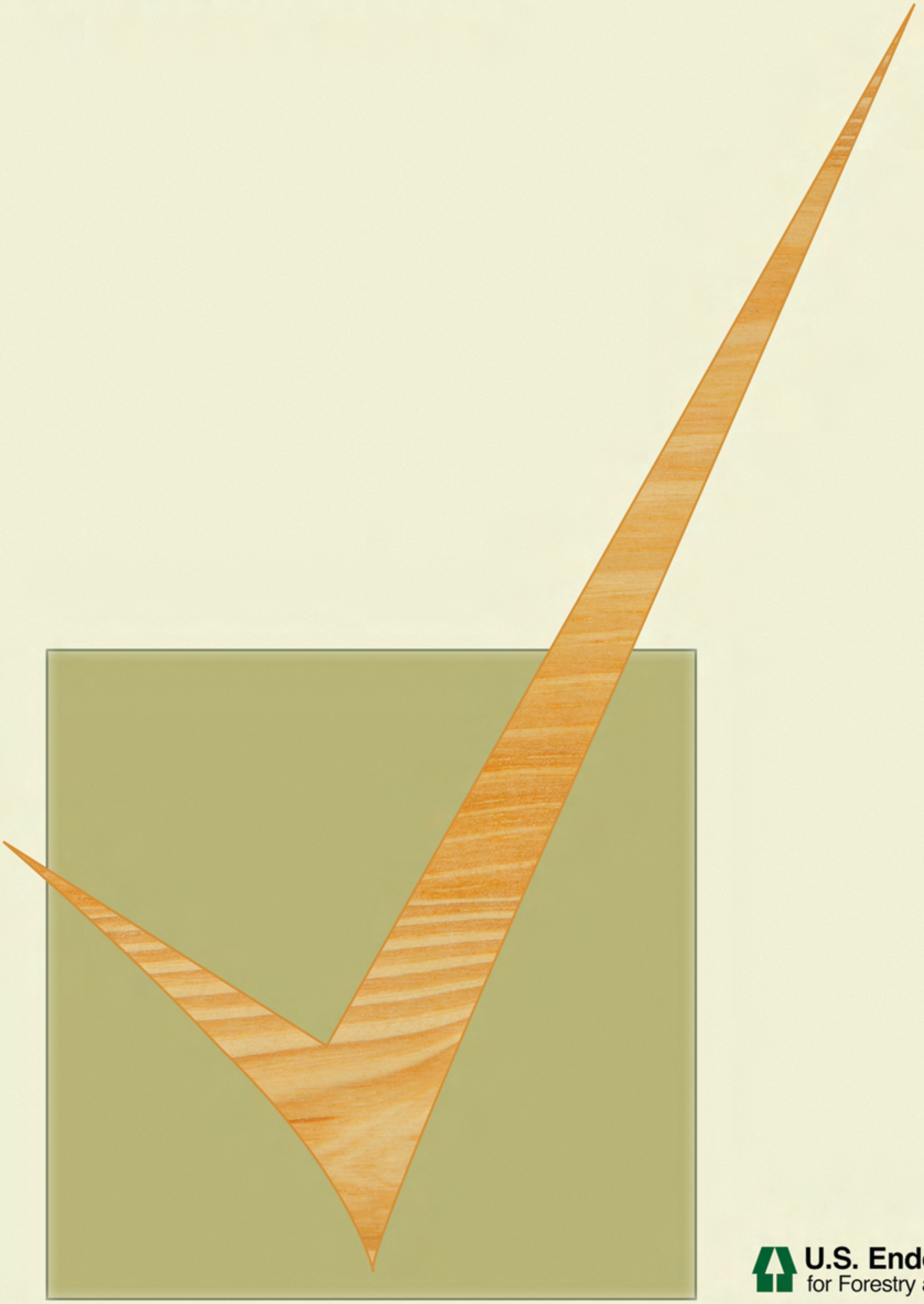
Commodity "Check-off"

The Potential for North American Softwood Lumber



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Abstract

Given its mandate in the 2006 Softwood Lumber Agreement to advance systemic, transformative and sustainable change for the health and vitality of the nation's working forests and forest-reliant communities, the U.S. Endowment for Forestry and Communities commissioned a report on the use of agricultural commodity "check-off" programs across North America. The intent of the report is to determine the feasibility of using such a program to grow markets for softwood lumber, thereby benefiting forests as well as forest-reliant communities.

Check-off programs have been used for more than fifty years by U.S. agricultural commodity producers to generate funds to educate consumers and promote domestic and foreign market demand. Well known examples include the "GOT MILK?" "Beef, It's What's for Dinner," and "Pork, the Other White Meat" programs. In the softwood lumber industry, modest check-off programs are active in several states, but there are no national programs in either the U.S. or Canada.

Check-off programs—which must be agreed to by a majority of industry—are governed by industry but enabled by government. Government involvement assures funding equity and stability over time, which has been a major shortfall of past and current voluntary marketing programs. Although no such legislation exists in Canada, the U.S. legislation is sufficiently flexible to allow Canadian production to be included, with proportional representation on the program's governing board. From the decision to pursue a check-off to the first meeting of a new board takes about eighteen months.

A survey of Canadian and U.S. industry leaders representing over fifty percent of softwood lumber production indicates that a majority are open to exploring a North American-wide check-off program. Industry executives generally support generic promotion. Reasons cited to consider a check-off program include the opportunity to improve business conditions, grow the market, secure stable funding and eliminate free riders, develop new products and applications, reduce costs, consolidate existing programs, and position industry's sustainable and renewable resource and products as part of the solution to climate change.

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Executive Summary

The impact of a shrinking and unstable North American forest products industry has been devastating to forest landowners and forest-reliant communities. For the last two decades—long before the recent housing bubble, sub-prime mortgage disaster and related credit crunch that together threaten a major industry restructuring—the North American forest products industry has existed in an almost continuous state of crises.

Forces such as public policy changes, competition from substitute materials and attacks by anti-industry campaigners have caused an erosion of market share as well as significant ongoing restructuring and consolidation within the forest industries. The impacts have meant fewer economic opportunities for forest landowners (outlets/markets for logs) and fewer jobs in rural communities. Forest-reliant communities have been especially hard hit.

In both the U.S. and Canada, when faced with stagnant or declining markets and difficult operating environments, various agricultural producers have asked their legislative bodies to levy small fees on their products to be used to improve business conditions through promotion, education and other activities designed to stimulate market demand. Among the better known of these national "check-off"[1] programs are the "GOT MILK?," "Beef, It's What's for Dinner," and "Cotton, the Fabric of our Lives" campaigns. In addition to strengthening the market position of these products, check-off authority also helps industries address sustainability objectives, conduct research to understand how they are perceived and positively influence that perception. Additionally, funds may be used to conduct research related to technical issues and product development.

Check-off programs have been used for more than fifty years by U.S. agricultural commodity producers to generate funds to educate consumers and promote domestic and foreign market demand.

The 1996 Farm Bill provides specific authority to include the "products of forestry" in a national check-off program. Many forest industry leaders believe that forest products benefit from generic promotion and have at times sponsored communications programs. Nevertheless, the forest products industry has never used national check-off program authority. Instead, generic promotion efforts have been voluntary, sporadic, and too short-lived to yield significant results.

A survey of the forest products industry conducted for this study, using softwood lumber as the basis, has shown that producers representing a majority of production capacity are open to exploring a North American-wide check-off program. Industry softwood lumber executives cited as their reasons opportunities to improve business conditions, grow the market, develop new products and applications, reduce costs, and enhance the industry's reputation for meaningful environmental stewardship in the face of global climate change.

To this end, three points are particularly noteworthy:

1. Imports can be included in a national check-off program. However, if they are, assessment rates on imported products can be no more than on domestic products, and the imported products must have fairly allocated, representative seats on the governing board.
2. The question of who benefits, who pays, and who votes must be clearly addressed. "Free riders"[2] have long hampered industry efforts at self-help, and have frustrated promotion and communications programs, as well as association member recruitment. Check-off programs are mandatory and, while they do take a majority vote to proceed, it is possible to exempt smaller and fiercely independent producers[3] who might find participation most burdensome. Such an exemption could significantly increase the chances for success. Yet, the benefits of a program would accrue to the entire industry, even the smaller exempt companies.
3. Check-off legislation allows an industry to accumulate check-off reserve funds to permit a continuous, effective program of research and promotion in years when, because of market conditions, assessments may be reduced.

It is important to note that this report deals with the success or failure of check-offs as sustainable programs, and does not examine the success or failure of their promotion, research or communications campaigns. This is a critical distinction because, overwhelmingly, programs have failed not because of poor communications programs but due to the underlying failure of an industry to deal with its specific structural problems in the conception and design of its check-off organization.

This feasibility report concludes that, should the North American industry decide to develop a check-off program, a unified North American program organized through the U.S. Department of Agriculture under provisions in the 1996 Farm Bill would be the most effective approach. From the softwood lumber industry perspective, the 1996 Farm Bill provides an opportunity for a fair, unified binational North American check-off program with cross-border equity with respect to financial contributions, process, and governance.

To aid understanding of this conclusion, this report will:

- Examine the opportunities provided by check-off programs for generic promotion,
- Summarize the positive economic benefits calculated for existing programs,
- Present research that supports findings and conclusions with regard to implementation options,
- Provide detailed information about how to establish and implement a check-off program, and
- Suggest how this tool might be used to improve business conditions for the forest products industry in North America.

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Findings and Conclusions

Findings & Conclusions

PURPOSE AND OBJECTIVES

Even before the recent housing crisis, sustainably produced forest-based products processed in North American mills had been challenged by increased competition in the marketplace. This has included pressure from foreign made goods on the one hand, and less sustainable products (such as steel, concrete, and oil-based substitutes) on the other, which have collectively helped to erode wood's share. Some have argued that existing trade agreements between the U.S. and Canada have actually served to open markets to offshore producers—non-North American imports increased exponentially starting in 1996—and substitute products have likewise captured an increased market share.

Specific impacts of these changing circumstances include a declining forest products industry, fewer economic opportunities for forest landowners, and fewer well-paying jobs in rural communities. When faced with similar circumstances, other agricultural producers have sought legislation to levy small fees on their products, to be used to promote increased demand. These promotional campaigns are commonly known as "check-off"[4] programs.

While the U.S. Endowment for Forestry & Communities (the Endowment) targets its work within the U.S., it has commissioned a "state-of-the-art" report on the use of commodity "check-off" programs across North America and the potential for such programs to grow domestic markets for sustainably produced forest products (Appendix A). The Endowment chose this approach in the spirit of the Softwood Lumber Agreement, with the goal of yielding the greatest gain from potential investments, both for the industry and the broader community.[5]

The objectives of this report are to provide a comprehensive feasibility study and implementation options that examine the potential for unified or coordinated "check-off" programs for softwood lumber in the United States and Canada. Such programs could provide a relatively stable and uninterrupted funding stream to support and expand markets, which in turn could benefit the broad range of forest communities and stakeholders.

Background on the firms chosen to conduct the study and their methodology can be found in Appendix B.

OVERVIEW

Commodity Check-off Programs

National, generic "research and promotion" programs, known as "check-off" programs from a time when farmers "checked the box" if they wished to contribute, are a well established means for agricultural commodity producers to raise funds for generic product promotion through self-imposed mandatory assessments overseen by U.S. Department of Agriculture (USDA). Congress has provided for the generic promotion of farm products since the 1930s, and modern-day check-offs began with the potato program authorized in 1966. Since then, enabling legislation has authorized programs for nearly thirty commodities.

Title V, Subtitle B, of the 1996 Farm Bill, called the Commodity Promotion, Research, and Information Act of 1996[6] (7 U.S.C. 7411-7425) (See Appendices C1 and C2), explicitly gives the USDA broad-based authority to establish national generic promotion and research (check-off) programs for virtually any agricultural commodity including "the products of forestry." Check-offs are established by the USDA at the request of an industry group that can show it has a majority consensus, by numbers or volume, in support of such a program. Specific Congressional authorization for each new check-off program has not been necessary since passage of generic authority in the 1996 Farm Bill.

Producer groups generally prefer an arrangement that provides more inclusive and mandatory participation, and check-off programs address the 'free rider' problem of other producers gaining benefits without contributing promotion funds. Because they can only be terminated through a referendum, these programs have also proven to be much more sustainable than alternate approaches over time.

Check-off programs are used to fund domestic and international marketing, market promotion and research projects for the purpose of improving the position of products in the marketplace. This is accomplished by growing markets and by improving overall business conditions, benefiting an industry's reputation and credibility as well as profitability and share.

Check-off programs are typically initiated by industry groups that submit their request to the U.S. Secretary of Agriculture. Proponent groups must provide evidence of broad-based industry support, as passage in referendum and the likelihood of minimal compliance problems are important considerations in the USDA's review.

Most industries choose to devote the largest share of check-off dollars to marketing activities aimed at increasing domestic or international demand for the agricultural commodity. Research—related to marketing, product, production, application, conservation and sustainability, etc.—is also funded by many programs. Although no taxpayer or government funds are involved, assessments are used by many industries as "matching" funds for other government-funded initiatives such as the USDA's (FAS) Foreign Market Development programs.

While each check-off program must have its own governing board, staff and budget, separate from any organization or association, it may contribute to the support of other organizations for projects that are consistent with statutory and regulatory authority. In this regard, for example, the softwood industry could use funds from check-off assessments to fund activities of the American Wood Council or industry grading agencies. However,

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when an industry has tried to use its trade associations as a principal check-off contractor, the arrangement has been the source of litigation and political problems in light of the apparent conflict with restrictions on public policy advocacy, political and lobbying activities. Thus care must be taken to restrict activities of sub-contracting organizations to those authorized by the statute.[7]

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Programs are established, overseen and administered by the USDA's Agricultural Marketing Service (AMS). The costs of administering the program, typically between $75,000 and $135,000, and up to $200,000 in a referendum year, are fully reimbursed to the USDA by the check-off program. From the time a decision is made to pursue a check-off program, it normally takes twelve to eighteen months to launch.

Participants should view check-offs as industry self-help programs that demand minimal government involvement, although some industries, having asked for and established a check-off, nonetheless chafe under USDA oversight. To fund promotion, the assessments paid by industry are generally tied to each unit they market. For example, the beef program assesses $1.00 per head, and softwood lumber might assess per thousand board foot unit or equivalent. Assessments are normally deducted at the time of sale—thus the continuing use of the term "check-off".

The opportunity provided by the 1996 Farm Bill would be the most effective way for softwood lumber to establish a check-off program for five reasons:

1. Congress has signaled that it no longer prefers[8] to initiate industry-specific check-off programs using stand alone legislation,
2. Other industries have spent millions of dollars on the legislative process to establish a check-off,
3. The Farm Bill specifically identifies forest products as agricultural commodities eligible for USDA-sponsored check-off programs,
4. The legislation allows a volume-based referendum, and
5. This approach would avoid the controversy that a stand-alone piece of legislation might awaken.

An interesting side note, given these difficult times for the industry, is that Title V, Section 516 of the 1996 Farm Bill allows an industry to accumulate check-off reserve funds "to permit an effective and continuous coordinated program of research, promotion, and information in years when the yield from assessments may be reduced."[9]

Establishing a Check-off

The first step in the process of establishing a check-off program is the creation of an industry task force to engage the USDA in discussions regarding feasibility. The task force then typically prepares an application and drafts a formal proposal to the USDA, called a Proposed Order. If the USDA determines that there is an adequate basis upon which to proceed, it publishes the Proposed Order in the Federal Register for public comment. After reviewing comments, and assuming no major reason not to proceed, the USDA then initiates a referendum of all parties who would be assessed under the check-off program. If a majority of the industry votes in support, the USDA then solicits nominations for the initial check-off board, appoints the board (in collaboration with industry), and calls the inaugural organizational meeting. Once the board takes action on organizational and administrative details, specific check-off activities can be designed and implemented, and funds can be assessed. At this stage—once the new industry check-off board is functional—the role of the USDA shifts to compliance and oversight (described later in this report).

To simplify, the process can be described in six stages, which collectively take from twelve to eighteen months. Each requires a successful outcome in order to proceed to the next:

1. Industry task force discussions with USDA
2. Application, including a Proposed Order, to USDA

   [Note: the USDA's review process can be lengthy]
3. Publication of Proposed Order in the Federal Register for public comment; USDA review of public comments (about nine months)
4. Industry referendum on Proposed Order
5. Creation of industry check-off governing board (nominations, appointment and initial organizational meeting)
6. Program implementation.

The USDA provides a detailed description of this process in a standardized menu of procedures and requirements for designing and implementing check-off programs. These can be found in Appendices D (1) – The Application Process, D (2) – Post Application Procedures, and D (3) – Drafting a Proposed Order.

Relevance to Softwood Lumber

An interview-based survey of over thirty North American softwood lumber industry CEOs and heads of business probed their level of interest in generic promotion to grow the market and improve business conditions, and explored whether a check-off program might be a viable method to achieve that end. The survey solicited responses from those accountable for over 60% of North American production and received responses from 54%. With few exceptions, executives see value in generic softwood lumber promotion. A simple majority, equating to about 51% of North American production, expressed interest in exploring check-off as a means to achieve industry market goals. Details on survey results can be found on page 45.

Many traditional "free riders" were not contacted or declined to respond to the survey, which is consistent with their general reluctance to engage on collective initiatives at any level. Even with a much lower approval rating from the remaining (non-surveyed) companies, a solid majority by volume of North American production can be expected to have an interest in exploring a check-off approach to improving business conditions for the industry.

Given the extent of positive responses to date, the U.S. Endowment can encourage with confidence further steps to explore the industry's interest in check-off. A possible next step for the Endowment might be to organize a representative group of senior executives to explore a North American check-off program for softwood lumber, and to facilitate introductions of key industry players in Canada and the United States to the USDA's Agricultural Marketing Service.

What follows will assist those who wish to encourage a North American check-off program by identifying the inherent and heretofore overwhelming issues and barriers to establishing such an undertaking, and describing the "winning conditions" needed to overcome them and create a successful outcome.

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Forest Industry Markets, Past Programs, Future Opportunities

Chapter 1

SITUATION ANALYSIS[10]

The Softwood Lumber Dispute

Any discussion of softwood lumber in North America cannot overlook the decades-long dispute between the industries of the United States and Canada over softwood lumber trade.[11] In fact, this study has been funded by one of the entities created as a result of the 2006 Softwood Lumber Agreement, which set aside funds for purposes related to improving conditions for forest landowners, forest-reliant communities and sustainable forestry, and for improving relationships between the Canadian and U.S. industries through collaborative projects to improve business conditions.

Among the most notable observations stemming from the softwood lumber dispute are that softwood lumber concerns are most sensitive when demand is soft, and many factors that impact demand cannot be foreseen or addressed by a trade agreement. Some of these—such as plunging housing starts, interest rate fluctuations, reduced availability of credit, natural events such as fire, and exchange rates—have already exacerbated the economic situation for producers on both sides of the border. Each factor affects demand, some affect supply, and any factor can impact how producers on both sides of the border feel about the 2006 Agreement.

The foresight of the North American industries and their respective governments to use some of the duties collected and held since 2002 to promote softwood lumber[12] may indicate that industry is experiencing some fatigue after decades of conflict, and wishes to pursue other approaches such as the one underpinning this study: cross-border collaboration to grow the market and improve business conditions.

The 2006 Agreement is not set to expire until 2013, leaving ample time to try new approaches and create successful joint efforts which could go a long way towards healing wounds of the dispute. Further, the globalization of the industry, heightened competition from abroad, and dramatically changing economic conditions suggest that the North American industry should invest in joint efforts to increase the overall market rather than sinking more money into costly trade cases.

This would not be the first case of former trade competitors joining forces for their mutual benefit. Ample evidence from other industries points to a natural progression from bilateral disputes and contentious trade cases to attempts at collaboration on generic marketing and promotion.[13] The U.S. avocado industry engaged in a number of trade cases with Mexico that featured memorable ads of then Agriculture Secretary

Glickman with a gun to the heads of avocado growers (or a noose around their necks), as growers protested that opening the border would risk the entry of pests that would wipe out the avocado industry. But in 2002, the U.S. industry established a national Hass avocado check-off program to promote generic avocado consumption in the U.S. That initiative is supported by both the Chilean and Mexican industries.

Likewise, U.S. raspberry processors who once brought a dumping case against Chile are now working on joint product promotion.

The progression from trade tensions to joint grow-the-market efforts occurs with the realization that disputes delay the inevitable: competition is here to stay, and industry benefits most from a marketing strategy broadly supported by all affected parties. Consequently, this study focuses on options for the softwood lumber industry that are fair, cost efficient, and give industry on both sides of the border equitable say in designing, implementing, and governing initiatives to grow the market, enhance the industry's reputation and improve business conditions.

North American Wood Supply and Consumption

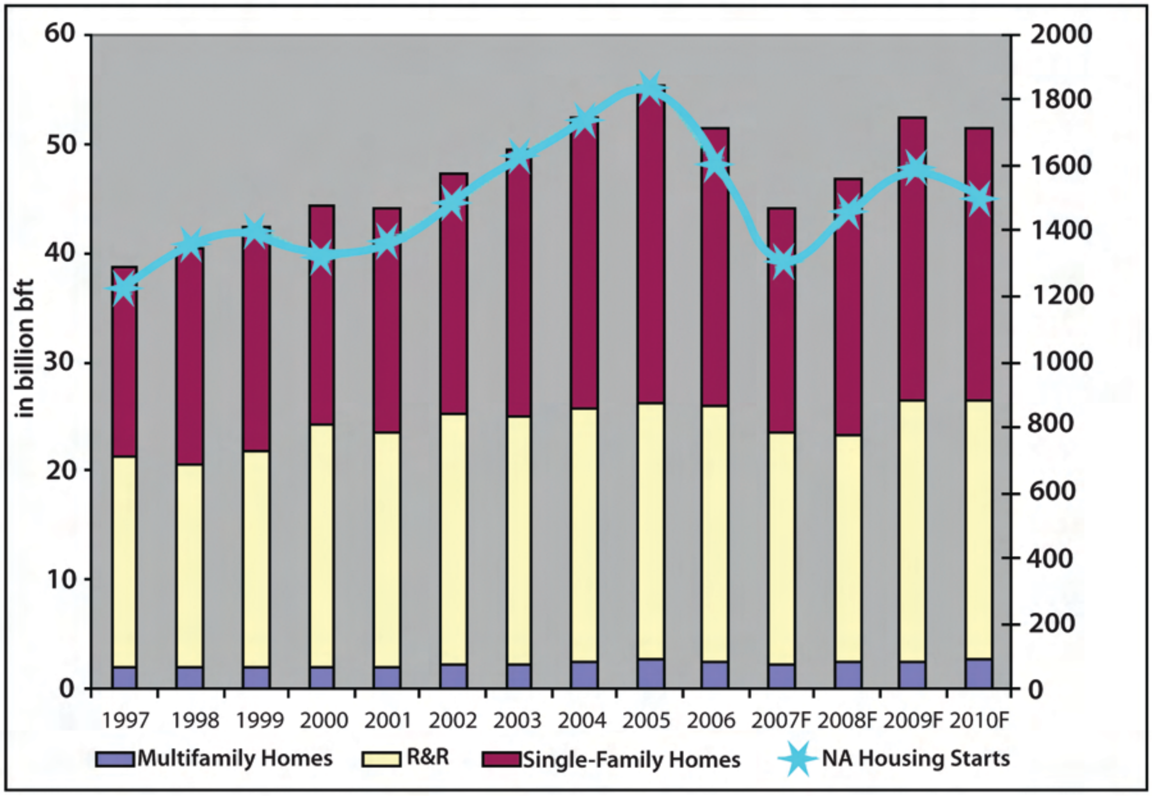
The market for North American softwood lumber is highly competitive with many producers and countless buyers. Further, supply is relatively inelastic to changes in demand, particularly in the short-term. Accordingly, producers are "price takers" in that price is a function of supply and demand and small changes in demand can have a significant impact on price (again, particularly in the short-term). Although price and supply elasticities will vary significantly depending on the point in the cycle, one study estimated that, over a decade and thus several cycles, an average 1% drop or increase in demand created a 1.7% drop or increase in price.[14] This in turn leads to price volatility, a staple of the North American lumber market for decades. However, it also points out the positive effect that a small increase in demand can have on price and thus profitability—which would be even more pronounced if some of the gains discussed later in this chapter were to be realized through promotion efforts.

Demand: Unfortunately, demand for North American lumber has been particularly volatile over the past five years; near record prices in 2004-05 were followed by record lows over the past two years. Not surprisingly, the impact on producers has been massive, as dozens of mills have been forced to close and many more are operating on curtailed shifts. Offshore imports have also fallen dramatically and demand is not forecast to recover substantially until late 2009 or 2010.

