing prior to March 31, 2016, and in all cases who have met the eligibility requirements for Current Participants set out in these Program Rules.

1.0 Program Overview

In Northern Ontario and across the world, industries are investing in energy conservation programs and infrastructure to foster and maintain a globally competitive advantage.

Northern Ontario's largest forestry, mining and steel production companies are also its largest electricity consumers and continue to be cornerstones of the northern economy. Promising new economic development opportunities and growth in the knowledge based economy are fuelling innovation and rapid technological advancement in these traditional industries. Improving performance of equipment and/or production processes provides energy and non-energy related benefits that may include:

- Increased system efficiency and reduced energy consumption
- Greater reliability and reduced maintenance costs
- Improved financial performance increasing competitiveness, and
- Reduced environmental impact

New technologies and a growing "culture of conservation" are shifting the view of energy as a manageable input to production in the global economy.

The Original NIER Program was a three-year program that provided approximately $340 million in electricity rebates to eligible large industrial companies located in Northern Ontario. The Original NIER Program rebate period ended on March 31, 2013. The Extended NIER Program was a three-year program extension that provided approximately $336 million in electricity rebates to eligible large industrial companies located in Northern Ontario. The Extended NIER Program rebate period ends on March 31, 2016.

The Ontario government is extending the Extended NIER Program for one year to continue supporting Northern Ontario's largest industrial electricity consumers in their efforts to reduce their electricity costs, in order to sustain jobs and maintain global competitiveness. The NIER Program will operate over the fiscal year[1] 2016-17 (ending on March 31, 2017) with an annual spending limit of up to $120 million for the fiscal year for electricity price relief, subject to approval of annual program funding. The program will continue to be administered by MNDM.

The NIER Program is a non-entitlement, discretionary program and is subject to, among other things, meeting and maintaining all eligibility and program requirements. Qualifying levels of eligible electricity consumption must be, as measured and verified through approved metering installations, both

(i) purchased directly or have historically purchased as a sub-metered customer from the Independent Electricity System Operator ("IESO") administered electricity market or from a local distribution company, including Hydro One Inc., and

(ii) consumed at each of the individual qualifying facilities.

The NIER Program will provide Qualifying Participants with an electricity cost rebate of two cents per kWh of electricity consumed during the period provided for in the NIER Program Agreement, where such consumption is verified in accordance with these Program Rules and the NIER Program Agreement, subject to the following:

Rebates and Rebate Caps

Facility Annual Caps

Subject to the Full Funding Annual Cap, described below, the annual rebate for each eligible facility will be capped ("Facility Annual Cap") based upon that facility's eligible electricity consumption for 2011-12. Prior to entering into any NIER Program Agreement, the determination of Facility Annual Caps may be reduced by MNDM, at its discretion, taking into consideration any structural reductions of eligible electricity consumption from the 2011-2012 period. In addition, prior to entering into any NIER Program Agreement with Current Participants that are, and those Current Participants previously associated with, sub-metered indirect Current Participants, the determination of Facility Annual Caps may be modified by MNDM, at its discretion, not to exceed the overall previous facility annual caps based upon eligible electricity consumption for 2011-12. For new applicants, without consumption history in 2011-12, or other period satisfactory to MNDM, the Facility Annual Cap will be the applicant's reasonable estimate of the facility's first 12 months of eligible electricity consumption as set out in its Energy Management Plan ("EMP"), which estimate is subject to MNDM's acceptance.

Qualifying Participant's Overall Annual Caps

- The overall, aggregate annual rebate for each Qualifying Participant will be capped (the "Full Funding Annual Cap") at a maximum amount of electricity consumption that shall be the lesser of:
  - (i) The aggregate of the Qualifying Participant's Facility Annual Caps; or,
  - (ii) 1TWh (1,000,000 MWh) of electricity consumption for each recipient, per annum, resulting in a maximum rebate of $20 million per year.
- Rebates will be reduced if the sum of the weighted average annual Hourly Ontario Energy Price (HOEP) and Global Adjustment is below 4.62 cents per kilowatt hour (kWh).
- Rebate caps, including Facility Annual Caps, are not shareable. Rebate caps, including Facility Annual Caps may be transferable at MNDM's discretion, subject to any terms or conditions MNDM may impose.

The foregoing is subject to Section 3.2 of these Program Rules, including limitations on NIER Program funding, downward adjustments of all rebate caps, including Facility Annual Caps, as a result of structural reductions of consumption at a facility, reductions where a facility is no longer owned and controlled by a participant Qualifying Participant and other reductions as are provided for in the NIER Program Agreement.

[1] References to "fiscal year" in these Program Rules means the Ontario government fiscal year, April 1, 2016 to March 31, 2017.

All references in these Program Rules to electricity, including being "eligible" or "consumed" or "purchased", means electricity purchased by a participant directly or historically purchased as a sub-metered customer from either the IESO administered electricity market or from a local distribution company, including Hydro One Inc. and consumed at each of the individual facilities which is measured or verified by the IESO or a distribution company, as the case may be, at an approved metering installation.

2.0 Program Objective

The objective of the NIER Program is to assist Northern Ontario's largest industrial electricity consumers develop and implement long-term efficiency and sustainability measures. As an incentive program, the NIER Program is intended to provide a bridge for Qualifying Participants to achieve greater electricity efficiency by committing to the development and implementation of an EMP.

It is recognized that Northern Ontario's industry sectors and individual companies have unique operating models, techniques and production cycles which will influence the manner in which electricity conservation and efficiency techniques are developed, measured and reported. It is also recognized that in some circumstances, the benefits of implementing energy savings are not immediately realized and, in the case of new and ongoing capital projects, may take several years to achieve desired results. It is also recognized that many companies in Northern Ontario have already made significant investments in energy conservation through participation in the Original NIER Program and the Extended NIER Program, capital projects and/or by participation in one of many energy conservation programs administered by the IESO (and formerly by the Ontario Power Authority prior to its amalgamation with the IESO).

Acknowledging the unique circumstances of industry sectors, individual companies and efforts currently underway, the NIER Program is intended to:

- Support continuing efforts of companies already engaged in energy savings programs to further advance their objectives while assisting other companies to begin the process of comprehensive energy management planning.
- Allow Qualifying Participants an opportunity to tailor and optimize their electrical savings and efficiency projects and/or programs to the specific circumstances of their operations.

Supported by electricity rate rebates, it is the expectation of the NIER Program that by Qualifying Participants committing to the development and implementation of a comprehensive EMP, energy efficiency and conservation targets are achievable.

Through the successful implementation of an EMP, northern industries which are Qualifying Participants will continue to maintain global competitiveness, create and protect jobs, and continue their substantial contribution to the overall economic prosperity of Northern Ontario.

3.0 Eligibility

3.1 Current Participants

In order for Current Participants to participate in the NIER Program, they must be in good standing in respect of the Extended NIER Program, unless decided otherwise by MNDM in its sole discretion, and they must enter into a NIER Program Agreement.

Current Participants are not required to submit a new application, unless otherwise requested by MNDM, however, Section 5.0 (Administration) of these Program Rules sets out additional requirements for maintaining eligibility throughout the duration of the program.

3.2 New Applicants

New applicants to the NIER Program must meet and maintain all the following criteria in order to be considered for selection into the NIER Program. Section 5.0 (Administration) of these Program Rules sets out additional requirements for maintaining eligibility throughout the duration of the program.

An application will not be considered to have been received unless it is determined by MNDM, in its sole and absolute discretion, to be complete. An application will not be considered complete by MNDM unless all of the application materials, including a developed EMP and any additional information and documents requested by MNDM or its agents, have been submitted by the applicant to MNDM's satisfaction within the time specified within these Program Rules or by MNDM.

Applications, Available Funding and Caps

"Full Funding Annual Cap" has the meaning set out in Section 1 of these Program Rules.

"Rebate Funding Shortfall" means the difference between a selected new applicant's Full Funding Annual Cap and the maximum rebate based on the Unallocated Funding at the effective date of its NIER Program Agreement.

"Unallocated Funding" means unallocated NIER Program funding, as determined by MNDM, which is approved and available, determined as of the date a new applicant is selected for the NIER Program and permitted to enter into a NIER Program Agreement.

"Applications in the Program Queue" means any complete NIER Program application that has been accepted but not assessed by MNDM due to there being less than $1 million of unallocated and approved NIER Program funding, as determined by MNDM, as at the date of the applicant's complete application to the NIER Program.

Acceptance of Applications

Acceptance of new applications to the NIER Program will commence on, and be subject to receipt of, future notice from MNDM, which will be posted on the Website (see Section 5.0 (Administration)). The notice will specify the date on which new applications may be accepted. Until such time and subject to such notice, MNDM will not be accepting or evaluating new applications and any applications that may be received prior to such notice will not be accepted or evaluated nor shall they be considered to be an Application in the Program Queue, subject to the following paragraph.

Applications already submitted under the Extended NIER Program by applicants who are not Current Participants will be considered and evaluated as new applications under the NIER Program, and will be assessed in the order such applications were originally received by MNDM, however, assessment of these applications under the NIER Program shall not commence until the date of acceptance of new applications set out in any notice described in the foregoing paragraph.

Upon and following the commencement date of acceptance of applications set out in any notice described above, when less than $1 million of unallocated NIER Program funding is approved and available, as determined by MNDM, a notice will be posted on the Website (see Section 5.0 (Administration) of these Program Rules) indicating that, although new applications will continue to be accepted, they will not be assessed unless and until unallocated and approved NIER Program funding in the amount of at least $1 million becomes available, as determined by MNDM. If $1 million or more of unallocated and approved NIER Program funding becomes available, as determined by MNDM, complete Applications in the Program Queue will be assessed by MNDM in the order in which they were received, one such application at a time, except where the funding is allocated to address a Rebate Funding Shortfall as described below.

Upon an applicant's acceptance into the NIER Program, in the event that Unallocated Funding is less than a new selected applicant's Full Funding Annual Cap, the NIER Program Agreement would provide for a maximum annual rebate equal to the Unallocated Funding in order to ensure that approved overall NIER Program funding is not exceeded. The new selected applicant would still be required to meet all regular NIER Program and contractual requirements including the full development and implementation of an EMP.

If additional, unallocated and approved NIER Program funding were to become available for disbursement, as determined by MNDM, then MNDM would consider, in its sole and absolute discretion, allocating such funding to a fully compliant new selected applicant with a Rebate Funding Shortfall up to the amount of such Rebate Funding Shortfall. In the event that the Rebate Funding Shortfall for that new recipient is reduced to zero, and more than $1 million of new unallocated and approved NIER Program funding becomes available, as determined by MNDM, the next complete Application in the Program Queue will be assessed by MNDM in the order in which the applications were received.

