NON-CONFIDENTIAL VERSION

In the LCIA
No. 81010

THE UNITED STATES OF AMERICA,

Claimant,

v.

CANADA,

Respondent.

UNITED STATES COMMENTS

ON THE EXPERTS' JOINT REPORT

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THE UNITED STATES' COMMENTS ON THE EXPERTS' JOINT REPORT

1. Pursuant to Procedural Order No. 6 and the Tribunal's clarifying communications thereafter, claimant, the United States, respectfully submits its comments on the joint report filed by economists Robert Topel and Joseph Kalt dated June 22, 2010.

2. These comments consist of the following: (1) a discussion of the utility of the experts' work given the terms of the 2006 Softwood Lumber Agreement ("SLA" or "Agreement"); (2) a discussion of legal issues and major points of disagreement affecting the calculation of program benefits; (3) a discussion of legal issues affecting the calculation of the compensatory adjustments to the export measures; and (4) a conclusion setting out proposed remedies.

INTRODUCTION

3. In Procedural Order No. 6, the Tribunal directed the parties' economists to confer and, after making certain assumptions, prepare a joint report estimating the benefits provided by Ontario and Québec to softwood lumber producers through five of the government programs challenged by the United States in this arbitration. The five programs are the Ontario Forest Sector Prosperity Fund ("FSPF"); the Ontario Forest Sector Loan Guarantee Program ("FSLGP"); the Québec Forest Industry Support Program ("PSIF"); the Québec Capital Tax Credit; and the Québec Road Tax Credit. The Tribunal directed the economists to calculate the reduction or offset of the SLA's export measures caused by these benefits, including reductions or offsets in the past. The Tribunal then directed the experts to calculate the compensatory adjustments necessary "to neutralize such reductions or offsets." Procedural Order No. 6, ¶ 1.3.

4. The Tribunal later clarified that, when determining the compensatory adjustments to the export measures, the experts should "focus on the concept of harm to US producers," also known as lost U.S. producer surplus.[1]

5. Professors Topel and Kalt met over the course of several months and submitted a joint report dated June 22, 2010. The experts state in their report that, although they agree on certain aspects of their work, areas of disagreement remain as to program benefit and compensatory adjustment calculations. Where there is disagreement, the experts explain their respective positions and the bases for them. The experts have attached to their report an "interactive spreadsheet" designed to allow users to see program benefits and the corresponding compensatory adjustments, program by program and year by year, depending on which configuration of the experts' respective positions is adopted by the Tribunal.

6. The experts estimate that the five Ontario and Québec programs identified by the Tribunal in Procedural Order No. 6 provide total benefits of between $188 million (if all of Professor Kalt's positions are adopted) and $273 million (if all of Professor Topel's positions are adopted). Joint Report, Att. A.[2]

7. These comments address, first, the limited utility of the joint report in the context of the terms of the underlying agreement and the scope of the Tribunal's task in this proceeding. The text of the SLA's Anti-circumvention provision agreed to by the parties straightforwardly defines the effect of a grant or other benefit. That is, the provision explains that program grants

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[1] C-72, Letter from G. Kaufmann-Kohler to R. Topel and J. Kalt, Apr. 15, 2010.

[2] Values are in Canadian dollars, as used in the experts' interactive spreadsheet. Joint Report, Att. A. By province, Professor Topel's benefit figures are $36 million for the Ontario programs and $237 million for the Québec programs; Professor Kalt's benefit figures are $17.3 million and $171 million, respectively.

and benefits *themselves* are the reduction or offset to the export measures that the provision guards against. There is no reference, either express or implied, to *effects* of the grants and benefits on anyone or any group. Canada's position that a remedy for a breach of the Anti-circumvention clause is constrained by the effects of the program benefits on United States producers is not supported by the text of the SLA and should be rejected.

8. After program benefits have been calculated, the only remaining task under the SLA is to determine a remedy that returns the parties to the *status quo ante*, through appropriate compensatory adjustments to the export measures. Because the breach consists of government grants and other benefits, regardless of the effect on United States producers, an appropriate remedy should adjust the export measures so as to recoup those benefits themselves, not the effects of those benefits. The most appropriate means permitted by the SLA to remedy the hundreds of millions of dollars in benefits received by the Canadian softwood lumber industry in violation of the SLA is to collect those hundreds of millions of dollars from that same industry, by means of an additional export charge.

9. Accordingly, although the experts' report provides a valuable range of program benefits, its focus on effects on United States producers for purposes of compensatory adjustments is of limited relevance. Exclusive reliance on the experts' work leads to the incongruous result that the remedy would compensate the United States for only a fraction of the benefits provided. This result is not only unjust but also dangerous, providing Canada an incentive to circumvent the SLA going forward: Canada will be able to provide benefits whose value is greater than the ultimate cost.

10. Turning to the substance of the experts' evaluation, these comments will not restate the technical discussion presented in the joint report. Rather, to the extent that the joint report raises major disagreements and legal issues, these comments will address those points.

11. Specifically, regarding the calculation of benefits, these comments will explain why Professor Topel's valuation of the Ontario and Québec loans and loan guarantees is not only more accurate than Professor Kalt's, but is also consistent with the manner in which both the United States and Canada would perform the analysis in countervailing duty investigations. Similarly, we will explain why Professor Topel's benefit calculations for the Québec Capital Tax Credit and the Québec Road Tax Credit are more accurate and should be used to neutralize the strength of the incentives to make forest sector investments.

12. With respect to the effect of program benefits on lost U.S. producer surplus, the experts' report raises two additional legal issues. First, as demonstrated below, the benefits wrongfully provided during the period of the SLA will continue to benefit Canadian producers and harm U.S. producers long after the expiration of the Agreement in 2013. Therefore, an appropriate remedy must compensate for post-SLA effects. *See* Joint Report, ¶ 3. Second, a determination of program benefits and an appropriate remedy should, as a legal matter, consider benefits afforded companies known as "Article X producers." *Id.* The Anti-circumvention provision broadly and intentionally covers grants and other benefits provided to all producers and exporters of Canadian softwood lumber, including grants or benefits provided to producers whose products are exempted from the export measures by Article X of the SLA.

13. Finally, these comments will summarize the legal issues and explain the United States' view of a proper remedy, given the Tribunal's assumptions as stated in Procedural Order No. 6 and the Tribunal's clarifying letters to the parties. As explained below, the United States

respectfully requests the Tribunal determine that an appropriate remedy consists of an additional charge of 2.3 percent on Ontario exports and 10.7 percent on Québec exports until the full amount of the benefits provided by the two provinces in breach of the SLA, $273 million, is collected.