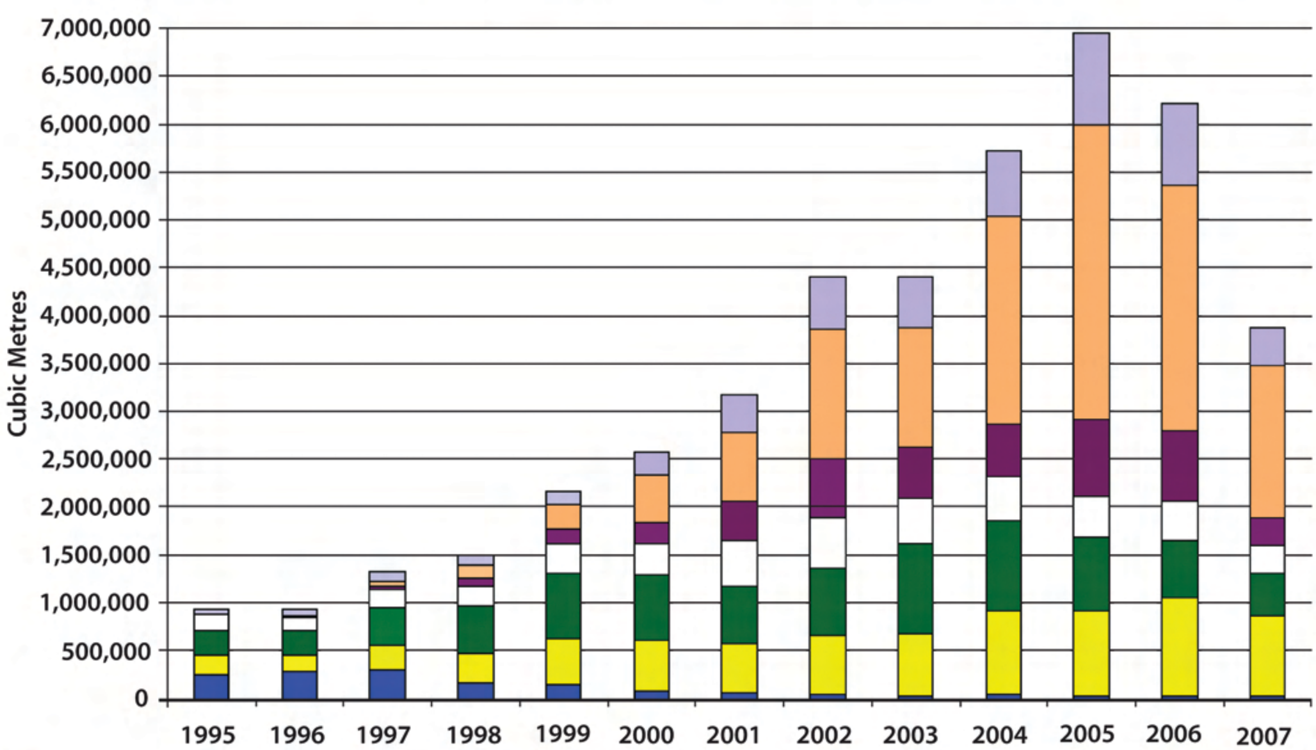
Forecasts by RISI, the National Association of Home Builders and others predict that the U.S. housing market will recover and demand for lumber will increase over the next two years, although not to the peak level of 2005. Some forecasters believe that the ability of North American producers to respond to improving market conditions may be hampered by the number of mill closures, and impacts on fiber supply from fire and insects, among other forces.

Supply: Prior to the recent lows in lumber prices, imports from outside North America, mostly from Western Europe, had increased seven fold over the past decade. Over the last two years, about half of these imports have disappeared, due in part to the drop in lumber prices but also because of stronger lumber markets in Europe and the weak dollar. Notable is the fact that the volumes are still up three fold from a decade ago. Given that European lumber markets have recently softened, and European and Russian production continues to increase, imports into the U.S. are expected to start increasing again as North American demand picks up.

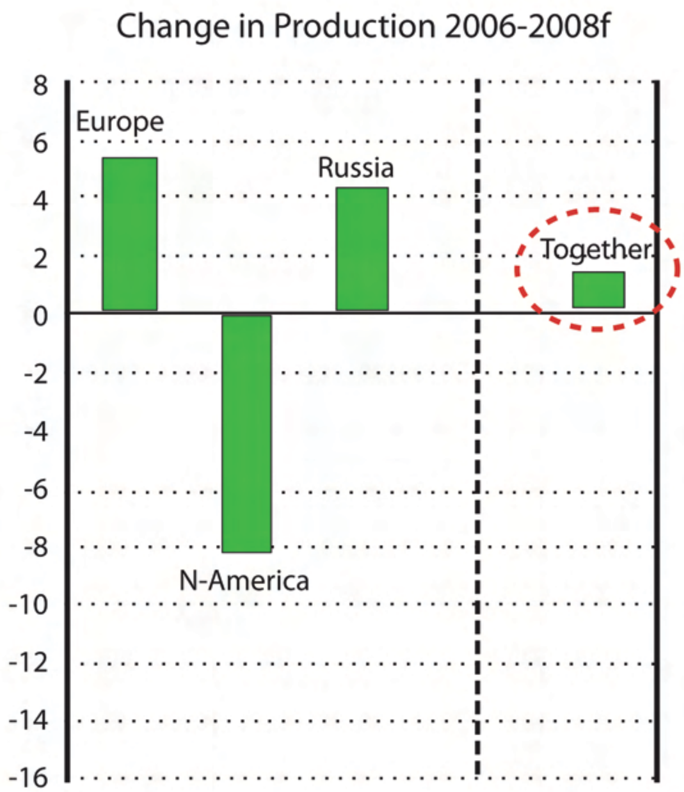
Lumber consumption in single family, multifamily and repair and remodelling (R&R) (in billion bft) and housing starts, 1997 to 2010

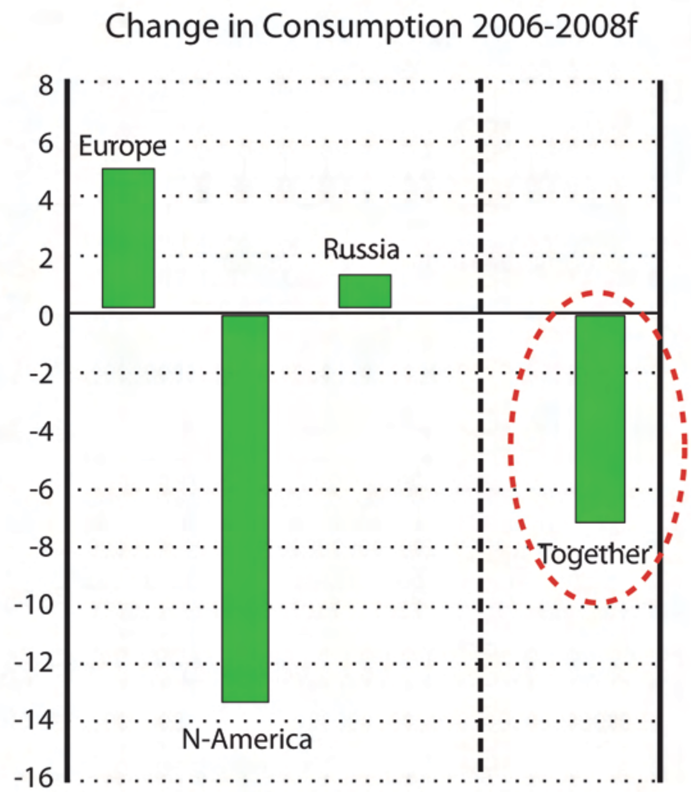


United States Imports of Softwood Lumber Excluding Canada



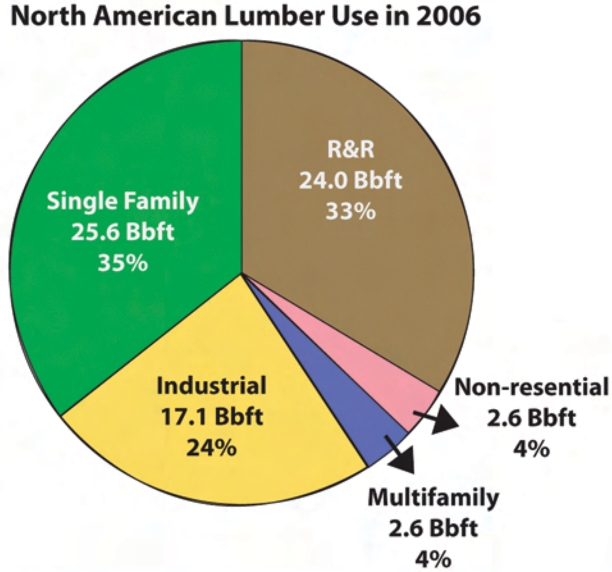
Source: GTIS,
US Bureau of the Census





Consumption: The largest consumption of softwood lumber in North America is in the residential market, which is responsible for 72% of all use (33% for repair and remodeling and 39% for single and multi-family homes). Non-residential applications comprise only 4% of the total market, but have increased as the market overall has grown. Non-residential construction activity has been consistently strong over the past five years, and is currently up almost 100% from 2002 and 2003 levels.

North American Lumber Use in 2006



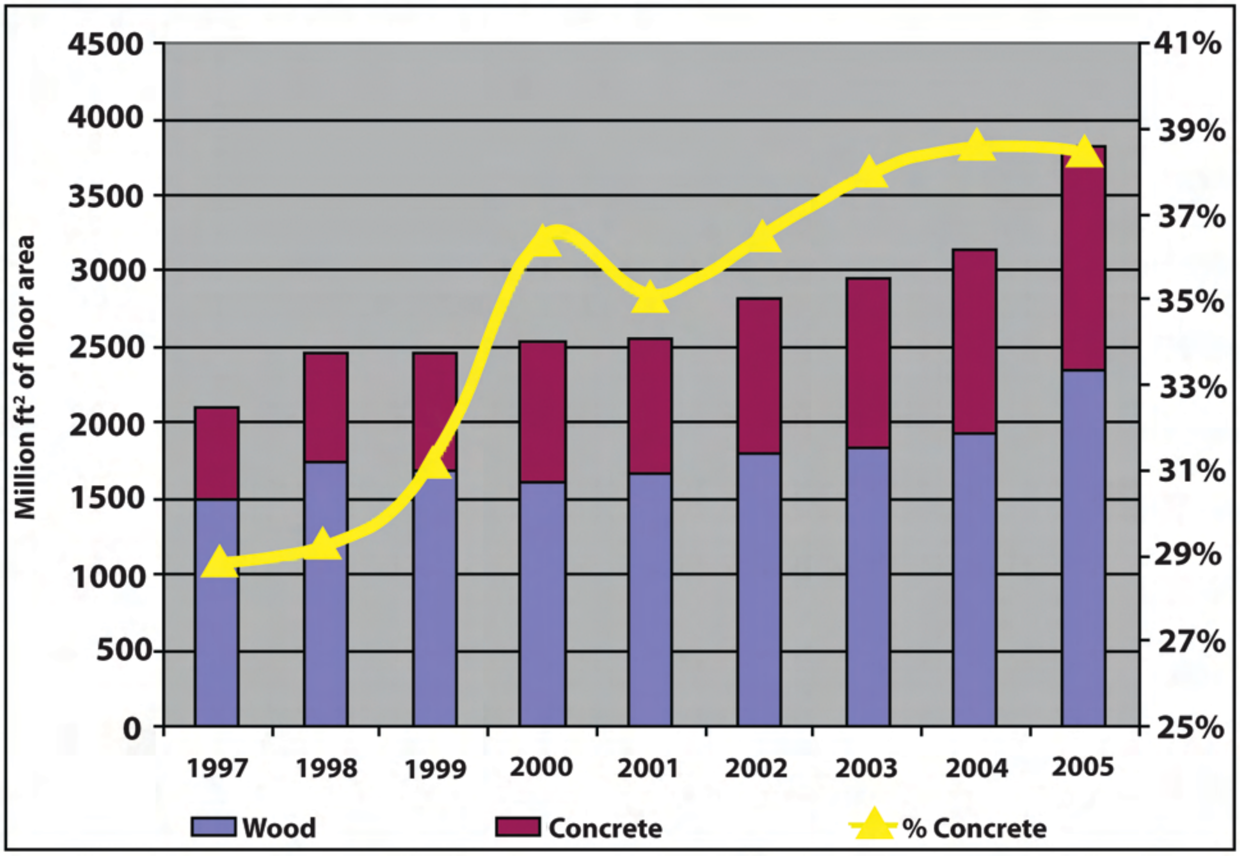
Trends in Non-wood Consumption

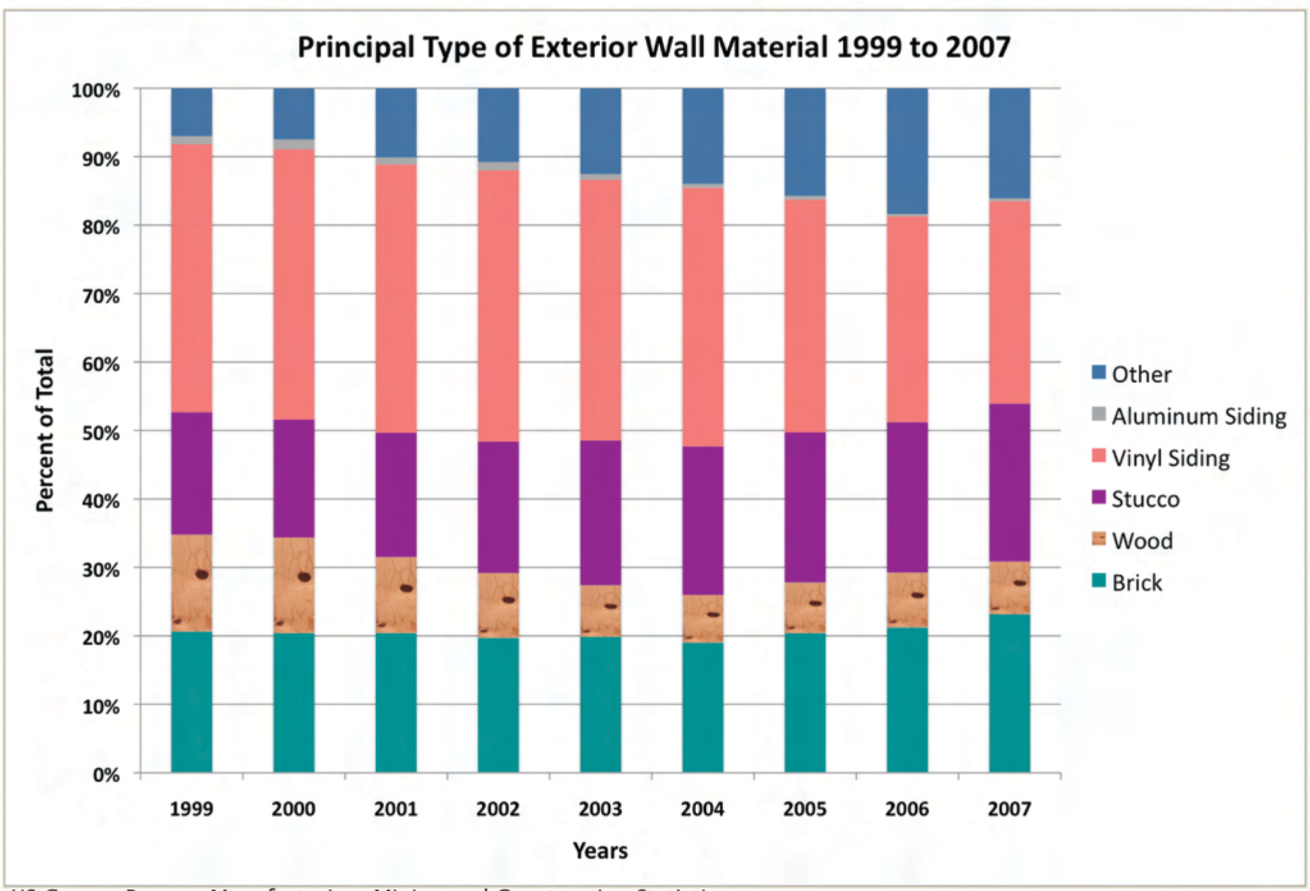
Approximately one-third of all lumber consumed in North America is in new residential construction. However, competition from substitute materials has consistently eroded wood's market share over many years and in a range of applications. Most recently, concrete has been increasing its share in exterior walls and floors. Key trends include the following:

- Based on total square footage of floors built, concrete's market share grew from 29% to 39% between 1997 and 2005. Wood has dropped from 70% to 60% in the last decade.
- Based on linear feet of exterior walls built, concrete walls have grown at a national rate of 11% annually. Wood has grown at a 4% rate annually, and steel has dropped by 7% each year.

The South Atlantic, West South Central, East South Central, Mountain and Pacific regions of the U.S. have shown the strongest growth in the use of concrete applications. These regions also make up 70% of all U.S. housing starts.

US contrete use in floor applications (in million ft²) and concrete market share (in %) between 1997-2005





US Census Bureau: Manufacturing, Mining and Construction Statistics

Market share losses in the recent past also include many exterior applications such as decking, siding, windows and roofing material. This is related primarily to durability concerns and the trend towards "maintenance free" products. A 2006 analysis by the NAHB showed that vinyl continues to be the most common primary exterior wall material used (34% of all homes in 2005), while fiber cement continues to show the greatest market gains (at 10%, up from 1% in 2000). Wood lost ground over the same period, dropping to 8% from 15%.

Challenges to lumber's market share will continue. For example, about 15% of the lumber used to frame a house is used for interior walls. Interior walls do not need to be load-bearing and do not have the thermal problems that plague steel-framing on exterior walls. Today, the installed cost for steel-frame interior walls is generally equivalent to wood-framing. As lumber prices increase, builders may seek to take advantage of this potential cost saving by mixing wood and steel framing, something the steel industry is working hard to encourage (augmented by a hefty promotion campaign). A loss of 50% of residential interior partitions to steel alone would reduce total lumber demand by 2 to 3%.

REVIEW OF FOREST INDUSTRY PROMOTION PROGRAMS

Many softwood lumber sector leaders believe that the industry needs generic, industry-supported promotion to address ongoing public policy challenges, competition from substitute materials, and attacks by anti-industry policy and market campaigners. Consequently, over the years, industry has sponsored many public outreach, education and promotion campaigns. Although some have been effective, none have fully accomplished their original objectives, and the gains achieved either disappeared quickly or eroded over time once the campaigns were terminated.

Although some forest industry-supported public outreach programs have been effective, none have fully accomplished their original objectives, and the gains achieved either disappeared quickly or eroded over time.

In general, such efforts have been sporadic and too short-lived to yield significant results. Further, free riders within the industry—most often medium to small producers, though not exclusively—have taken advantage of the voluntary nature of the programs, frustrating enthusiasm and support for fundraising among the paying players. A number of the major efforts are detailed below. However, it should be noted that there are many other, technical or smaller product- and/or region-specific efforts, which have not been included. Lessons learned summarized at the end of this section are the same for all.

Campaign for the 90s

The American Paper Institute (API), a predecessor of the American Forest & Paper Association[15], traces its roots back to the late 1800s. In the early 1990s, API launched a communications program called "Campaign for the 90s" under which members would contribute an additional $10 million annually for an industry-wide communications program. The communications program focused on recycling, forest management, and mill operations.

Out of this effort grew three important initiatives, each with a communications component: the Paper Recovery Goal (then 50%, now 55%), the Sustainable Forestry Initiative (SFI) certification program (see more below), and the Environmental, Health and Safety (EHS) program. Research funded by the campaign was vital for industry to determine its position with both policymakers and the broader public. With this data, industry could design programs and communications efforts that provided the best chance for the three programs to succeed.

All three programs continue today and are considered operational successes. The Paper Recovery Goal and SFI programs are broadly recognized and accepted in the marketplace. The EHS program, as advised by the research, keeps a lower profile, but is nonetheless influential with policymakers. Funding for the "Campaign for the 90s" ended not long after API and the National Forest Products Association (NFPA) merged in 1993.

While the "Campaign for the 90s" provided critical research to help the forest industry understand its position in the marketplace and how to communicate with key target audiences, the program was too short-lived to have a meaningful communications impact in the public policy arena. Initial steps taken under the campaign were successful, but important changes in public attitudes through national communications campaigns rely on an enduring commitment that ensures the absorption of key messages over time. Three good operational programs were begun, but a promising industry-wide communications campaign was not given the time needed to achieve its full potential.

Canadian Wood Council (CWC) / Forest Products Association of Canada (FPAC)

The Canadian Wood Council (CWC) is the major trade organization in Canada representing the technical and marketing interests of Canadian lumber in North America and to a lesser extent overseas. Formed in 1959, CWC's core mandate is to ensure market access for Canadian wood from the perspective of codes and standards.

At a secondary level, CWC participates in marketing and promotion efforts to educate architects, engineers and builders about the benefits of wood, directly in Canada and in cooperation with the Wood Products Council (WPC) in the U.S. (see below). In Canada, CWC operates a smaller non-residential market growth program similar to the WPC program noted below. In the U.S., it has participated in virtually all of the industry-wide marketing efforts undertaken, but generally as a member of the WPC instead of a direct funder. CWC's annual budget is about $8 million.

The Forest Products Association of Canada (FPAC) is the major trade organization in Canada representing the broader forest and forestry interests of Canadian lumber in North America and overseas. Formed in 1913 and formerly known as the Canadian Pulp and Paper Association, FPAC represents industry's broader voice in government, trade, and environmental affairs. Although FPAC does not participate in the WPC market initiatives, it does undertake a significant customer outreach program and, as such, interacts with most of the larger lumber buyers in North America. FPAC addresses issues of most concern to buyers at the time. These have included endangered forests, certification, climate change, environmental campaigns and so forth. Generally, FPAC has focused on how best to support customers under pressure from anti-industry activists.

Although effective and significant as voices for Canadian lumber and forestry interests, neither CWC nor FPAC have the resources to undertake a North American-wide communications effort. Consequently, their activities to date have been more targeted and/or been undertaken in partnership with U.S. counterparts.

Sustainable Forestry Initiative (SFI) Program

Comprehensive research commissioned by API in the "Campaign for the 90s" clearly demonstrated that the spotted owl debacle and decades of negative campaigning (including advertising) against the industry had taken a significant toll on its credibility with policymakers and the public. This research also suggested that the industry was on the verge of losing its social license to operate.

With development beginning in 1989, the Sustainable Forestry Initiative (SFI) Program was launched in 1995 as industry's effort to demonstrate to policymakers and the public that the forest industry was willing to change its behavior to earn back public trust.

Three years later, the industry found that the SFI program was needed not only to address public policy challenges, but also anti-industry activism in the marketplace. Anti-industry campaigners were effectively convincing major customers—beginning with The Home Depot and Staples and followed by many others—to insist on sustainably-produced products certified by the Forest Stewardship Council (FSC), a certification body endorsed by environmental non-governmental organizations (NGOs).

By 1999, AF&PA members were convinced that a major SFI promotion program was needed. They agreed on a $21 million mandatory assessment (a three year commitment at $7 million per year) for development and execution—and, while the assessment lasted just one year, it did provide important research that showed how the SFI program needed to evolve to satisfy the marketplace.

The program did ultimately evolve as required. However, the communications program ran in fits and starts from 1999 to 2005. Research and awards demonstrated that the materials and advertisements generated by the program were of exceptionally high quality; but they sat largely unused. Reasons for this included a major downturn in the paper industry, changes in CEOs of leading companies, concerns over individual company versus SFI branding efforts, division over whether AF&PA (where SFI was housed at the time) should be involved in marketplace issues, and threats by market campaign groups to turn up the heat if SFI launched a major campaign.

Consequently, the award-winning SFI communications program (not the SFI standard and certification program) lost steam and effectiveness. Data shows that the program was effective in terms of its core attributes and messages. Nevertheless, its potential for convincing industrial and commercial customers to accept SFI certified product was not realized and the program did not become the success anticipated due to a lack of industry follow through.

Wood Products Council / Wood Promotion Network

Since 1982, the Wood Products Council (WPC) has been the vehicle through which the U.S. and Canadian wood industry associations have developed and coordinated market access, education and promotion programs.

Although small programs were undertaken in the past (such as the $400,000 WoodWorks environmental communications program in the mid-1990s), the first multi-million dollar promotion / positioning effort was the "Wood is Good" campaign. It was delivered by the Wood Promotion Network (WPN), which was created for the purpose, and ran from 2000 through 2005.

The WPC's most significant market growth effort is the recently launched program titled WoodWorks – for Non-residential Construction. This program sparked the official incorporation of the WPC in 2006, so as to facilitate the receipt of government partner funding. The current budget for the non-residential program is about $5 million per year.

As noted, the Wood Promotion Network was created by the WPC as a vehicle to deliver the most significant category marketing and positioning campaign the industry had ever supported. This program was motivated in large part by the steel industry's $100 million, five-year consumer campaign and their use of negative advertising, which included graphic images of termites, fire and clearcuts. Envisioned as wood's "Got Milk?" campaign, the program had a target revenue of at least $15 million per year for five years. More specifically, the objective was to "*reduce market share risk from the campaigns of anti-industry activists and the product substitution efforts of competing industries, and to grow the market longer term.*" In the end, $11 million was raised in year one, falling to $7 million and eventually $5 million as markets weakened in the early part of the decade.

The reduced revenues resulted in less ambitious objectives as the campaign limited its consumer efforts to "key influencers" and focused more on the "business-to-business" audience of builders and other wood product specifiers. The objective evolved to positioning wood as a "great product that comes from forests that are abundant and growing." Using a combination of targeted advertising, earned media and direct outreach, considerable opinion gains were achieved in terms of how the target audiences viewed wood as a building product and forest abundance in general.

The program wound down in 2005 due in part to a belief that the market risks from competitive products had eased (the steel industry had curtailed its $100 million effort) and because of the establishment of a paper-based initiative with similar forest messaging objectives (the Abundant Forest Alliance). The latter reflected the fact that many of the environmental campaigners had switched their focus from solid wood products (and thus the likes of The Home Depot and Centex Homes) to the pulp and paper sector (and thus the likes of Victoria's Secret and other catalogue producing companies). As a result, larger pulp and paper companies now required a voice to address their particular concerns.

In retrospect, the WPN program was likely halted prematurely, as the recent gains by concrete in the residential market, the delay in efforts to take advantage of new opportunity in the non-residential markets, and the renewed efforts by several environmental campaigners against wood and forests, can attest.

Canadian Federal and Provincial Governments

The Canadian federal government and two provincial governments—British Columbia (BC) and Quebec—have for many years been the most active Canadian jurisdictions in supporting industry's market access and promotion efforts.

Most notable in the North American context is

BC's Forestry Innovation Investment (FII), a government agency established to partner with industry associations to co-fund a wide range of market access, growth and positioning initiatives worldwide and to deliver programs directly. Although initial funding for this entity was raised by a stumpage surcharge and some viewed this as similar to a check-off program, it contained none of the major elements of check-off (e.g., voluntary participation by industry and industry governance of how the monies are spent). Examples of programs supported by FII include the WPN and WPC initiatives noted above. FII has an annual budget of over Can$24 million, of which about $4.5 million is focused on market access and growth initiatives in North America.