Eligible Facilities

Each individual facility of the applicant must satisfy all the following criteria to qualify for participation in the NIER Program. The individual facility must be:

- directly owned and controlled by the applicant;
- a production or processing facility that consumes a minimum of 50,000 megawatt hours (MWh) of electricity per year, as measured by the IESO or a local distribution company at an approved metering installation. This electricity must be both purchased by the applicant from the IESO administered electricity market or from a local distribution company, including Hydro One Inc. and consumed at each of the individual qualifying facilities;
- classified as being within one of the following North American Industry Classification System (NAICS) 2002 industry sectors:
    - 21 Mining and Oil and Gas Extraction, and
    - 31-33 Manufacturing, with the exception of facilities that are designated as Sawmills and Wood Preservation (3211) which would not be eligible for the NIER Program;
- located in Northern Ontario, defined as being within the collective territorial Districts of Kenora, Rainy River, Thunder Bay, Cochrane, Algoma, Sudbury, Timiskaming, Nipissing, Manitoulin, and Parry Sound; and
- a market participant purchasing electricity from the IESO administered electricity market or from a local distribution company, including Hydro One Inc.

Where applicable, applicants may identify more than one directly owned and operated eligible facility in their application for the NIER Program. Applicants shall not submit more than one application.

New applicants must clearly demonstrate to MNDM's satisfaction that they meet all these eligibility criteria in their application and EMP submission.

Solvency

Qualified Participants must demonstrate ongoing solvency or other measure of operational viability for the duration of the program to the satisfaction of MNDM. As part of their application, new applicants will be required to submit:

- Audited annual financial statements from the two most recent fiscal years of the applicant;
- Annual forecast sales or production and EBITDA for each facility for each of the applicant's fiscal years up to March 31, 2019; and
- Forecast of total capital expenditures for each facility for the applicant's fiscal years ending March 31, 2019 and a list of projects associated with expenditures.

New applicants under evaluation will be subject to review and evaluation by a qualified Financial Reviewer to be retained by MNDM, for MNDM's sole benefit, to provide the necessary due diligence to assess, among other things, the new applicant's solvency and operational viability.

MNDM, at its sole discretion and under such terms and conditions as MNDM deems appropriate, and subject to meeting other eligibility requirements, may permit, Current Participants that are operating under the *Companies' Creditors Arrangement Act* (CCAA) or other debt relief legislation to participate in the NIER Program.

Prepare and Implement an Energy Management Plan

Participation in the NIER Program is subject to, among other things, the submission of an EMP for each facility, which must be satisfactory to MNDM, detailing proposed steps and methods for improving electrical efficiency and sustainability over the duration of the program.

The EMP must at a minimum satisfactorily meet the requirements set out at Section 4.0 of these Program Rules – "Energy Management Plan Requirements".

4.0 Energy Management Plan Requirements

Comprehensive energy management planning is a process of monitoring, controlling, and evaluating energy use in an organization, then taking action to achieve conservation and efficiency targets. It begins with analyzing energy consumption and identifying opportunities to save energy and estimating the potential for how much energy each opportunity will save. While periodic energy audits may provide a snapshot in time and where isolated efficiency projects provide temporary energy savings, comprehensive energy management planning is a process of continuous improvement.

This section sets out the required contents of a comprehensive EMP. While the NIER Program focuses on electrical energy efficiency, it is important for Northern Ontario industries which are Qualifying Participants to consider all energy sources such as natural gas, coal, diesel, or renewable fuels such as biomass, in order to have a complete understanding of opportunities for energy cost reduction and potential for self-generation. Accordingly, MNDM highly recommends Qualifying Participants consider developing EMPs that account for all their energy needs, in conjunction with the requirements for the NIER Program.

Despite anything contained in the Program Rules or the NIER Program Agreement, Qualifying Participants will be solely responsible for ensuring the technical, regulatory, financial, economic and overall viability of their EMPs, and MNDM shall have no responsibility whatsoever to independently assess the viability of any application or project nor any liability whatsoever in the event that an EMP turns out not to be viable in any respect.

Required Contents of an Energy Management Plan

Current Participants can continue to implement their MNDM approved EMP and provide updates through the quarterly reporting process. They are not required to submit revised EMPs, unless otherwise requested by MNDM in its discretion, however action plans submitted in the last quarterly reports and accepted by MNDM under the Extended NIER Program for each EMP (with updates acceptable to MNDM, including the identification of new and ongoing measures planned to improve electricity efficiency and overall facility competitiveness for fiscal years 2016-17 and beyond) will be incorporated into and form part of any rebate agreements entered into under the NIER Program, and Current Participants will be required to adhere to those action plans.

New applicants are to submit a separate EMP for each facility proposed for inclusion under the NIER Program.

Section 1: Executive Summary

The EMP should begin with a brief overview highlighting the contents of the EMP with supporting tables and charts summarizing key numbers (i.e. energy performance, conservation targets, projects, etc.).

Section 2: Background

This section should describe the nature of the applicant's business and its operations to set context for the EMP. While Section 3 requires detailed information on electrical consumption, costs, production and specifics on existing and proposed conservation initiatives, this section should identify:

1. Process descriptions, physical location and access to resources, life of operation, plant operations and factors that affect energy use and future energy requirements.

2. The applicant's Corporate Energy Policy (if one exists) or a statement of the applicant's desired objectives via participation in the NIER Program.

3. Key challenges and constraints to achieving energy reduction goals (e.g. resources, capital, expertise, corporate commitment, data, commodity prices etc.).
4. The members of the applicant's energy team (if applicable) and full contact details.
5. Any other relevant information with respect to electricity conservation and the nature of the applicant's industry with respect to the program requirements of the NIER Program.

Section 3: Baseline Information Requirements

This section should provide details about the applicant's electricity consumption for the facility, the sources of the electricity and annual costs by source, where applicable. The more detail that is presented in this section, the easier it will be to demonstrate progress and the overall success of the EMP.

A. Electricity Consumption Baseline Requirements

For each year of the past three billing years prior to the application, or for each year that data exists where less than three years of data exists, please identify the following:

i. Electricity supply sourcing (e.g. purchased/self-generated) with a description of how supply/consumption is measured and recorded for each source identified;

ii. Annual electricity consumption in megawatt hours (MWh) by source, with supporting documentation; and

iii. The baseline analysis will be used as a point of comparison for future electricity use. Develop a baseline analysis of electricity consumption, including:

   a) Description/definition of significant energy users;

   b) Description of key energy use drivers (i.e. weather, production levels, product mix, tonnes milled, etc.);

   c) Description of the correlation between significant electricity users and key drivers;

   d) Data to justify key assumptions used in developing the baseline analysis;

   e) A baseline period that is representative of typical operating conditions and captures the effects of changes in each of the key energy use drivers identified (for example, if weather is identified as a key energy use driver, the baseline period must be at least one year).

B. Production Baseline Data Requirements

Identify the categories of products produced at the facility, and for each year of the past three complete fiscal years, and for each product:

i. Provide the annual volumes of production; and

ii. Provide energy intensity calculations.

For new applicants, without a prior three year production history, the period may be a different recent period, or the new applicant's reasonable estimate, which period or estimate must be satisfactory to MNDM.

C. Forecast Data for The NIER Program Duration 2016-2017

Identify the following forecasted or actual data for the fiscal year 2016-2017:

1. Electricity Forecast Data

   i. Explain electricity supply sourcing (e.g. purchased/self-generated);

   ii. Provide the forecast annual electricity consumption in MWh by source; and

   iii. Describe how supply/consumption will be measured and recorded for each source of electricity.

2. Production and Electricity Consumption Forecast Data

Identify the categories and grades of products produced at the facility and for each product for the fiscal year 2016-2017:

i. Provide the forecasted annual volumes of production;

ii. Identify forecasted electricity consumption in MWh per unit of production by facility; and

iii. Identify any anticipated events or foreseen circumstances that may influence production and consumption forecasts.

Section 4: Efficiency and Conservation Targets

While the EMP must identify and achieve efficiency and conservation targets, the scale and complexity of any given measure will influence the effort and time it takes to realize efficiency targets. Other circumstances such as variation in production cycles may also make it difficult to measure progress at regular intervals.

As a process of continuous improvement, energy management planning is about achieving long-term sustainability and the NIER Program will consider both measured results (quantifiable data) and results or actions that demonstrate progress towards achieving targets in its review and evaluation of participants.

Demonstrating quantifiable results could include, but not be limited to:

- Reduction in electricity use while maintaining production levels (net savings);
- Maintaining stable electricity consumption use while increasing production levels (improved efficiency); and
- Reduction of electricity consumed directly from the grid through self-generation projects such as a co-generation plant.

These results can be achieved by such measures as replacing or upgrading inefficient equipment and/or shifting to more efficient production techniques. These results can also be measured in overall electricity costs, which may be further reduced by modifications in operations to shift consumption away from system-peaking hours to off-peak hours. While a reduction in overall electricity use may be attributable to decreased production levels for a variety of circumstances, it may still be possible to demonstrate efficiencies in such scenarios.

The EMP should describe what the demonstration of on-going progress could include, such as but not limited to, such actions as:

- Achieving key milestones in an EMP such as actions demonstrating progress towards the implementation of capital projects or making commitments to invest in new electrical efficiency capital projects.
- Establishment and filling of a dedicated Energy Manager position to demonstrate a corporate commitment towards conservation and efficiency.
- Efforts made towards achieving third-party certification such as the proposed ISO 50 001 certification for energy management systems.
- For companies just beginning comprehensive energy management planning, initial steps such as completing energy audits or employee energy awareness programs to demonstrate progress towards electricity efficiency and sustainability.

MNDM acknowledges that many Northern Ontario companies have made significant investment and effort towards achieving energy efficiency. For example, various participants in the Original NIER Program have been successfully implementing EMPs since the program's inception in 2010. In addition, a number of industrial facilities have also been involved in one or more of the IESO's conservation and demand management or other programs and continue to achieve ongoing results.

In recognition of these efforts, participation in relevant and progressive electricity conservation and efficiency programs will contribute to the requirements of the NIER Program and allow Qualifying Participants to advance their existing goals and/or establish new conservation targets and objectives.

Where desirable in MNDM's opinion, MNDM may work with new applicants to assist them to identify and define electricity efficiency and sustainability measures suitable to the nature and circumstances of their operations to meet the program objectives of the NIER Program.