I. The Program Benefits Themselves Constitute The Reduction Or Offset Of The Export Measures

14. Canada's breach in this arbitration is the circumvention of the SLA through Canada's providing grants and other benefits to softwood lumber producers. By its very terms, the Anti-circumvention provision treats such grants or other benefits, if not covered by one of the enumerated exceptions, as reductions or offsets to the export measures. This is logical: Canada is charged with enforcing the export measures under the SLA, and thus, it cannot be permitted to undo or reduce the effect of the SLA by financially assisting the very industry subject to these export measures. Once a grant or other benefit has been provided, the United States need not demonstrate any particular market effect to establish a breach, and the most direct remedy that would return the parties to the *status quo ante* is one that recoups the benefits, dollar for dollar.

15. The Anti-circumvention provision prohibits any party from taking any "action to circumvent or offset the commitments under the SLA 2006, including any action having the effect of reducing or offsetting the Export Measures . . . ." SLA, Art. XVII, ¶ 1. Although there is a range of actions that could circumvent or offset Canada's commitments under the Agreement, the provision declares that certain actions circumvent the agreement.

16. Specifically, paragraph 2 of the provision states that "[g]rants or other benefits that a Party, including any public authority of a Party, provides *shall be considered* to reduce or offset the Export Measures if they are provided on a *de jure* or *de facto* basis to producers or exporters of Canadian Softwood Lumber Products." SLA, Art. XVII, ¶ 2 (first emphasis added).

In other words, once grants or other benefits have been identified and quantified as having been provided by Canada to softwood lumber producers or exporters, the only remaining tasks are: (1) to determine whether the grants or other benefits qualify for an enumerated exception; and if not, (2) to determine an appropriate remedy for the breach, consisting of adjustments to the export measures. The plain language of the provision suggests that the purpose of compensatory adjustments is to recover the amount of the grants or other benefits wrongfully provided to softwood lumber producers or exporters. There are, therefore, two steps in devising a remedy once a breach has been found: (1) calculate the amount of the benefits conferred; and (2) calculate how that amount is to be recovered by adjusting the export measures upward. In this way, the parties can best be returned to the pre-breach *status quo ante*.

17. This ordinary meaning is confirmed by the SLA's remedy provisions. To remedy a breach, the Agreement requires that the Tribunal determine "appropriate" adjustments to the export measures "in an amount that remedies the breach." SLA, Art. XIV, ¶ 23. As we have demonstrated in prior submissions, appropriate adjustments must wipe out all the consequences of the breach. The primary consequence of the breach here, indeed, the very nature of the breach, is that the distribution of grants or other benefits has effectively returned and continues to return the export charges to Canadian industry — the same industry whose export behavior is to be limited by the export measures in the first place. This prohibition on the return of export charges is precisely what the United States insisted upon and Canada agreed to when the parties crafted the Anti-circumvention provision. Given the nature of the breach, any remedy must, at the very least, recover the grants or other benefits afforded by the breaching programs because

the SLA defines those grants and other benefits as the reduction or offset to the export measures.[3]

18. In Procedural Order No. 6, the Tribunal directed the experts to calculate the benefits provided by each program and the reduction or offset of the export measures. As demonstrated above, pursuant to the text of the Agreement, the reduction or offset in the export measures is, dollar for dollar, the amount of the benefits provided in violation of the SLA. The Tribunal also directed the experts to calculate the compensatory adjustments required "to neutralize such reductions or offsets," making sure to indicate the overall amounts to be collected from Ontario and Québec. *Id.* ¶ 1.3. The experts were later instructed to "focus on the concept of harm to U.S. producers" when determining the compensatory adjustments.[4] This focus on U.S. producers demonstrates that the compensatory adjustments, as an additional tariff on Ontario and Québec lumber exports, will have a positive effect on lumber prices in the United States.[5]

19. Thus, a focus on U.S. producers is a useful exercise insofar as demonstrating that a remedy will benefit U.S. producers. This focus, however, should not function as a limitation

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[3] The Canadian programs may have a larger adverse effect on U.S. producers than if Canada were simply returning the export charges to the companies. Returning the export charges might or might not have any effect on U.S. producers, depending on what the producers were to do with the returned charges. Professors Topel and Kalt agree that the challenged programs subsidize investment in the industry, which makes investment greater than it otherwise would be. These investments have a direct effect on output and ultimately on U.S. producers.

[4] C-72, Letter from G. Kaufmann-Kohler to R. Topel and J. Kalt, Apr. 15, 2010.

[5] Of course, an additional export charge on Ontario and Québec exports results in a positive economic effect everywhere outside of these two provinces, including the other Canadian provinces whose exporters (not subject to the additional charge) can take advantage of the marginally higher prices in the United States. This means that softwood lumber producers in British Columbia (by far Canada's largest exporter of softwood lumber to the United States) will marginally benefit from a remedy applied to only Ontario and Québec exports.

on remedy under the SLA. Compensatory adjustments could just as easily, and perhaps more appropriately, focus on Canadian producers. In any event, the most appropriate remedy focuses on the breach itself, the wrongful providing of benefits to Canadian industry, and counteracts those benefits dollar for dollar.

20. The range of total benefits provided by the five breaching programs identified by the Tribunal in Procedural Order No. 6 is from $273 million (if Professor Topel's positions are adopted) down to $188 million (if Professor Kalt's positions are adopted).[6] Joint Report, Att. A. This range is the quantum of Canada's breach. Yet the remedies proposed by the experts do not collect these amounts. The additional export charges calculated by Professor Topel collect only $182 million of the $273 million in benefits; the export charges calculated by Professor Kalt are far less effective, collecting only $48.9 million of the $188.2 million (or 25 percent) he calculates in benefits.

21. These figures show that a remedy that accounts for only the effect on U.S. producers is, at best, a partial remedy. More troubling is the obvious observation that the compensatory adjustments, by collecting far less than the amount of the breach, provide an incentive for Canada to circumvent the Agreement going forward, a result that threatens the foundation of the Agreement itself. Canada and its industry should not be permitted to realize a net gain from Canada's breach of the SLA.

22. Compensatory adjustments designed to recoup the benefits provided by Canada's breach and return the parties to the *status quo ante* are consistent with international law and well-

[6] The Tribunal may, of course, adopt Professor Topel's position on certain issues, and Professor Kalt's position on others. In that event, the total benefit amount will be a value between $273 million and $188 million.

recognized principles of contract law.[7] Simply put, if the Tribunal allows Canada to keep the gains realized by its breach, then the balance achieved in the SLA would be upset and significantly tilted in Canada's favor. Canada will have an incentive to continue circumventing the Agreement, because the amount provided in grants and other benefits will be greater than the ultimate cost, and softwood lumber companies will be better off with circumvention than without.