Second is Natural Resources Canada (NRCan), through the Canadian Forest Service, which has a mandate to promote the responsible and sustainable development of Canada's forests. As with the USDA, NRCan has been active in promoting wood use in offshore markets for many decades. They recently expanded their mandate to include the U.S. and are currently a major supporter of the WPC and CWC non-residential market growth programs in the U.S. and Canada, respectively.

Third is the Quebec Wood Export Bureau (QWEB), which was founded in 1996 to promote increased customer awareness and confidence in Quebec wood products in Europe, and to identify and quantify new markets. With an annual budget of $5 million, QWEB has recently broadened its focus to Canada and, to a lesser extent, the U.S.

Abundant Forest Alliance

The Abundant Forest Alliance (AFA) is an ongoing multi-million dollar public outreach and advertising program aimed at enhancing public perception of the industry and its products among select demographics. While the AFA has experienced success and its efforts benefit the entire industry, it has been financially supported by only a dozen or so companies. As a result, AFA leadership faces many of the same challenges that have plagued past programs and has sought ways to expand their support base.

Lessons Learned

With few exceptions, the ongoing marketing efforts of the Canadian and U.S. forest products industries over the past twenty years have been limited to the core task of ensuring market access and expanding demand by communicating opportunities to use more wood. The justification for this focus relates to the need to ensure that building codes allow wood to be used, and that wood is considered for use by architects, specifiers and decision makers as often as possible. This objective is generally supported by a majority of North American producers. However, although stable and long-term, these efforts have tended to be technical in nature[16] and lack the marketing muscle and communications messaging required to create "demand pull."

The four most significant campaigns—the current Abundant Forest Alliance and Wood Products Council market growth programs, and the previous Wood Promotion Network category marketing and positioning program, and American Forest & Paper Association forest certification and reputation campaign—are unique in their size and objectives, but have suffered from waning funding over time. The key lessons learned below are drawn from all of the programs described in this chapter.

a) **Change requires long-term commitment.**
   - Specifier (business) and public opinions can be changed, but both audiences require ongoing reinforcement to prevent the erosion of opinion gains. Further, changing public opinion is particularly costly and requires a sustained commitment.
   - Industry's attention span for major communication, marketing and promotion programs is short. Most efforts—large and small—do not last longer than two or three years, whereas it usually takes three to five years to show substantive change, and longer to have a more enduring impact.
   - Promotions designed to change business customer and consumer preferences have not lasted long enough to achieve significant results.

- Interest and support for new communications or marketing efforts is high initially and erodes with both market cycles and industry consolidation and/or turnover.

b) **The best promotion is proactive, not reactive.**
- Industry generic promotions have been crisis driven. The absence of a pool of funds to get out ahead of an issue or crisis has significantly reduced program effectiveness. Further, crisis-driven programs are simply that; as soon as the crisis passes, funding stops.
- Industry occasionally expends considerable resources reworking goals, shifting focus and reducing expectations relatively early in the life of the program. While this is often necessitated by funding deficiencies, changing market conditions or the emergence of a new crisis can also be the trigger.

c) **Industry must work hard to overcome natural divisions that hinder success.**
- Structural and geographic divisions in the North American industry have exacerbated efforts to maintain a critical mass of industry support. Divisions such as big vs. small, East vs. West, public vs. private supply, paper vs. wood, funders vs. free riders, imports vs. domestic, and the ongoing consolidations and divestitures thwart long-term effectiveness.
- Even when the industry aligns itself around an issue, the environment in which industry works is dynamic, and continuous structural change erodes consensus.
- The SFI communications program (as opposed to the SFI certification program), like many others, is a good example of a program that was unable to achieve its original objectives because of an inability to maintain consensus and the resulting lack of follow through. The program endured four or five false starts in a twelve year period.
- Companies are reluctant to promote their reputation and products through trade associations because they do not want to promote a trade association as a brand, and because the work of a trade association in the policy arena can detract from the credibility of industry messages.

d) **CEO leadership and support are critical ingredients to success.**
- Ambitious programs require strong CEO support over several years to get off the ground. Without sustained CEO support, programs do not survive long.
- Voluntary campaigns with highly visible CEO participation can garner upwards of 60-70% support by volume. However, retention is a major challenge due to differing market objectives and the inevitable growth in the number of free riders. Support for WPN, for example, eroded from close to 70% to around 50% over the first three years, at which time WPN entered a wind-down mode focused on green building and the Green Building Initiative.

In conclusion:

1. **Short-term commitment leads to minimal results.**

   In general, industry's efforts at generic marketing, communications, promotion and outreach have been sporadic and too short lived to yield significant, enduring results.

2. **Voluntary programs create resentments, leading to a drop in commitment.**

   The many free riders who withhold support from these voluntary industry promotion programs have frustrated fundraising and caused an erosion of financial support by those companies that, justifiably, do not wish to carry the burden for the entire industry.

CURRENT MARKET OPPORTUNITIES

The need to protect existing markets and the opportunity to grow new markets for wood are substantial. As such, it is important to understand which markets take priority. In 2005, the Wood Products Council (WPC) undertook a multi-association effort to identify and broadly quantify the range of potential initiatives.[17]

As summarized in the chart below, the assessment included the size of the opportunity, wood's current market share, the opportunity to gain share, the ease of capture and the time required to show results. For example, with respect to offshore markets, the forest industry has the most history with Japan, where it has a long record of successful investments. Although the Japanese housing market offers limited growth potential, familiarity with wood and short-term payback warrants ongoing investment, which is also necessary to maintain the gains achieved in the past.

With respect to North America, recent changes to building codes have created new opportunities in non-residential markets, but the challenges to growth are substantial and the payback longer-term.

The two most promising opportunities that the WPC study identified in terms of growing market share were the non-residential market in general and raised wood systems within the residential market. The theoretical maximum potential market share gain was estimated at 9.5 billion board feet and 4.0 billion board feet, respectively. Although these estimates are a valid approximation of the maximum opportunity and are considered conservative by some, there are two factors that impact this estimate significantly, albeit in opposite directions. First, building codes limit the use of wood in numerous ways, such as the building's area and intended use, which would reduce the opportunity. Second, the estimates are based on average wood use under current practices rather than optimal use under more wood-intensive practices, which would increase the opportunity. Although there remains uncertainty over the size of the potential

New Opportunities in non-residential markets

Opportunity	Size of Market	Current Share	Opportunity to Gain Share	Ease of Capture	Timing of Returns
Offshore					
Japan (res)	Large	Medium	Small	Medium	Short-term
Japan (non-res)	Medium	Small	Medium	Difficult	Long-term
China	Large	Small	Large	Difficult	Medium-Long
South Korea	Medium	Small	Medium	Medium-Difficult	Medium-Long
Other Asia	Medium	Small	Small	Medium-Difficult	Long-term
Europe	Medium	Small	Small	Difficult	Long-term
Domestic					
Residential	Large	Large	Small	Relative ease	Short-term
Industrial	Small	Small	Small to medium	Difficult	Medium
R&R	Large	Large	Small	Relative ease	Short-term
DIY	Small	Large	Small	Relative ease	Short-term
Raised floor	Large	Small	Small to medium	Difficult	Medium-long
2005 Hurricane	Medium	-	Medium	Medium	Short-medium
Substitutes*	Medium	-	Medium	Medium-Difficult	Medium-Long
Non-res	Large	Small	Large	Medium-Difficult	Medium-Long

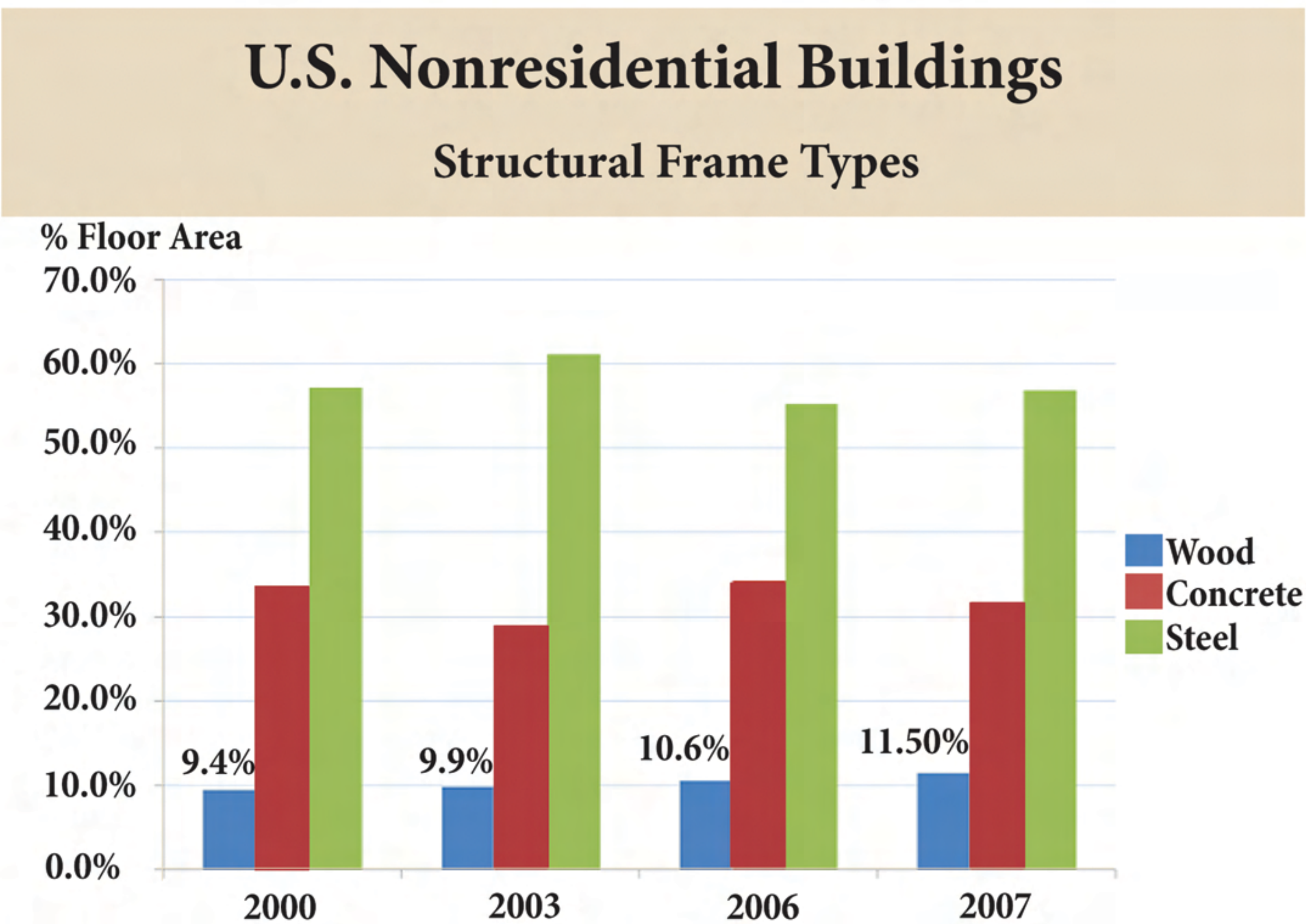
Although there remains uncertainty over the size of the potential gain, current information suggests—for these two opportunities alone—that the realistic long-term market growth opportunity is somewhere between 10 and 12 billion board feet.

gain, current information suggests—for these two opportunities alone—that the realistic long-term market growth opportunity is somewhere between 10 and 12 billion board feet.

Non-residential construction, although currently not a large user of lumber, is widely believed to represent the largest opportunity for market share growth. Over the past five years, U.S. consumption has been approximately 1.5 bbf, which represents about 10% market share. The balance of the market share is held by steel at about 60% and concrete at 30%. However, since 2000, wood has seen a steady, albeit small, gain of 2%.

Consensus is strong on the second major opportunity in North America—raised floor construction systems in the Gulf States. Over the next ten years, approximately 150,000 houses with raised floor systems will be built, offering a unique opportunity to demonstrate and promote the benefits of raised floor systems in flood-prone areas. Once proven and accepted by the building community, the opportunity to broaden the effort to neighboring states where most of the recent market share loss to concrete has occurred, is significant.

Economists at the Forest Products Laboratory in Madison, WI have done considerable work in this area and put the total softwood lumber market growth potential under optimum conditions at



around 8.0 billion board feet, which is somewhat lower than industry estimates. A detailed description of applications with market growth opportunities can be found in *Profile 2007: Softwood Sawmills in the United States and Canada*,[18] in the section "Softwood Lumber Uses," which concludes:

> "Much of this potential is dependent on consumer preference, particularly in the new single-family construction and residential repair and remodeling markets ... It is difficult to determine what part of this potential for softwood lumber could actually be achieved ... However, through promotion, research efforts, and direct involvement of builders, architects, buyers, and others in the design, construction and use of softwood lumber in residential and non-residential building construction, it is possible that softwood lumber can gain market share in these applications.[19]

Check-off as a Powerful Self-help Opportunity

Chapter 2

CHECK-OFF ISSUES RELEVANT TO THE FOREST PRODUCTS INDUSTRY

This section summarizes the results of extensive literature reviews and in-depth interviews with check-off experts. Rather than providing comprehensive case studies of a few current check-off programs, issues relevant to a generic program for the forest products industry are identified and the salient aspects noted.

Unsuccessful programs have failed not because of poor communications programs, but because of the underlying failure of an industry to deal with its specific structural problems in the conception and design of its check-off organization and order.

In several instances, agricultural producers covered by USDA authorized check-off programs have voted to either not implement their program or to terminate their check-off, largely due to unresolved political and structural issues within the affected industry. These cases are particularly instructive in identifying the reasons why check-off programs fail.

It is important to note that this report deals with the success or failure of check-offs as sustainable programs, and does not examine the success or failure of their promotion, research or communications campaigns. This is a critical distinction because, overwhelmingly, unsuccessful programs have failed not because of poor communications programs, but because of the underlying failure of an industry to deal with its specific structural problems in the conception and design of its check-off organization and order. An examination of the success factors of national check-off communications programs could be the subject of another report.

Success and failure factors that could impact the development of a check-off for softwood lumber, and how these factors can be used to develop industry specific options and implementation strategies, are summarized in the final section of this report.

Overview – Current Agricultural Check-offs

Congress has enacted enabling legislation authorizing national generic promotion ("check-off') programs for nearly thirty agricultural commodities, of which seventeen are now in operation. Six of these were established by the USDA using the authority granted to it by Congress in the 1996 Farm Bill, with the remainder being separately authorized by Congress. The USDA's Agricultural Marketing Service (AMS), which has operational oversight for check-off, describes these programs as follows:

> "Authorized by federal legislation, these programs are designed to strengthen the position of the industry in the marketplace and to maintain and expand domestic and foreign markets. The programs are all fully funded by industry assessments. Board members are nominated by industry and appointed officially by the Secretary of Agriculture. AMS oversees the activities of the boards or councils and approves budgets (and programs), in order to assure compliance with the legislation."[20]

The seventeen currently active national check-offs in the USDA system in aggregate collected more than $768 million in 2007. Several general conclusions about check-off programs can be drawn from the fact that six (including sorghum) new programs have been established since 1999, and eleven have been operational for more than fifteen years:

1) They continue to be an important option for industries wanting to improve operating conditions,
2) They can be sustained over time, even in down markets,
3) They can generate robust and broad industry support, and
4) They can create value over the long-term.

Ten other check-offs have been authorized but either were not implemented or were terminated by producers in referenda. These are: canola and rapeseed, flowers and plants, fresh cut flowers and greens (1995; $15 million), kiwifruit, limes, pecans, sheep, wheat, and wool (mohair, 1954/1962, $0.6 in 2005).[22] Several of these will be particularly instructive in identifying why check-off programs fail. A check-off for sorghum was proposed in November 2007; it has been approved and went into effect on July 1, 2008, with a delayed referendum.

Currently Active Check-offs

Commodity	Year Established	Assessment Collected 2005 ($ millions)	Assessment Collected 2006 ($ millions)
Beef	1986	80.4	79.8
*Blueberries	2000	1.8	1.9
Cotton	1966–67	83.6	66.6
Dairy products	1984	278.7	281.2
Eggs	1979	20.2	21.0
Fluid milk	1993	107.1	107.8
Hass avocados	2002	20.6	24.2
*Honey Packers	2008	--	--
Honey[21]	1987	3.6	3.8
*Lamb	2002	2.4	2.3
*Mangos	2005	3.9	3.9
Mushrooms	1993	1.7	2.6
*Peanuts	1999	6.7	5.7
Popcorn	1997	0.5	0.6
Pork	1986	60.8	65.4
Potatoes	1972	8.7	10.7
Soybeans	1991	82.8	89.5
Watermelon	1990	1	1.6

*Established under the USDA's Generic Authority granted by the 1996 Farm Bill

A matrix with details about check-off boards (composition and appointments), assessments, USDA costs, referenda, and provisions for enforcement can be found in Appendix F.

Why Check-off?

Interest in check-off programs continues as commodity groups seek new ways to support their products. As costly farm programs are targeted by federal budget cutters, check-off may appear to be an attractive option. In general, check-off programs are perceived to provide considerable benefits to the industries that pursue them, as they:

- Generate significant funding for grow-the-market promotion
- Assure funding stability over time
- Address the "free-rider" problem[23]
- Unify the industry
- Improve the business operating environment through reputation enhancement
- Change perceptions among target audiences
- Support a broad range of research beneficial to industry—e.g., markets, product development, end use application, safety, sustainability
- Support industry organizations (see prohibited uses elsewhere), including grading, technical, promotion, sustainability and certification, and research
- Assure fairness as importers can be also assessed in a national check-off program

Why Government? Producers have often organized voluntary cooperative arrangements; indeed the forest products industry has launched many voluntary promotion efforts. Yet, across the broad agriculture community, such voluntary promotion accounts for only about 10% of all funding for generic efforts; the rest—90% of all promotion arrangements—are operated under the authority of either federal or state laws. It is helpful to understand why.

Since the prototype Florida Citrus Advertising Tax was instituted in 1935, more than 350 promotion programs, covering some 80 farm commodities, have been legislated by states or the federal government. Nine out of ten U.S. farmers now contribute to one or more of these efforts. Producers prefer government-sponsored programs for a number of reasons, one of the most important of which is the 'free rider' problem, where other non-participating producers gain benefits without contributing funds. To address this pervasive problem, producer groups generally prefer an arrangement (government-sponsored check-off) that provides more inclusive and mandatory participation. Further, voluntary efforts can be easily terminated by a relatively small group of producers, whereas government-sponsored check-off programs can only be stopped by referendum, and have therefore proven to be much more sustainable.

Requests for mandatory check-off legislation have been prompted by numerous factors, including a decline in consumption of a particular product or other economic setback, a belief that voluntary promotion efforts have been ineffective, and the successes of previously authorized check-offs. Groups also may be interested in improving coordination of promotional efforts already underway at the state or regional levels.

Objections and Legal Challenges – Beef

Despite their demonstrated success, check-off programs can be controversial. The politics of establishing and governing a check-off program need to be addressed with great sensitivity. There are many examples of strife, all of which have placed programs in jeopardy. Difficulties arise from:

- Regional differences
- Conflicts between state and national programs

Producers prefer government-sponsored programs for a number of reasons, one of the most important of which is the 'free rider' problem, where other non-participating producers gain benefits without contributing funds.

- Differences over the content and targets of promotional activities
- Controversy over who benefits (big/small)
- Competition with and between trade associations
- Other marketing and trade disputes

To fund promotion, all producers are required to pay an assessment generally tied to each unit they market. With the assessment deducted from revenues at the time of sale, some producers object strongly to what they contend is a "tax" for activities they would not fund voluntarily. In some cases, small producers and others with private rights concerns have found the programs objectionable. Concerns raised by the U.S. hardwood industry[24] when it considered, and rejected, a check-off in 1993-1994 are as follows:

- Perceptions of:
  - Increased monthly paper work
  - Increased administrative costs (including reimbursing USDA)
  - Cumbersome governance structure; allowing those assessed to participate in the program administration
- Creating yet another industry group requiring funding
- Creating conflict within industry should check-off supplant current voluntary dues/assessments to pre-existing industry associations
- Creating another competing group within industry
- Creating a new bureaucracy within the industry
- Allowing government (USDA) to have oversight of industry activities

For these reasons, plus the statutory and regulatory restrictions described in Section D below and the competitive forces at play between current industry organizations, it would be virtually impossible for any existing industry membership organization to successfully establish a national check-off program for forest products. This finding applies whether the preexisting organization is state, regional, product or trade association, promotional alliance or coalition in nature.

Legal Challenges: Some producers covered by existing check-off programs have objected strongly to what they contend is a "tax" for activities they would not underwrite voluntarily and which impinge on their right of "free speech." For these reasons, they have challenged the constitutionality of check-off programs in the federal courts.

It would be virtually impossible for any existing industry membership organization to successfully establish a national check-off program for forest products.

The Supreme Court's third[25] and most recent decision on check-off programs (Johanns v. Livestock Marketing Association, 2005) ruled that the generic advertising under the beef check-off program was the government's own speech, and therefore not susceptible to a First Amendment challenge.[26]

In this case, South Dakota and Montana cattle ranchers had sued the U.S. government, claiming the beef check-off program was unconstitutional. They argued that the advertising campaign promoting beef as a generic commodity hindered their own efforts to promote their beef as a superior product. Because they disagreed with the message of the advertising campaign, they argued, they should not be compelled to fund it. Moreover, they argued that compelling someone to subsidize speech with which they disagree violated the person's First Amendment right to free speech.[27]

The Court found that the messages promoted by the beef check-off were effectively controlled by the government because the Secretary of Agriculture has final say over every word in promotional campaigns and USDA staff attended and participated in meetings where proposals were developed.

The beef decision has had far-reaching affects. Three circuit court rulings that invalidated other check-off programs have already been vacated in light of this case. At this time, it appears that legal challenges to check-off have been resolved by the Supreme Court precedent. See Appendices G (1) and G (2).

It is worth noting that USDA check-off program oversight, which some commodities find constraining at times, is what salvaged the beef program from what had been several successful legal challenges. Another benefit of check-off is the refuge and protection the government provides.

Controversy & Prohibited Uses; Sustainability – Beef, Cotton

Check-off programs authorized by Congress, including those established under the generic legislation in the 1996 Farm Bill, are prohibited from political, company-specific and other related commercial activities, including the following:

- Lobbying U.S. Government officials[28]
- Political campaign contributions
- Political advertising
- Payments to lobbyists
- Projects which include individual company brand names[29]
- Sponsoring contests, shows, scholarships, or awards not directly related to marketing products covered by check-off
- Activities that are inconsistent with or might undermine the U.S. government's own export promotion strategies or trade policy objectives

While check-off program funds can be used to promote the industry's image, support research, provide consumer information and conduct product promotion, federal promotion laws contain a prohibition against using collected funds in any manner "for the purpose of influencing any legislation or governmental action or policy."[30]

Some check-off critics regard the distinction between selling a product to consumers and promoting it politically to lawmakers as a narrow one, particularly as check-off funding raises a particular commodity's national visibility.

As a precedent for promoting an industry's environmental stewardship, principally to influence business customers and consumers, but not ignoring the potential impact on policymakers, one can look to the cattle industry. Advertising promoting the conservation efforts of cattlemen have appeared in The New York Times and the Washington Post. By bearing their logos, these ads are attributed to the National Cattlemen's Beef Association (NCBA), which is the industry's major lobby group, and the Cattlemen's Beef Promotion and Research Board, which administers the check-off program. Critics contend that these advertisements are aimed at influencing congressional policy decisions; defenders argue that they are simply a frequently used advertising tool to build a positive public image of an industry and thereby increase consumer demand for its products.

"This policy question is further complicated if a national check-off program staff is housed in the same offices as that commodity's national trade association, or where a national trade association receives contracts from the check-off board to carry out some "permitted" activities."[31] Among future possible legal challenges to check-off programs may be the potential or appearance of subsidizing prohibited activities when commodity programs are closely linked to industry trade associations or through board memberships.[32] See Appendix V.

Sustainability: For the softwood lumber industry, sustainability may be one of these issues where policymakers are a target in a communications campaign. However, the softwood lumber industry should not shy away from a check-off because of potential concerns about cross-fertilization between the consuming public and public policymakers. The foregoing discussion illustrates that, while promotion of an industry's conservation record has been controversial in some cases, it can be done. It is important, however, that any new program be designed with this issue in mind, and that precedent be closely examined during the process of developing appropriate messages and vehicles.

Cotton Incorporated's sustainability program provides a good example of what is being done in this area with check-off funds.

There is no reason that the forest products industry cannot promote its sustainability and environmental stewardship, the renewability of its resource, or the ability of its products to sequester carbon. Questions should not arise if promotion clearly targets the market.

Cotton Incorporated's sustainability program provides a good example of what is being done in this area with check-off funds. Among the claims made by the cotton industry's sustainability program[33] are progress in environmental stewardship in the areas of soil, water, habitat and biodiversity, pesticide use, air quality, energy, manufacturing, and recycling. Unlike the cattle industry's efforts, the cotton sustainability program has not been subject to claims of inappropriate political crossover. A carefully designed program can be very successful, and the softwood lumber industry has many compelling messages in this area. See Appendix M for examples of cotton sustainability advertising.

Participation by Non-U.S. Suppliers – Mango, Blueberry

Any consideration of a softwood lumber check-off will undoubtedly raise a host of serious questions about the role of non-U.S. suppliers to the U.S market in such a program: How would it interact with Canadian and offshore volumes? What if suppliers to the U.S. market didn't want to participate; would it be automatic that they must pay into the program? How would that be determined? What input would Canadian and offshore suppliers have on the establishment of a program? Once established, would proportional roles in governance be granted to non-U.S. suppliers?