Accordingly, in this section:

1. Describe measures/initiatives undertaken by the applicant since the beginning of the 2016 fiscal year to reduce electricity consumption at the facility.
2. Specify the impact these measures have had at the gross levels by year (e.g. load shifted savings, demand reduction, emergency reserve, etc.) and characterize their overall success.
3. Develop an Action Plan. In a section entitled "Action Plan", identify new and ongoing measures planned to improve electricity efficiency and overall facility competitiveness for the fiscal year 2016-17 and beyond. Describe in detail the measures, initiatives and/or projects currently in place or planned, and for each measure:
    i. Quantify the impact/savings that the measure is projected to have at the facility;
    ii. Provide a schedule showing estimated dates for initiation, milestones and completion;
    iii. Provide forecast operating and capital cost schedules associated with the measure;
    iv. Indicate whether the measure has been committed to or approved at the time of the submission of this plan and if not, describe what conditions/preconditions are necessary to secure the commitment or the approval;
    v. Indicate when the condition(s) must be in place in order for the measure to achieve the projected impacts savings described in (i) above; and
    vi. Indicate if the measure is subject to conditions of project financing and provide financial details including expectations relative to other relevant provincial programs.
4. Set out implications of the implementation of the EMP on your company's labour force (e.g. new jobs created, jobs maintained, etc.), or broader labour force implications influenced by the EMP (e.g. local direct and/or indirect jobs and economic spin-offs for Northern Ontario suppliers, services, construction, etc).

Section 5: Certification

Each EMP must be accompanied by a signed endorsement from a recognized engineering firm and/or an accredited professional specializing in areas of electrical power, conservation projects, technology, monitoring and verification. Each EMP shall be sealed, signed and dated by a P.Eng. pursuant to the *Professional Engineers Act* (Ontario).

Each EMP will be subject to review and evaluation by a qualified Technical Reviewer to be retained by MNDM, for MNDM's sole benefit, to provide the necessary due diligence to assess, among other things, EMP efficiency and conservation targets and the applicants' capacity for implementation and adherence to the Program Rules.

Accurate and routine measurement of energy savings from the energy efficiency projects detailed above can reduce uncertainty about the efficacy of the projects and help guide the selection of future projects. Regular reporting and monitoring will also assist in future estimates of savings. Progress towards achieving efficiency and conservation targets of approved EMPs will be subject to quarterly review by MNDM as detailed in Section 5.0 (Administration) of these Program Rules, below.

5.0 Administration

Application Process

The application material, including the application form and instructions for ensuring a complete submission, can be found on the Website. Upon receipt of an application package, MNDM will endeavour to advise applicants whether the submission is complete within 15 working days of receipt.

Rebate Disbursement

Rebates will be disbursed on a quarterly basis based on the Province's fiscal year and commence in the quarterly period immediately following the quarterly period in which the approved new applicant enters into a NIER Program Agreement. For disbursement of any retroactive rebates to which a Qualifying Participant might be eligible, see "Retroactivity" below.

On-going quarterly rebates are subject to meeting all terms and conditions, including Quarterly Reporting requirements (see Quarterly Reporting below). Upon demonstration of satisfactory results and substantial progress in successfully implementing the approved EMP, quarterly rebates will normally be disbursed within 45 days from the end of the quarter for which the rebate is calculated or on such dates as MNDM may determine.

Rebates will not be paid unless and until each individual facility of the selected new applicant consumes a minimum of 50,000 MWh of eligible electricity during the year and meets other eligibility requirements specified below during the year, subject to the NIER Program Agreement.

Review of Energy Management Plan

MNDM reserves the right, at its sole and absolute discretion, to impose additional terms and conditions relating to the obligation of the Qualifying Participant to make satisfactory changes and improvements to each EMP in accordance with prescribed milestones and timelines, the failure to comply could constitute an event of default for the purposes of the NIER Program Agreement.

Quarterly Reporting

NIER Program participants are required to submit quarterly reports within **20 days** from the end of the quarter.

Participants will be required to submit quarterly summary reports which shall include, but not be limited to, the following information with respect to the preceding quarter:

- Details regarding the status of the implementation of the EMP, including but not limited to achievement of the milestones;
- Details regarding how the objectives of the EMP have been met;
- Forecast for at least upcoming 12 months on a rolling quarterly basis;
- Data required for the measurement of performance identified in the EMP;
- Details on variance from actual to forecast must be included;
- Risks of not achieving targets and milestones identified in this reporting cycle and updates on previously identified risks;
- Updated forecasts and actuals, compared to the baseline information provided in the application; and
- Opportunities identified for additional savings measurements.

The 4th Quarterly Report in each fiscal year shall set out the number of full-time equivalent employees of the Qualifying Participant on an annual basis.

Quarterly reports will be subject to review and evaluation by MNDM's Technical Reviewer to be retained to assess progress towards meeting EMP objectives and adherence to Program Rules.

Commencement

Quarterly reporting will commence at the end of the Qualifying Participant's first full fiscal quarter following entering into a NIER Program Agreement.

Retroactivity

Current Participants which enter into NIER Program Agreements, as required by the Program Rules, no later than December 31, 2016 would be eligible for retroactive rebates based on eligible electricity purchased and consumed at eligible facilities from and after April 1, 2016, subject to the NIER Program Agreements.

New selected applicants that enter into NIER Program Agreements prior to March 31, 2017 would be eligible for retroactive rebates based on eligible electricity purchased and consumed at eligible facilities from and after April 1, 2016, subject to the NIER Program Agreements.

If, and to the extent applicable, Qualifying Participants are entitled to rebates in respect of eligible electricity already consumed from April 1, 2016 up the end of the last fully completed quarter prior to their entering into a NIER Program Agreement, such rebates may be disbursed upon receipt by MNDM of satisfactory quarterly reports for the completed quarters.

Maintaining Minimum Electricity Consumption

Qualifying Participants must maintain a minimum annual electrical consumption rate of 50,000 MWh per year per facility from the IESO administered electricity market or from a local distribution company, including Hydro One Inc.

In the event that a participating facility consumes less than 50,000 MWh per year in any given year throughout the duration of the NIER Program, that Qualifying Participant's facility can remain in the NIER Program if it can be demonstrated, to the satisfaction of MNDM, that the lower consumption is wholly and demonstrably attributable to the achievement realization of energy efficiencies.

Maintaining Operations

Planned or unforeseen events of outage, shutdown or other matters contributing to the ceasing of commercial operations, will render a participant ineligible to continue in the NIER Program, subject to the NIER Program Agreement, and at MNDM's sole and absolute discretion and on such terms that MNDM may impose.

Facilities

Each individual facility must continue to be directly owned and controlled by the participant. Where a facility no longer meets the forgoing criteria, that facility will not be considered a facility for the purpose of the NIER Program for the transferor and there will be a corresponding reduction in the participant-transferor's Caps. Rebate caps, including Facility Annual Caps, may be transferable to a purchaser of a facility at MNDM's discretion, subject to any terms or conditions MNDM may impose.

Website

Any reference to "Website" in these Program Rules means MNDM's NIER Program website at http://www.mndm.gov.on.ca/en/northern-development/business-support/northern-industrial-electricity-rate-program or such other website as MNDM may designate from time to time.

Application Period

See Section 3.2 of these Program Rules, "Acceptance of Applications".

Legal Agreement

All Qualified Participants will be required to enter into a NIER Program Agreement. The NIER Program Agreement which Current Participants will enter into will reflect the changes in the NIER Program and MNDM requirements.

Coordination with Other Energy Programs

Subject to the portion of these Program Rules, below, dealing with the IEI Program, nothing in the NIER Program restricts Qualified Participants from applying to other energy programs aimed at reducing energy costs and conservation subject to the requirements, including restrictions, of such other programs.

Industrial Electricity Incentive (IEI)

Any load settled under the IESO's Industrial Electricity Incentive (IEI) program is not eligible to receive NIER rebates, which will be provided for in the NIER Program Agreement. NIER rebates will be paid based on eligible electricity volumes that will be net of IEI Eligible Incremental Electricity as defined in the IEI Stream 1, and IEI Stream 2 and IEI Stream 3 Program Rules, as applicable, and any other electricity volumes specified under the IEI program.

In order to ensure the forgoing, consultations and sharing of information will take place among MNDM, the Ministry of Energy and the IESO.

Applicants and current participants should reference the IEI Program Rules for further details on the IEI program (http //www.powerauthority.on ca/iei).

Additional Rules

Where MNDM may take an action or make a determination under these Program Rules, the decision to take such action or make such determination shall be at MNDM's sole and absolute discretion. Any reference to MNDM's discretion in these Program Rules shall mean MNDM's sole and absolute discretion.

From time to time MNDM, in its discretion, may amend the NIER Program and the Program Rules without prior notice. Without limiting the generality of the foregoing, such changes may apply to new applications, applications already submitted and to NIER Program participants which have entered into a NIER Program Agreement. Notice of any amendments will be posted on the Website and will apply to any applications in progress, future applications, selected applications and NIER Program Agreements as may be specified on the notice.

MNDM may, but is not obligated to, request clarification, additional information, documentation and statements in relation to any application at any time and may establish the time frame in which the request is to be responded to.

MNDM may reject any incomplete application, any application that does not satisfy all of the eligibility requirements or is ineligible and any application in respect of which information is not satisfactory to MNDM or its advisers in any respect in its discretion.

Notwithstanding anything contained in these Program Rules, MNDM reserves the right, in its discretion, to reject any application in whole or part whether or not completed properly and whether or not it contains all necessary information and reserves the right to discuss different or additional proposals to those included in any application.

No commitment has been made by MNDM to enter into any NIER Program Agreement and neither the issuance of a notice of selection nor the participation by MNDM or any of its representatives in the NIER Program process will create a commitment or any form of agreement between MNDM and any applicant or Current Participant. No binding commitment will be created unless and until MNDM and a Qualified Participant, each in its discretion, enter into a definitive written NIER Program Agreement.

MNDM reserves the right to cancel any part or all of the NIER Program at any time and for any reason or to suspend the NIER Program including suspending the acceptance or assessment of applications, in whole or in part for any reason for such period of time as MNDM shall determine in its discretion, in each case without any obligation or any reimbursement to any applicant or Current Participant.

Each Qualifying Participant shall be solely responsible for its own costs and expenses relating to the NIER Program, including costs related to the preparation and submission of its application and the development and implementation of its EMPs, whether or not an application is accepted or the NIER Program is suspended, revoked, amended or revised. Under no circumstances shall MNDM be liable for any claims for compensation or damages, including any indirect, punitive or consequential damages associated with a selected new applicant or Current Participant's participation in the NIER Program or an applicant's submission of an application. Qualifying Participants irrevocably and unconditionally waive any such claims against MNDM, whether relating to an alleged breach by MNDM of the Program Rules or otherwise.

MNDM shall not be liable for any delays in processing, reviewing, accepting or rejecting an application or providing a notice of selection or entering into any NIER Program Agreement.

MNDM reserves the right, in its discretion, to waive any informality, irregularity or non-compliance with respect to an application or with respect to an applicant or Current Participant's compliance with these Program Rules, including by extending any deadline, which for clarity may be any deadline affecting MNDM, the Current Participant or the applicant.

The rights reserved to MNDM in these Program Rules are in addition to any other express rights or any other rights existing under the Program Rules, the NIER Program Agreement or at law or in equity including any rights which may be implied in the circumstances, and MNDM shall not be liable for any claim, losses, liabilities, penalties, obligations, payments, costs and expenses or any direct or indirect damages incurred or suffered by any applicant, Current Participant or any third party resulting from MNDM exercising any of its express or implied rights under the NIER Program, including the right to exercise its discretion hereunder. In submitting an application, each applicant agrees that it waives any rights it may have to bring a claim or otherwise as against MNDM for failing to issue the applicant a notice of selection or for issuing a notice of selection to another applicant.