23. Furthermore, the analysis offered in the experts' joint report is contrary to the approach taken by the Tribunal in *United States v. Canada*, LCIA No. 7941, Award on Remedies, in which the Tribunal determined appropriate adjustments to the export measures using the benefit to *Canadian* producers as the measure, not the loss to U.S. producers.[8] This measure is the most efficient, appropriate, and direct means to remedy the breach and return the parties to the *status quo ante*, given the unique nature of the Agreement and the breach.

24. If the remedy in this case accounts for only the effect of the breach on U.S. producers, Canadian producers will have realized the undeserved windfall that the SLA was intended to avoid. If the full amounts of benefits are not counteracted in the form of export measures, Canada will have been permitted to breach the Agreement but be held responsible for only a fraction of that breach. No principle of international law, provision of the SLA, or notion of logic supports such an inequitable result.

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[7] CA-19, *Case Concerning the Factory at Chorzów* (Germ. v. Pol.), 1928 P.C.I.J. 47 (ser. A) No. 17 (Sept. 28); CA-20, Responsibility of States for Internationally Wrongful Acts, U.N. GAOR, Int'l Law Comm., 53d Sess., pt. II, ch. 1, art. 31, U.N. Doc. A/CN.4/L.602/Rev.1 (2001); *see also* CA-52, Lionel D. Smith, *Disgorgement of the Profits of Breach of Contract: Property, Contract, and "Efficient Breach,"* 24 Can. Bus. L.J. 121 (1995); CA-53, Melvin A. Eisenberg, *The Disgorgement Interest in Contract Law*, 105 Mich. L. Rev. 559 (2006).

[8] CA-12, *United States v. Canada,* Award on Remedies, LCIA 7941, ¶ 334.

25. Accordingly, the United States respectfully requests an award directing Canada to collect $273 million from Ontario and Québec exporters of softwood lumber. Joint Report, Att. A. This amount constitutes the total benefit amounts for the five programs identified in Procedural Order No. 6. As explained in the final section of these comments, this amount should be collected from Ontario and Québec exporters by the imposition of an additional export charge of 2.3 percent on Ontario exports and 10.7 percent on Québec exports until the equivalent amount of the benefits provided by the two provinces in breach of the SLA is collected.

II. Major Disagreements And Legal Issues Concerning The Proper Calculation Of Program Benefits

26. Professors Topel and Kalt identify several areas of disagreement with respect to the calculation of program benefits that merit brief discussion given their significance or the legal issues implicated. We do not comment on the areas (such as the grant valuation under the Ontario FSPF) as to which there is agreement among the experts.

A. The Valuation Of Loans And Loan Guarantees

27. The Tribunal directed the experts to value the benefits conferred by loans and loan guarantees by means of the "standard practice" of using the difference between the interest rates received through the government program and the interest rates that recipients could have obtained commercially.[9] Procedural Order No. 6, ¶ 1.2. Professor Topel has offered the only viable valuation method that conforms to standard practice because he acknowledges the

[9] For the reasons described by the United States in its previous filings, the "standard practice" is not an accurate method of measuring the benefit of the Ontario and Québec loan guarantee programs under circumstances when the recipient companies obtained financing for projects that would not have gone forward without the government guarantees. *See, e.g.*, US Post-Hr'g Br. ¶¶ 103-128. Of course, we accept the Tribunal's direction to the experts in Procedural Order No. 6 to limit their benefit calculations to the interest rate differential method, and will not further argue the question here. However, we ask that the Tribunal consider these unaccounted-for benefits to industry when evaluating Professor Kalt's statement that the additional export charges proposed by the experts may be "excessive." Joint Report, ¶ 199.

uncontroverted public statements by government officials, considers the reality of the credit problems facing the Canadian industry since 2005, and bases his interest rate benchmark on the forest sector industry. Professor Kalt, by contrast, contrives an alternate reality in which ailing Canadian companies in a distressed industry could have obtained financing at rates a mere 2 percent above the prime rate absent government assistance. Joint Report, ¶ 23. Professor Topel finds Professor Kalt's conclusions contradicted by the evidence and implausible. Professor Kalt's method deviates from standard practice by misconstruing certain evidence and ignoring other evidence, and should be rejected entirely.

28. Professor Topel details the evidence that Ontario softwood lumber producers have had extreme difficulty obtaining credit over the past few years. For example, Ontario's Revenue Minister acknowledged in 2009 that the "forestry sector faces interest rates of 20 to 30 percent to borrow money in the current tough credit markets." Joint Report, ¶ 49 (quoting Attachment 20 to the Joint Report). In fact, the Canadian Federal government declined to provide the same billions of dollars in subsidies to the forest sector that it provided to the automobile sector, noting that such assistance would amount to a violation of the SLA because "we would be giving [forest sector companies] an advantage of 20 percentage points." *Id.* Accordingly, Professor Topel reasonably concludes that forest sector borrowers faced interest rates "well above 20 percent." *Id.*, ¶ 50.

29. Similar government statements from 2006 are contained in other documents as well. *See, e.g.*, Joint Report, ¶ 53 (Québec Council of Ministers statement that [

] (quoting Beck Report, Attachment AD)); *id.* at ¶ 54 (Ontario Ministry of Natural Resources observation that [

] (quoting ON-CONF-07230)). Professor Topel accepts and credits these statements; Professor Kalt ignores them. The Tribunal should not permit Canada to avoid the representations of its officials that the programs were put in place because of the inability of the forest sector in the provinces to obtain financing.

30. Professor Topel then provides a careful and thorough explanation of why the interest rate analysis of Robert Reilly – the analysis that forms the core of Professor Kalt's conclusions – is fundamentally flawed in nearly every respect. Joint Report, ¶¶ 56-76. For example, Professor Topel describes why Mr. Reilly's concept of asset-based lending is confused and why asset-based lending to recipients of government loans and loan guarantees does not support Mr. Reilly's conclusion that these recipients could have obtained project financing at favorable interest rates. *Id.*, ¶¶ 64-67. Importantly, and in contrast to Professor Kalt, Professor Topel relies on actual provincial documents, as well as the actual loans and loan guarantees provided under the programs. *Id.*, ¶¶ 68-71.

31. Similarly, to arrive at interest rates that lumber producers *could have received*, Professor Topel relies on *actual* market evidence of the default risks of *actual* Canadian forest sector borrowers. *Id.*, ¶¶ 72-76. Professor Topel analyzes monthly data on yields to maturity for bonds issued by Canadian forest sector companies, many of which received government aid. These yields reflect these companies' default risk. *Id.* From 2005 to the present, the data reveal that "ratings agencies were sharply downgrading loans to Canadian forest sector companies" because those companies were "uncommonly risky." *Id.*, ¶ 73.