The USDA's statutory authority allows imported as well as domestically produced product to be assessed. Title V, Section 516 of the 1996 Farm Bill, Permissive Terms in Orders, states in part:

> *(f) Assessment of Imports. – An order issued under this subtitle may contain authority for the board established under the order to assess under section 517 an imported agricultural commodity, or products of such an agricultural commodity, at a rate comparable to the rate determined by the appropriate board for the domestic agricultural commodity covered by the order.*[34]

Nevertheless, if imported volumes are assessed, a few restrictions apply: promotion may not specify product origin (e.g. "Cotton, the fabric of our lives," is permitted, but "U.S. cotton, the fabric of our lives" is not); the program cannot include participation by product from some supplying countries, but not others; and all must be treated equally, and in the same way as U.S. product, in accordance with the GATT principle of "National Treatment."[35] Since softwood lumber is an agricultural commodity which can participate in the USDA's check-off programs, the volumes that Canadian and offshore producers ship to the U.S. market can participate.

Since the Canadian share of the U.S. market is so large, establishing a North American check-off should involve Canadian suppliers in the initial application discussions with the USDA, and all affected Canadian and offshore volumes must be included in any referendum. For a check-off to be established, the initial application must provide convincing evidence that a majority of the suppliers (both U.S. and non-U.S.) to the U.S. market agree with the goals and will support a check-off program when the referendum occurs. Once implemented, all suppliers will be assessed identically on those volumes that are supplied to the U.S. market.

> ***Since the Canadian share of the U.S. market is so large, establishing a North American check-off should involve Canadian suppliers in the initial application discussions with the USDA***

In general, there must be sufficient industry support for a check-off to convince USDA that there will be minimal opposition to its creation. **Given the nature of the softwood lumber dispute, AMS staff has unofficially suggested that the USDA will want to carefully scrutinize the level of support to initiate any check-off program to be sure that opposition concerns are addressed or can be effectively managed.**[36]

With respect to governance, both the mango and blueberry programs provide precedential examples of how provisions can be made in the Order establishing a check-off to allow non-U.S. producers seats on a governing board (see Appendices P (2) and P (3)). Therefore, from the softwood lumber industry perspective, a truly North American program with cross-border equity on financial contributions, process, and participation in governance is possible.

Who Pays, Who Votes? The Import Question

Successfully determining who pays, who votes, and who governs a check-off program is perhaps the most important condition for its establishment. As noted later in this report, other programs have failed because these issues have not been adequately addressed. Further, even though a "unified, North American check-off" was not explicitly envisioned in 1996 Farm Bill's authorizing legislation, check-off experts believe that the softwood lumber industry can successfully establish such a program. Accordingly, this section describes the traditional interpretation of the legislation in this area, identifies several groundbreaking precedents, and maps out a pathway to a unified, binational, North American check-off program.

As a general principle, companies requesting or benefiting from a check-off program are said to be "covered" by the program. These companies, unless otherwise exempted, pay assessments to fund the program, and participate in initial and subsequent referenda, voting whether or not to approve a program.

Section 518 of the 1996 Farm Bill authority for check-off programs provides that:

(1) . . . the Secretary shall conduct a referendum among persons subject to assessments under section 517 who, during a representative period determined by the Secretary, have engaged in –

(A) the production or handling of the agricultural commodity covered by the order; or

(B) the importation of the agricultural commodity.[36]

Section 517 of the 1996 Farm Bill authority further provides:

(a) Assessments Authorized. – While an order issued under this subtitle is in effect with respect to an agricultural commodity, assessments shall be –

(1) paid by first handlers with respect to the agricultural commodity produced and marketed in the United States; and

(2) paid by importers with respect to the agricultural commodity imported into the United States, if the imported agricultural commodity is covered by the order pursuant to section 516(f).

Section 516 states:

(f) Assessment of Imports. – An order issued under this subtitle may contain authority for the board established under the order to assess under section 517 an imported agricultural commodity, or products of such an agricultural commodity, at a rate comparable to the rate determined by the appropriate board for the domestic agricultural commodity covered by the order.[39]

Terms used are defined as follows in the 1996 Farm Bill:

First handler. – The term ``first handler" means the first person who buys or takes possession of an agricultural commodity from a producer for marketing. If a producer markets the agricultural commodity directly to consumers, the producer shall be considered to be the first handler with respect to the agricultural commodity produced by the producer.

Importer. – The term ``importer" means any person who imports an agricultural commodity from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person.[40]

Several points can be drawn from these authorities. First, if a check-off program is established for a domestic agricultural commodity (or products derived from it), authority exists for extending coverage under such a program to imports of the same agricultural commodity (or products derived from it).

Second, assessments are levied on first handlers and importers, primarily as a program convenience to reduce the number of entities from which assessments must be collected and, in the case of imports, reflecting the domestic reach of U.S. law and program enforcement. Thus, unless domestic first handlers are specifically covered under a check-off program (which they may be), they are presumed to be assessment collectors, passing the cost of the assessment back to producers. In turn, it is producers of an agricultural commodity, not first handlers, who vote in referenda associated with a check-off program. In those cases where first handlers participate or are actually covered under a check-off program it is as marketers of an agricultural commodity or processors that manufacture products from an agricultural commodity. First handlers may choose to be covered under a program in association with producers of an agricultural commodity or under a check-off program focused exclusively on handlers (e.g., marketers, processors, manufacturers).

Third, importers play a role similar to domestic first handlers, being primarily responsible for the collection and payment of assessments. However, given the domestic scope and reach of U.S. law, importers are normally deemed the eligible entities for purposes of voting in referenda and being seated on check-off boards to represent the interests of producers and exporters in the countries from which they import agricultural commodities (or products derived from them). In many cases, these importers also are producers or processors in the exporting countries, but not always.

Against this backdrop, domestic softwood lumber producers would likely be viewed as first handlers that purchase trees and manufacture or process them into lumber. As such, they would be eligible for a check-off program that they fund and operate subject to USDA oversight.[41] Authority also would exist to extend coverage under such a program to imported softwood lumber products and those who manufacture or process them.

Although the 1996 Farm Bill authority for check-off programs does not appear to fully anticipate a unified North American check-off program, there are several ways that this may be resolved. Indeed, given the cross-border ownership of many companies producing products in Canada, and the fact that most forest products companies fulfill the role of first handler, it is likely that a reasonable scenario can be worked out so that the group most affected and most needing the program, the North American lumber producing industry, would be able to vote on, govern, and pay for a check-off program.

Precedent exists, for example, under already established programs to include foreign producers and/or processors on check-off boards when imports are assessed.[42] Also, if the USDA determines that a formal vote of softwood lumber producers outside U.S. borders is not possible, a straw vote of Canadian producers might be conducted with a favorable vote agreed to be conditional for the implementation of a check-off program.

The North American lumber producing industry would need to be able to vote on, govern and pay for the check-off program.

The exact description of who would pay and who would vote would be resolved when the forest products industry develops and negotiates a process with the USDA. Nevertheless, consultation with check-off experts indicates the strong likelihood that an effective system that addresses assessments and assigns voting rights to lumber producers in the United States and Canada can be designed, and that this can be done in a way that has a high likelihood of securing a majority vote by numbers of companies and production volumes.

Further, it is likely that strong interagency[43] and political support can be found for a regulatory or legislative solution that will allow cross-border collaboration on a check-off. Certainly, a unified North American check-off program would be viewed by many as a means to move beyond the decades-long softwood lumber dispute and the bilateral friction this dispute has generated between

Canada and the United States. The explicit cooperation envisioned in a unified North American check-off, the implicit acceptance of cross-border competition, and the decision to move beyond trade action to collaborative market focused activities would certainly be an important market signal in this regard.

This optimism regarding a solution that will allow lumber producers to vote on, pay for, and govern a check-off program is further supported by Title V, Section 516 of the 1996 Farm Bill, Permissive Terms in Orders, which says in part:

(g) Other Authority. – An order issued under this subtitle may contain authority to take any other action that –

(1) is not inconsistent with the purpose of this subtitle, any term or condition specified in section 515, or any rule issued to carry out this subtitle; and

(2) is necessary to administer the order.[44]

The USDA establishes and oversees check-off programs within the authority granted to it by Congress, and that authority, while interpreted strictly in terms of the policies and rules that guide the operations of a check-off, appears to provide the flexibility to design programs that work. This is borne out when significant variation exists in the range of agricultural check-off programs from commodity to commodity.

Governance and Oversight The Government's Role – Mango, Beef, Soy, Cotton, Blueberries

Title V, Section 515 of the 1996 Farm Bill describes how a check-off board is nominated, constituted and appointed. There is considerable flexibility for industry to nominate a board that is representative of the regional diversity of the North American industry. In fact, the law requires that board composition "reflects the geographical distribution" of production. A few key sub-paragraphs are instructive.

(b) Board. –

(1) Establishment. – Each order shall establish a board to carry out a program of generic promotion, research, and information regarding the agricultural commodity covered by the order and intended to effectuate the purpose of this subtitle.

(2) Board membership. –

(A) Number of members. – Each board shall consist of the ***number of members considered by the Secretary, in consultation with the agricultural commodity industry involved, to be appropriate to administer the order****. In addition to members, the Secretary may also provide for alternates on the board.*

(B) Appointment. – The Secretary shall appoint the members and any alternates of a board ***from among producers of the agricultural commodity and first handlers and others in the marketing chain as appropriate****. If imports of the agricultural commodity covered by an order are subject to assessment under section 516(f), the Secretary shall also appoint importers as members of the board and as alternates if alternates are included on the board. The Secretary may appoint 1 or more members of the general public to each board.*

(C) Nominations. – The Secretary may make appointments from nominations made pursuant to the method set forth in the order.

(D) Geographical representation. – To ensure fair and equitable representation of the agricultural commodity industry covered by an order, ***the composition of each board shall reflect the geographical distribution of the production of the agricultural commodity involved in the United States and the quantity or value of the agricultural commodity imported into the United States****.[45]*

Members of national commodity promotion boards (sometimes called councils) are nominated by industry and appointed by the Secretary of Agriculture. The statute provides for two three-year terms, although the initial board is appointed to staggered terms so that some members serve more than two terms, and so that each year approximately one-third of the membership is reappointed. Some boards also have alternate members.[46]

The industry group that comes together to propose a check-off design to the USDA has an advantage in proposing how the program should be structured (see section on establishing a check-off program). This includes how the board of directors will be chosen, geographical representation, size of the board, responsibilities, and various other details.

Generally, assessed companies govern the check-off program, although foreign and small exempt producers who do not pay assessments may be invited to participate on the board. The National Mango Board is especially instructive with respect to the participation of non-U.S. producers and the wholesale and retail trade.

Given the cross-border ownership of many forest product companies, and the ability for industry to reach throughout the supply chain to establish an appropriate board, it is possible for the softwood lumber industry to create a truly North American program with cross-border equity with respect to financial contributions, process, and governance. If imports are included in a check-off program, imported volumes must be represented when a program is established in a referendum and on the governing board, with seats proportional to their share of the market.

Before moving forward with establishing a check-off, the USDA is required to ensure that representation on the board is equitable with respect to the regional distribution of production. Some check-off boards are relatively lean, with as few as 18 or so members, where others number over 100 and operate through a well organized committee structure. Examples of governance structures of the mango, beef, soy and cotton programs can be found in Appendix H. A matrix showing the governance structures of all active and inactive check-offs can be found in Appendix F.

The mango and blueberry Orders are path-breaking with regard to foreign producers' representation in governance, and establish an important precedent for the North American softwood lumber industry with regard to Canadian seats on a check-off governing board. See Appendices P (2) and P (3), and Endnote 66.

Government's Role: The USDA has no role in governance of the program. However, it does have statutory authority and responsibility to exercise oversight to ensure that programs operate within the policy guidelines of the statute, and within the regulatory parameters of the respective program Order. Beyond that, a softwood lumber check-off would basically be designed in its entirety by the softwood lumber industry board.

The USDA's oversight focuses on the use of check-off assessment revenues by the industry board as follows:

- Approves the board's annual budget
- Reviews administrative expenses and justification for contract costs
- Limits domestic administration (10-15% of total assessments)
- Approves business plans, programs and contracts
- Appoints board members
- Attends board meetings (AMS and, if international activities are part of the program, FAS may also attend)

The check-off program is responsible for reimbursing USDA administrative costs to oversee the program, usually between \$75,000 and \$135,000 per year. The amount depends on the scope and complexity of the program, the number and location of meetings, and whether a referendum is required that year. The program has three to five years after an assessment begins to reimburse AMS for its start-up costs.

Industry Consolidation, Exemptions – Eggs

Key to the success of a check-off program is defining the populations that will vote, pay and govern the program. Programs that fail often do so because the group that designed the program did not identify or adequately accommodate a subgroup of disaffected participants.

Most often, smaller producers vote against check-offs or discourage implementation because they don't see direct benefits, and/or they find the assessments burdensome. Thus, in their wisdom, the drafters of the 1996 Farm Bill included authority to establish exemptions for *de minimis* quantities from the Order.

The *de minimis* exemption is an effective tool to excuse producers of marginal percentages of production volume from a program, reflecting their general unwillingness—financially or in principle—to support such a program. (See the description of the pecan check-off in Part K below.) Section 516 of Title V of the 1996 Farm Bill specifically authorizes the use of *de minimis* exemptions as follows:

(a) Exemptions. – An order issued under this subtitle may contain –

(1) authority for the Secretary to exempt from the order any de minimis quantity of an agricultural commodity otherwise covered by the order; and

(2) authority for the board established under the order to require satisfactory safeguards against improper use of the exemption.[47]

The effective use of the *de minimis* exemption is demonstrated by the Egg Research and Promotion Program. The egg check-off was authorized by Congress in 1974. The program is funded by a mandatory assessment of $0.10 per case, with an exemption for producers owning 75,000 or fewer laying hens. The $20 million raised by the program each year is used to fund advertising, consumer education, and foodservice promotion programs. Some funds are used for research projects examining, for example, the effect of dietary cholesterol on serum cholesterol levels. The program is governed by the American Egg Board, 18 producer members and their alternates. The board meets regularly to plan and budget programs. Implementation is handled by a 19-person staff.

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What is significant about the egg program is the egg industry's history of raising the *de minimis* exemption three times, only in part due to industry consolidations. In making these changes, the egg industry maintained majority support for the program and addressed potential willingness-to-pay issues. When originally authorized, all farmers with more than 3,000 laying hens were assessed. Later this number was changed to 30,000 and, in 1994, it was changed again to 75,000 laying hens. During this time, the per case assessment has changed several times, from a starting point of $0.025 to $0.05 and, in 1994, when the exemption level was changed, to $0.10. It is safe to interpret this as a move by the larger producers to ensure the support necessary to continue the program, albeit at a higher assessment rate. The Egg Order requires a two-thirds affirmative vote of all producers, or a majority vote of producers representing two-thirds of the total egg volume, to pass the referendum necessary to implement an assessment change.

Two related issues are worth mentioning. First, a *de minimis* exemption of small producers makes administration and compliance simpler and less costly. Second, because the egg industry had its own authorizing legislation, a legislative change had to be made by Congress to modify the *de minimis* level. A check-off established under the USDA's generic authority in the 1996 Farm Bill need only amend the Order establishing the check-off, a much simpler task.

It is safe to say that in changing the *de minimis* level, the egg industry wished to exempt smaller producers to ensure the ongoing vitality of the program. Among other things, exempting smaller producers makes easier the national Egg Board's compliance function with regard to payment of assessments, which is ultimately enforced by the USDA, and keeps delinquent payments to a minimum.[48]

For the softwood lumber industry, this might mean exempting companies with production under a certain number of board feet to generate the majority support of a voting population, by both volume and numbers, who can successfully approve a referendum with a simple majority. The USDA defines or restricts neither the size of the company covered by the exemption, nor the total production volume excluded by the exemption. Excluding even 20% or more of North American volume would apparently not be a problem.

Evaluating Effectiveness and Measuring Success – Milk, Potatoes, Watermelon

Measuring the results of check-off programs is critical, but challenging. The most competent and aggressive executives leading check-off programs today will admit how difficult it is to isolate the impact of their programs from the many forces that drive the marketplace. They are continually striving for more effective ways to measure the progress of check-off program activities that are targeted at specific audiences and goals as separate and distinct from market and economic fluctuations and the weather.

Assessing product demand and how it changes with and without generic promotion is central to evaluating the usefulness of a commodity check-off program. Demand is driven by many economic and socio-demographic factors, some measurable and some not easily quantified, making the task of determining the effect of a check-off program on demand difficult.[49] Yet, for strong check-off supporters, like potato producers and many others, the obvious first question is, "where would consumption and prices be without coordinated national marketing, outreach, and other value-added efforts?"[50]

Some programs, like milk, frequently evaluate effectiveness and publish results annually to provide responsible and objective assurances to the producers who voted for the program and contribute the funding. In fact, the stand alone legislative authorization for the dairy check-off requires such annual evaluations of program effectiveness. Beginning in 1996, to address the legal challenges that check-off programs had been facing throughout the 1990s, Congress mandated independent evaluations of the effectiveness of all federally-authorized generic promotion programs at least once every five years.

The USDA has encouraged check-off boards to engage economists to prepare econometric studies of program effectiveness. The use of econometric techniques allows the impacts of check-off activities to be distinguished from those of other socio-economic factors. Based on these results, it becomes possible to simulate market performance with and without the promotion and research funded by a check-off. Calculations of return on investment—i.e., for each check-off dollar spent, how much sales have increased—are normally

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made. Although econometric studies are viewed as beneficial in answering the basic question of program effectiveness, they are data intensive, and the necessary data is not always available. As an alternative, studies based on narrower quantitative assessments or qualitative approaches are performed.

Because calculations of return on investment are occasionally viewed as insufficient, check-off boards often have their own, more targeted purposes for conducting evaluations, such as measuring the effectiveness of specific activities designed to: deliver messages to a target number of potential customers, educate new markets, target niche markets, improve specific business conditions, improve the reputation of an industry, or demonstrate sustainability. Some check-off boards would prefer that these latter evaluations be deemed acceptable for purposes of meeting the Congressional mandate for effectiveness studies. The USDA has agreed that these more narrowly focused evaluations are necessary to check-off program operations, but does not believe they address the broader Congressional requirement for assessments of overall program effectiveness.

A few findings from some of the effectiveness evaluations include[51]:

- From 2000-2004, economic reviews have estimated that the beef check-off program had a rate-of-return of \$5.00 for every check-off dollar invested during that period.
- Economic reviews of the soybean check-off estimated a rate-of-return of \$6.75 for every check-off dollar invested.
- Economic reviews of the pork check-off estimated a rate-of-return of \$4.79 for every check-off dollar invested.
- Revenue gains to the watermelon industry are estimated to be slightly over \$10 for every dollar spent on check-off activities.[52]

These simple statements of bottom line results belie the complexity of the evaluation process. Agricultural economists in recent years have stepped up their research into this question, and the larger programs all use econometric modeling. Studies of advertising for specific dairy, citrus, and several other products have generally found a positive relationship between the amount of money invested in generic advertising and sales of the advertised commodity, although the "law of diminishing returns" applies in some cases—that is, as advertising expenditures increase, sales do increase, but at a slower rate.

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For those wishing to look further into this topic, the recent evaluation report of the Watermelon Board, especially the opening and closing sections, is very instructive (see Appendix I). Another helpful example is the Potato Board, which in 1998 saved its check-off program by hiring new leadership who aggressively revitalized their strategic planning and evaluation process. (See Appendix J for a recent evaluation report.) Finally, those interested in evaluations of a very successful commodity check-off communications campaign may wish to plumb the secrets of the famous and popular "Got Milk?" campaign. (See Appendix K for a recent report of the Milk Board.)

Check-offs for Processors, Manufacturers, Marketers – Propane, A Different Model

The vast majority of check-off programs have been established for food and feed crops to benefit growers, yet there is ample precedent for robust, well-supported and long lasting check-off programs for non-food and non-agriculture industries. There are also two check-offs that are not funded by growers. And some check-off programs are sponsored by government agencies other than the USDA.

Some successful check-offs for non-food products:

- The USDA cotton check-off has existed since 1966. This program now promotes "Cotton: The Fabric of Our Lives" in many different ways.[52]
- Currently, a check-off is being proposed to promote corn-based ethanol, and portions of the new sorghum check-off will likely support research into sorghum-based ethanol.

Some check-offs are supported by processors, not producers:

- The Popcorn Board is a non-profit check-off organization funded exclusively by U.S. popcorn processors—not growers—to raise awareness of popcorn as a versatile, whole-grain snack.[54]
- "Got Milk?" is also supported by processors.

Some check-offs are not sponsored by the USDA:

- Twelve years ago Congress passed legislation authorizing a check-off for the liquid fuel (propane) industry supported not only by producers, but also by distribution, marketing and sales organizations[55]. The Department of Energy oversees this program.
- The National Oilheat Research Alliance (NORA), was created by an act of Congress in 2000 (Public Law 106-469). It collects $0.002/gallon at the wholesale level. NORA must go through the reauthorization process every five years, although the industry wants to redraft the legislation to eliminate the sunset clause. NORA's activities include consumer and professional education, and research and development. Consumer education includes radio, TV, print, and internet advertising.[56]

Popcorn: Frustrated that changing membership made it difficult for the sixty-year old Popcorn Institute to maintain level fees and a level playing field to support ongoing public relations, the popcorn processors decided to create a check-off that mandated an assessment. The popcorn producers were efficient: they worked with Congress, developed an Order and held a check-off referendum within a year, at a cost of approximately $100,000. Thus, the Popcorn Board was formed in April 1998.

Popcorn is a contract crop—the processors contract with growers to grow the popcorn, and then package it and bring it to market. The check-off created a *de minimis* level, exempting from assessments companies that process less than four million pounds a year. The assessment is $0.06 per hundred weight, raising $500,000 annually. This makes popcorn the smallest check-off program. Assessments on domestic shipments are used for domestic public relations; assessments on international shipments are used for PR outside the U.S. The program is supported solely by processors.

The Propane Education & Research Council: The propane check-off program raises several issues that the softwood lumber industry should consider in exploring the check-off opportunity. Research reveals the impressions that knowledgeable outsiders have of USDA programs, and also captures the pros and cons of seeking a check-off through industry-specific legislation.

In 1996, Congress passed the Propane Education and Research Act (PERA), which established the propane check-off program. (See Appendix L (1)). An industry referendum overwhelmingly approved the formation of the Propane Education & Research Council (PERC). PERC receives funding by an assessment of $0.005 per gallon of odorized propane gas, raising $45.1 million to fund programs and projects. Through PERC, the propane industry has committed itself to a multi-year, multi-million dollar effort to improve consumer and employee safety, to fund research and development of new and more efficient propane equipment, and to promote sales of propane by expanding public awareness of its many uses and environmental advantages.

The legislation names the Department of Energy as the sponsoring agency for PERC, with price analysis and program impact reports provided by the Department of Commerce. While much of this legislation mirrors check-off legislation for programs under the USDA, several distinctions create important considerations for the softwood lumber industry.

The first key distinction is that the legislation allows PERC to function independently, like a trade association, without DOE sign-off, constrained only by the provisions of the statute. While it is not allowed to lobby with check-off funds, it can educate, and is not as restricted when dealing with Congress and the agencies (although it is very conservative on this point). While PERC informs DOE of its activities, DOE does not approve its budgets and programs, unlike USDA check-offs, which cannot implement programs without USDA approval. And, unlike USDA-sponsored check-offs, PERC runs its own referenda and processes its own assessments. PERC does have a responsibility to reimburse DOE for government expenses, limited to an amount equaling the average salary of two DOE employees, but given the latitude the legislation gives PERC, DOE's involvement is minimal.

One of the frustrations of industries with USDA check-offs is an alleged lack of consistency among USDA staff—referred to as "handlers" by some—in their oversight of the programs. Some USDA staff are viewed as more "diligent" than others in overseeing such things as the roll out of an ad campaign, a serious constraint when activities or messages are not approved or when USDA staff requires modification.[57] PERC must answer only to its board, and has no such agency oversight.

PERC is governed by a twenty-one member board which, unlike USDA appointed check-offs boards, is not appointed by the Department of Energy but by the industry's two trade associations representing producers and marketers, the National Propane Gas Association and the Gas Producers Association. Each association appoints nine members, and they cooperate on appointing three public members.

Interestingly, since assessments are collected from the party having title to the propane when odor is added, foreign entities may be liable for the assessments.

The second key distinction is an important one. The propane industry benefits from the industry-specific legislation that created PERC because it mandates the assessment, thereby eliminating the free rider problem, while at the same time allowing PERC the flexibility to operate independently.

Yet there is a serious downside to independence. PERC does not have a vested advocate—DOE doesn't have ownership in PERC's programs—and further, PERC could not argue that its communications are the government's speech, as the beef industry successfully did in the face of a Supreme Court challenge. The absence of sanctuary in the face of legal challenges, whether internal—from companies frustrated with the check-off—or from an external source, could be significant for the forest products industry given the history of litigation as a policy tool of anti-industry activists.

For further reading, the activities of PERC are guided by the Propane Education and Research Act, as well as the Policies, Rules, and Procedures (see Appendix L (2)); By-laws (see Appendix L (3)); and Strategic Plans (see Appendix L (4)).

Failures – Cut Flowers, Pecans

Check-off programs fail for one overriding reason: they fail to pass the necessary referendum. There are various reasons for this, all of which boil down to a failure to thoroughly understand:

1) Specifically who will pay and therefore who will vote;
2) How this group will vote; and
3) How to take advantage of tools like the '*de minimis* exemption,' 'volume vs. numbers,' and 'delayed referendum' in drafting the proposed order to insure a positive outcome.

This can be much more complicated than it seems, especially when imports are involved. For imported shipments, assessments are collected at the border, by customs, but are levied on the importer of record, since the USDA will not assess foreign producers. This means understanding the supply chain well, and taking action in advance of drafting the proposed order to define the voting population. This is entirely possible for softwood lumber, but discussions with the USDA and a careful negotiation of the approach to funding the check-off and the referendum will be critical to success.

Pecans – A Failure of Numbers: The pecan industry is a case in point. Large growers representing the overwhelming majority of pecans harvested in the

U.S. came together and decided they all wanted to pursue a check-off. The large growers were not careful to specify a volume-based approach to the check-off, or to specify and get the agreement of the first handlers. They apparently were not aware that they were seriously outnumbered by what they call "pick-up" (truck) farmers who, unbeknownst to them, were not only growers of record, but also opposed the check-off.