Each applicant and Current Participant agrees that, in no circumstances shall it nor any third party be entitled to recover any damages as against MNDM, whether such claim for damages arises in contract, tort, warranty, equity, negligence, intended conduct, detrimental reliance or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of MNDM, and including any claim by the applicant or Current Participant that MNDM has failed to comply with these Program Rules.

Applicants and Current Participants authorize the collection by MNDM of the information set out in the application and otherwise collected in accordance with the terms hereof, and the use and sharing of such information for the purposes set out in or incidental to these Program Rules and the NIER Program Agreement, and for the purpose of offering, managing, directing and evaluating the NIER Program generally. Applications and the NIER Program Agreement will provide further for the collection and sharing of information.

MNDM may extend the time to meet the requirements of these Program Rules at its discretion. Any such extension of time shall only be valid and binding on MNDM if provided in writing by an authorized representative of MNDM. Any failure to meet the revised time requirement shall have the same consequences as if the original time requirement had not been met.

Despite the fact that these Program Rules were drafted by MNDM and its advisors, applicants and Current Participants acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision in these Program Rules shall not be construed against MNDM in favour of the applicant or Current Participant when interpreting such term or provision, by virtue of such fact.

Exhibit H

Alberta

Tax and Revenue Administration
Fuel Tax Act
Information Circular PROP-1R1

Released:	September 21, 2010
Produced by:	Alberta Treasury Board and Finance, Tax and Revenue Administration
For more information:	tra.revenue@gov.ab.ca

PROP-1R1 / September 2010

ALBERTA FUEL TAX ACT INFORMATION CIRCULAR: PRESCRIBED REBATE OFF-ROAD PERCENTAGES (PROP)

NOTE: Effective 12:01 a.m., February 25, 2011, the Tax Exempt Fuel Use (TEFU) rebate for licensed vehicles, including Prescribed Rebate Off-road Percentages (PROP), is eliminated. The marked fuel (tax excluded) component of TEFU, the Alberta Farm Fuel Benefit, and the Alberta Farm Fuel Distribution Allowance are not affected by this change.

Questions and answers relating to the change are posted on the Taxes and Rebates section of the Alberta Treasury Board and Finance website: http://www.finance.alberta.ca.

NOTE: This information circular is intended to explain legislation and provide specific information. Every effort has been made to ensure the contents are accurate. However, if a discrepancy should occur in interpretation between this information circular and governing legislation, the legislation takes precedence.

This information circular explains how to apply for a rebate of fuel tax under the PROP program. The topics covered are:

OVERVIEW OF PROP

1. Alberta Treasury Board and Finance, Tax and Revenue Administration (TRA) has been working with industry to simplify the Tax Exempt Fuel User (TEFU) rebate application process. Through consultation, TRA has reached agreement with certain industry sectors on rebate percentages (based on activity and type of vehicle/equipment) and the start date for using the prescribed rebate off-road percentages (PROP).

2. Before submitting a rebate application, apply to TRA by submitting a Fuel Tax Rebate Enrolment Application (AT4940) (see the "How to Apply for Enrolment" and "Time Limits and Rebate Application Periods" sections of this circular for more information). This process is used to ensure that applicants are:

   - eligible for the program,
   - aware of their eligible activity and vehicle categories,
   - aware of the fuel tracking requirements, and

- have the necessary fuel records in place from the enrolment date forward.

3. If you carry out **BOTH** PROP-eligible and -ineligible (TEFU) activities after the PROP Industry Implementation date, obtain a determination from TRA about how to properly file your fuel tax rebate application(s).

4. Under the PROP process, the applicant no longer prepares surveys, tracks hours in off-road activities, or maintains records of fuel consumption rates. However, applicants are required to track and document fuel dispensed into each vehicle or rig package to which prescribed rebate off-road percentages are applied.

5. Using the PROP process, you may apply for a rebate of fuel tax for off-road fuel use:

   A x B x C = PROP rebate for each approved category,

   where A is the tax paid litres of fuel consumed and tracked to eligible vehicles,
   where B is the prescribed rebate percentage for the approved category, and
   where C is the applicable Alberta fuel tax rate.

   The total PROP rebate is the sum of all calculations for each approved category.

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ELIGIBILITY FOR PROP

6. To be eligible for PROP, you must operate in one of the specified industries and perform one or more of the prescribed activities listed in Appendix A. You should be the entity that paid the fuel tax and conducted the activity. If you are currently using the TEFU program to obtain fuel tax rebates, check the current list of PROP-approved industry activities before submitting each TEFU rebate application, to determine if any of your activities are eligible for rebate under the PROP program.

HOW TO APPLY FOR ENROLMENT

7. Complete and forward a "Fuel Tax Rebate Enrolment Application" (AT4940) to TRA. The applications are available from TRA or from our Internet site.

8. On approval of your enrolment, TRA will send you a letter confirming the effective date and the prescribed rebate percentages for your industry type and activities

9. You may be contacted to discuss your particular fuel tracking methods for the different activities you perform.

10. TRA determinations regarding eligibility are based on the information you provide at the time of enrolment. The determinations are binding on you and are subject to any terms and conditions imposed by TRA.

11. If TRA determines you are eligibleunder both TEFU and PROP, you are considered a "dual filer". Please note that Alberta fuel tax may only be rebated once. When applying under both programs, use the same calendar quarter to reconcile fuel reported. A calendar quarter is a period of three months beginning on the first day of January, April, July and October of each calendar year.

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Dual Eligibility (TEFU/PROP)

12. Some instances when dual elibility might occur:

    - **Single vehicle performing both PROP and TEFU activities.**

      For example, vehicle A hauls logs (PROP activity) from September to March and then hauls gravel (TEFU activity) from April to August.

    - **Multiple vehicles performing exclusive PROP or TEFU activities.**

      For example, vacuum truck A exclusively removes drilling mud (PROP activity) while vacuum truck B exclusively cleans residential septic tanks (TEFU activity).

13. To obtain a determination of dual eligibility, complete a "Fuel Tax Rebate Enrolment Application" (AT4940) including a clear and detailed listing of all operational activities on a per-unit basis. If there is insufficient space, please provide attachments.

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Cancellation or Refusal to Accept Enrolment

14. TRA may refuse your application for enrolment if you are not eligible, or cancel your enrolment if you are no longer eligible. TRA may cancel an enrolment when PROP eligible activities cease or if program requirements are not followed.

15. TRA cannot accept or process fuel tax rebate applications for PROP eligible activities under the PROP or TEFU programs if your PROP enrolment has been cancelled for not following program requirements.

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When business activities/operations change

16. If your business has amalgamated with another or undergoes any other changes in corporate structure, or if your operations change and you begin working in another industry sector, please complete a new enrolment form (AT4940).

For example: As a forestry company involved in logging you are approved for PROP in category 1D and use a tractor trailer for your log hauling activity. Then you decide to cease all logging operations and start oilfield heavy equipment hauling with a tractor and a flatbed trailer. To file a fuel tax rebate application, you are now required to re-enrol your heavy equipment hauling operations in category 5B (see Appendix A). If your fleet size has changed, please provide this information on the new enrolment form.

17. If, while enrolled for PROP, your business changes so that you regularly perform PROP-ineligible activities in addition to PROP-eligible activities, complete form (AT4940) to obtain a TRA determination.

18. If you stop conducting activities eligible for PROP, you may submit applications for fuel consumed up to the date your activities ceased to be eligible. Your final PROP application must reflect a calendar quarter. The fuel reported should be based only on purchases and fuel tracking to the date that the PROP-eligible operations ceased.

For example, a rebate application period may extend from January 1, 20XX to March 31, 20XX (boxes 7 and 8 on the application form AT277). If your operations ceased to be eligible on February 23, 20XX, the application should only contain fuel purchased and consumed from January 1, 20XX to February 23, 20XX. After the date your PROP eligibility ceased, you may be eligible to enroll in the TEFU program.

19. When the number of units in a fleet increases or decreases by more than 10 per cent, and/or a new rig package is added to your fleet, during a calendar quarter, you must submit an amended unit list (pages 4 and 5 of the "Fuel Tax Rebate Enrolment Application" [AT4940]) to TRA prior to filing your application for this period.

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HOW TO FILE A PROP APPLICATION

20. After your enrolment application has been accepted and your PROP activity categories confirmed by letter, you may apply for rebates using PROP. You may only use application periods subsequent to the effective date specified in your enrolment approval letter.

21. To apply for a rebate under PROP, complete and sign a "Prescribed Rebate Off-road Percentages (PROP) Application" (AT277), following the instructions for completion of the application (IN277 Instructions), and

- submit it online using Tax and Revenue Administration Client Self-service System (TRACS) on Alberta Treasury Board and Finance's website, or
- hand-deliver, fax or mail your paper PROP application form to TRA.

Note: submitting applications online is easy and allows faster processing than for those sent to TRA by other means, as manual tracking and keying steps are not required.

22. Non-PROP approved activities may be filed under the TEFU rebate program ("Fuel Tax Rebate Application", AT342). (See the TEFU information circulars for details).

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DOCUMENTATION TO SUPPORT PROP APPLICATION (Form AT277)

23. If you are enrolled in PROP, keep complete and accurate records to support your application. Based on your operations, such records include, but are not limited to, the following:

a. fuel purchase invoices or statements,
b. bulk fuel storage inventory records,
c. per unit fuel tracking records,
d. summary fuel tracking records,

e. vehicle inventory records,
f. WCB annual returns,
g. source documents to support that the fuel reported was consumed in prescribed activities (e.g., job tickets).

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Clear fuel Purchases

24. You do not have to submit fuel purchase invoices, or a fuel purchase list when filing an application, but retain (for a period of six years) the invoices and chronological fuel purchase list to support each rebate application. Preparing a chronological list of fuel purchases will make it easier to identify fuel purchases that occurred outside the period for which you are preparing a rebate application.

TRA may request these documents when conducting a post-payment review or audit of an application.
Prepare a separate fuel purchase document or
PROP "Schedule A" (AT4752) and fuel tracking summary schedule (see paragraph 30) for each type of Alberta tax-paid fuel (gas/ diesel/propane) that you will be reporting. You may use computer-generated forms instead of TRA's pre-printed forms, if you provide all the required information in the same format.

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Fuel Tracking Records

25. Keep records to confirm:

a. the volume of fuel purchases you reported for each period, including the fuel tax amounts that you were charged,
b. you have the right to make the application for this fuel, and the:
   - volume of fuel placed into each separate PROP-approved unit or service rig package, or
   - volume of fuel placed into each oil or gas well during the application period, or
   - volume of fuel used to mix with other substances to manufacture well fracturing fluid.