32. Professor Topel then calculates the average monthly interest rate on forest sector debt, which reveals the evolution of lending risks during the credit crisis of the last few years. His conclusions are consistent with the Ontario Revenue Minister's public statement that forest

sector companies were facing interest rates of 20 to 30 percent. Joint Report, ¶¶ 49, 87.[10] Based on this evidence, Professor Topel calculates a benchmark rate that varies over time, reaching a peak of approximately 26 percent in late 2008 and early 2009. Joint Report, ¶ 86-87, Fig. 19.

33. Professor Topel's approach is consistent with the standard approach used by both United States and Canadian investigating authorities when determining a benchmark interest rate to value loan subsidies. For example, in countervailing duty investigations, the United States Department of Commerce attempts first to use the subsidy recipient's own history of borrowing and absent that, permits use of a national average interest rate for *comparable* loans. 19 C.F.R. § 351.505(a) , CA-51. Likewise, Canadian regulations use an interest rate that the recipient "could have obtained," and absent that evidence, permit use of the prevailing interest rate in the territory that provides the loan. Importantly, Canadian regulations require that the prevailing interest rate be derived *from similarly creditworthy companies in the same or next most similar sector*. SIMR § 29(2)(c), CA-54.

34. Professor Kalt's valuation methodology does not consider similarly creditworthy companies in the same or similar sector, nor does it consider comparable loans. Rather, it relies on financing obtained by large, diversified companies with significant accounts receivables available as security. Joint Report, ¶¶ 51-52. The examples Professor Kalt employs have little

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[10] Professor Topel also could have quoted the statement from Québec's forest industry association in March 2009 describing the interest rates faced by the Québec softwood lumber industry:

> The major problem right now is credit. Do you know how an industry is experiencing two crises at the same time is perceived by the financial institutions? They aren't too happy to see us. If we want to pay interest of 25% or 30%, they guarantee the risks no problem, but at prohibitive rates. We think money should be lent at a commercial rate.

C-60, Subcommittee on Canadian Industrial Sectors of the Standing Committee on Industry, Science and Technology, Mar. 12, 2009, at 8.

relevance to the small to medium scale companies that took advantage of the 100 percent provincial loan guarantees in order to obtain project financing. Note, for example, that several of Professor Kalt's "forest sector" examples are large, multi-national paper companies – companies in a far different position than the recipients of the Ontario and Québec loan guarantees. *Id.*

35. For his interest rate benchmark Professor Kalt also erroneously relies on an index of bonds that have little relevance, in contrast to the forest sector bonds used by Professor Topel. Joint Report, ¶ 80. Further, the description of the index specifically states that it excludes the least credit-worthy borrowers. For example, in 2006, the index contained 20 bonds from 10 companies, none of which were forest products companies. Most of the bonds were from the same three companies that bear no resemblance to the lumber producers in this case: Ford Credit Canada, Sears Canada, and Shaw Communications. *Id.* Professor Kalt concludes, relying on information wholly unrelated to the forest sector, that forest sector companies could have obtained loans and guarantees at only 2 percent above the prime rate. This is not standard practice, nor is it accurate, given the evidence on the record regarding the forest sector's extreme financial distress.

36. Canada should not be permitted to, on the one hand, make public statements suggesting that substantial loans to the forest sector are tantamount to a violation of the SLA because they so clearly provide a benefit to the softwood lumber industry, and, on the other hand, offer an expert opinion that suggests a benchmark approximately 10 to 20 percent lower than the government's own estimates. Statements by Ontario and Québec government officials describing the state of their forest industries are inherently more reliable than post hoc "explanations" by Canada's long-time economist rendered in the context of a dispute with the United States.

37. Finally, it is also important to emphasize Professor Topel's observation that benefit calculations using the standard interest rate differential method directed by the Tribunal should *not* be construed as a concession that the projects would have gone forward at the higher interest rates:

> Of course, this does not mean that the subsidized loan would actually have occurred at the higher "but for" interest rate, because substantially higher interest would make many loans unattractive to borrowers. Indeed, the inability of companies to obtain credit at sufficiently low rates, or to obtain it at all, was the central reason for the government subsidies.

Joint Report, ¶ 79.

38. We raise this observation to demonstrate the inherent conservatism of Professor Topel's benefit calculations and, therefore, the limited nature of any remedy based on these calculations. None of the remedies proposed by the experts accounts for the fact that the subsidized loans would not have been made without government assistance.

B. Valuation Of The Québec PSIF Loans

39. It is not disputed that Québec provided both loans and loan guarantees to softwood lumber producers through the PSIF program administered by Investissement Québec ("IQ"). The experts agree on the loan amounts disbursed under the PSIF. However, they disagree on the valuation of the benefits provided for the same reasons that they disagree on the valuation of benefits provided under the Ontario FSLGP. Joint Report, ¶ 92.

40. Professor Kalt's position regarding the PSIF loans is even more unreasonable than his position regarding the Ontario program. As demonstrated above, Professor Topel uses evidence of actual forest sector companies, with similar creditworthiness and comparable risk, to derive a conservative benchmark interest rate to apply to all the loan and loan guarantee programs at issue in this case. In contrast, Professor Kalt relies almost entirely on conclusions of

Mr. Reilly in deriving his benchmark. Professor Topel explains why Mr. Reilly's conclusions are inapplicable, inaccurate, or incorrect. Nevertheless, to the extent Mr. Reilly's conclusions can be considered, they are limited to Ontario data and not Québec. Mr. Reilly conceded during the hearing in July 2009 that he performed no analysis whatsoever on Québec loans or loan guarantees. Tr. 544:2-5; 705:24-706:3 ("I really didn't do any work related to the Québec programs."). Accordingly, to the extent Professor Kalt's conclusions as to the value of the Québec loans and loan guarantees are based on Mr. Reilly's work, such reliance is unfounded and inappropriate.

C. Valuation Of The Québec PSIF Loan Guarantees

41. The Tribunal directed the experts to value the benefits provided by the PSIF program. The Tribunal did not limit the analysis to only the PSIF loans, but directed a valuation of the entire program. As Professor Topel recognizes, the record does not identify specific loan guarantees made under the PSIF program. Joint Report, ¶ 93. Nevertheless, IQ documents disclose that both loans and loan guarantees were provided under the PSIF program, and Canada has never denied this fact. The record reveals that [ ] million of the $425 million PSIF budget had been spent by [ ], and that approximately [ ] of that amount represents amounts disbursed as *loans*. *Id.*, ¶ 94. Professor Topel then allocates the same [ ] of the remaining budget to estimate the amount that will be spent on *loans* after 2008.

42. To derive an estimate of how much Québec disbursed in loan guarantees, Professor Topel employs a similar analysis. The record is clear that loan guarantees were made. *Id.*, ¶ 95 (citing Attachments 29-31). The question is how to estimate the amounts in the absence of specific, company information.