When the check-off vote occurred, it was based on numbers, one grower-one vote, and was soundly defeated. The large growers could have avoided this failure. Had they done any of the following, the vote could have passed:

- Specified that the vote would be based on volume, not numbers,[58]
- Used a *de minimis* exemption, relieving small growers from the burden of paying (and therefore voting), or
- Negotiated in advance with the first handlers (middlemen, distributors, wholesalers, packers, and processors, including many of the large growers themselves) to gain their agreement to pay the assessment and vote in favor.

Cut Flowers – A Failure of Organization: The complexity of the cut flower industry's attempts at generic promotion and advertising in many ways mirrors the efforts of the forest products industry: a series of sporadic efforts by shifting groups of funders with mixed results. One difference is that the flower industry has tried the mandatory check-off approach, has made several failed attempts and is now attempting another. The flower industry's efforts are well documented and instructive.[59] (See Appendix N for information and a link to the article from Florists' Review.)

The National PromoFlor Council and its generic promotion program, PromoFlor, was a check-off program authorized by an Act of Congress in 1993. Getting the legislation passed and the program implemented cost the cut flower industry over $1.5 million. PromoFlor is an instructive example of a highly successful preliminary program that failed in a delayed referendum due to poor organization of efforts by the program supporters.

The industry coalition, remembering an earlier check-off attempt (FloroBoard) that failed in an up front referendum because it was too inclusive (included potted plants, grasses, etc.), wanted to limit the assessment to flower growers and importers. The plan was that growers and importers would add a line on their invoices for the check-off, collect the assessments and send them to the National PromoFlor Council. Growers were offered prominent seats on the board. To avoid the hazards of the early vote that sank the first effort, PromoFlor opted for a three-year delayed referendum. During that time, PromoFlor engaged in a preliminary promotional effort to demonstrate the positive effects of generic promotion, believing this would ensure a smooth vote. Presciently, this plan did not include a parallel effort to organize the industry around the program.

In the three-year period before the statutorily delayed initial referendum, the promotion achieved excellent results, bringing 12.5 million new households into the market for cut flowers. Advertisers considered it a great success and evaluators claimed that the promotion generated $6.62 for every dollar of check-off funds spent.

However, in the run up to the vote, the inherent weaknesses created by failure to organize the various industry players, came to full bloom. First, the wholesalers decided that they wanted the check-off costs to be included in the price of the flowers. Growers, fearing lost revenue, refused, and voted against the referendum. The founding coalition then asked first handlers to cover an assessment of 0.5% of cut flower sales, with a *de minimis* exemption for organizations with sales of less than $750,000. The handlers saw the assessment as coming out of their pockets, and also refused to vote favorably in the referendum. The industry blamed the failure on the fact that only a part of the industry (growers, importers, and then handlers) were to be responsible for the assessments, and they perceived a free rider problem and did not want to bear the costs alone.

In both attempts, the larger cut flower companies supported a generic promotion, but were out-voted by smaller companies. The larger companies also objected strongly to free riders, and were not willing to have a significant *de minimis* exemption. The experience of the cut flower industry raises several key factors that contributed to the failure of their check-off.

1. Multiple points of view: Proponents of the program did not sufficiently deal with the multiple points of view along the supply chain and in various segments of their industry, and identify a group willing to pay. They were not able to resolve disputes between big box sellers, supermarkets, importers, growers, wholesalers, distributors, and small retailers.
2. Numbers vs. volume: They voted by numbers, one company-one vote, and not volume. Had they voted by volume, the check-off may have passed. Their legislation should have specified volume.
3. Meaningful *de minimis* exemption: They did not establish a significant and accurate *de minimis* exemption to be sure that they could get the noisy opposition out of the system and gain agreement among those who would be assessed and would vote.
4. Perceptions of fairness: They exempted some significant parts of the supply chain, and so the program was not perceived as being fair.
5. Lack of unity: Despite the demonstrated successes of the early promotion campaign the check-off supporters were not able to sufficiently reach out to unify their industry with the benefits of their program and thereby achieve positive responses from the pool of voters in the referendum to secure a favorable vote.
6. Poor intra-industry relations: They were not able to maintain a consistently positive relationship with the domestic growers, the California Cut Flower Commission, or representatives of imported flowers, the associations in Ecuador and Columbia.

These points are particularly relevant for the softwood lumber industry. To succeed with a check-off program, the industry will have to identify a like-minded group of companies that represent a majority of production and want a check-off, and exempt the hundreds of smaller companies who would benefit from check-off activities but oppose mandatory participation. Of course, these smaller companies would represent only a small percentage of production and, therefore, of the dollars available for collection.

Forest Products Precedent – The Hardwood Industry[60]

The hardwood industry provides another example of an unsuccessful attempt to organize a check-off. On many fronts, the industry went about its attempt to create a check-off in a thorough and comprehensive manner; but, in the end, the industry was not ready to work with what it perceived to be "another government program."

In January, 1993, the National Hardwood Lumber Association's (NHLA) long range planning board introduced the idea of a check-off program and, in April 1994, the NHLA polled its members to gauge support. In July, the NHLA submitted a concept paper for a proposed hardwood check-off program to the USDA and appointed a "blue ribbon" industry-wide panel to develop the details. In April 1995, a first draft of the check-off program was presented to the NHLA board and the final draft of the authorizing legislation was completed by the panel in September 1995.

The NHLA-proposed check-off board would have required in its bylaws to contract with existing industry-controlled, national non-profits to implement the check-off program. This would prevent the board from becoming a "new bureaucracy" as well as reduce administrative overhead.

NHLA-proposed Assessments: The NHLA's check-off program would have assessed sawmills, wholesalers, distributors and concentration yards. Each would pay an assessment on sales of hardwood lumber or its board feet equivalent for veneer and hardwood plywood as follows:

Grade of Product	Amount of Assessment
Selects and Better	$1/MBF
No. 1 Common	$1/MBF
No. 2 Common	$1/MBF
No. 3A Common	$1/MBF
Frame Stock	$1/MBF
Pallet Lumber & Cants	50 cents/MBF
Ties	50 cents/MBF
Timbers	50 cents/MBF

NHLA-proposed Check-off Board

1. A board of 21 people
2. Three-year staggered terms
3. Geographically diverse and representing all sectors falling under the assessment
4. Two candidates nominated by the industry for each slot on the board; the USDA would choose one of these candidates for each slot

NHLA Study of Check-off Feasibility: The NHLA's feasibility study on a proposed check-off showed mixed results with 41% of those polled having an overall positive opinion, while only 22.2% had a negative opinion; 35.2% were undecided or neutral; 61% believed a check-off would increase government intervention in their business and 71.8% felt a check-off would mean more paperwork and red tape.

At the end of 1995, the NHLA membership voted not to pursue a check-off program for the hardwood industry.[61]

Voluntary and State Check-offs – Rice

Several hundred state and voluntary check-off programs exist. Mandatory programs are typically authorized by state legislation, overseen by state departments of agriculture, and managed by research and promotion boards established in each individual state. In some cases, state boards contribute to voluntary, national check-off programs, as in the case of rice check-offs. Rules and policies for establishing check-off programs vary by state.

As the forest products industry knows, voluntary check-off programs are relatively easy to set up and require little to no government involvement. For example, the SFI communications program and the Wood Promotion Network could be considered voluntary check-offs. The design of a voluntary check-off can be essentially the same as a mandatory check-off save for the fact that no one is required to participate in the program.

Several findings from research undertaken at Cornell University may be relevant when considering voluntary check-off programs:[62]

Opt-out – A program with an opt-out mechanism is designed so that companies automatically contribute unless they opt-out, the reason being that businesses are less likely to oppose the status quo. The Cornell study suggested an 86% contribution level for the opt-out approach compared with 50% for an opt-in voluntary check-off.

Provision Point Mechanism (PPM) – Provides for a refund to all if a certain level of funding is not reached. Cornell found that PPM might help sustain a higher level of contributions for many years.

Communications-based – A program of this kind includes consultation with those to be assessed during concept design in order to gain wide support. (This is also true of mandatory check-offs.) **Cornell's research indicates that programs subject to an industry-wide referendum that actively seek out and ensure business input would encourage contribution rates that were 22-27% higher than programs that ignored any kind of consultative or democratic process and were simply imposed.**[63]

Rice – Limited Geography Points to Success: Check-off programs in six rice producing states contribute several million dollars to two different national organizations which run coordinated national check-off programs, with three states contributing to each national association. Because the funds are derived at the state level, the USDA has no oversight function. Program leaders cite the absence of USDA involvement as a major benefit. If the softwood lumber industry wished to consider this approach, it would be worth the time to consult with rice executives about the pros and cons.

The strong positive for a state-by-state approach for the softwood lumber industry is that there would be no governmental entity overseeing the binational board governing the activities supported by the pooled funds. This is outweighed by a stronger negative: softwood lumber is produced in so many provinces and states that the effort to establish check-offs in each one, coordinate those programs, and be sure that local industries agreed to contribute to one coordinated national program, would be overwhelming.

The Mechanics of Referenda

As discussed elsewhere, check-offs succeed or fail on a democratic vote. To assure lasting majority support, it is essential to understand the affected populations: who pays, who votes, and who governs. Because the statutory authority under which the USDA operates is predicated on the general axiom "no taxation without representation" (i.e., those that pay get the vote), it is essential to determine if the payers under the statute understand the need and desire a check-off, or if they are too far removed to care. If the paying population is not the affected stakeholder group, then industry needs to work with the USDA to redefine the group that will pay and therefore vote.

Once the voting and paying population is adequately defined, care has to be taken to involve that population in the design and governance of the check-off program to assure lasting majority support in the referenda that follow every few years. For this reason. it is important also to understand the various types of referenda, and options available.

Summary of the Types of Referenda: Procedurally, for a check-off program to proceed to implementation, a simple majority of those affected, or those representing a simple majority of production volume, must be in favor of the program. Check-off Orders can be written to allow approval of a program to be determined in several ways:

1. By a simple majority (51%) of those voting
2. By persons voting for approval who represent a simple majority (51%) of the volume of the agricultural commodity

   [Note: A vote based on production volume could be stymied by vociferous majority opposition from small low-volume producers if it appears that the check-off will be a political or compliance problem. This demonstrates the practical importance of exempting small producers if necessary.]
3. By a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity[64]

The Referendum Process: After an application for a check-off and a draft Proposed Order have been received, the USDA will review, determine whether an adequate basis has been provided for proceeding, make revisions as appropriate and publish a Proposed Order and other process documents in the Federal Register for comment. The Proposed Order will be open for comment for sixty days, followed by a response to comments and publication of a Final Order—providing the USDA determines there is still an adequate basis for proceeding. The procedures associated with the Final Order typically take about nine months. Once the Final Order is approved, a referendum is conducted to determine if the affected industry chooses to proceed with implementation, or the program is immediately implemented and subject to a delayed referendum conducted no later than three years after program initiation.

1. **Up-Front Referendum**

   Conducted prior to program implementation, an up-front referendum determines whether those who would be affected support implementation. If an up-front

For a check-off program to proceed to implementation, a simple majority of those affected, or those representing a simple majority of production volume, must be in favor of the program.

referendum is held, another referendum is not required for seven years.

2. **Delayed Referendum**

   The initial referendum can be delayed for up to three years after program launch. If the delayed referendum fails, the program is terminated, and remaining monies are refunded.

3. **Subsequent Referenda**

   - Each check-off must hold continuance referenda no later than seven years after start of the program, and periodically thereafter, to determine whether the affected industry wants to maintain the program.
   - Ten percent of affected producers can call for a referendum at any time.
   - The Secretary of Agriculture can call for a referendum at any time.

The initial referendum can be delayed for up to three years after program launch. If the delayed referendum fails, the program is terminated, and remaining monies are refunded.

Ten percent of affected producers can call for a referendum at any time.

FOREST PRODUCTS STATE CHECK-OFF PROGRAMS

Three states have check-off or quasi-check-off programs: California (1990), Idaho (1992) and Oregon (1991). The programs have important commonalities, yet there are some distinct differences. Each was authorized by its state legislature at the urging of the forest products industry in the wake of a disruptive or potentially disruptive public policy debate. In the case of California, legislative authorization followed a very costly industry campaign to defeat a ballot initiative that would have added prohibitive costs to forest management on private lands. For Oregon and Idaho, decisions related to the spotted owl on public lands helped rally industry to lobby for authorization of check-off programs. The years 1990-1992 also happened to be reasonably good market years for the forest products industry.

California and Idaho have programs that meet the definition of check-off as described elsewhere in this report. The program in Oregon is funded through a timber severance tax on the harvest from private lands. The authorizing legislation for the Oregon program allows the money collected only to be used for public and landowner education—no product promotion.

The California and Idaho programs are based on the idea that building a strong and trusting relationship between the staff of the check-off program and those that contribute is critical to its success. CEO oversight is important to both, as is their mix of communicators, policy and operations experts involved in development and execution. Supporters of both believe that the funds they are able to spend on public, marketplace and policy-maker opinion and direction is money well spent, as it not only helps them in strategic planning, but provides essential support in selling the strategic plan to members. They also believe that it is critically important for those contributing to the program to have very clear objectives and that the check-off program must be diligent in not straying from those objectives. This is also a helpful means to create clarity on the role of the check-off programs versus the roles of forestry or product associations. Supporters of the Oregon program believe very strongly that the industry in Oregon needs some sort of product promotion effort.

The California program collects fees only from sawmills, and only from mills that purchase a minimum of 5 MMBF of logs per year. Developers of this program believe that setting this minimum was critical to the success of their initial authorization and implementation. The Idaho program includes loggers, landowners and sawmills. The annual budgets for each of these programs range from $800,000 to $1.8 million, with $200-300 thousand of those amounts coming from non-dues revenue—generally grants that are secured each year. Dues range from $0.35 to $1.00 per MBF.

Each was authorized by its state legislature at the urging of the forest products industry in the wake of a disruptive or potentially disruptive public policy debate.

None of the state programs expressed concern over the potential for the development of a national check-off program as they all saw the need for promotion and research at the national level.

The governing boards in California and Idaho are generally "self-selected" and balanced based on mill size/type of contributor. In California's case, it is a 10-member board which the board itself selects. One seat must be a member of the public (currently occupied by organized labor) and the State Secretary of Agriculture must concur on the board members. For Idaho, the five-member board is self-selecting with the exception of one member appointed by the governor. In Oregon, the State Forester appoints the 11-person board.

None of the state programs expressed concern over the potential for the development of a national check-off program as they all saw the need for promotion and research at the national level. Each realizes that their program focuses on unique challenges within their state, and can envision the efficiencies of a national program as well as their ability to provide tools for use by various state programs.

CANADIAN PROMOTION AND RESEARCH PROGRAMS

Unlike the 1996 Farm Bill, which provides the USDA with the authority to establish national generic promotion and research programs for virtually any agricultural commodity, no directly parallel Act or enabling law exists in Canada. However, the same market condition—and thus market need—exists in Canada for generic promotion for most agricultural commodities, and this has been accommodated by the agricultural market board structure developed over the past century. More recently, several industries not supported by national marketing boards have pursued the "check-off" program approach but with limited success given the lack of enabling legislation.

Canadian Marketing Boards: The Canadian Agricultural Marketing Board is a statutory body which acts as a compulsory marketing agent, performing or controlling one or more of the functions of marketing on behalf of producers of specific agricultural commodities. Boards may be established and operated under legislation passed by either provincial or federal governments, depending on whether the products they market or regulate are produced and sold within a province or are sold inter-provincially or to export markets. Some boards are subject to the jurisdiction of both levels of government. Marketing boards operate in every province and regulate a wide variety of agricultural products.

The first boards developed from farmers' efforts to gain market power through joint action and as a reaction to unstable farm prices and incomes. The first Canadian producer-controlled agricultural marketing boards were introduced in British Columbia in the late 1920s. Federal legislation for this purpose was passed in 1934 and, after numerous constitutional battles, both provincial and federal legislation recognized the respective jurisdictions of the two levels of government.

Provincial marketing acts generally establish supervisory boards or councils to develop provincial commodity marketing plans and oversee the introduction and operation of boards and commissions which administer these plans. Directors of commodity commissions are generally government appointed, but board directors are commonly elected by producers. Commodity marketing plans are implemented following a favorable vote by producers of the commodity.

Conflicts arising from efforts by some provincial supply-management boards to control the in-flow of products from other provinces contributed to passage of several Federal Acts. These provide not only for "policing" but also the development of national or regional marketing plans, and for the establishment and operation of national marketing agencies or boards. Legislation now covers eggs, poultry, wheat, barley, hogs, milk and some vegetables and fruits.

There is substantial variation in the legislatively sanctioned powers held and exercised by boards and considerable difference in the activities they undertake in pursuit of their objectives. The major objectives of marketing boards are to enhance and reduce variability in producers' prices and incomes. Some boards also are concerned that access to market opportunities be shared equitably among producers and that there be standardized terms of sale for the products they regulate. Boards usually have powers to conduct or sponsor research, information or product promotion activities, and most are empowered to purchase and sell their regulated products. Boards are empowered to enforce compliance with the marketing regulations they administer and may have power to license relevant processors and handlers.

Commodity Check-off Programs: Although no enabling legislation for check-off programs exists, several Canadian industries—which lack a marketing board enabler—have established "check-off like" programs, most notably beef and blueberries, and both are pursuing federal legislative changes to support their efforts.

The beef industry has a federal program, which evolved from several provincial programs. The legislation is specific to that industry and is under Part III of the Farm Products Agencies Act.[65] (See http://laws.justice.gc.ca/en/F-4/index.html.) The Canadian program relies on the provinces to implement; however, given the patchwork of provincial programs, the application is not consistently applied and thus has achieved limited results. Accordingly, efforts are now being made to change the federal program to equalize the situation across the provinces.

The Canadian beef industry does work closely with the U.S. national beef check-off program through an understanding that Canadian beef exports to the U.S. are contributing financially through the importers of record. The understanding is mostly an agreement to cooperate, align and avoid duplication, rather than any direct participation or involvement. This is seen to work very successfully.

The blueberry industry in British Columbia has a provincial check-off program under the provincial Farming and Fishing Industries Development Act – Blueberry Industry Development Fund Regulation. Although the BC industry represents approximately 98% of the Canadian market, the check-off program is limited in that it only applies to BC-grown blueberries and cannot be applied to anything imported. Accordingly, the blueberry industry is pursuing a national program, which would also allow access to federal funds for international marketing efforts.

The BC industry does participate in the U.S. blueberry check-off system if they export to the U.S. Payment is made by importers and passed back to the packers and processors, rather than the growers in Canada. Under the U.S. blueberry program, seats are provided on the council for one "exporter" and alternate as well as one "importer" and alternate. These seats can be filled by Canadians.[66]

The apple and fruit industries in Canada are interested in a check-off system and are currently doing investigative work similar to this study.

Moving Forward

Chapter 3

THE FOREST PRODUCTS INDUSTRY'S RESPONSE

North American Forest Industry Survey: Purpose and Objectives

Surveys in the form of in-depth interviews and written interest queries were used to determine the level of interest among North American softwood lumber industry leaders in generic promotion to grow the market and in exploring check-off as a viable method to achieve that end.

Forty-four executives representing over 60% of North American production were solicited, with a goal of determining the level of interest in meeting with their peers to explore check-off programs as a means to create more favorable business conditions for the forest products industry and to grow the market. Twenty-seven companies representing 53% of production have responded to date.

The approach to interviews can be found in the discussion guide of subjects to be probed (Appendix T). All interviews were with CEOs or heads of business within each company (Appendix E). Efforts were made to ensure national and regional diversity, as well as size and ownership.

This report uses 2007 production data, and production volume percentages are fairly constant despite recent market distortions. Appendix O provides estimates of potential check-off revenue based on estimates of assessable North American production.

Summary of Results

With few exceptions the softwood lumber executives who responded see value in generic softwood lumber promotion and a majority expressed interest in check-off as a means to achieve industry market goals. In answer to the question, "Would you be interested in engaging with industry peers in a discussion about check-off as a cross-border method to fund generic industry efforts to grow the market," individuals representing approximately 35% of total North American production replied yes without reservation; another 16% replied yes but with reservations or conditions, and 3% were not interested at this time, citing primarily market conditions.

In summary, a simple majority representing about 51% of North American production favors exploring check-off. While this is a very conservative number, notwithstanding this demonstration of interest, it would be incorrect to assume that the remaining producers will respond in the same way. Traditional "free riders" were not included in the survey or declined to respond, consistent with their general reluctance to engage on collective initiatives at any level. Yet, even with a lower approval rating from the remaining companies, a strong majority by volume of North American production can be expected to have an interest in exploring a check-off approach to improving business conditions for the industry.

In spite of economic conditions, most executives recognize this period of restructuring as a prime opportunity to explore a generic promotion through check-off.

Interview Details: Economic Considerations

All respondents voiced concerns about the current housing, construction and credit markets. They generally believe that because of the many complications surrounding the excess housing inventory that the market will not begin to regain its strength until 2011. These circumstances have already triggered a major restructuring in the softwood lumber industry that will see the elimination of 20% to 25% of capacity. Even now, U.S. consumption appears to be off by that amount. This complicates the reporting of market trends.

The economic situation is relevant to this report because industry leaders were asked to comment on a new and moderately expensive program during a time when revenue is dramatically declining and softwood lumber profits are all but non-existent.

The survey verified market share concerns related to steel, concrete, plastics and, at some points in the cycle, imports, and flagged these as the best areas for the industry to gain share. However, several executives pointed out that there are new opportunities for wood in non-residential and other applications.

Several also said that adverse business conditions (referring here not to the economic downturn, but in part to the attitudes of key audiences) and industry reputation are the real issues. They see improving these as a necessary precursor—or at least a required parallel effort—to gaining market share and growing the market.

In spite of economic conditions, most executives recognize this period of restructuring as a prime opportunity to explore a generic promotion through check-off.

Market Opportunities and Priorities; Generic Promotion

With few exceptions, the survey found robust support on both sides of the border for industry collaboration on market expansion programs. Most industry leaders believe that lumber is so thoroughly a commodity that individual company promotion to try to differentiate one company's product from others is meaningless, and that broad participation in generic promotion is the best way to go.

Industry executives were somewhat divided on the subject of promotional targets. A significant number believe that it is important to improve the perception and reputation of the industry, and that over the long-term this will lead to improved market conditions, and possibly increased market share. These respondents believe a program is worth doing to simply improve the public opinion climate in which the industry operates.

A significant number are adamant that promotion focus on specifiers, architects, and end-use decision makers, and efforts should be made to reach older architects who have been trained exclusively in steel and concrete. This group believes strongly that market share can be gained from steel and concrete.

Several leaders point to the opportunity to create new end-use markets, such as raised floors.

Most believe that lumber is so thoroughly a commodity that individual company promotion to try to differentiate one company's product from others is meaningless, and that broad participation in generic promotion is the best way to go.

In spite of the differences in emphasis—promotion aimed at improving business conditions and reputation vs. promotion aimed specifically at increasing sales—most executives see both as important, necessary and interrelated.

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Role of Research and Promotion to Support Market Expansion

Virtually all respondents are excited by the immediate opportunity to promote wood building products, and believe that the industry has two very important messages that will resonate at this particular period in time:

1. Wood is cost effective (compared to competing products).
2. Wood is environmentally preferable (a renewable resource that has a positive impact on climate change through carbon sequestration, especially compared to the energy needs of competing products).

Industry leaders believe that the threat of climate change creates the opportunity to link wood building products to society's core values—personal well being and the well being of future generations—through messages related to renewable resources, energy efficiency, carbon sequestration and so forth.

Reservations and Concerns

All but two respondents expressed a willingness to engage with industry peers to explore check-off as a fair and sustainable method to improve business conditions and grow the market. While many were enthusiastic and expressed no reservations or conditions, the concerns that were expressed would likely form the agenda for any high level industry meeting to explore check-off. Accordingly, the key reservations include:

1. Many companies feel that a check-off program should not be additive or incremental, but instead replace current promotion programs and related association activities. This should be seen as an effort to raise more money focused on growing the market while lowering individual company costs for those that currently support associations and generic promotion.
2. Several executives believe that the many industry programs operating today to promote the industry and/or its products should be consolidated to increase efficiency and effectiveness.
3. A few companies believe that the burden for check-off should be shared equally with landowners, as so many messages will be about the forest. Others view this as a major hurdle to consensus and therefore a non-starter.
4. A few condition their participation on a strict focus on a target audience of end-use decision makers, and not glossy ads to the general public. "Funds should be focused on getting more business ."
5. One company believes that promotional funds provided by the Binational Council and through AFA are already sufficient.
6. Several companies are concerned about governance and control and will want to understand how a program would work and be governed before committing to check-off.
7. Many respondents spoke to the significant inequities in industry funding of state, regional and national trade associations, promotion programs, grading agencies, etc. and see a check-off program as a possible vehicle to address at least some of the inequities. If the industry decides to pursue a check-off program, efforts would have to be made to make the free rider problem as small as possible.

8. Some companies pointed out that, from a promotional perspective, it is not possible to separate lumber from panels, and both should be included in the check-off.
9. Some Canadian companies suggested the export tax as a way for Canadian companies to contribute. Most understand that Canadian and U.S. contributions must be equitable, but suggested that the export tax could be used to "top off" the fund, lowering the cost for all participants and providing additional funds for increased effectiveness.

Recommendation for Next Steps

Given the extent of positive responses to date, the Endowment can with confidence encourage industry senior executives to explore a North American check-off program for softwood lumber. However, before launching efforts in this regard, the Endowment may wish to think through the "winning conditions" for creating a successful outcome. These might include:

- A proposal: Several industry leaders said they would only attend if a proposal provides context and organizes the discussion. The USDA's Agricultural Marketing Service suggested that a proposal could be in the form of a draft Order.
- A statement of principle: It should be clear that this would be a truly North American program with cross-border equity with respect to financial contributions, process, and participation in governance.
- Consideration for timing given the down market: State forest product check-off programs were established in growing markets following a policy disaster, when the industry was feeling positive but vulnerable, and of a mind to act.
- Consideration to include engineered wood and panel producing companies:[68] Given the responses about end use marketing, the Endowment should consider inviting companies that also produce engineered wood and panels so that the discussion is perceived to be aimed at the entire industry.
- Thought should be given to developing champions among industry thought leaders, and strategies to reach out broadly to the industry in order to manage potential efforts to derail an emerging check-off initiative.
- Not surprisingly, industry and cross-border politics could have an impact on conference outcomes. This suggests that broad buy-in from existing stakeholders could be important, and that thought should be given to potential hosts (government officials), sponsors, venues (e.g., an existing industry meeting), and other related issues.