26. Fuel purchase records include receipts, invoices, statements, and IFTA return information (pro-rate method only), if applicable.

27. To be eligible for a rebate through the PROP program, fuel tracking must record every litre of fuel dispensed into each unit or piece of equipment (or other items listed in paragraph 25b.) included in your rebate application. If fuel is purchased, but there is insufficient evidence to determine which unit, rig package, or oil well it was dispensed into, this fuel is not eligible for rebate. **Estimation procedures or fuel allocation benchmarks are not acceptable fuel tracking methods.**

28. Fuel tracking is a critical control and a requirement for this rebate program and other programs such as IFTA. TRA will conduct post-payment reviews and audits to ensure this and other controls are in place and functioning appropriately.

29. Ideally, each unit has its own log book or fuel card. Each fuel receipt should have the unit number and vehicle identification number recorded on it. This record-keeping will assist in reconciling the fuel receipts back to your monthly fuel statements, fuel tracking summary records and "Schedule A" (AT4752).

Another fuel tracking option is to have each person with the fuel card keep a fuel logbook noting the vehicle or equipment into which every litre of fuel was dispensed for all purchases on the card. This system is useful when multiple vehicles are filled at the same time and the supervisor pays for all the fuel with one fuel card.

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30. **Fuel Tracking Summary Schedule** - you must maintain fuel records that total all the fuel dispensed into each vehicle according to approved PROP category during an application period.

Sample Fuel Tracking Summary Schedule		
Category 5B	**Gas**	**Diesel**
Per Unit	Litres Dispensed	Litres Dispensed
Unit 575	2,541	0
Unit 580	0	1,967
Unit 585	654	0
Total	3,195	1,967

Category 8A	Car	
Per Unit	Litres Dispensed	
Unit 19	893	
Unit 20	526	
Unit 21	1,053	
Unit 25	1,125	
Total	3,598	

You must be able to reconcile these summary records to the source fuel tracking documentation (e.g., invoices), for each PROP category and unit.

31. Fuel tracking records vary depending upon your operations, but may include:

Single Vehicle Operators

- when there is no metered bulk fuel storage - fuel invoices.
- when there is metered bulk fuel storage – fuel invoices and bulk fuel log book/inventory records.

Multiple Vehicle Operators

- Write vehicle unit number or vehicle identification (VIN) numbers on fuel invoices or statements beside their related purchases. This information must be summarized for each application period. See paragraph 29 above.
- Maintain a current listing of vehicle unit numbers or VINs associated with units enrolled in each PROP vehicle category.

  or

- If you maintain a fuel log book, you must identify the unit number, and total litres placed into every unit on each fuel receipt. On multiple purchase receipts identify the unit numbers next to the subtotals.
- Keep a summary of log book details to reconcile to the fuel totals under each PROP category. Reconciliations between log books and invoices and statements are needed for accuracy and to avoid duplication.

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Example of a Fuel Log Book for a Supervisor Purchasing Fuel for Multiple Units

Company Name: _____

Division/Department Name: _____

Supervisor/Fuel Card holder Name: _____

Fuel Supplier Name: _____ Acct #: _____

Card #: _____

Date	Vehicle Lic. Plate #	Unit #	Driver Name	Vehicle Description (brand/colour/type)	Fuel Type	Disposition Volumes
					Total Litres	

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Multiple Vehicle Operators when there is Metered Bulk Fuel Storage:

- For reconciliation with fuel purchase records, note fuel withdrawal volumes by vehicle unit into a log book.
- Keep bulk storage inventory records to ensure the volume tracked to vehicles does not exceed the volume available.

Service Rig Packages (Permit issued by Alberta Transportation):

- Summarize bulk fuel delivery receipts for fuel consumed by each service rig package (defined in Appendix A Category 6A).
- Fuel dispensed into units not defined in Category 6A must be tracked to each unit through a metered pump and log book.

Unlicensed Equipment (not included in Appendix A Category 6A):

- Invoices and receipts with unit numbers written on them; or
- a fuel log book distinguishing between clear and dyed fuel litres dispensed into the equipment, volume, and the purchase location.

When clear fuel is consumed in unlicensed equipment provide details why dyed fuel was not available for use in the unit. See paragraphs 40 to 42 below.

Fracturing and Down Hole Service (Category 5E):

- Inventory records
- volumes mixed and sold, and
- disposal records including Unique Well Identifiers (UWI), and specific volumes injected into each well.

Note: Fuel not supported by sufficient fuel tracking documentation is not eligible for rebate.

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Fuel Purchase Invoices in Applicant's Name

32. On the "Listing of Fuel Purchases PROP Schedule A" (AT4752), provide the invoices for each type of fuel chronologically (by date). Complete a separate listing for each type of Alberta tax-paid fuel purchased (diesel/gasoline/propane). Include biodiesel in the diesel totals. Include ethanol with the gasoline. If you used fuel such as kerosene for motive purposes and you filed and remitted tax to TRA, you may be eligible for a rebate if the kerosene was used for PROP activities. Include tax-paid kerosene with diesel on the PROP application forms.

33. Suppliers' statements are also acceptable if they contain all the necessary information described in the next paragraph. TRA will return invoices and suppliers' statements requested after completing any rebate application review or audit. Invoices for fuel that are not in your or your business name must be listed separately. (See additional information below).

34. All supporting purchase invoices or suppliers' statements are required to show:

    a. the name and address of the seller,
    b. name of the purchaser,
    c. date of the purchase,
    d. invoice number,
    e. type and quantity of fuel,
    f. price paid, and
    g. the Alberta fuel tax that was paid.

Rebate applications based on invoices or statements that do not meet these requirements will be disallowed.

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Fuel Purchase Invoices Not In Applicant's Name - Fuel Assigned

35. For prescribed activities, the last entity to pay the provincial fuel tax and use the fuel is eligible to apply for a rebate under PROP. Follow special procedures if someone other than you, the applicant, has purchased fuel for which you are seeking a tax rebate.

36. If you have authorized a third party (initial purchaser) to buy fuel on your behalf, and reimbursed the purchaser, provide a signed agreement with the initial purchaser of the fuel. The agreement must state that the fuel purchased was used in your commercial operations and that the initial purchaser will not apply for a fuel tax rebate on that fuel. Both you and the initial purchaser must sign and date the agreement. See a sample "Fuel Tax Rebate Agreement" (AT4911) on the TRA website.

Carriers and Owner-operators

37. Where an owner-operator uses fuel purchased from a carrier, it may be more practical for the carrier to file a PROP rebate application on behalf of all its owner-operators. If you are a carrier and apply for a PROP rebate that includes fuel purchased and used by owner-operators, provide an assignment of the PROP refund entitlement from each owner-operator who purchased and used the fuel included in your application. You, as the carrier, are responsible for ensuring that fuel tracking records and vehicle and owner-operator listings are kept and that the owner-operators are using the tax-paid fuel strictly for the PROP activities that you are enrolled in.

Note: The assignment may be made in a clause in the contract between you and an owner-operator or in a separate document. The "Fuel Tax Rebate Agreement" (AT4911) can be used by your company and its lease operators. When filing an application for fuel consumed in units that are used, but not owned by you, complete the "PROP Vehicle Enrolment Agreement" (AT4750).

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IFTA-registered Vehicle Fuel Adjustments

38. When International Fuel Tax Agreement (IFTA) vehicles are used off-road and included in your PROP application, adjust the application to reflect the actual fuel used in Alberta by these vehicles, not the amount of fuel bought in the province. The IFTA return reallocates fuel and tax among jurisdictions based on where fuel was used. The Alberta IFTA adjustment for fuel is located under AB in column 6 of the "IFTA Fuel Type Schedule" (AT2060).

39. If the PROP-registered vehicles form part of your IFTA fleet, then use only the portion of the IFTA adjustment relating to the PROP vehicles to adjust the PROP fuel reported. Apply the IFTA fuel adjustment to the appropriate PROP vehicle category consistently and proportionally to the fuel burned in an IFTA-registered vehicle off-road in Alberta.

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UNLICENSED EQUIPMENT - USE OF MARKED FUEL

40. To buy marked fuel, present a fuel tax exemption certificate at the time of purchase. To apply for an exemption number, complete a "Declaration of Tax Exempt Fuel User" (AT321) and submit it to TRA. For details, see Information Circular FT-3, *Fuel Tax Exemption Certificates*.

41. Commercial operations using unlicensed vehicles and equipment must use tax-exempt marked fuel in those vehicles. Fuel tax-paid on clear fuel purchases may be rebated for unlicensed vehicles or equipment only if, in TRA's opinion, marked fuel was not reasonably available and the consumer has a valid TEFU certificate and number.

42. Marked fuel is considered not reasonably available only in situations where you have a valid TEFU certificate and number, and:

    a. there is no bulk fuel dealer with marked fuel for sale located within a 50 kilometre radius of your work site, or
    b. the fuel is being used in a project where clear fuel must also be used and there is a legal restriction (such as zoning) that prevents you from having more than one storage tank.

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TIME LIMITS AND REBATE APPLICATION PERIODS

43. If you carry out the activities listed in Appendix A, make an application for PROP enrolment on the proper form and manner (see "How to Apply for Enrolment") on or before the later of:

    a. one year from the date the activity is prescribed, or
    b. one year from the date you begin using fuel to conduct the activity.

If you have missed the deadline described in the above paragraph, TRA may still consider enrolling you if you provide evidence of acceptable fuel tracking throughout the period.

You may be denied enrolment for any enrolment application if there is insufficient evidence or evidence of inappropriate fuel tracking for activities prescribed in Appendix A. Also, you may not obtain a rebate under either the PROP or TEFU program for fuel used.

44. PROP application periods must be calendar quarter periods.

45. TRA must receive a complete PROP application for a fuel tax rebate no later than three years after the end of the calendar year in which the fuel was purchased.

    For example: If you bought and used fuel in PROP-approved activities in October 2006, TRA must receive an application for that fuel by December 31, 2009. After December 31, 2009, the fuel bought and used in October 2006 is not eligible for a fuel tax rebate.

46. Under the *Fuel Tax Act*, you must file an objection to any disallowance of your rebate application within 90 days of the date of the letter issued by TRA describing the disposition of the application. Refer to Information Circular FT-9, *Audits, Objections, and Waiver of Penalties and Interest*, for additional information about extensions of the time period to file objections.

47. Submit amended PROP applications under the same period as was originally filed. Do not add amended applications to future periods.

    For example: You have just filed for the quarter April 1 to June 30, 20XX. You realize after the application has been processed that you forgot to include 10,000 litres of fuel. File an amended application for April 1 to June 30, 20XX. DO NOT add the 10,000 litres to July 1, 20XX to Sept 30, 20XX or any other later period end.