43. Professor Topel estimates the amounts of loan guarantees provided based on IQ Annual Reports. These public documents demonstrate specific amounts of loan guarantees provided to the "wood sector," of which softwood lumber producers are a part. Professor Topel used the IQ's general allocation of funds to the wood sector to estimate the amount of PSIF funds provided to Québec lumber producers. So, for example, as of March 2008, IQ had disbursed 40 percent of its total fund for the wood sector as loan guarantees. *Id.*, ¶ 97. Professor Topel similarly assumes that loan guarantees account for 40 percent of the total amount in loans and loan guarantees disbursed under the PSIF program. *Id.*, ¶ 101. Canada – whose province Québec has access to all the loan guarantee documents it claims are absent from this arbitration – has not provided any evidence to dispute this methodology or conclusion.

44. Professor Kalt concludes that the loan guarantees should be valued at zero, arguing that estimates are "speculative and unreliable." *Id.*, ¶ 104. Professor Kalt's blanket refusal to estimate loan guarantee disbursements, in the face of undisputed evidence of loan guarantee disbursals under the PSIF, is unreasonable. Obviously, whatever estimate the Tribunal chooses should be reasonable and conservative. However, to ignore entirely that loan guarantees were made would be contrary to the Anti-circumvention provision and would allow Canadian lumber producers to benefit from loan guarantees that, based on the evidence, we know to exist. Professor Topel's methodology is both reasonable and conservative and, most importantly, gives meaning to the Anti-circumvention's prohibition on grants or other benefits. There is no dispute that a loan guarantee is a benefit, nor is there any dispute that Québec made these guarantees through its PSIF program.

D. Valuation Of The Québec Capital Tax Credit

45. The experts agree on the timing, the rates applicable, and the total amount of the Québec Capital Tax Credit available to softwood lumber producers, but disagree on the benefit conferred by the credit. Joint Report, ¶ 114. Professor Topel explains that an accurate and complete valuation of the benefit must include not only the amount of credit actually used, but also the amount of credit that could have been used, because the credits could be carried over and used as offsets against future taxes. *Id.*, ¶¶ 121-125.

46. Professor Topel explains that "[t]he relevant economic question is not whether the tax credit was ultimately used, but whether the impact [on investment] was seriously blunted by the fact that a company cannot use more credit that it owed in tax." *Id.*, ¶ 122. The answer to this question is no. Here, as a matter of economics, investment would be incentivized even if the credit could not be used in the year the investment was made, because credits earned could be used to offset future tax liabilities. *Id.* ¶ 123. Although subsidized credits for forest sector firms could be accumulated only through November 2007, the opportunity to use the credits in the future – and the resulting incentivized investment – should be considered in valuing the program benefit. The companies themselves cannot be certain that they will be able to use the credit when they make the investment, but they will at least have some expectation that they will be able to use it.

47. More significantly, the tax credits reduce the cost of investment and thereby induce companies to make more investments. Québec presumably would not have extended the additional credit unless it expected to affect the behavior of forest sector companies.

48. Professor Kalt ignores this aspect of the Québec Capital Tax Credit and, therefore, posits an incomplete valuation of program benefits. Thus, Professor Topel's valuation

methodology for the Capital Tax Credit is more complete and consistent with the Anti-circumvention provision's prohibition of government grants or other benefits to softwood lumber producers or exporters.

49. Finally, despite the use of the phrase "Total Credit Amount Used," Professor Kalt's methodology is based on an unreliable extrapolation derived from a small sample of tax returns. Indeed, Professor Kalt's statement that he calculates benefits by using the "amount of the tax credit that was actually used" by companies, Joint Report, ¶ 115, is untrue because he does not know this information. Instead, he has extrapolated from a self-serving sample of tax returns that he concedes represent only the "smaller softwood producers" who permitted disclosure of their returns. *Id.*, ¶ 119, n. 112. Moreover, Professor Kalt has neither disclosed his extrapolation method nor tried to explain why his unrepresentative sample is amenable to extrapolation.

50. Thus, Professor Kalt's "Total Credit Amount Used" figure is a misleading and unreliable extrapolation, and not an accurate measure of the benefits provided by the actual tax credits. In the absence of definitive information from Québec detailing the credits actually used (which Québec certainly could produce without revealing the taxpayers' names), Professor Topel's reliance on the full benefit made available by Québec is a more reliable benchmark for measuring program benefits.

E. Valuation And Treatment Of Benefits From The Québec Roads Tax Credit

51. The Québec refundable tax credit for the construction of roads was originally announced as part of the Minister of Finance's speech in March 2006 at a rate of 40 percent.[11]

[11] *See* C-43 at p. 40, Att. U.

In October 2006, the Québec Premier amended the program to increase the credit to 90 percent.[12] The road credit, which had an estimated budget cost of $232 million,[13] effectively transfers 90 percent of the cost of certain forest roads from industry to the government.

52. The Tribunal directed the experts in Procedural Order No. 6 to consider only the portion of the credit above the initial 40 percent. Professors Topel and Kalt disagree with respect to the valuation of the benefits provided by Québec through its refundable tax credit for the construction of forest roads. Specifically, the experts disagree as to the methodology to estimate total annual spending on roads eligible for the credit in 2008, 2009, and 2010. Joint Report, ¶¶ 128-132 (there is agreement on the amounts for the years before and after these three years); *see also* Joint Report, Fig. 28.

53. The disagreement is the result of the fact that Québec has not published complete information as to the tax credits claimed in these three years. Joint Report, ¶ 131. In the absence of this direct evidence, Professor Topel uses Revenu Québec's *estimates* of tax credits claimed in 2006 and 2007 in order to estimate the amount of credits claimed in 2008-2010. In contrast, Professor Kalt simply adopts Québec's own untested, unrevised, and potentially self-serving *projections* of claimed credits for these same years. Joint Report ¶¶ 133-134. The chart below demonstrates the differences between Professor Kalt's reliance on Québec's own untested and unrevised projections and Professor Topel's use of Revenu Québec's estimates.