HOW TO ESTABLISH A CHECK-OFF PROGRAM—NUTS AND BOLTS

The process of establishing a check-off program is a long one, normally taking about eighteen months. Close collaboration with the Agricultural Marketing Service is recommended. AMS will provide a detailed description of the process to establish a check-off, and will help resolve the unique questions specific to an individual industry.

Reviewing existing orders, which are readily available through the USDA's Agricultural Marketing Service, is an excellent way to understand and to help prepare an application and a draft Proposed Order. Several Final Orders are provided here. It would be helpful to review several to prepare for creating a Proposed Order because they differ on many terms from commodity to commodity. Examples of Orders approved under the USDA's generic authority from the 1996 Farm Bill are found in Appendices P (1) for the peanut check-off Order, P (2) for the mango check-off Order, and P (3) for the blueberry check-off Order.

The process to establish a check-off usually begins with the creation of an industry task force to discuss feasibility and draft a formal proposal to the USDA, called a draft Proposed Order. The USDA will work with industry to clarify and refine the proposal and determine whether sufficient basis exists for proceeding. If the USDA decides to proceed, it will publish a Proposed Order in the Federal Register for public comment. After reviewing comments, if all goes well, the USDA will initiate a referendum of all those who would be assessed (including importers, if included). If a majority of the industry votes in support, the USDA will ask for nominations for the first check-off board, appoint the board in collaboration with the industry, and call the initial organizational meeting. Once the board votes on organizational and administrative details, the check-off can be implemented.

For the sake of simplicity, we can describe the process in six stages, each requiring approval or a successful outcome in order to proceed:

1. Discussions with the USDA
2. Application including a draft Proposed Order to establish a check-off program
3. Publication in the Federal Register for public comment
4. Industry referendum, if up-front
5. Nominations, appointment, and organizational meeting of check-off board
6. Implementation

Two critical points should be noted before these six stages are discussed—non-U.S. involvement and *de minimis* exemptions:

Non-U.S. involvement: First, if it is the industry's intent to include imports in a check-off, the non-U.S. suppliers to the U.S. market who would be assessed must be involved when a program is designed and established and be part of the initial referendum. When a referendum is held, a simple majority of all participants, by either numbers or volume represented (although in the case of softwood lumber, both will probably be preferred) is sufficient to approve a program. When a program is established, seats on the governing board would be allocated proportionally to participants, probably by region, state, province, country, and perhaps size.

***De Minimis* exemptions:** Second, not all softwood lumber producers need be included in a check-off, as USDA's statutory authority allows exemptions. The industry task force that designs a check-off program can define the population that will participate and be assessed in any way that makes sense. It is a majority of this defined population that needs to agree to the check-off by majority vote in a referendum (probably a majority by both number of companies and volume produced). If the referendum vote passes, then all companies in that defined population must pay the agreed upon assessment to fund the check-off.

The Six Steps to Establishing a Check-off Program

1. **Discussions with the USDA**

   In the first step, representatives of the softwood lumber industry would initiate discussions with the USDA's Agricultural Marketing Service. This group must be able to demonstrate sufficient support by production and number of companies, that a majority vote in favor can be achieved. Given the history of the North American softwood lumber disputes, the USDA will want to assure itself that a significant majority of the companies on both sides of the border support a check-off.

2. **Preparing an application and draft Proposed Order**

   These discussions with the USDA could lead to a second stage, preparing an application and a draft Proposed Order for a check-off program. While a Proposed Order is issued by the Secretary of Agriculture, an initial draft is normally prepared by the interested industry group in collaboration with the AMS. The application and draft Proposed Order include an industry analysis, justification for a national program, objectives of the program, impact on small business, and proof of level of industry support. These documents basically lay out how the program will be organized and governed, how industry will be assessed, who will be assessed, assessment rates, the kinds of activities that will be funded, program goals, and how the program will operate. Appendices D (1) and D (2) spell out steps required to establish a check-off program. Appendix D (3) discusses preparation of the Proposed Order.

3. **Publication in the Federal Register for public comment**

   After USDA review, a Proposed Order is published in the Federal Register for public comment. Generally, the public is provided 60 days to comment. This process takes about nine months.

4. **Industry referendum (if up-front)**

   Next, USDA prepares a Final Order. Depending on the structure of the check-off program, USDA conducts an up-front referendum of all those to be assessed to see if they support the Final Order. This vote determines whether there is sufficient industry support for the program. Programs with less than majority support cannot be implemented. It is possible to delay the initial referendum for up to three years to get the check-off up and running and show results, but in the case of softwood lumber, the industry should expect that USDA will want to conduct the referendum up-front.

5. **Nominations, appointment, and organizational meeting of check-off board**

   Industry usually leads the nomination process, providing several names each for board seats and alternates. Once the Secretary of Agriculture has selected and announced the board, policies, procedures, staffing, administration, and so forth are handled at its initial meeting.

6. **Implementation**

   Once the Secretary of Agriculture has approved the Final Order to establish a check-off, the program is implemented, including the collection of assessments.

A PowerPoint presentation developed by the Agricultural Marketing Service to explain and summarize national generic research and promotion programs is provided as Appendix Q. Appendix R provides a resource list of agricultural check-off experts; Appendix S is the discussion guide used for check-off interviews.

OPTIONS FOR GENERIC PROMOTION FOR THE SOFTWOOD LUMBER INDUSTRY

The Endowment commissioned this study to determine whether a unified, binational check-off program is possible, if it is feasible for the softwood lumber industry (for lumber and as a proxy for other forest products) and, if so, how it could be accomplished.

Findings indicate that a unified check-off is possible, and that it is feasible for the softwood lumber industry to create an effective binational check-off program. Options for this are described below. Finally, this report recommends a specific approach to accomplish a successful check-off program. That recommendation is provided in the next section.

The options for establishing a generic softwood lumber promotion program in North America include:

1. Voluntary program based on willingness to pay – the status quo,
2. Coordinated provincial and state check-off programs,
3. Parallel Canadian and U.S. national check-off programs, and
4. A unified North American check-off program – the recommended option.

Voluntary Program Based on Willingness To Pay – The Status Quo

Chapter 1 (page 13) describes many of the larger generic public outreach, education and promotion campaigns that the forest products industry has sponsored over the years. Some were effective in achieving a subset of what was intended, but none accomplished the full suite of their original objectives. These past programs, in general, have been sporadic and too short-lived to yield significant results, and the free riders that took advantage of the voluntary nature of the programs frustrated those who initially enthusiastically supported the fundraising.

Even the most vigorous and widely supported of the voluntary programs suffered from waning funding over time. Examples include the WPN's category marketing and positioning program and the AF&PA's forest certification and reputation campaign (SFI communications).

Even the most vigorous and widely supported of the voluntary programs suffered from waning funding over time.

The SFI communications program is a noteworthy example of a voluntary program with a "mandatory" funding approach that was not completely successful in accomplishing original objectives. At the outset, a majority of AF&PA members agreed to the $21 million SFI communications program, making funding mandatory for all members. Nevertheless, enthusiasm waned after the first $7 million was collected, and in the second year the collective AF&PA membership decided to suspend the fundraising, even though research showed the award winning ads and research to be powerful and effective.

It is worth noting that, in contrast, a program established with government oversight, like a check-off, which is mandated by legislation and has the compliance authority of government, cannot be so easily terminated.

The reasons that voluntary, generic programs undertaken by the forest products industry have generally not been successful are:

- Specifier and public opinion can be impacted, but the latter is particularly costly and both require ongoing reinforcement.
- Interest and support for a new communications or marketing effort is high initially and erodes with market cycles and industry consolidation/turnover. The attention span for these programs averages three years or less.
- Voluntary campaigns with high and visible levels of CEO participation can garner upwards of 60-70% support by volume but retention is a major challenge due to

differing market objectives and the inevitable emergence of free riders and their debilitating influence.

- Most communications efforts—large and small—do not last longer than two or three years. It usually takes 3-5 years to show substantive change, and longer to have a more enduring impact.
- The SFI communications program is a good example of a campaign that was unable to achieve its original objectives because of a lack of unity beyond the first year. As a result, it endured four or five false starts in a twelve year period, in spite of the award winning quality of the campaign.
- In general, industry's efforts at generic marketing, communications, promotion and outreach have been sporadic and too short-lived to yield significant results.
- The many free riders who have taken advantage of voluntary programs have frustrated fundraising, and in many cases caused an erosion of financial support by those companies who justifiably do not wish to carry the burden for the entire industry.

Coordinated Provincial and State Check-off Programs

Provincial and state check-off programs mandated by legislation provide an opportunity to collect funds from the industry broadly and avoid the free rider problem. These funds could, in whole or in part, be contributed to a North American pool for broad-based generic promotion, governed by a committee of the whole, with representation based on volume, contributions, or some other equitable formula.

This model has worked well for some industries in the U.S., which claim that the benefits of avoiding USDA oversight outweigh the difficulty of coordinating multiple programs.

The difficulty with such an approach for the forest products industry is the fact that the industry operates in so many states and provinces. The task of establishing more than forty coordinated check-offs is more than daunting. Further, this approach has never been tried for a North American-wide program, and approaches in the U.S. and Canada at the state/provincial level differ in many respects, raising barriers to harmonizing methodologies.

The many free riders who have taken advantage of voluntary programs have frustrated fundraising, and in many cases caused an erosion of financial support by those companies who justifiably do not wish to carry the burden for the entire industry.

Perhaps the most difficult obstacle to this approach is inter-industry competition. In the rice example, where pooled state check-offs have worked, there is broad cross-industry agreement through two trade associations, which each draw their funds from the states.

The scores of state, regional, provincial, and product associations that characterize the North American forest products industry, layered on top of more than forty check-off programs, would require an extremely high degree of harmony to make administration possible. The North American industry is not well known for its ability to harmonize and/or concentrate its efforts. Therefore, the obstacles to implementing this model appear daunting at best, if not insurmountable.

Parallel Canadian and U.S. National Check-off Programs

This option, separate national check-offs in the U.S. and Canada, each mandated by legislation or regulation, and coordinated by a committee of the whole, is certainly possible and may be preferred by some due to perceived governance and program advantages. The latter refers to the increased probability of agreement nationally (or at least the perception of such) and the potential to pursue endeavors of specific interest, such as offshore promotion for certain products.

In reality, although a check-off program for U.S. softwood lumber producers could be established with relative ease, the same is not true in Canada. Given the lack of federal enabling legislation, the strength of provincial authority, differences in provincial approaches, and the challenge to unify on a national level, passing enabling legislation in Canada would likely be a difficult and time consuming process. The Canadian beef industry's check-off efforts may be groundbreaking in this regard, but they still have a distance to go.

Further, the length and intractability of the many softwood lumber disputes suggest that a committee of the whole might have difficulty coordinating the activities of two separate check-off programs and the separation itself might reinforce rather than moderate past differences. Indeed, a parallel approach would be wholly voluntary, and would not have the force of government authority to ensure coordination, collaboration, and cooperation. Past efforts to conduct joint international marketing efforts using funds from two different sources, the BC provincial government and the USDA's Foreign Agricultural Service, did not bear fruit because a mandate for a joint committee did not exist. The current Binational Council by its very nature has a much higher chance for successful cooperation because there is only one governmentally established funding source.

For these reasons coordinated programs, separate but parallel, are less likely to succeed and thus are not recommended.

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Recommendation

Chapter 4

A UNIFIED NORTH AMERICAN CHECK-OFF PROGRAM

The most important finding in this feasibility study is that authorizing legislation in the 1996 Farm Bill and a decades-old system of precedents can provide the softwood lumber industry an opportunity for a truly North American check-off program with cross-border equity with respect to financial contributions, process and governance. Even though a "unified, North American check-off" was not explicitly envisioned in the 1996 Farm Bill's authorizing legislation, experts believe that the softwood lumber industry can successfully establish such a program. As such, this option offers the best set of winning conditions that could help resolve trade tensions, grow the market, and improve business conditions.

> ***The most important finding in this feasibility study is that authorizing legislation in the 1996 Farm Bill and a decades-old system of precedents can provide the softwood lumber industry an opportunity for a truly North American check-off program with cross-border equity with respect to financial contributions, process and governance.***

A Shared Vision: A necessary winning condition is a unifying challenge and/or threat. There must be broad cross-industry agreement that action is required to address the poor market, for example, or the ongoing crises described earlier in this report, or the billions of board feet of demand lost to specifier, builder or consumer preference for steel and concrete. The steel industry's $100 million campaign and its use of negative advertising was a key unifier in the creation of the WPN in 1999.

Industry must also agree that a check-off will create the opportunity to take meaningful action that will be helpful. The eighteen-month lead time that it takes to establish a USDA check-off gives the market time to improve before a referendum is held and assessment invoices are sent. The ongoing crises and the poor market can be the motivator now, and industry will hopefully feel better about the economics when it comes time to vote and pay.

The timing may be auspicious in yet another regard. A lull of at least five years before the Softwood Lumber Agreement ends provides ample time for a generic check-off promotion program to demonstrate success.

Compliance and Enforcement Ensures a Broad Funding Base and Sustainable Results-oriented Programs: Foremost among the winning conditions is the opportunity to establish a bi-national generic promotion unlike any that have gone before in two critical ways:

1) A USDA authorized check-off guarantees that free riders can be eliminated through the compliance enforcement powers of the USDA, thus ensuring a broad and permanent funding base that should lower costs for all involved; and

2) A check-off program is sustainable over time, for it can only be terminated through a voter referendum, and cannot be stopped by a minority of disaffected producers. Thus the unified North American check-off option could give industry the staying power and follow-through lacking in earlier voluntary programs, and help it realize the significant gains in demand described earlier.

Focusing on the Bottom Line and Lowering Costs: This winning condition corresponds with the desire of the forest products industry to consolidate promotion programs and lower costs. Many companies feel strongly that a check-off program should not be additive or incremental, but instead replace current promotion programs and related association activities. This is entirely possible under a check-off which allows industry to use the funds to support those programs it deems worthy, and consolidate others to increase efficiency and effectiveness. A check-off can be used as a fund raising vehicle to focus on growing the market while lowering individual company costs for those that currently support associations and generic promotion. Check-offs lend themselves to both a strict focus on a target audience of end-use decision makers in an effort to get more business, and also on improving the industry's reputation around its conservation efforts and environmentally friendly products.

Many forest products leaders see significant inequities in company funding of state, regional and national trade associations, promotion programs, grading agencies, and so forth. A check-off is clearly a vehicle to address many of these inequities.

Governance and Control: Company concerns about governance and control can be satisfied through a check-off. Over the past eight years, several changes in the USDA's approach to check-offs have established precedents in how programs are established and governed that create the conditions for cross-border equity in governance, which is needed to achieve a majority support vote. For example if industry were to decide that it wants a lean board (any number, to be determined by industry) the USDA would only insist that the geographic distribution of seats be fair. If the board had eighteen members, the USDA would require that six seats be filled by Canadian producers (based on U.S. market share), and twelve be U.S. producers, distributed fairly across the South, West, Lake States and Northeast. Industry could add seats for customer and other categories if desired. If offshore imports rose above 5%, an importer representing those volumes may also be required.

A USDA authorized check-off guarantees that free riders can be eliminated through the compliance enforcement powers of the USDA, thus ensuring a broad and permanent funding base that should lower costs for all involved

Broad and Equitable Participation: Disproportionate funding burdens have killed earlier programs. The fact that the statute allows all suppliers to the market, domestic and non-U.S., to participate creates a unique opportunity, and a winning condition.

Identifying Companies That Will Vote and Pay for a Check-off: The final, critical winning condition must be created by industry. Most failed check-off programs have at their root a lack of absolute clarity around the supply chain, and a consequential failure to work with the USDA to determine who will vote, pay, and govern. Indeed, successfully determining who pays, who votes, and who governs is perhaps the most important condition for establishing a check-off program. As noted in early sections of this report, other programs have failed because these issues have not been adequately addressed.

The current detailed production data needed to set a *de minimis* level (see Appendix U), and the regulatory framework to exempt from the assessment the many small companies that might find it too burdensome to pay and would, therefore, vote against a check-off, both exist. Foreign producers can also be accommodated. However, industry must take the time to work with the USDA to carefully structure the check-off so it explicitly identifies who participates. In this way it can be successful in referendum and avoid downstream compliance problems.

Concluding Comment

The progression from trade tensions to joint grow-the-market efforts has occurred in many industries with the realization that disputes delay the inevitable—the competition is here to stay, and what industry needs is a strategy supported by all affected parties to grow the market. The same progression is possible for the softwood lumber industry and by virtue of this study, may be in the process of being realized.

For these reasons, this study focused on whether a unified, binational option that would be fair, cost efficient, and give industry on both sides of the border equitable say in design, implementation and governance – is feasible. And the answer is a definitive yes!

Check-off legislation provides the mandatory inclusiveness and stability over time to enable industry to grow the market, enhance its reputation and improve business conditions. Under these circumstances, trade disputes become a rarity and the benefits of an improved market accrue to industry, forests and forest-reliant communities.

This study focused on whether a unified, binational option that would be fair, cost efficient, and give industry on both sides of the border equitable say in design, implementation and governance – is feasible.

And the answer is a definitive yes!

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Acknowledgements

The authors acknowledge and thank the scores of agriculture and forest industry leaders and experts (Appendices E and R) who provided information in interviews and written literature. This study would not have been possible without their valuable input. Neither would the report have been possible without the reports, data and other material from reports and websites of the USDA's Agricultural Marketing Service, the Congressional Research Service, the U.S. Forest Service and the check-off programs of many agricultural commodities.

We are especially grateful to Sonia Jimenez of the USDA's Agricultural Marketing Service for her generous guidance. Dr. Kenneth Clayton[*] conducted an expert review of this report and was very helpful in understanding and interpreting check-off legislation and regulation and providing advice on how the industry might handle various aspects of check-off. Tom O'Brien, Esq.[†] also conducted an expert review, and provided helpful advice on legal aspects of check-off. William Watson[‡] provided key insights into check-off program implementation and important references. Elizabeth C. Ward[❧] generously provided her research on check-off for the hardwood lumber industry and insights into state and voluntary programs.

Most importantly we would like to thank our Canadian partner, Kelly McCloskey, President of Kelly McCloskey & Associates Ltd. and his staff, who provided invaluable materials and perspectives on the Canadian industry, the North American market, past industry promotion programs, and the Canadian situation with respect to check-off.

We are grateful to all for the time and expertise of all those who contributed to this study. That said all the views in this paper belong solely to the authors, who bear full responsibility for any mistakes or misrepresentations.

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[*]Dr. Clayton served as Associate Administrator (highest ranking career executive) of the Agricultural Marketing Service for twenty years with responsibility for a broad range of USDA programs, a staff of 4,500, and a budget of $1.5 billion. Dr. Clayton's responsibilities included USDA oversight of national agricultural check-off programs.

[†]Tom O'Brien is an attorney who has written Orders for a number of check-off programs, and works with several members of the Commodity Roundtable. Mr. O'Brien served as associate administrator with the duties of chief of staff of the Agricultural Marketing Service, and has extensive expertise with check-off marketing and promotion programs. He participated in the development of the 1996 Farm Bill which revolutionized how industries can pursue check-off programs.

[‡]Mr. Watson is Executive Director of the Mango Check-off Program and convener of the Commodity Roundtable. The Roundtable is made up of the staff chief executives of virtually every national check-off program, and could be a valuable resource for the softwood lumber industry should it wish to move forward with a program.

[❧]Currently CEO of the Rice Council, Ms. Ward wrote Check-off Programs: A White Paper for the Hardwood Industry (June, 2006), while she was Executive Director of the Hardwood Federation.

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Endnotes

[1]The term "check-off" describes industry led research and promotion programs authorized by government legislation and overseen by the federal or state governments. These programs are designed to strengthen the position of the industry in the marketplace and to maintain and expand domestic and foreign markets. The programs are fully funded by industry assessments.

[2]"Free-rider" is a term that refers to companies which refuse to give financial support to a voluntary program, but who benefit from the program nonetheless. This is a chronic problem for trade associations whose member companies' dues support generic public policy and promotional efforts along with other services which benefit the entire industry, including those companies who refuse to join and support this work with their dues.

[3]In agricultural parlance, the term "producer" refers to a grower as distinct from a processor who processes the raw agricultural commodity into a usable product. In the future it may become important to keep the distinction between the business of growing trees and the business of processing trees into lumber clear, but for the purposes of this report, because of customary usage, the term "producer" will be used to describe a processor or manufacturer of trees into softwood lumber.

[4]See Endnote 1 above.

[5]U.S. Endowment Request for Proposals ("RFP") #2008-002

[6]Title V, Subtitle B, of The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Farm Bill), deals with Agricultural Promotion. The short title of Subtitle B is the Commodity Promotion, Research, and Information Act of 1996 (See Appendix A1).

[7]For example, the arrangement that the Cotton Board has with Cotton, Inc. to carry out its promotion programs is uniquely authorized in Cotton's stand alone statutory authority. There are many examples of a broad range of legitimate activities that can be sub-contracted by a check-off board under the generic authority in the 1996 Farm Bill.

[8]More a preference than a limitation on Congress' part. For example, the Avocado R&P (check-off) program authority was passed by Congress in 2000 as stand alone legislation four years after the generic authority created in the 1996 Farm Bill to address problems unique to the avocado industry.

[9]1996 Farm Bill, Title V, Section 516, Permissive Terms in Orders.

[10]The graphs, charts and figures shown in this section were provided courtesy of FP Innovations, Forintek Division (FPI) and the Wood Products Council (WPC). The most used sources include:

- FPI - Research Needs Assessment: Wood Substitution by Concrete in the US South Residential Market. March 2008.
- WPC– Plan to Grow the Non-residential Market for Wood in the US, April 2006

[11]A detailed history and analysis has been written by Daowei Zhang, The Softwood

Endnotes

Lumber War. Resources for the Future. 2007.

[12]As suggested by Mr. Zhang. Page 263ff—"Possible Solutions and Potential Routes."

[13]Source: Interview with Tom O'Brien, Esq. June 6, 2008.

[14]Spelter, Henry A Product Diffusion Approach to Modeling Softwood Lumber Demand , Society of American Foresters, Forest Science, Volume 31, Number 3, 1 September 1985 , pp. 685-700(16). Also:

- Nagubadi, Rao V., Zhang, Daowei, Prestemon, Jeffrey P., and Wear, David N. Softwood Lumber Products in the United States: Substitutes, Complements, or Unrelated?
- Adams, Darius M., and Haynes, Richard W., Editors, Resource and Market Projections for Forest Policy Development.

[15]The American Forest & Paper Association was formed as the result of a 1993 merger of the American Paper Institute and the National Forest Products Association.

[16]For example, the work of the American Wood Council in expanding the use of wood in building codes and AWC's support of technology transfer activities is not addressed in our chapter on generic industry promotion programs. It should be noted that the American Wood Council sponsored promotion programs many years ago; these were discontinued when NFPA and API merged.

[17]Wood Products Council Plan to Grow the Nonresidential Market for Wood in the United States. April, 2005.

[18]Spelter, Henry; McKeever, David, and Alderman, Mathew. Profile 2007: Softwood Sawmills in the United States and Canada. Page 10. Research paper FPL-RP-644. Forest Products Laboratory, Madison, Wisconsin. October, 2007.

[19]Spelter, Henry; McKeever, David, and Alderman, Mathew. Page 10.

[20]Source: Agricultural marketing Service (AMS) Website. http://www.ams.usda.gov/AMSv1.0/

[21]All assessments by the National Honey Board (established 1987) ceased on May 21, 2008, and this program will be terminated shortly. The final Order for the new Honey Packers check-off established under the generic legislation was approved on May 22, 2008. At the same time, US honey producers have submitted a new proposal to USDA, showing some divisions within the industry.

[22]Becker, Geoffrey S, Congressional Research Service (CRS) Report for Congress: "Federal Farm Promotion ("Check-Off") Programs. Becker is a Specialist in the CRS Agricultural Policy, Resources, Science, and Industry Division. Order Code 95-353. Updated April 17, 2007.

[23]See Endnote 1 above.

[24]Source: The Hardwood Federation: Check-off Programs: A White Paper for the Hardwood Industry. Elizabeth C. Ward, Executive Director, June, 2006.

[25]For a short discussion of all three Supreme Court cases, see Becker, page 3 (Endnote 20).

[26]Vina, Stephen R, Congressional Research Service (CRS) Report for Congress: "Farm Product "Check-Off" Programs: A Constitutional Analysis." Vina is a Legislative Attorney in the CRS American law Division. Order Code RL32957. Updated June 9, 2006. Page 3ff.

[27]Source: The Hardwood Federation: Check-off Programs: A White Paper for the Hardwood Industry. Elizabeth C. Ward, Executive Director, June, 2006.

[28]Exception: Check-off programs may advise and counsel the USDA regarding issues relating directly to the check-off program itself. Further, check-off board members may continue to confer with their elected officials on any issues as private citizens, but not as representatives of a check-off board, nor may check-off assessments be used to defray those lobbying expenses.

[29]While this restriction is generally true, as the programs are intended to create collective, not individual, benefits, there are instances where programs partner with retailers (e.g., Burger King) to promote increased demand for a particular commodity (e.g., beef).

[30]The Commodity Promotion, Research, and Information Act of 1996, Section 515 (d) (2).

[31]Becker, page 5.

[32]Becker provides a good four page summary of potential future challenges to check off in the section 'Outlook and Issues." Page 3ff.

[33]Source: http://www.cottoninc.com/sustainability/

[34]1996 Farm Bill, Title V, Section 516, Permissive Terms in Orders.