48. TRA staff may contact you for additional information or clarification about the PROP application. If the requested information is not satisfactory, TRA may adjust, disallow, or refer your application for audit. Payment of all, or part, of an application does not mean TRA's review has been completed. An in-depth review may be conducted by TRA at a later date.

49. Keep the records supporting your rebate application for four years after the end of the year in which the rebate is paid, or six years from the end of the year in which the fuel was purchased, whichever is later.

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POST-PAYMENT REVIEW

50. TRA may select your application for an in-depth review to ensure that the benefits received under the PROP program comply with legislation and are supported by appropriate documentation.

    At our request, you must provide all records to support your PROP rebate application for the period specified. If you do not comply, we may withhold funds from future PROP rebate applications, and/or reassess your rebate entitlement for the selected period to zero.

    Regardless of the findings by reviews completed through this process, TRA may conduct an audit of the same period at a future date.

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AUDIT OF PROP REBATE APPLICATIONS

51. TRA may conduct audits of PROP applications to ensure applicants have received the benefit to which they are entitled under the program. Ensure your records are available and provided, if requested. Records requested may include, but are not limited to:

    a. vehicle lists,
    b. vehicle assignment to category/type of operation,
    c. fuel purchase invoices,
    d. a fuel tracking summary for all vehicles and detailed records for each unit,
    e. fuel log books for fuel dispensed from bulk storage,
    f. evidence that you perform the PROP activities for which you are enrolled, and
    g. any other documentation considered necessary to support your application.

52. The onus is on you, the applicant, to demonstrate how your books and records support the off-road fuel rebate you are reporting under PROP.

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Appendix A - Prescribed Rebate Off-road Percentages (PROP)

To be eligible to use PROP, claimants must be operating in one or more of the industries activities listed and must complete an enrolment for Prescribed Rebate Off-road Percentages (PROP) (AT341). The implementation date for each section is shown below. The descriptions following the specified sector are examples. If there are any questions, please contact Tax and Revenue Administration.

Prescribed Rebate Off-road Percentages (PROP)

1. For those engaged in **OIL AND GAS DRILLING:**

This includes entities engaged in drilling oil or gas wells for themselves, or others on a contract or fee basis, involving the use of large, heavy-duty stationary drilling rigs capable of drilling several thousand feet into the earth.

Also included is oil and gas well servicing, drilling, and rework, if performed by a mobile service rig and other units as part of the rig package. A mobile service rig is composed of a derrick and draw works and is capable of pulling and running jointed tubulars and conventional/continuous sucker rods. The service rig package may include attendant equipment such as mobile pump, tank trucks, winch trucks and portable doghouse, (crew change facilities).

The mobile service rig must be permitted on public highways only for short convoy travel distances and spend up to 95 per cent of its total operating time either "off-road" (i.e., not on public roads), stationary or "rigged up" on site. Permits will be confirmed at enrolment time.

Support vehicles are defined as light trucks used by field staff who are actively and directly involved in a primary step in production for approved PROP categories. Support vehicles may include units such as mechanic pilot, and foreman/supervisor trucks. Support vehicles do not include administrative, sales or similar trucks within the claimant's fleet that do not conduct primary activities at off-road locations.

	ACTIVITY CATEGORY	Effective Industry Date	Percentage of Fuel Used Eligible for Rebate
6A	**Mobile Service Rigs Package** • mobile well service rigs and attendant equipment (equipment trucks, mud pumps, winch trucks, pickers, tank units, utility trucks.	1-Jan-05	90%
6B	**Support Vehicles** • boiler trucks, half-ton to one-ton trucks, and other similar licensed vehicles (flatbeds hauling stationary service rigs)	1-Jan-05	40%
6C	**Stationary Rigs and Boilers** • drilling rigs, top drive, front-end loader, auxiliary light plant, boiler service rigs, trailer service rigs, yard loader and other similar equipment.	1-Jan-05	100%

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2. For those engaged in **OIL AND GAS GEOPHYSICAL OR SEISMIC EXPLORATION:**

To qualify in this industry the entity must be engaged in oil and gas geophysical, geological, and other exploration services using seismic technology for the purpose of locating formations beneath the earth's surface. Included in this category:

- shot hole drilling (a truck-mounted, low impact or helisportable drill) and the units that support this activity;
- surveying, permit agents and scouts supporting the exploration activities of sites for seismic activity.
- Vibroseis trucks that are delivered to work locations should be claimed under unlicensed equipment (26A)

Support vehicles are defined as light trucks used by field staff who are actively and directly involved in a primary step in production for approved PROP categories. Support vehicles may include units such as mechanic, pilot, and foreman/supervisor trucks. Support vehicles do not include administrative, sales or similar trucks within the claimant's fleet that do not conduct primary activities at off-road locations.

ACTIVITY CATEGORY	Effective Industry Date	Percentage of Fuel Used

			Eligible for Rebate
7A	**Drill Trucks:** • licensed Vibroseis units, vibe tech, drill trucks and other similar licensed vehicles	1-Jan-05	90%
7B	**Other Field and Job-Site Vehicles:** • line trucks, stiff boom , winch tractor, tandem, tractors, pickers, knuckle pickers, water and gravel trucks, recorders, shooters, shop, fuel, staging trucks and other similar licensed vehicles	1-Jan-05	70%
7C	**Support Vehicles:** • half-ton to one-ton trucks and other similar licensed vehicles	1-Jan-05	80%

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3. For those engaged in **OIL AND GAS PRODUCTION:**

This includes entities involved in upstream oilfield activities that generate revenue from the production and sale of clean bitumen/oil sands products, crude oil and/or natural gas. These entities perform the upstream production activities on properties on which they hold working interest rights for exploration of oil and gas or oil sands.

The upstream sector includes the exploration and extraction of crude oil, natural gas and natural gas liquids. This activity involves various methods, such as drilling, steam injection, strip mining and upgrading, used to extract and clean crude oil.

Upstream production facilities include oil/gas wells, well head equipment, flow line/gathering systems tied into field processing facilities ◆ battery site/compressor stations, crude oil separators and natural gas dehydrators treater/sulfur processing plants, heavy oil projects including steam generation and/or other enhanced recovery methods. Excluded are the bulk delivery of refined fuel, pipelines, site preparation and the construction of facilities.

Support vehicles are defined as light trucks used by field staff who are actively and directly involved in a primary step in production for approved PROP categories. Support vehicles may include units such as mechanic, pilot, and foreman/supervisor trucks. Support vehicles do not include administrative, sales or similar trucks within the claimant's fleet that do not conduct primary activities at off-road locations.

	ACTIVITY CATEGORY	Effective Industry Date	Percentage of Fuel Used Eligible for Rebate
25A	**Support Vehicles:** • half-ton to one-ton trucks and other similar licensed vehicles	1-Jan-05	47%

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4. For those engaged in **OIL AND GAS SERVICING:**

This includes activities listed below that service and supply within the upstream petroleum industry. Excluded are all snubbing units and stand-alone units' cranes, hotshot service, surveying, line cutting, line locating, water drilling, bush clearing, road building, excavating or erecting services and bulk fuel delivery.

Support vehicles are defined as light trucks used by field staff who are actively and directly involved in a primary step in production for approved PROP categories. Support vehicles may include units such as mechanic, pilot, and foreman/supervisor trucks. Support vehicles do not include administrative, sales or similar trucks within the claimant's fleet that do not conduct primary activities at off-road locations.

			Percentage of

	ACTIVITY CATEGORY	Effective Industry Date	Percentage of Fuel Used Eligible for Rebate
5A	**Pumping downhole for well stimulation and workovers:** • down hole fluid or gas pumping • pressure testing of vessel and wells • coiled tubing • down hole • cementing of oil and gas wells • flushby service • cementing shot holes • chemical treatment of oil and gas wells • hot oiling well bores (paraffin removal) • pumping hot oil for cleaning and stimulation purposes (including coiled tubing units, nitrogen/carbon dioxide (CO2), acid, cement, chemical pumpers, frac pumpers/blenders, hot oilers, bulk blowers, and flushby)	01-Jan-06	49%
5B	**Oilfield heavy equipment hauling and logistics services (units over 4550kg):** • transportation of oversized or overweight loads, off-highway in the oilfield • rig moving • oilfield equipment hauling • pipe storage and hauling (**NOT** including hauling to resurface) • pipe stringing services • hauling cement, nitrogen, sand, acid, CO2 and facturing fluid for well stimulation (including bed, winch, picker, boom and iron trucks, wireline pickers, highway tractors, body jobs, and crane units)	01-Jan-06	43%
5C	**Wireline Operations:** • gas and oil wells • wireline operation • gas and oil wells • logging and perforating services	01-Jan-06	65%
5D	**Swabbing:** • swabbing units	01-Jan-06	56%
5E	**Fracturing & Downhole Service***:** • fuel injected into wells or blended with other chemicals for injection into wells. The blended fuel must not be useable in an internal combustion engine. • oilfield downhole service. • fracturing of oil and gas wells.	01-Jan-06	100%
5F	**Fire and Safety:** • fire-fighting and ambulance vehicles, not including services provided by a municipality or county	01-Jan-06	40%
5G	**Rat-Hole Drilling:** • drilling starter, conductor, or mouse holes or holes for pipe stands by truck-mounted drilling rigs • installation of ground anchors to secure service rigs	01-Jan-06	37%
5H	**Supporting Activities:** • relating to pumping for well stimulation and workovers, heavy equipment hauling and logistics services, wireline, swabbing, rat-hole drilling, fracturing and downhole services, and fire and safety.	For 5A to 5G: 01-Jan-06	30%

	• relating to crude oil and petroleum distillates hauling and pumping and oilfield site service • checking well head equipment • battery operation • gas plant operation • oilfield production operations • production operators ◆ field • well testing (oilfield) • maintenance (including pickups, crew cabs, light, and pilot trucks, foreman/supervisor trucks and power tong trucks)	For 5K to 5L: 01-Jul-06	30%
5I	**Well Testing:** • testing and coring oil and gas wells • well site supervision • coring and testing of oil and gas wells	01-Jan-06	55%
5J	**Pipeline Construction:** • supporting units - crew-cabs, pilot trucks, light trucks • picker trucks • highway tractors • welding trucks • pipefitter trucks • winch tractor/bed trucks • mechanic trucks • tandem trucks • boom trucks	01-Jan-06	62%
5K	**Crude Oil and Petroleum Distillates Hauling and Pumping** Relating to the loading/unloading and transportation of: • crude oil • produced water • condensates • natural gas liquids (NGLs) ethane, butane and propane (including highway tractors, tank trucks, and body jobs)	01-Jul-06	42%
5L	**Oilfield Site Service for** • non-destructive excavation • steam and washing of well heads, oilfield site equipment and buildings • removal and disposal of solid and liquid oilfield site waste by vacuum truck • transportation of water for the mixing of down hole drilling mud (including vacuum, hydro vac, pressure, and steam trucks and tank trucks for drilling mud)	01-Jul-06	49%
Not included are all snubbing units and cranes assisting the stand alone, hotshot service, general surveying, line cutting, line cleaner, line locating, water drilling and hauling, bush clearing, road building, excavating or erecting services, site preparation and the construction of facilities, waste disposal, commodity hauling and bulk fuel delivery. These activities have not yet been included under a category under PROP.			