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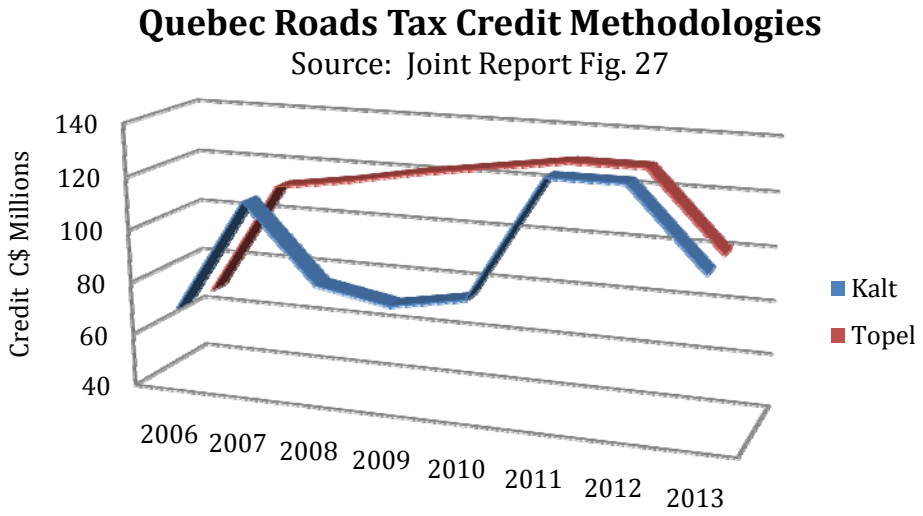
[12] *Id.*

[13] *Id.*, Att. AB.



54. Beyond this, there is apparent agreement as to the percentage of road spending attributable to softwood lumber and the offset to benefits resulting from the adjustment to Québec's stumpage system (the "stumpage offset"). The end result is a relatively modest difference in program benefits to softwood lumber producers: $204 million (Topel) compared to $164 million (Kalt). Thus, using either expert's methodology, Québec clearly provided a substantial benefit to its softwood lumber producers in contravention of the SLA.

55. The far more significant disagreement with respect to the Québec Road Tax Credit is the treatment of program benefits in the economic model. Joint Report, ¶¶ 147-160. Professor Topel concludes that the Québec road benefits involve provincial investment in capital used to produce softwood lumber, specifically logging roads, a conclusion that Professor Kalt does not contest. Joint Report, ¶ 156. Professor Topel, therefore, treats the capital investment in logging roads just as any other capital investment, explaining that "[r]oads are built when the present discounted value of the stream of returns they will yield exceeds the cost of building and maintaining them. They are part of the capital stock of the lumber industry – roads built today

will impact the cost of producing lumber both now and in the future, and their impact on future market incomes is recognized today." Joint Report, ¶ 160. Professor Kalt also does not contest this conclusion.

56. Instead, Professor Kalt proposes carving an exception out of the general rule that capital used in the production of softwood lumber should be treated the same, regardless of whether it is located at a sawmill or in the forest. Joint Report, ¶¶ 150-151. In proposing this exception, Professor Kalt presumes, despite his lack of expertise in forestry or sawmill operations, and without citing to any authority, that roads should be treated differently because they purportedly affect only the delivered price of logs to sawmills. His reasoning is based on an assumption that the availability of additional roads does not affect sawmill operations. Joint Report, ¶ 152.

57. According to Professor Kalt, the experts' differences "affect [the] model's predicted lumber supply response to the Québec roads tax credit" because the fact that the roads allow the production of additional logs should not increase sawmill efficiency. Joint Report, ¶¶ 151-152. However, Professor Kalt simply assumes, absent factual support, that sawmills lack the capacity to handle increased volumes of logs available due to the additional logging roads; in other words, he assumes that all sawmills are always operating at 100 percent capacity. *See* Joint Report, ¶¶ 151 (asserting that his "approach entails the perspective that no matter how many roads are built, or how good they are, additional roads affect the costs of the logs delivered to a sawmill and do not separately affect milling productivity and mill costs"). This assumption is unsupported by the record.

58. In fact, rather than supporting Professor Kalt's assumption, the record reflects that Québec sawmills were operating at only 83 percent of their capacity when Québec enacted its

logging roads benefit.[14] Thus, additional forest roads have the effect of not only decreasing the price of delivered logs, but also of increasing the supply. This allows greater use of the excess capacity in Québec's sawmills, affecting the overall efficiency of lumber production.

59. Professor Topel explains that he treats "the production of lumber from logs as an integrated process involving capital – roads, trucks, sawmills and so on – together with other inputs such as labor, energy and, yes, logs cut in the forest. This process begins with a log and ends with finished lumber." Joint Report, ¶ 160. Professor Kalt never contests the integrated nature of the production process.

60. In sum, Professor Topel's reasonable conclusion that Québec road building program benefits should be treated like any other capital expense finds support in the record; Professor Kalt's proffered exception does not.

61. The significance of Professor Kalt's theory and his resulting treatment of road program benefits is dramatic, sharply reducing the compensatory adjustments and the total amount collected for the road program by over 40 percent. Thus, where Professor Topel calculates that the program results in $204 million in benefits to Canadian softwood lumber producers, Professor Kalt's modeling leads to the collection of only $74 million in additional export charges. Using Professor Kalt's own benefit figure of $164 million, his modeling results in the collection of only $62 million. As explained above, the record does not support such a dramatic discounting of the benefits provided by the Québec roads tax credit.[15]

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[14] *See* U. S. Stmt. of Case, C-1 at Attach, I at 7 (noting that by 2006, Québec sawmills were operating at only 83 percent capacity; this statistic excluded closed mills which might have been reopened, adding even more capacity).

[15] The Tribunal will observe in using the interactive spreadsheet that Professor Kalt's modeling of this parameter affects the calculations of compensatory adjustments for the other programs as well.

III. Legal Issues Concerning The Compensatory Adjustments To The Export Measures

62. The final section of the experts' joint report provides a statement by each economist as to the wisdom of compensating for the post-SLA effects of program benefits provided by Ontario and Québec during the SLA. Joint Report, 163-205. There is an important point of agreement at the outset of the section: both economists agree that the program benefits will cause harm to U.S. producers after the expiration of the SLA, harm of the same kind as that caused during the SLA. The only issue is whether that harm is considered and compensated as part of the remedy determined by the Tribunal. Professor Topel makes clear in the joint report and we explain below that the answer to this question should be yes.

63. Another legal issue – how to treat benefits provided to "Article X producers" – is presented in the experts' calculations but not discussed in the report because it is a purely legal issue. We briefly address the question below, demonstrating that these benefits should be included pursuant to the plain text of the SLA Anti-circumvention provision, which does not except such benefits from its prohibition.

A. Post-SLA Effects Of The Breach Should Be Considered For Remedy Purposes

64. The Tribunal directed the experts to perform two separate calculations in determining compensatory adjustments. First, the experts calculate compensatory adjustments covering only the effects of the benefits experienced during the period of the SLA's existence (until 2013).[16] Second, the experts calculate compensatory adjustments covering the effects of the benefits experienced during *and after* the expiration of the SLA. *Id.* The experts recognize that the decision whether to include post-SLA effects involves legal interpretation, but provide

[16] Letter from G. Kaufmann-Kohler to R. Topel and J. Kalt, Apr. 15, 2010.

their opinions as economists regarding the two options. Notably, the experts agree on the amount of the effects experienced after the SLA's expiration. Joint Report, ¶ 163. Accordingly, if the Tribunal determines to consider post-SLA effects, it need not choose between different calculations of the effects.