[35]The principle of "national treatment" (giving others the same treatment as one's own nationals) is found in all three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS). It means that imported and locally-produced goods must be treated equally, at least after the foreign goods have entered the U.S. market. It is essential that check-off programs that include imported agricultural products respect "national treatment" so that the United States does not violate the international trade laws and agreements that make up the WTO.

[36]This will be especially important for the softwood lumber industry. Before a Proposed Order can be published in the Federal Register by USDA, USTR must be formally "consulted" if imports are implicated and clearance must be granted by OMB based on its review and consultation with USTR, the Department of Commerce, State Department, and perhaps others.

[37]1996 Farm Bill, Title V, Section 517, Referenda.

[38]1996 Farm Bill, Title V, Section 517, Assessments.

[39]1996 Farm Bill, Title V, Section 513, Permissive Terms in Orders.

[40]1996 Farm Bill, Title V, Section 513, Definitions.

[41]The Fluid Milk, Honey, and Popcorn programs have set precedents in which processors (manufacturers instead of growers) are also first handlers and are assessed and vote in referenda.

[42]The Blueberry and Mango Orders have both set new precedents in the area of non-U.S. participation on check-off boards. Seven of eighteen members of the Mango Board are foreign producers. See Endnote 59.

[43]In establishing a check-off, USTR must be formally "consulted" if imports are implicated and clearance must be granted by OMB based on its review and consultation with USTR, the Department of Commerce, State Department, and perhaps others. These agencies should be supportive of a solution that will reduce bilateral trade tension.

[44]1996 Farm Bill, Title V, Section 516, Permissive Terms in Orders.

[45]1996 Farm Bill, Title V, Section 515, Required Terms in Orders.

[46]Source: AMS Website

[47]1996 Farm Bill, Title V, Section 516, Permissive Terms in Orders.

[48]AMS Website. Egg Research and Promotion Section.

[49]The National Watermelon Board: An Evaluation of Their Program Impact on Demand for Watermelon, Dr. Ronald W. Ward, University of Florida, January 2008.

[50]Evaluation of Grower-Funded Value-Added Activities by the United States Potato Board, Timothy J. Richards and Paul M. Patterson, Morrison School of Management and Agribusiness, University of Arizona, March 29, 2007.

[51]Source: AMS Website

[52]The National Watermelon Board. Ibid.

[53]http://www.thefabricofourlives.com/

[54]http://www.popcorn.org/

[55]http://www.propanecouncil.org/

[56]http://www.nora-oilheat.org/

[57]In USDA's defense, some Boards do a better job of engaging USDA at earlier stages in ad development, while other Boards endeavor to be cutting edge without duly recognizing the issues it can raise for USDA in its review. For example, USDA was presented ad copy that was arguably disparaging of other commodities for the first time when a board had a film crew on the streets of New York City.

[58]See Endnote 58 below.

[59]Bauer, Amy, "Floral Promotion, Past, Present and Future" in The Florists' Review. http://www.floristsreview.com/main/april/featurestory.html

[60]The Hardwood Federation: Check-off Programs: A White Paper for the Hardwood Industry. Elizabeth C. Ward, Executive Director, June, 2006.

[61]Source: This section is taken in its entirety from the Hardwood Federation: Check-off Programs: A White Paper for the Hardwood Industry. Elizabeth C. Ward, Executive Director, June, 2006.

[62]This research is primarily conceptual with some experimental input derived from scenario playing.

[63]Kent D. Messer, Harry M. Kaiser, Gregory L. Poe (2007) Voluntary Funding for Generic Advertising Using a Provision Point Mechanism: An Experimental Analysis of Option Assurance. Review of Agricultural Economics 29 (3) , 612–631 doi:10.1111/j.1467-9353.2007.00375.x

[64]As discussed elsewhere, obtaining USDA approval of a softwood lumber check-off by USDA with a vote of the entire industry based solely on volume is somewhat unlikely. Other agencies (USTR, Commerce, and the ITC) more familiar with the softwood lumber disputes will likely advise USDA to build strong assurances of program success. Therefore, even though this list contains the legitimate alternatives, industry may find that option 1) will not be acceptable without a *de minimis* exemption, or that 1) alone without 2) will be acceptable to USDA.

[65]Source for more information: http://laws.justice.gc.ca/en/F-4/index.html

[66]The Mango and Blueberry Orders are path-breaking with regard to foreign producers' representation on governing boards, and establish an important precedent for the North American softwood lumber industry with regard to Canadian seats on a check-off governing board. The Mango Board has seven seats dedicated to foreign producers. Under the U.S. blueberry program seats are provided on the Council for one "exporter" and alternate as well as one "importer" and alternate. An importer is "any person who imports fresh or processed blueberries into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles fresh or processed blueberries outside of the United States for sale in the United States . . ." Thus, the importer position and alternate could be filled by Canadian nationals. For the exporter – "One exporter and alternate shall be filled by foreign blueberry producers currently shipping blueberries into the United States from the largest foreign blueberry production area, based on a three-year average." Quotes are from the Blueberry Order, Appendix P (2).

[67]A significant number of the existing check-off programs promote to end use businesses, for example, food service, point of purchase literature in grocery stores, etc. Soybeans, in particular, is interesting as it is by definition promoting an ingredient--the program supports work on new uses (e.g., soy ink, soy diesel, etc.) and technical assistance on animal feed rations. Cotton, similarly, supports technical assistance to domestic and foreign mills to help them figure out how to best utilize cotton of different qualities.

[68]Some companies had misgivings that including panels might skew governance.

[69]Spelter, Henry; McKeever, David, and Alderman, Mathew. Profile 2007: Softwood Sawmills in the United States and Canada. Research paper FPL-RP-644. Forest Products Laboratory, Madison, Wisconsin. October, 2007.

Appendix B

METHODOLOGY AND CONTRACTORS

Methodology

To achieve the U.S. Endowment's stated purpose and objectives, the Endowment retained Phoenix Strategic Solutions, Inc. (Phoenix), a public policy group with extensive forest industry sector experience, to bring together a team with unparalleled expertise in researching and understanding the issues and challenges raised in the RFP. To this end Phoenix has partnered with Kelly McCloskey & Associates, Ltd. (KMA) an expert Canadian firm familiar with the industry and government programs in Canada and the US, and the Artemis Strategy Group, a communications research consultant familiar with the operation of U.S. agricultural check-off programs.

The principle methodologies deployed in our research have included searches of existing literature and statistics, in-depth interviews with forest and agriculture industry executives, in depth work with USDA and other current and ex-government officials, and consultations with other relevant experts. These have resulted in a clear understanding of the current state of the issues, factors contributing to both the success and the failure of relevant programs, a comprehensive discussion of relevant issues, and the future opportunities related to check-off programs for the forest products sector.

Personnel Performing the Study

The principals of Phoenix Strategic Solutions, Inc., John Heissenbuttel and Steve Lovett, will perform the majority of the work on this project in partnership with several individuals who have unique skill sets and exceptional records of performance: Kelly McCloskey, President and CEO of Kelly McCloskey & Associates, Ltd., and Jon DeWitt, principal of Artemis Strategy Group will be the principal collaborators, with extensive knowledge of Canadian programs and of the operations and impact of U.S. check-off programs. Curriculum Vitae for each Phoenix principal, associate and partner are attached.

The personnel named above are uniquely qualified having been the leaders and principals for virtually all of the major industry efforts over the last twenty years (including having worked on the recent Abundant Forest Alliance program) to promote or influence the marketplace for forest products. These individuals were integral to securing funding and implementation of industry promotion programs valued well in excess of $100,000,000 and in the process worked with industry leaders throughout North America as well as with senior U.S. and Canadian government officials, NGOs, foreign governments and industries, and other stakeholders.

As a Board member of the U.S. Agricultural Export Development Council for many years, Steve Lovett has worked closely with the CEO leaders of other agricultural trade associations in the United States on all manner of trade and promotional matters, and as such has a good understanding of check-off programs and the players in that area.

Phoenix Strategic Solutions, Inc. Overview: Capabilities, Areas of Expertise

Phoenix Strategic Solutions, Inc., a Maryland Corporation, is a public affairs firm specializing in issue management solutions to environmental and social license to operate challenges. The principles of Phoenix have over 40 years combined experience working creatively to help organizations address political and marketplace challenges. The Phoenix team has a proven track record with corporations and trade associations in the forestry, bio-energy, climate change, agriculture, forest and paper products and retail sectors build platforms to renew trust, strengthen brands, and enhance reputations.

Phoenix principals are well versed in public affairs processes and have worked closely with corporate executives of major multinational corporations, national and local political leaders and policy influentials to address policy and marketplace issues. Phoenix helps clients understand and respond effectively to pressure for change that would adversely affect them in the marketplace and in public policy. Forces for change usually come from some part of civil society; Phoenix's specialty includes managing demands from NGOs, environmental activists, academia, and public interest groups. Phoenix develops for clients both comprehensive strategic plans and issue-specific solutions by analyzing the motivations, strategies and tactics of the forces behind each challenge and designing programs to resolve issues in an ethical, legal, cost effective and responsible manner.

Phoenix's principals have extensive experience in the dynamics of political and industrial issues and are expert at dealing with activist demands that would negatively impact our clients' interests. Some of our specific services include: situation analysis with assessments of vulnerabilities; tactical and strategic advice on how to deal with activists in both the short and long-term; information to help anticipate activists' future moves; procurement and environmental policies that address demands from civil society; partnerships that build trust in a client's commitment to sustainability and corporate social responsibility; and ongoing information critical to understanding the operating arena as influenced by civil society and public policy. Phoenix believes that the best way to achieve difficult public policy objectives is to develop a strategic plan that creates specific avenues to those objectives.

Phoenix brings together the talents of its principals and partners, individuals who have teamed up to help numerous trade associations and Fortune 500 companies grow public trust in their commitment to meet corporate social and environmental responsibilities. Phoenix principals were responsible for the development, management, improvement, strategic planning and promotion of the Sustainable Forestry Initiative (SFI) program which proved to be what the forest products industry needed to respond to corporate reputation, product and brand challenges.

John Heissenbuttel, President, Phoenix Strategic Solutions, Inc.

Prior to founding Phoenix Strategic Solutions, John worked for the American Forest & Paper Association from 1988 until June 2006. As Vice President of Forestry and Wood Products he was responsible for leading the development of strategies for ensuring fiber supply and access to wood product markets for Fortune 500 corporations. John is known for providing the staff leadership to create, implement, and promote the Sustainable Forestry Initiative® (SFI) program. Under John's leadership, the SFI program has become one of the largest internationally recognized sustainable forest management standards. The SFI program enjoys the support of industry and major conservation groups.

This experience has led to extensive knowledge of: processes to create and manage sustainable development programs; the UN and its affiliated international bodies involved in sustainability; domestic and international environmental and conservation organizations; domestic and international industry trade associations involved in sustainability; domestic and international natural resource professional organizations; US government legislative and regulatory policy development. John holds a Bachelor's in Forestry from Humboldt State University.

Steve Lovett, President, Phoenix Strategic Solutions, Inc.

Prior to founding Phoenix Strategic Solutions, Inc. Steve served for many years as Executive Vice President and Chief Operating Officer at the American Forest & Paper Association where he was responsible for wood and paper products, forestry, international marketing, statistics, economics, membership, and paper recycling. An important part of his responsibility was the Sustainable Forestry Initiative, one of the largest and most respected sustainable forest management and certification programs in the world, with over 160 million acres enrolled.

Steve has a strong background in international trade, sustainable forest management and certification, risk management related to corporate environmental responsibility, and sustainability issues related to carbon, water, and forestry. Prior to AF&PA, he worked with a China market access firm specializing in agriculture and forestry. He wrote a study of China's forestry sector, one of the most comprehensive studies of market potential in China at that time, requiring extensive field research which he conducted in Mandarin.

At AF&PA he also served as Group Vice President for Forestry and Wood Products and International Vice President. He was responsible for trade policy and international marketing, and quarterbacked industry trade negotiations in the World Trade Organization and North American Free Trade Agreement as well as the Super 301 bi-lateral agreement with Japan.

Steve is a graduate of Harvard and Stanford, served in the U.S. Navy, and currently serves on the boards of a Swiss multi-national company and several non-profit organizations. He has spoken professionally and testified before Congress on the subjects of international trade, sustainability, standards and certification programs, working effectively with multi-stakeholder groups, and multi-cultural relations. .

Kelly McCloskey, President, Kelly McCloskey & Associates

Formed in 2005, Kelly McCloskey & Associates (KMA) was established to manage the transition of the Wood Promotion Network (WPN) from a broad-based communications initiative to a focused effort supporting wood's interests in the fast growing trend of "green building". Although Kelly continues as WPN CEO, his firm has expanded into marketing research, strategy facilitation, strategic planning and plan implementation. Working primarily for forest industry associations and their member companies in the US and Canada, KMA is known for effecting constructive change via industry-wide collaboration and synergistic execution. Examples of ongoing work include:

- California and BC Climate Change Pilot Initiative – a coalition of groups supported by the Binational Council to determine how best to communicate and positively influence policy as it relates to forests, wood and climate change. KMA was hired to oversee and implement the BC Pilot work and bridge the results with California so as to ensure the products produced and lessons learned can be shared North American-wide.
- Wood Products Council - a coalition of all major North American wood product associations. KMA was hired to establish a consensus view on the size of the non-residential market opportunity for wood, on how to secure market share gains, the means to raise the necessary resources and how execute on the plan. KMA was subsequently hired to manage and oversee the implementation of the plan.
- Canadian Forest Industry Coalition on the 2010 Olympics – a coalition of the forest companies and related industry associations and government agencies with the mandate to develop strategies and tactics vis-à-vis the Games. Hired as the Coalition's Facilitator / Manager, accomplishments to date include development of successive strategic plans and facilitation of the decision to feature

wood in key venues, most notably the innovative wood roof design planned for the Richmond Ice Skating Oval.

- Wood Promotion Network – as noted above, KMA has been hired to sustain the assets created by the WPN in green building. Most notable is the Green Building Initiative as a provider of credible, mainstream green building standards. Created as an independent non-for-profit charity, the GBI has succeeded in becoming the second most widely recognized provider of green building standards in the US. Back in 1999, Kelly was instrumental in coalescing the US and Canadian industry formation of the WPN—the most significant forest industry-wide marketing and communications effort of its kind—becoming its CEO in 2000.

Prior to the WPN, Kelly was President of the Canadian Wood Council. He is also a former Chief Forester and General Manager of Finance with Ainsworth Lumber, Assistant Manager of the Cariboo Lumber Manufacturers' Association and a Management Consultant for Price WaterhouseCoopers. Kelly holds a Bachelor of Science in Forestry and a Masters in Business Administration from the UBC.

Dwight Yochim, Vice President, Kelly McCloskey & Associates

Hired by KMA as National Director of the Wood Product Councils WoodWorks program to grow the non-residential market for wood, Dwight has over twenty years of diversified management experience with government, communities, professional groups, associations and academia. Areas of expertise include: board and committee management, policy development, development of position papers, development and management of complex contracts, media liaison, membership relations, communications, volunteer organization, multi-stakeholder consultation, business development, financial management, and resource and environmental management. Previous positions include various senior management positions at the Association of BC Professional Foresters, the University of British Columbia and the BC Continuing Studies Network.

Jon DeWitt, Principal, Artemis Strategy Group

Jon is a global brand strategy specialist with broad experience on a spectrum of research and innovation assignments. Prior to founding Artemis, he was Senior Vice President with Harris Interactive and with WirthlinWorldwide for twelve years. In both organizations he was the leading brand strategy specialist on major assignments spanning industry sectors, including key roles in the development of campaigns sponsored by the U.S. beef and mild check-off programs.

Jon combines an ability to make breakthrough observations with a skill communicating those insights in a way that is both easily understood and impactful. During his time at Harris and Wirthlin, his work was twice recognized with David Ogilvy Awards for innovative research in support of strategic advertising campaigns. Jon began to build his global knowledge as Vice President of Macro International; he established and managed research operations during the late '80s and early '90s in Poland, the Czech Republic, Hungary and Russia helping Western companies to introduce their products and services to the newly opened markets of Eastern Europe. Jon began his career and developed his orientation to politics and policy as a legislative and research director for U.S. Senator Robert T. Stafford (R-VT). Jon holds a Bachelor's degree in Political Science from the University of North Carolina.

Appendix C1:
Statutory Authority

COMMODITY PROMOTION, RESEARCH, AND INFORMATION ACT OF 1996 [1]

(7 U.S.C. 7411-7425)

SEC. 511. SHORT TITLE.

This subtitle may be cited as the "Commodity Promotion, Research, and Information Act of 1996". (7 U.S.C. 7401 note.)

SEC. 512. FINDINGS AND PURPOSE.

(a) FINDINGS..–Congress finds the following:

(1) The production of agricultural commodities plays a significant role in the economy of the United States. Thousands of producers in the United States are involved in the production of agricultural commodities, and such commodities are consumed by millions of people throughout the United States and foreign countries.

(2) Agricultural commodities must be of high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply.

(3) The maintenance and expansion of existing markets and the development of new markets for agricultural commodities through generic commodity promotion, research, and information programs are vital to the welfare of persons engaged in the production, marketing, and consumption of such commodities, as well as to the general economy of the United States.

(4) Generic promotion, research, and information activities for agricultural commodities play a unique role in advancing the demand for such commodities, since such activities increase the total market for a product to the benefit of consumers and all producers. These generic activities complement branded advertising initiatives, which are aimed at increasing the market share of individual competitors, and are of particular benefit to small producers who lack the resources or market power to advertise on their own. These generic activities do not impede the branded advertising efforts of individual firms, but instead increase general market demand for an agricultural commodity using methods that individual companies do not have the incentive to employ.

(5) Generic promotion, research, and information activities for agricultural commodities, paid by the producers and others in the industry who reap the benefits of such activities, provide a unique opportunity for producers to inform consumers about a particular agricultural commodity.

(6) It is important to ensure that generic promotion, research, and information activities for agricultural commodities be carried out in an effective and coordinated manner designed to strengthen the position of the commodities in the marketplace and to maintain and expand their markets and uses. Independent evaluation of the effectiveness of the generic promotion activities of these programs will assist the Secretary of Agriculture and Congress in ensuring that these objectives are met.

(7) The cooperative development, financing, and implementation of a coordinated national program of research, promotion, and information regarding agricultural commodities are necessary to maintain and expand existing markets and to develop new markets for these commodities.

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[1] Title V, Subtitle B, Issuance of Orders for Promotion, Research, and Information Activities Regarding Agricultural Commodities, of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, 110 Stat. 1032, Apr. 4, 1996. Provisions generally referred to as the ``Generic Commodity Promotion, Research and Information Act".

(8) Agricultural commodities move in interstate and foreign commerce, and agricultural commodities and their products that do not move in such channels of commerce directly burden or affect interstate commerce in agricultural commodities and their products.

(9) Commodity promotion programs have the ability to provide significant conservation benefits to producers and the public.

(b) PURPOSE.–The purpose of this subtitle is to authorize the establishment, through the exercise by the Secretary of Agriculture of the authority provided in this subtitle, of an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of generic promotion, research, and information regarding agricultural commodities designed to–

(1) strengthen the position of agricultural commodity industries in the marketplace;

(2) maintain and expand existing domestic and foreign markets and uses for agricultural commodities;

(3) develop new markets and uses for agricultural commodities; or

(4) assist producers in meeting their conservation objectives.

(c) RULE OF CONSTRUCTION.–Nothing in this subtitle provides for the control of production or otherwise limits the right of any person to produce, handle, or import an agricultural commodity. (7 U.S.C. 7411)

SEC. 513. DEFINITIONS.

In this subtitle (unless the context otherwise requires):

(1) AGRICULTURAL COMMODITY.-The term ``agricultural commodity'' means–

(A) agricultural, horticultural, viticultural, and dairy products;

(B) livestock and the products of livestock;

(C) the products of poultry and bee raising;

(D) the products of forestry;

(E) other commodities raised or produced on farms, as determined appropriate by the Secretary; and

(F) products processed or manufactured from products specified in the preceding subparagraphs, as determined appropriate by the Secretary.

(2) BOARD.–The term ``board'' means a board established under an order issued under section 514.

(3) CONFLICT OF INTEREST.–The term ``conflict of interest'' means a situation in which a member or employee of a board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, a board for anything of economic value.

(4) DEPARTMENT.–The term ``Department'' means the Department of Agriculture.

(5) FIRST HANDLER.–The term ``first handler'' means the first person who buys or takes possession of an agricultural commodity from a producer for marketing. If a producer markets the agricultural commodity directly to consumers, the producer shall be considered to be the first handler with respect to the agricultural commodity produced by the producer.

(6) IMPORTER.–The term ``importer'' means any person who imports an agricultural commodity from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person.

(7) INFORMATION.–The term ``information'' means information and programs that are designed to increase–

(A) efficiency in processing; and

(B) the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of agricultural commodities on a national or international basis.

(8) MARKET.–The term ``market'' means to sell or to otherwise dispose of an agricultural commodity in interstate, foreign, or intrastate commerce.

(9) ORDER.–The term ``order'' means an order issued by the Secretary under section 514 that provides for a program of generic promotion, research, and information regarding agricultural commodities designed to–

(A) strengthen the position of agricultural commodity industries in the marketplace;

(B) maintain and expand existing domestic and foreign markets and uses for agricultural commodities;

(C) develop new markets and uses for agricultural commodities; or

(D) assist producers in meeting their conservation objectives.

(10) PERSON.–The term ``person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(11) PRODUCER.–The term ``producer'' means any person who is engaged in the production and sale of an agricultural commodity in the United States and who owns, or shares the ownership and risk of loss of, the agricultural commodity.

(12) PROMOTION.–The term ``promotion'' means any action taken by a board under an order, including paid advertising, to present a favorable image of an agricultural commodity to the public to improve the competitive position of the agricultural commodity in the marketplace and to stimulate sales of the agricultural commodity.

(13) RESEARCH.–The term ``research'' means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of an agricultural commodity.

(14) SECRETARY.–The term ``Secretary'' means the Secretary of Agriculture.

(15) STATE.–The term ``State'' means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(16) SUSPEND.–The term ``suspend'' means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an order during a particular period of time specified in the rule.

(17) TERMINATE.–The term ``terminate'' means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an order beginning on a date certain specified in the rule.

(18) UNITED STATES.–The term ``United States'' means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States. (7 U.S.C. 7412.)

SEC. 514. ISSUANCE OF ORDERS.

(a) ISSUANCE AUTHORIZED.–

(1) IN GENERAL.–To effectuate the purpose of this subtitle, the Secretary may issue, and amend from time to time, orders applicable to–

(A) the producers of an agricultural commodity;

(B) the first handlers of the agricultural commodity and other persons in the marketing chain as appropriate; and

(C) the importers of the agricultural commodity, if imports of the agricultural commodity are subject to assessment under section 516(f).

(2) NATIONAL SCOPE.–Each order issued under this section shall be national in scope.

(b) PROCEDURE FOR ISSUANCE.–

(1) DEVELOPMENT OR RECEIPT OF PROPOSED ORDER.-A proposed order with respect to an agricultural commodity may be–

(A) prepared by the Secretary at any time; or

(B) submitted to the Secretary by–

(i) an association of producers of the agricultural commodity; or

(ii) any other person that may be affected by the issuance of an order with respect to the agricultural commodity.

(2) CONSIDERATION OF PROPOSED ORDER.–If the Secretary determines that a proposed order is consistent with and will effectuate the purpose of this subtitle, the Secretary shall publish the proposed order in the Federal Register and give due notice and opportunity for public comment on the proposed order.

(3) EXISTENCE OF OTHER ORDERS.–In deciding whether a proposal for an order is consistent with and will effectuate the purpose of this subtitle, the Secretary may consider the existence of other Federal promotion, research, and information programs or orders issued or developed pursuant to any other law.

(4) PREPARATION OF FINAL ORDER.–After notice and opportunity for public comment under paragraph (2) regarding a proposed order, the Secretary shall take into consideration the comments received in preparing a final order. The Secretary shall ensure that the final order is in conformity with the terms, conditions, and requirements of this subtitle.

(c) ISSUANCE AND EFFECTIVE DATE.–If the Secretary determines that the final order developed with respect to an agricultural commodity is consistent with and will effectuate the purpose of this subtitle, the Secretary shall issue the final order. Except in the case of an order for which an initial referendum is conducted under section 518(a), the final order shall be issued and become effective not later than 270 days after the date of publication of the proposed order that was the basis for the final order.

(d) AMENDMENTS.–From time to time the Secretary may amend any order, consistent with the requirements of section 523. (7 U.S.C. 7413.)

SEC. 515. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.–Each order shall contain the terms and conditions specified in this section.

(b) BOARD.–

(1) ESTABLISHMENT.–Each order shall establish a board to carry out a program of generic promotion, research, and information regarding the agricultural commodity covered by the order and intended to effectuate the purpose of this subtitle.

(2) BOARD MEMBERSHIP.–

(A) NUMBER OF MEMBERS.–Each board shall consist of the number of members considered by the Secretary, in consultation with the agricultural commodity industry involved, to be appropriate to administer the order. In addition to members, the Secretary may also provide for alternates on the board.

(B) APPOINTMENT.–The Secretary shall appoint the members and any alternates of a board from among producers of the agricultural commodity and first handlers and others in the marketing chain as appropriate. If imports of the agricultural commodity covered by an order are subject to assessment under section 516(f), the Secretary shall also appoint importers as members of the board and as alternates if alternates are included on the board. The Secretary may appoint 1 or more members of the general public to each board.

(C) NOMINATIONS.–The Secretary may make appointments from nominations made pursuant to the method set forth in the order.

(D) GEOGRAPHICAL REPRESENTATION.–To ensure fair and equitable representation of the agricultural commodity industry covered by an order, the composition of each board shall reflect the geographical distribution of the production of the agricultural commodity involved in the United States and the quantity or value of the agricultural commodity imported into the United States.