Note *** fracturing and down hole service*** refers to the taxable fuels pumped into a wellbore or used as an ingredient in the preparation of well stimulation or fracturing fluids. It does not refer to fuel consumed by vehicles (category 5A) to pump these fluids into a wellbore.

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5. For persons engaged in **FORESTRY:**

This activity does not include access road construction, hotshot service and legal surveying.

Support vehicles are defined as light trucks used by field staff who are actively and directly involved in a primary step in production for approved PROP categories. Support vehicles may include units such as mechanic, pilot, and

foreman/supervisor trucks. Support vehicles do not include administrative, sales or similar trucks within the claimant's fleet that do not conduct primary activities at off-road locations.

	ACTIVITY CATEGORY	Effective Industry Date	Percentage of Fuel Used Eligible for Rebate
1A	**Support Vehicles:** For moving crew/supervisor/fuel on- and off-site for logging, loading and site preparation operations including: • block and road layout* • bush burning* • road enforcement* (monitoring and maintenance) • forestry inventory • forestry fire fighting* (includes light or pilot trucks, campsite trucks*, crew cabs, emergency vehicles*, safety supervisor, mechanic or operator vehicles)	01-Jul-06	52%
1B	**Heavy Support Vehicles over 4550kg:** Includes: • hauling • moving equipment on and off site. (includes bed trucks, highway tractors [with low boys or high boys], winch and picker trucks, fuel trucks*, potable water trucks* for water consumption in campsite)	01-Jul-06	34%
1C	**Log Transport Class 2 Plated***:** • Loading and transporting logs from cut locations to mills and returning empty to the cut locations**. (highway tractors, highway tractors with pickers)	01-Jul-06	87%
1D	**Log Transport Class 1 Plated:** • loading and transported logs from cut locations to mills and returning empty to the cut locations** (includes where a Class 1 plate was held for more than 30 days during the claim period or a permit was purchased for more than a total of 30 days in a calendar quarter.) (Class 1 plated highway tractors, highway tractors with pickers)	01-Jul-06	40%
1E	**Silviculture Operation:** Moving people, equipment, supplies on and off sites for: • planting of seedlings • checking plots • inspection of sites and timber cruising • hauling of forestry herbicide application • stand tending • cone picking. (using light trucks, crew cabs, buses)	01-Jul-06	63%
1F	**Wood Chip and Hog Fuel Hauling:** • hauling of wood chips and hog fuel from logging sites to the mill and returning empty. Restricted to the area south of Peace River to the northern part of High Level.	01-Jul-06	41%

	(highway tractors)	-		

Note:

* Activities followed by an asterisk (*) must be a sub function of the primary activity of Forestry Management to qualify.

** Log transport does not include hauling from mills to locations other than cut location.

***Class 1 Plated/Class 2 Plated- This refers to the motor vehicles licence plate classification of the specific vehicle. Check with your Alberta Registries agent if you are unsure of the plate class of your commercial vehicle.

6. For an eligible Municipality:

This includes all Alberta cities, improvement districts, Metis settlements, municipal districts, special areas and specialized municipalities, as defined by Alberta Municipal Affairs.

19A	**Municipal Operations:** • All fuel dispensed into licensed equipment used for municipal operations.	1-Jul-10	10%

7. For persons engaged in a PROP industry or an eligible municipality listed above:

To qualify for one of these categories, you must be enrolled in a PROP industry or eligible municipality listed above and also operate unlicensed equipment or ATV's, quads, or snowmobiles.

26A	Unlicensed Units*
	
	Applies to all unlicensed units operating within the following sectors:
	• Oil and Gas:
	  • Drilling
	  • Geophysical or Seismic Exploration
	  • Production
	  • Servicing
	• Forestry
	• Municipality
		Same as primary industry	100%

26B	Licensed ATVs, quads and snowmobiles used in moving people/ equipment on and off sites Applies to: • Oil and Gas • Drilling • Geophysical or Seismic Exploration • Production • Servicing ▫ Forestry	1-Jul-06	75%

Note:
* Unlicensed units should use marked (tax-exempt) fuel. Clear fuel should be used only when marked fuel is not reasonably available. The applicant must have a valid TEFU number and purchase marked fuel whenever reasonably available.

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Alberta

Exhibit I

Alberta

Tax and Revenue Administration
Fuel Tax Act
Information Circular FT-3R2

Released/Last Updated: January 20, 2016
Produced by: Alberta Treasury Board and Finance, Tax and Revenue Administration
For more information: tra.revenue@gov.ab.ca

FT-3R2/ January 2016

FUEL TAX ACT INFORMATION CIRCULAR: FUEL TAX EXEMPTION CERTIFICATES

NOTE: This information circular is intended to explain legislation and provide specific information. Every effort has been made to ensure the contents are accurate. However, if a discrepancy should occur in interpretation between this information circular and governing legislation, the legislation takes precedence.

FUEL TAX EXEMPTION CERTIFICATES

This information circular explains:

FUEL TAX EXEMPTION CERTIFICATES

1. The *Fuel Tax Act* allows specific consumers to apply for certificates, issued by Alberta Treasury Board and Finance, Tax and Revenue Administration (TRA) or Alberta Agriculture and Forestry (Agriculture), which allow fuel to be purchased exempt or partially exempt from tax. There are two types of certificates available to consumers. The first type of certificate permits consumers to purchase clear fuel exempt from tax. The second type of certificate permits consumers to purchase marked fuel partially exempt from tax.

EXEMPTION CERTIFICATES TO PURCHASE CLEAR FUEL

Who Is Eligible to Apply for a Certificate

2. Consumers may apply to TRA for a fuel tax exemption certificate to purchase clear fuel from an exempt-sale vendor without tax where:
   - the person who purchases liquefied petroleum gas (LPG) from a registered distributor uses the LPG in mining operations in Alberta, or
   - the Indian or Indian band purchases fuel for personal use and the purchase is made on a reserve, or on the Garden River settlement or Heart Lake before April 1, 2008 or such later date as determined by the President of Treasury Board and Minister of Finance (the Minister).

Application for a Certificate

Mining Operations in Alberta

3. An applicant engaged in mining operations in Alberta wanting to purchase LPG exempt from tax is required to send a letter to TRA requesting an exemption. If the application is approved, TRA will send an approval letter to the applicant and notify all LPG distributors of the applicant's eligibility to purchase LPG exempt from tax.

Indians and Indian Bands

4. An eligible Indian consumer may apply for a certificate to purchase clear fuel exempt from tax. The rules on eligibility and the procedures for establishing and maintaining eligibility are provided in Information Circular AITE-2, Tax-exempt Purchases Made by Indians and Indian Bands. Where TRA approves the application, an exemption card will be issued to Indians who are at least 16 years of age or to Indian Bands. Where an Indian band has applied for the issuance of multiple exemption cards they will be issued on the conditions TRA has specified.

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EXEMPTION CERTIFICATES TO PURCHASE MARKED FUEL

Who is Eligible to Apply for a Certificate

5. Consumers may apply for a fuel tax exemption certificate to purchase marked fuel partially exempt from tax from an exempt-sale vendor where the fuel is for one of the following uses:
   - commercial purposes in an engine owned or operated by the consumer, but does not include an engine that drives a motor vehicle, boat or aircraft, or the fuel is used solely to regulate the temperature of a trailer or container used for the commercial transportation of goods;
   - commercial purposes in a motor vehicle not required to be licensed;
   - by a government authority, other than the Canadian government, in an engine owned or operated by the government authority, other than an engine that drives a motor vehicle, boat or aircraft;
   - by a government authority, other than the Canadian government, in a motor vehicle not required to be licensed;
   - to produce heat or light but does not include a motor vehicle, boat, aircraft, locomotive, trailer or container used for the commercial transportation of goods;
   - any purpose other than burning the fuel in an internal combustion or turbine engine; or
   - for farming operations in Alberta carried out by a farmer.

   The partial exemption on marked fuel is $0.09 per litre.

Application for a Certificate

Consumers - other than farmers

6. To be eligible to purchase marked fuel, a consumer is required to apply to TRA for a fuel tax exemption number by completing and submitting a "Declaration of Tax Exempt Fuel User" (form AT321) to TRA. TRA will review the application and may issue a fuel tax exemption certificate once it is satisfied of the applicant's eligibility. The fuel tax exemption certificate will contain an approval number and an expiry date.

Farmers

7. To be eligible to purchase marked fuel, a farmer will need to obtain an Alberta Farm Fuel Benefit (AFFB) number by completing and submitting an AFFB application to Agriculture at the address shown on the form. Agriculture will review the application and may issue an AFFB fuel tax exemption certificate if satisfied the applicant is eligible for the AFFB benefits. The fuel tax exemption certificate includes an approval number and an expiry date.

8. Consumers eligible for both a TEFU and AFFB certificate may register for only one certificate.

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Legal Name of Applicant

9. The applicant's legal name is to appear on the application for a fuel tax exemption certificate and will match the legal name used to purchase fuel fully or partially exempt from tax from the exempt-sale vendor. This ensures fuel invoices clearly show the party who purchased the fuel and received the tax exemption or partial exemption.

10. If a person has a sole proprietorship and an incorporated business, both entities must have separate exemption certificates to purchase fuel for their separate eligible commercial activities. If applying for an exemption certificate to obtain marked fuel for use by a partnership, the partners' legal names are to be provided with the application. If the partners perform other eligible commercial activities, separate from the partnership's eligible commercial activities, each partner should also apply for a separate exemption certificate. Fuel purchased under a specific exemption certificate can only be used for the operations of that entity.

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CERTIFICATES AND CARDS – GENERAL

Expiration

11. Fuel tax exemption certificates expire on the earliest of:
    - the expiry date shown on the certificate,
    - the date the certificate holder ceased to conduct the activities that qualified him to obtain the certificate, or
    - the date the certificate is cancelled by TRA.

12. The expiry date of a certificate, or a series of certificates, may be extended by the Minister where considered appropriate. A fuel exemption certificate remains valid until it expires or is suspended or cancelled.

Amendment of Approval Numbers

13. TRA may amend an approval number at any time by notification to the holder of the fuel tax exemption certificate. When an amendment is made, the previous approval number ceases to be in force.

Refusal to Issue Tax Exemption Certificates

14. TRA or Agriculture may refuse to issue a fuel tax exemption certificate if the applicant:
    - does not meet the requirements to be issued a certificate,
    - has contravened the Act or its Regulation or another enactment that imposes tax,
    - has already been issued a valid certificate,
    - has an overdue debt to the Crown,
    - is a farmer and Agriculture has determined the applicant provided an unreasonable estimate of his/her market value of production from farming operations, or
    - has provided false or misleading information on the application.