65. The SLA's remedy provisions require any remedy to be in the form of compensatory adjustments to the export measures, "in an amount that remedies the breach." SLA, art. XIV, ¶ 23. It is well-established that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[17] The Tribunal in *United States v. Canada*, LCIA No. 7941, applied this long-standing, customary international law principle to breaches of the SLA.[18]

66. The experts agree that the harm caused by Canada's providing of benefits "will continue after the expiration of the SLA in 2013." Joint Report, ¶ 164. Because there is no dispute regarding the amount of harm, this harm must be accounted for in any remedy that is to satisfy traditional requirements of reparations. Given the nature of the remedy as export charges, any remedy must itself be completed before the expiration of the SLA. To the extent that effects of the breach extend beyond the expiration of the SLA, the requirement to "remedy the breach" includes these effects.[19]

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[17] CA-19, *Case Concerning the Factory at Chorzów* (Germ. v. Pol.), 1928 P.C.I.J. 47 (ser. A) No. 17 (Sept. 28).

[18] CA-12, *United States v. Canada,* Award on Remedies, LCIA 7941, ¶¶ 274-275.

[19] If the Tribunal disagrees and intends its award to offset only a portion of the benefits it has found to exist, the United States respectfully requests that the Tribunal make clear exactly what benefits are not offset by its award. This information will be useful in determining how to address unaccounted-for benefits should the parties decide to extend the SLA or should the parties desire to consider this information after the expiration of the SLA.

67. This result is not only required by the SLA and by generally accepted notions of remedy, it makes logical sense given the unique nature of the export charges that will make up the remedy here. Because the remedy must be in the form of export charges that cannot extend beyond the year 2013, the charges are temporary and can be avoided. As Professor Topel explains, "exporters that are subject to temporary duties are able to avoid the duty either by waiting until it expires or by selling their lumber in other areas." Joint Report, ¶¶ 174-76. Indeed, we have seen this very phenomenon in the collection of the remedy in *United States v. Canada*, LCIA No. 7941. There, exporters sharply increased exports just before the onset of the remedy period, presumably to avoid the tax for a period of time, and sharply reduced exports when the remedy was imposed. *Id.*, ¶ 176.

68. Additionally, because duties would be imposed on only two exporting regions (Ontario and Québec), producers in those regions can avoid the charges by selling more lumber to locations other than the United States, while the regions not affected by the charges can take over and export the lumber to the United States that would have been exported by Ontario and Québec. Joint Report, ¶ 173.

69. Finally, producers can avoid the tax by choosing to delay the harvesting of trees until the tax expires. *Id.*, ¶¶ 174-175.

70. These opportunities for avoidance are, in part, the natural result of the limited remedy options available under the SLA and the fact that the additional export charge will be temporary. Given that the joint model does not account for this avoidance, the remedy must acknowledge this to the extent possible. A remedy that accounts for only effects experienced during the SLA's existence is insufficient. Joint Report, ¶¶ 175-177. In other words, a remedy that does not include post-SLA effects is already a partial remedy, because we know that a

portion of those charges will likely be avoided by the tactics noted above. Post-SLA effects must be considered not simply because they are legitimate consequences of the breach, but because without them, the remedy will have little effect at all. *Id.*

71. Professor Kalt disagrees with this analysis, arguing that the conservatism and inadequacy of the remedies are "undemonstrated and unmeasured." Joint Report, ¶ 197. What is particularly striking is that, in the earlier arbitration (LCIA 7941) under the SLA, Professor Kalt made exactly Professor Topel's observations. In that proceeding, he was sharply critical of the remedies proposed by the United States because they did not consider the likely economic effects of a temporary duty, effects that he now disputes. Professor Kalt wrote in LCIA 7941:

> It is widely recognized that the economic effect of a temporary tax differs, often substantially, from the effect of a permanent one. For example, the spending response to a "tax holiday" may be substantially greater than the effect of a similar permanent tax cut . . . .
>
> Competent lumber producers, exporters, and buyers would not be expected to respond to a temporary tax such as that proposed by the U.S. here in the same economic fashion as they would to a permanent tax. In response to a temporary tax, for example, both potential buyers and Option B region exporters can take advantage of the distinction between exports (which are taxed) and production (which is not). In particular, during the period in which the penalty is in effect, exporters would have incentives to add to inventory, and purchasers would be expected to deplete their inventories – in effect waiting for the export penalties to expire. Normal inventory behavior would be expected to be restored once the tax ended. . . . Adjusting inventory in response to the effect of a temporary tax is hardly "manipulation," but is part of rational profit-seeking behavior by competent market participants. *The implication is that, with a temporary tax a large reduction in exports would be filled by inventory adjustments, rather than higher prices and more production in the U.S., and market prices seen by U.S. producers would be expected to be little, if at all, affected.*[20]

[20] C-71, *Rebuttal Expert Witness Statement of Joseph P. Kalt and David Reishus*, ¶¶ 32-34 (emphasis added). Mr. Reishus continues to assist Professor Kalt in this arbitration as well.

72. Professor Kalt's submission in LCIA 7941 is inconsistent with his criticism of Professor Topel's observations in this case and his conclusion that a remedy that fails to account for post-SLA effects will be "too conservative" and "under-compensate" for the effects of the breaching programs. Joint Report, ¶¶ 175, 177.

73. It is particularly important to consider post-SLA effects of the breach if the Tribunal disagrees the United States' position that the remedy should be a collection of all of the benefits conferred without regard to the effect of the breach on lost producer surplus. If the Tribunal considers only the effect of the breach on U.S. lost producer surplus, then it will be awarding only a partial remedy, far less than the amounts of benefits provided.

74. If, in addition, the Tribunal considers only the effects of the breach during the term of the SLA, the remedy will be even further reduced. Not only would this result be contrary to the terms of the SLA, it would increase the likelihood that the remedy has little to no effect on Canada or its producers. This would effectively allow Canada to continue to breach the Agreement, knowing that any remedy imposed would be just a fraction of the benefits conferred.

B. Benefits To Article X Producers Are Properly Included In Benefit And Remedy Calculations

75. The final legal issue is the treatment of program benefits to companies whose exports, pursuant to recognition in Article X of the SLA, are not subject to the SLA's export measures. The experts recognize the question but do not take a position in the joint report. Joint Report, ¶ 3. Nonetheless, the experts include the choice of considering or not considering benefits to Article X companies among the selections in the interactive spreadsheet. *Id.*, Att. A.