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Suspension or Cancellation of Exemption Certificate

15. TRA or Agriculture may suspend or cancel a fuel tax exemption certificate if the holder:
    - no longer meets the requirement to possess a card,
    - has contravened the Act or its Regulation or any other enactment that imposes a tax or levy,
    - has an overdue debt to the Crown,
    - has lost the exemption certificate, or had it stolen, destroyed, or made unusable because of damage, or
    - provided false or misleading information to TRA or Agriculture.

16. Where TRA or Agriculture has suspended or cancelled a fuel tax exemption certificate or declared a federal identification card to be invalid for our purposes, the holder of the certificate or card will be notified of the action taken. Exempt-sale vendors will also be notified of the suspension, cancellation or invalidation of the card.

17. Where a tax exemption certificate has been cancelled or suspended the approval number is also cancelled or suspended.

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Declaring Exemption Card Invalid

18. TRA may declare a card issued by the Government of Canada stating that the holder is on the Indian Register under the Indian Act (federal identification card) to be invalid for purposes of the Act if:
    - TRA determines the holder has contravened the Act or its Regulation or any other enactment that provides for the imposition of a tax or levy, or
    - the holder of the card has an overdue debt to the Crown.

19. Where TRA declares a federal identification card to be invalid because of an overdue debt to the Crown and the debt is subsequently paid, the Indian or Indian band may apply to TRA for a new fuel tax exemption certificate.

20. TRA or Agriculture may reinstate a fuel tax exemption certificate that was suspended because of an overdue debt due the Crown. Upon reinstatement TRA will notify the cardholder and any relevant exempt-sale vendors.

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Alberta

Exhibit J

NELMA

EASTERN WHITE PINE

MILLS

MILL LISTINGS

41 Total Listings

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- [ ] Eastern Spruce - Balsam Fir
- [x] Eastern White Pine
- [ ] Hardwoods
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- [ ] Common Grades
- [ ] Dehumidification Drying
- [ ] Finger-Jointed Lumber
- [ ] Flooring
- [ ] FSC Certification
- [ ] Hardwood Lumber
- [ ] Heat Treatment
- [ ] Kiln Drying
- [ ] Moulding
- [ ] Paneling
- [ ] Rough Lumber
- [ ] Select Grades
- [ ] SFI Certification
- [ ] Shop/Furniture Grades
- [ ] Siding
- [ ] Structural Grades
- [ ] Timbers
- [ ] Live Edge Siding

Britton Lumber Company, Inc.
7 Ely Road
Fairlee, VT 05045
FULL PROFILE »

Censosimo Lumber Company
1103 Vernon Street
Brattleboro, VT 05301
FULL PROFILE »

Cyr Lumber, Inc.
215 Poor Farm Road
Milton, VT 05468
FULL PROFILE »

DiPrizio Pine Sales
5 Kings Highway; Rte 153
Middleton, NH 03887
FULL PROFILE »

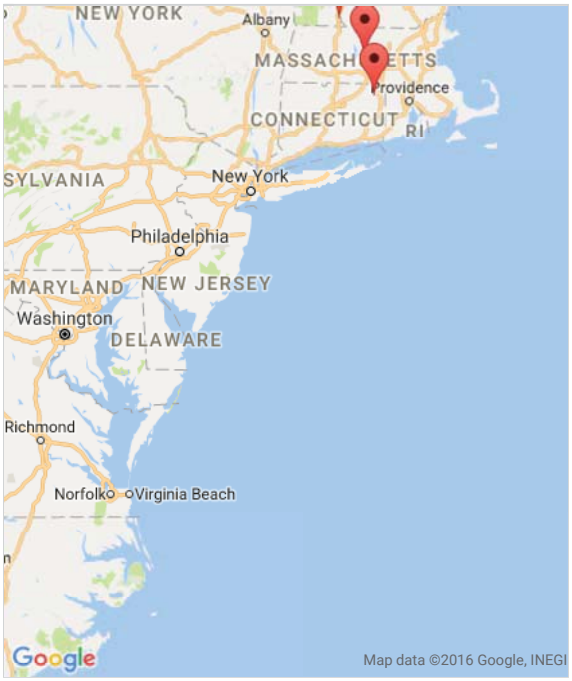
Durgin & Crowell Lumber Company, Inc.
231 Fisher Corner Road
New London, NH 03257
FULL PROFILE »

H.G. Wood Industries LLC
32 Sawmill Road
Bath, NH 03740
FULL PROFILE »

Hammond Lumber Company
2 Hammond Drive
Belgrade, ME 04917
FULL PROFILE »

Hancock Lumber Company, Inc.-Bethel
639 Walkers Mill Road
Bethel, ME 04217
FULL PROFILE »

Hancock Lumber Company, Inc.-Casco
1260 Poland Spring Road
Casco, ME 04015
FULL PROFILE »



Barcode:3527948-01 C-122-858 INV - Investigation -

Hancock Lumber Company, Inc.-Pittsfield
P.O. Box 378
Pittsfield, ME 04967
FULL PROFILE »

Heath, M.B. & Sons Lumber Company, Inc.
Ferry Street
North Hyde Park, VT 05665
FULL PROFILE »

Henniker Forest Products LLC
1104 Old Concord Rd.
Henniker, NH 03042
FULL PROFILE »

Hull Forest Products
101 Hampton Road
Pomfret Center, CT 06259
FULL PROFILE »

Hunt, N.C., Inc.
10 CCC Camp Road, Route 215
Jefferson, ME 04348
FULL PROFILE »

Irving Forest Products
24 Hall Hill Road
Dixfield, ME 04224-9584
FULL PROFILE »

Johnson Lumber Company
Route 26
Carthage, NY 13619
FULL PROFILE »

King Forest Industries, Inc.
53 Eastside Road
Wentworth, NH 03282
FULL PROFILE »

Lamell Lumber Corporation
82A Jericho Road
Essex Junction, VT 05452
FULL PROFILE »

Limington Lumber Company
411 Pequawket Trail
East Baldwin, ME 04024
FULL PROFILE »

Lovell Lumber Company, Inc.
3 Mill Road
Lovell, ME 04051
FULL PROFILE »

Lowell, R.E., Lumber, Inc.
132 North Hill Road
Buckfield, ME 04220
FULL PROFILE »

Madison Lumber Mill, Inc.

Filed By: osendarp@hugheshubbard.com, Filed Date: 12/7/16 5:02 PM, Submission Status: Approved

71 Marcella Drive
West Ossipee, NH 03890
FULL PROFILE »

Matra, Inc.
21, 11e rue ouest
Saint-Martin, QC G0M 1B0
FULL PROFILE »

Mill River Lumber Ltd.
2639 Middle Road
North Clarendon, VT 05759
FULL PROFILE »

Patenaude Lumber Company, Inc.
628 Rush Rd.
Henniker, NH 03242
FULL PROFILE »

Pleasant River Pine-Hancock
17 Wymans Road
Hancock, ME 04640
FULL PROFILE »

Pleasant River Pine-Sanford
563 New Dam Road
Sanford, ME 04073
FULL PROFILE »

Precision Lumber, Inc.
576 Buffalo Road
Wentworth, NH 03282
FULL PROFILE »

Robbins Lumber, Inc.
Ghent Road
Searsmont, ME 04973
FULL PROFILE »

Robinson, W.R., Lumber Company, Inc.
Cleveland Road
Hardwick, MA 01094
FULL PROFILE »

Seacoast Mills, Inc.
136 Pine Road
Brentwood, NH 03833
FULL PROFILE »

Ward Lumber Company, Inc.
702 Glen Road
Jay, NY 12941
FULL PROFILE »

Phone:207-829-6901 | Fax:207-829-4293 | Email: info@nelma.org

NELMA

SPF

MILLS

MILL LISTINGS

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SPECIES

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- [ ] Eastern Spruce - Balsam Fir
- [ ] Eastern White Pine
- [ ] Hardwoods
- [ ] Other
- [x] SPFs

PRODUCTS

- [ ] Air Drying
- [ ] Common Grades
- [ ] Dehumidification Drying
- [ ] Finger-Jointed Lumber
- [ ] Flooring
- [ ] FSC Certification
- [ ] Hardwood Lumber
- [ ] Heat Treatment
- [ ] Kiln Drying
- [ ] Moulding
- [ ] Paneling
- [ ] Rough Lumber
- [ ] Select Grades
- [ ] SFI Certification
- [ ] Shop/Furniture Grades
- [ ] Siding
- [ ] Structural Grades
- [ ] Timbers
- [ ] Live Edge Siding

Brojack Lumber Company
350 Commerce Drive
Scott Township, PA 18447
FULL PROFILE »

Fontaine, Inc.
850 rue Fontaine
Woburn, QC G0Y 1R0
FULL PROFILE »

Irving Forest Products, Ashland
1218 Portage Road
Nashville Plantation, ME 04732
FULL PROFILE »

Lamell Lumber Corporation
82A Jericho Road
Essex Junction, VT 05452
FULL PROFILE »

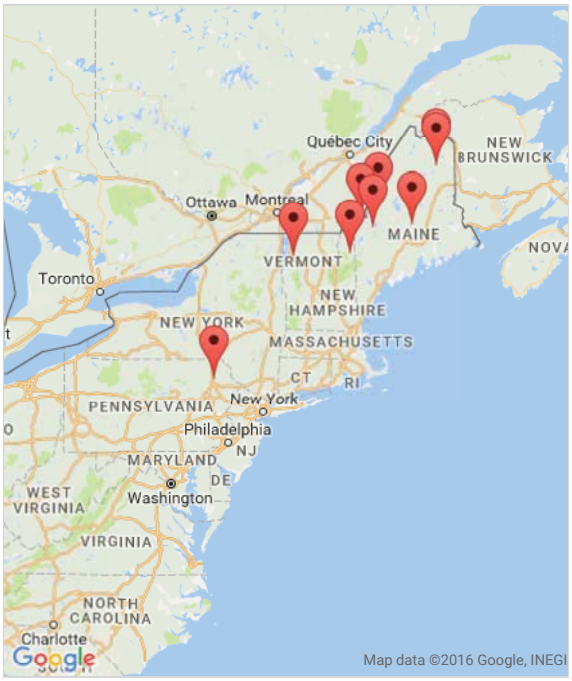
Maibec Lumber, Inc.
1200 Masardis Road, Route 11
Masardis, ME 04732
FULL PROFILE »

Milan Lumber Co.
358 Milan Rd.
Milan, NH 03588
FULL PROFILE »

Pleasant River Lumber Co. -Moose River
25 Talpey Road
Jackman, ME 04945
FULL PROFILE »

Pleasant River Lumber Company
432 Milo Road
Dover-Foxcroft, ME 04426
FULL PROFILE »

Stratton Lumber, Inc.
66 Fontaine Road
Stratton, ME 04982
FULL PROFILE »



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