76. The question can be answered by the text of the SLA itself and an understanding of the genesis of Article X. A company's status as an Article X producer is separate and distinct from circumvention under Article XVII. The Anti-circumvention provision prohibits grants and

other benefits to "producers or exporters of Canadian Softwood Lumber Products." SLA, Art. XVII, ¶ 2. Article X producers are "producers or exporters of Canadian Softwood Lumber Products," and Canada cannot contend otherwise. Significantly, Article X producers are *not* included among the express exceptions in Article XVII.

77. Accordingly, benefits to Article X producers are treated the same as benefits to any other Canadian producers or exporters for purposes of determining a remedy for breach of the Anti-circumvention provision. This is true even if exports from Article X producers themselves are not subject to the SLA's export measures, and there is no inconsistency. The SLA simply exempts certain companies from the export measures, but states that circumvention can occur when Canada provides grants or other benefits to these same companies: they are exempt from the export measures but not from the Anti-circumvention provision.

78. This interpretation is confirmed by the history of Article X. "Article X producers" are those companies referenced in paragraph 1(c) to Article X and listed in Annex 10. SLA, Art. X, ¶ 1(c). This section of Article X reflected prior findings by the U.S. Department of Commerce that certain Canadian companies did not significantly benefit from government subsidies and, therefore, could be excluded from the countervailing duty (CVD) order or be subject to significantly lower cash deposit rates under the order.[21] These CVD proceedings were settled by the SLA.

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[21] *See, e.g.*, CA-55, *Certain Softwood Lumber Products from Canada*, 67 Fed. Reg. 15,545, 15,548 (Dep't Commerce Apr. 2, 2002) (companies 1-18 in Article X(1)(c) and Annex 10 found to receive zero or *de minimis* subsidies); CA-56, 68 Fed. Reg. 24,436, 24,438 (Dep't Commerce May 7, 2003) (companies 21-23 in Article X/Annex 10 found to receive zero or *de minimis* subsidies); CA-57, 69 Fed. Reg. 10,982, 10,984 (Dep't Commerce Mar. 9, 2004) (companies 19, 20, 24 in Article X/Annex 10 found to receive zero or *de minimis* subsidies); CA-58, 67 Fed. Reg. 67,388, 67,392 (Dep't Commerce Nov. 5, 2002) (companies 25, 27-32 in Article X/Annex 10 found to receive low levels of subsidies). Although not directly relevant here, softwood lumber products produced in the Maritime provinces, the Yukon, and the

79. In other words, a company's inclusion in Article X, and the exemption of their products from the export measures, was based on findings prior to the SLA that the company received no or minimal subsidies during the period of investigation. The *status quo* brought forward and preserved by the SLA rests upon the continued viability of the proposition that the companies identified in Article X do not receive significant government subsidies, because additional subsidies to these companies would have rendered them ineligible to be listed in Article X in the first place.

80. For these reasons, Article XVII makes no distinction between Article X companies and non-Article X companies: grants and other benefits provided to Article X companies undermine and circumvent the Agreement just like grants or other benefits to any other producer or exporter of Canadian softwood lumber products. Furthermore, benefits to Article X producers harm United States producers. Any capital benefits provided to a Canadian producer or exporter of softwood lumber, such as PSIF loan guarantees at issue here, have the effect of increasing the supply of softwood lumber, thereby lowering its price to the detriment of the United States industry.[22] Such benefits are, therefore, properly included in the experts' benefits and compensatory adjustment calculations.

C. The United States' Requested Remedies

81. Professor Topel calculates that the five programs identified by the Tribunal in Procedural Order No. 6 provide $273 million in grants and other benefits to Canadian softwood lumber producers and exporters. The SLA declares that these grants and other benefits reduce or

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Northwest Territories are also excluded from the export measures by Article X pursuant to similar findings. SLA, Art. X(1), ¶¶ (a), (b).

[22] *See generally* Joint Report, ¶¶ 181-83 (discussing effects of subsidies to capital on supply and demand).

offset the SLA's export measures, and do not qualify for any exception. As explained above, an appropriate remedy must remedy the breach by wiping away all consequences and returning the parties to the pre-breach *status quo ante*.

82. To that end, we respectfully request that the Tribunal determine a remedy that collects $273 million on exports from Ontario ($36 million) and Québec ($237 million). These amounts should be collected by the imposition of an additional charge at a rate of 2.3 percent on Ontario exports and 10 percent on Québec exports until the entire amounts are collected.[23]

83. For the reasons articulated in Part I, collecting these amounts will provide a more complete remedy for Canada's breach of the SLA.

84. This request is limited to the five programs identified in Procedural Order No. 6 and the experts' joint report. Our request should not be construed as a concession that the other Ontario and Québec programs identified in our previous submissions do not breach the SLA, or that we are not entitled to a remedy for these other programs.

CONCLUSION

85. The United States has established Canada's liability for breach of the SLA Anti-circumvention provision and entitlement to a remedy. Professors Topel and Kalt estimate in their joint report that Ontario and Québec have provided between $188 million and $273 million in benefits through five of the challenged government programs. For the reasons explained above and by Professor Topel in the joint report, the $273 million benefits figure is more

[23] According to the experts' calculations, an additional 2.3 percent export charge on Ontario exports is expected to collect $36 million. Joint Report, Att. A (using Topel positions/inputs). An additional 10.7 percent charge on Québec exports can be expected to collect $237 million, given the experts' estimate that a 6.6 percent export charge will collect $146 million on expected Québec exports. *Id.*

accurate, and should be the basis for calculating compensatory adjustments to the export measures.

86. On the basis of the experts' calculations, the United States respectfully requests that the Tribunal identify a reasonable period of time, not longer than 30 days, for Canada to cure its breach. We further request that the Tribunal determine that, should Canada fail to cure its breach within that period, appropriate adjustments to the export measures will consist of additional export charges of 2.3 percent on Ontario softwood lumber exports and 10.7 percent on Québec softwood lumber exports, to be applied until the amounts of $36 million and $237 million, respectively, are collected.

Respectfully submitted,

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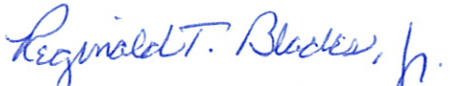

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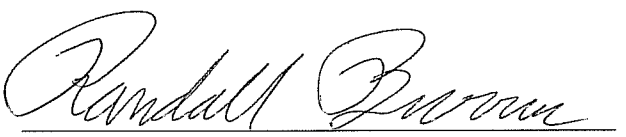
July 15, 2010

CERTIFICATE OF SERVICE

I certify that I caused to be sent, by overnight courier, the UNITED STATES COMMENTS ON THE EXPERTS' JOINT REPORT (Non-Confidential) to the members of the Tribunal and the legal representative of Canada on July 22, 2010.



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