(3) REAPPORTIONMENT OF BOARD MEMBERSHIP.–In accordance with rules issued by the Secretary, at least once in each 5-year period, but not more frequently than once in each 3-year period, each board shall–

(A) review the geographical distribution in the United States of the production of the agricultural commodity covered by the order involved and the quantity or value of the agricultural commodity imported into the United States; and

(B) if warranted, recommend to the Secretary the reapportionment of the board membership to reflect changes in the geographical distribution of the production of the agricultural commodity and the quantity or value of the imported agricultural commodity.

(4) NOTICE.–

(A) VACANCIES.–Each order shall provide for notice of board vacancies to the agricultural commodity industry involved.

(B) MEETINGS.–Each board shall provide the Secretary with prior notice of meetings of the board to permit the Secretary, or a designated representative of the Secretary,to attend the meetings.

(5) TERM OF OFFICE.–

(A) IN GENERAL.–The members and any alternates of a board shall each serve for a term of 3 years, except that the members and any alternates initially appointed to a board shall serve for terms of not more than 2, 3, and 4 years, as specified by the order.

(B) LIMITATION ON CONSECUTIVE TERMS.–A member or alternate may serve not more than 2 consecutive terms.

(C) CONTINUATION OF TERM.–Notwithstanding subparagraph(B), each member or alternate shall continue to serve until a successor is appointed by the Secretary.

(D) VACANCIES.–A vacancy arising before the expiration of a term of office of an incumbent member or alternate of aboard shall be filled in a manner provided for in the order.

(6) COMPENSATION.–

(A) IN GENERAL.–Members and any alternates of a board shall serve without compensation.

(B) TRAVEL EXPENSES.–If approved by a board, members or alternates shall be reimbursed for reasonable travel expenses, which may include a per diem allowance or actual subsistence incurred while away from their homes or regular places of business in the performance of services for the board.

(c) POWERS AND DUTIES OF A BOARD.–Each order shall specify the powers and duties of the board established under the order, which shall include the power and duty–

(1) to administer the order in accordance with its terms and conditions and to collect assessments;

(2) to develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the board and such rules as may be necessary to administer the order, including activities authorized to be carried out under the order;

(3) to meet, organize, and select from among the members of the board a chairperson, other officers, and committees and subcommittees, as the board determines to be appropriate;

(4) to employ persons, other than the members, as the board considers necessary to assist the board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(5) subject to subsection (e), to develop and carry out generic promotion, research, and information activities relating to the agricultural commodity covered by the order;

(6) to prepare and submit for the approval of the Secretary, before the beginning of each fiscal year, rates of assessment under section 517 and an annual budget of the anticipated expenses to be incurred in the administration of the order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the board;

(7) to borrow funds necessary for the startup expenses of the order;

(8) subject to subsection (f), to enter into contracts or agreements to develop and carry out generic promotion, research, and information activities relating to the agricultural commodity covered by the order;

(9) to pay the cost of the activities with assessments collected under section 517, earnings from invested assessments, and other funds;

(10) to keep records that accurately reflect the actions and transactions of the board, to keep and report minutes of each meeting of the board to the Secretary, and to furnish the Secretary with any information or records the Secretary requests;

(11) to receive, investigate, and report to the Secretary complaints of violations of the order; and

(12) to recommend to the Secretary such amendments to the order as the board considers appropriate.

(d) PROHIBITED ACTIVITIES.—A board may not engage in, and shall prohibit the employees and agents of the board from engaging in—

(1) any action that would be a conflict of interest;

(2) using funds collected by the board under the order, any action undertaken for the purpose of influencing any legislation or governmental action or policy other than recommending to the Secretary amendments to the order; and

(3) any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or misleading or disparaging to another agricultural commodity.

(e) ACTIVITIES AND BUDGETS.—

(1) ACTIVITIES.—Each order shall require the board established under the order to submit to the Secretary for approval plans and projects for promotion, research, or information relating to the agricultural commodity covered by the order.

(2) BUDGETS.—

(A) SUBMISSION TO SECRETARY.—Each order shall require the board established under the order to submit to the Secretary for approval a budget of its anticipated annual expenses and disbursements to be paid to administer the order. The budget shall be submitted before the beginning of a fiscal year and as frequently as may be necessary after the beginning of the fiscal year.

(B) REIMBURSEMENT OF SECRETARY.—Each order shall require that the Secretary be reimbursed for all expenses incurred by the Secretary in the implementation, administration, and supervision of the order, including all referenda costs incurred in connection with the order.

(3) INCURRING EXPENSES.–A board may incur the expenses described in paragraph (2) and other expenses for the administration, maintenance, and functioning of the board as authorized by the Secretary.

(4) PAYMENT OF EXPENSES.–Expenses incurred under paragraph (3) shall be paid by a board using assessments collected under section 517, earnings obtained from assessments, and other income of the board. Any funds borrowed by the board shall be expended only for startup costs and capital outlays.

(5) LIMITATION ON SPENDING.–For fiscal years beginning 3 or more years after the date of the establishment of a board, the board may not expend for administration (except for reimbursements to the Secretary required under paragraph (2)(B)), maintenance, and functioning of the board in a fiscal year an amount that exceeds 15 percent of the assessment and other income received by the board for the fiscal year.

(f) CONTRACTS AND AGREEMENTS.–

(1) IN GENERAL.–Each order shall provide that, with the approval of the Secretary, the board established under the order may–

(A) enter into contracts and agreements to carry out generic promotion, research, and information activities relating to the agricultural commodity covered by the order, including contracts and agreements with producer associations or other entities as considered appropriate by the Secretary; and

(B) pay the cost of approved generic promotion, research, and information activities using assessments collected under section 517, earnings obtained from assessments, and other income of the board.

(2) REQUIREMENTS.–Each contract or agreement shall provide that any person who enters into the contract or agreement with the board shall–

(A) develop and submit to the board a proposed activity together with a budget that specifies the cost to be incurred to carry out the activity;

(B) keep accurate records of all of its transactions relating to the contract or agreement;

(C) account for funds received and expended in connection with the contract or agreement;

(D) make periodic reports to the board of activities conducted under the contract or agreement; and

(E) make such other reports as the board or the Secretary considers relevant.

(g) RECORDS OF BOARD.–

(1) IN GENERAL.–Each order shall require the board established under the order–

(A) to maintain such records as the Secretary may require and to make the records available to the Secretary for inspection and audit;

(B) to collect and submit to the Secretary, at any time the Secretary may specify, any information the Secretary may request; and

(C) to account for the receipt and disbursement of all funds in the possession, or under the control, of the board.

(2) AUDITS.–Each order shall require the board established under the order to have–

(A) its records audited by an independent auditor at the end of each fiscal year; and

(B) a report of the audit submitted directly to the Secretary.

(h) PERIODIC EVALUATION.–In accordance with section 501(c), each order shall require the board established under the order to provide for the independent evaluation of all generic promotion, research, and information activities undertaken under the order.

(i) BOOKS AND RECORDS OF PERSONS COVERED BY ORDER.–

(1) IN GENERAL.–Each order shall require that producers, first handlers and other persons in the marketing chain as appropriate, and importers covered by the order shall–

(A) maintain records sufficient to ensure compliance with the order and regulations;

(B) submit to the board established under the order any information required by the board to carry out its responsibilities under the order; and

(C) make the records described in subparagraph (A) available, during normal business hours, for inspection by employees or agents of the board or the Department, including any records necessary to verify information required under subparagraph (B).

(2) TIME REQUIREMENT.–Any record required to be maintained under paragraph (1) shall be maintained for such time period as the Secretary may prescribe.

(3) OTHER INFORMATION.–The Secretary may use, and may authorize the board to use under this subtitle, information regarding persons subject to an order that is collected by the Department under any other law.

(4) CONFIDENTIALITY OF INFORMATION.–

(A) IN GENERAL.–Except as otherwise provided in this subtitle, all information obtained under paragraph (1) or as part of a referendum under section 518 shall be kept confidential by all officers, employees, and agents of the Department and of the board.

(B) DISCLOSURE.–Information referred to in subparagraph (A) may be disclosed only if–

(i) the Secretary considers the information relevant; and

(ii) the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party.

(C) OTHER EXCEPTIONS.–This paragraph shall not prohibit–

(i) the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person violating any order and a statement of the particular provisions of the order violated by the person.

(D) PENALTY.–Any person who willfully violates this subsection shall be subject, on conviction, to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both.

(5) WITHHOLDING INFORMATION.–This subsection shall not authorize the withholding of information from Congress. (7 U.S.C. 7414.)

SEC. 516. PERMISSIVE TERMS IN ORDERS.

(a) EXEMPTIONS.–An order issued under this subtitle may contain–

(1) authority for the Secretary to exempt from the order any de minimis quantity of an agricultural commodity otherwise covered by the order; and

(2) authority for the board established under the order to require satisfactory safeguards against improper use of the exemption.

(b) DIFFERENT PAYMENT AND REPORTING SCHEDULES.–An order issued under this subtitle may contain authority for the board established under the order to designate different payment and reporting schedules to recognize differences in agricultural commodity industry marketing practices and procedures used in different production and importing areas.

(c) ACTIVITIES.–An order issued under this subtitle may contain authority to develop and carry out research, promotion, and information activities designed to expand, improve, or make more efficient the marketing or use of the agricultural commodity covered by the order in domestic and foreign markets. Section 515(e) shall apply with respect to activities authorized under this subsection.

(d) RESERVE FUNDS.–An order issued under this subtitle may contain authority to reserve funds from assessments collected under section 517 to permit an effective and continuous coordinated program of research, promotion, and information in years when the yield from assessments may be reduced, except that the amount of funds reserved may not exceed the greatest aggregate amount of the anticipated disbursements specified in budgets approved under section 515(e) by the Secretary for any 2 fiscal years.

(e) CREDITS.–

(1) GENERIC ACTIVITIES.–An order issued under this subtitle may contain authority to provide credits of assessments for those individuals who contribute to other similar generic research, promotion, and information programs at the State, regional, or local level.

(2) BRANDED ACTIVITIES.–

(A) IN GENERAL.–The Secretary may permit a farmer cooperative that engages in branded activities relating to the marketing of the products of members of the cooperative to receive an annual credit for the activities and related expenditures in the form of a deduction of the total cost of the activities and related expenditures from the amount of any assessment that would otherwise be required to be paid by the producer members of the cooperative under an order issued under this subtitle.

(B) ELECTION BY COOPERATIVE.–A farmer cooperative may elect to voluntarily waive the application of subparagraph (A) to the cooperative.

(f) ASSESSMENT OF IMPORTS.–An order issued under this subtitle may contain authority for the board established under the order to assess under section 517 an imported agricultural commodity, or products of such an agricultural commodity, at a rate comparable to the rate determined by the appropriate board for the domestic agricultural commodity covered by the order.

(g) OTHER AUTHORITY.–An order issued under this subtitle may contain authority to take any other action that–

(1) is not inconsistent with the purpose of this subtitle, any term or condition specified in section 515, or any rule issued to carry out this subtitle; and

(2) is necessary to administer the order. (7 U.S.C. 7415.)

SEC. 517. ASSESSMENTS.

(a) ASSESSMENTS AUTHORIZED.–While an order issued under this subtitle is in effect with respect to an agricultural commodity, assessments shall be–

(1) paid by first handlers with respect to the agricultural commodity produced and marketed in the United States; and

(2) paid by importers with respect to the agricultural commodity imported into the United States, if the imported agricultural commodity is covered by the order pursuant to section 516(f).

(b) COLLECTION.–Assessments required under an order shall be remitted to the board established under the order at the time and in the manner prescribed by the order.

(c) LIMITATION ON ASSESSMENTS.–Not more than 1 assessment may be levied on a first handler or importer under subsection (a) with respect to any agricultural commodity.

(d) ASSESSMENT RATES.–The board shall recommend to the Secretary 1 or more rates of assessment to be levied under subsection (a). If approved by the Secretary, the rates shall take effect. An order may provide that an assessment rate may not be increased unless approved by a referendum conducted pursuant to section 518.

(e) LATE-PAYMENT AND INTEREST CHARGES.–

(1) IN GENERAL.–Late-payment and interest charges may be levied on each person subject to an order who fails to remit an assessment in accordance with subsection (b).

(2) RATE.–The rate for the charges shall be specified by the Secretary.

(f) INVESTMENT OF ASSESSMENTS.–Pending disbursement of assessments under a budget approved by the Secretary, a board may invest assessments collected under this section in–

(1) obligations of the United States or any agency of the United States;

(2) general obligations of any State or any political subdivision of a State;

(3) interest-bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) obligations fully guaranteed as to principal and interest by the United States.

(g) REFUND OF ASSESSMENTS FROM ESCROW ACCOUNT.–

(1) ESCROW ACCOUNT.–During the period beginning on the effective date of an order and ending on the date the Secretary announces the results of a referendum that is conducted under section 518(b)(1) with respect to the order, the board established under the order shall–

(A) establish and maintain an escrow account of the kind described in subsection (f)(3) to be used to refund assessments; and

(B) deposit funds in the account in accordance with paragraph (2).

(2) AMOUNT TO BE DEPOSITED.–The board shall deposit in the account an amount equal to 10 percent of the assessments collected during the period referred to in paragraph (1).

(3) RIGHT TO RECEIVE REFUND.–Subject to paragraphs (4), (5), and (6), persons subject to an order shall be eligible to demand a refund of assessments collected during the period referred to in paragraph (1) if–

(A) the assessments were remitted on behalf of the person; and

(B) the order is not approved in the referendum.

(4) FORM OF DEMAND.–The demand for a refund shall be made at such time and in such form as specified by the order.

(5) PAYMENT OF REFUND.–A person entitled to a refund shall be paid promptly after the board receives satisfactory proof that the assessment for which the refund is demanded was paid on behalf of the person who makes the demand.

(6) PRORATION.–If the funds in the escrow account required by paragraph (1) are insufficient to pay the amount of all refunds that persons subject to an order otherwise would have a right to receive under this subsection, the board shall prorate the amount of the funds among all the persons.

(7) CLOSING OF ESCROW ACCOUNT.–If the order is approved in a referendum conducted under section 518(b)(1)–

(A) the escrow account shall be closed; and

(B) the funds shall be available to the board for disbursement as authorized in the order.

(7 U.S.C. 7416.)

SEC. 518. REFERENDA.

(a) INITIAL REFERENDUM.–

(1) OPTIONAL REFERENDUM.–For the purpose of ascertaining whether the persons to be covered by an order favor the order going into effect, the order may provide for the Secretary

to conduct an initial referendum among persons to be subject to an assessment under section 517 who, during a representative period determined by the Secretary, engaged in—

(A) the production or handling of the agricultural commodity covered by the order; or

(B) the importation of the agricultural commodity.

(2) PROCEDURE.—The results of the referendum shall be determined in accordance with subsection (e). The Secretary may require that the agricultural commodity industry involved post a bond or other collateral to cover the cost of the referendum.

(b) REQUIRED REFERENDA.—

(1) IN GENERAL.—For the purpose of ascertaining whether the persons covered by an order favor the continuation, suspension, or termination of the order, the Secretary shall conduct a referendum among persons subject to assessments under section 517 who, during a representative period determined by the Secretary, have engaged in—

(A) the production or handling of the agricultural commodity covered by the order; or

(B) the importation of the agricultural commodity.

(2) TIME FOR REFERENDUM.—The referendum shall be conducted not later than 3 years after assessments first begin under the order.

(3) EXCEPTION.—This subsection shall not apply if an initial referendum was conducted under subsection (a).

(c) SUBSEQUENT REFERENDA.—The Secretary shall conduct a subsequent referendum—

(1) not later than 7 years after assessments first begin under the order;

(2) at the request of the board established under the order; or

(3) at the request of 10 percent or more of the number of persons eligible to vote under subsection (b)(1);

to determine if the persons favor the continuation, suspension, or termination of the order.

(d) OTHER REFERENDA.—The Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the order or a provision of the order is favored by persons eligible to vote under subsection (b)(1).

(e) APPROVAL OF ORDER.—An order may provide for its approval in a referendum—

(1) by a majority of those persons voting;

(2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or

(3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

(f) COSTS OF REFERENDA.—The board established under an order with respect to which a referendum is conducted under this section shall reimburse the Secretary for any expenses incurred by the Secretary to conduct the referendum.

(g) MANNER OF CONDUCTING REFERENDA.—

(1) IN GENERAL.—A referendum conducted under this section shall be conducted in the manner determined by the Secretary to be appropriate.

(2) ADVANCE REGISTRATION.—If the Secretary determines that an advance registration of eligible voters in a referendum is necessary before the voting period in order to facilitate the conduct of the referendum, the Secretary may institute the advance registration procedures by mail, or in person through the use of national and local offices of the Department.

(3) VOTING.—Eligible voters may vote by mail ballot in the referendum or in person if so prescribed by the Secretary.

(4) NOTICE.—Not later than 30 days before a referendum is conducted under this section with respect to an order, the Secretary shall notify the agricultural commodity industry involved, in such manner as determined by the Secretary, of the period during which voting in

the referendum will occur. The notice shall explain any registration and voting procedures established under this subsection. U.S.C. 47417.)

SEC. 519. PETITION AND REVIEW OF ORDERS.

(a) PETITION.–

(1) IN GENERAL.–A person subject to an order issued under this subtitle may file with the Secretary a petition–

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

(2) HEARING.–The Secretary shall give the petitioner an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) RULING.–After the hearing, the Secretary shall make a ruling on the petition. The ruling shall be final, subject to review as set forth in subsection (b).

(4) LIMITATION ON PETITION.–Any petition filed under this subsection challenging an order, any provision of the order, or any obligation imposed in connection with the order, shall be filed within 2 years after the effective date of the order, provision, or obligation subject to challenge in the petition.

(b) REVIEW.–

(1) COMMENCEMENT OF ACTION.–The district court of the United States for any district in which a person who is a petitioner under subsection (a) resides or carries on business shall have jurisdiction to review the final ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of the final ruling by the Secretary under subsection (a)(3).

(2) PROCESS.–Service of process in a proceeding may be made on the Secretary by delivering a copy of the complaint to the Secretary.

(3) REMANDS.–If the court determines that the ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions–

(A) to make such ruling as the court determines to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

(c) EFFECT ON ENFORCEMENT PROCEEDINGS.–The pendency of a petition filed under subsection (a) or an action commenced under subsection (b) shall not operate as a stay of any action authorized by section 520 to be taken to enforce this subtitle, including any rule, order, or penalty in effect under this subtitle. (7 U.S.C. 7418.)

SEC. 520. ENFORCEMENT.

(a) JURISDICTION.–The district courts of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation issued under this subtitle.

(b) REFERRAL TO ATTORNEY GENERAL.–A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary shall not be required to refer to the Attorney General a violation of this subtitle if the Secretary believes that the administration and enforcement of this subtitle would be adequately served by providing a suitable written notice or warning to the person who committed the violation or by an administrative action under this section.

(c) CIVIL PENALTIES AND ORDERS.–

(1) CIVIL PENALTIES.–A person who willfully violates an order or regulation issued by the Secretary under this Act may be assessed by the Secretary a civil penalty of not less than $1,000 and not more than $10,000 for each violation.

(2) SEPARATE OFFENSE.–Each violation and each day during which here is a failure to comply with an order or regulation issued by the Secretary shall be considered to be a separate offense.

(3) CEASE-AND-DESIST ORDERS.–In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring a person to cease and desist from violating the order or regulation.

(4) NOTICE AND HEARING.–No order assessing a penalty or cease-and-desist order may be issued by the Secretary under this subsection unless the Secretary provides notice and an opportunity for a hearing on the record with respect to the violation.

(5) FINALITY.–An order assessing a penalty or a cease-and-desist order issued under this subsection by the Secretary shall be final and conclusive unless the person against whom the order is issued files an appeal from the order with the United States court of appeals, as provided in subsection (d).

(d) REVIEW BY COURT OF APPEALS.–

(1) IN GENERAL.–A person against whom an order is issued under subsection (c) may obtain review of the order by–

(A) filing, not later than 30 days after the person receives notice of the order, a notice of appeal in–

(i) the United States court of appeals for the circuit in which the person resides or carries on business; or

(ii) the United States Court of Appeals for the District of Columbia Circuit; and

(B) simultaneously sending a copy of the notice of appeal by certified mail to the Secretary.

(2) RECORD.–The Secretary shall file with the court a certified copy of the record on which the Secretary has determined that the person has committed a violation.

(3) STANDARD OF REVIEW.–A finding of the Secretary under this section shall be set aside only if the finding is found to be unsupported by substantial evidence on the record.

(e) FAILURE TO OBEY CEASE-AND-DESIST ORDERS.–A person who fails to obey a valid cease-and-desist order issued by the Secretary under this section, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not less than $1,000 and not more than $10,000 for each offense. Each day during which the failure continues shall be considered to be a separate violation of the cease-and-desist order.

(f) FAILURE TO PAY PENALTIES.–If a person fails to pay a civil penalty imposed under this section by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States for any district in which the person resides or carries on business. In the action, the validity and appropriateness of the order imposing the civil penalty shall not be subject to review.

(g) ADDITIONAL REMEDIES.–The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available. (7 U.S.C. 7419.)

SEC. 521. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) INVESTIGATIONS.–The Secretary may make such investigations as the Secretary considers necessary–

(1) for the effective administration of this subtitle; or

(2) to determine whether any person subject to this subtitle has engaged, or is about to engage, in any action that constitutes or will constitute a violation of this subtitle or any order or regulation issued under this subtitle.

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—For the purpose of any investigation under subsection (a), the Secretary may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records or documents that are relevant to the inquiry. The attendance of witnesses and the production of records or documents may be required from any place in the United States.

(c) AID OF COURTS.—In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, in order to require the attendance and testimony of the person or the production of records or documents. The court may issue an order requiring the person to appear before the Secretary to produce records or documents or to give testimony regarding the matter under investigation.

(d) CONTEMPT.—Any failure to obey the order of the court may be punished by the court as a contempt of the court.

(e) PROCESS.—Process in any case under this section may be served in the judicial district in which the person resides or carries on business or wherever the person may be found. (7 U.S.C. 7420.)

SEC. 522. SUSPENSION OR TERMINATION.

(a) MANDATORY SUSPENSION OR TERMINATION.—The Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or a provision of an order obstructs or does not tend to effectuate the purpose of this subtitle, or if the Secretary determines that the order or a provision of an order is not favored by persons voting in a referendum conducted under section 518.

(b) IMPLEMENTATION OF SUSPENSION OR TERMINATION.—If, as a result of a referendum conducted under section 518, the Secretary determines that an order is not approved, the Secretary shall—

(1) not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under the order; and

(2) as soon as practicable, suspend or terminate, as the case may be, activities under the order in an orderly manner. (7 U.S.C. 7422.)

SEC. 523. AMENDMENTS TO ORDERS.

The provisions of this subtitle applicable to an order shall be applicable to any amendment to an order, except that section 518 shall not apply to an amendment. (7 U.S.C.7422.)

SEC. 524. EFFECT ON OTHER LAWS.

This subtitle shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity. (7 U.S.C. 7423.)

SEC. 525. REGULATIONS.

The Secretary may issue such regulations as may be necessary to carry out this subtitle and the power vested in the Secretary under this subtitle. (7 U.S.C. 7424.)

SEC. 526. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.–There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

(b) LIMITATION ON EXPENDITURES FOR ADMINISTRATIVE EXPENSES.-Funds appropriated to carry out this subtitle may not be expended for the payment of expenses incurred by a board to administer an order. (7 U.S.C. 7425.)

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Appendix D1:
Application Process

How to Submit a Proposal for a Research and Promotion Program

A complete proposal submitted to USDA should include an overview of the industry and address objectives and details of the proposed program. Specific requirements are listed below. Contact the Research and Promotion Branch of the Fruit and Vegetable Programs for additional guidance at any time before the proposal is officially submitted.

1. **Industry Analysis:** Develop a profile of the industry, including such information as the volume, value, and geographic distribution of domestic production; the volume, value, and countries of origin of imports; and the number of large and small businesses.

2. **Justification:** Determine the justification for a national program. Address questions, such as:

   What marketing problems exist (e.g., declining sales or prices, lack of industry price support programs), and how would a national program address these problems?

   What alternatives were considered and why were they rejected?

   How much income could the program expect to generate at the optimum assessment rate?

   How much would it cost to administer the program, including Government reimbursements (user fees)?

   After program administration costs are paid, how much funding would remain to finance the program?

   Could an effective research and promotion program be conducted with the remaining funds?

3. **Objectives:** Identify what the industry expects to achieve through the program.

4. **Impact on Small Business:** Describe how the program's reporting, record keeping, and other compliance requirements would affect small businesses. The description should include an estimate of the types of small businesses that would be subject to the order and the type of professional skills necessary to prepare reports and otherwise comply with the program. This analysis should describe each compliance requirement, including the payment of assessments, and estimate the costs, comparing large and small entities. Distinguish initial costs from recurring or operating costs and indicate where different compliance requirements may be necessary for small businesses. In addition, identify all relevant federal rules that may duplicate, overlap, or conflict with the proposed program.

5. **Industry Support:** Determine the level of industry support for the program. USDA will not consider a proposal for which there is not substantial industry support.

6. **Text of the Proposal:** Draft the text for the proposed order. It should provide the details of the proposed program. Address all aspects of the program, such as who would pay the assessment (e.g., producers, first handlers, processors, importers); what the assessment rate would be (amount per unit of trade) or a maximum assessment rate, and whether small businesses would be exempt and, if so, the exemption level. An outline is attached for your convenience.

7. **Submission:** In summary, the package submitted should include: (1) industry analysis; (2) justification; (3) objectives; (4) impact on small business; (5) evidence of industry support for the program; and (6) the text of the proposed order. Submit the completed package to the Administrator of AMS at the following address: Administrator, Agricultural Marketing Service, USDA, STOP Code 0201, 1400 Independence Avenue, S.W., Washington, D.C. 20250-0201.

Important: Once the proposal is published in the *Federal Register*, *ex parte* communication about the substance of the proposal between any U.S. Department of Agriculture representative involved in the decision process and interested persons about the substance of the proposed order is prohibited. Discussion about procedural matters and status reports are permitted.

Appendix E

SOFTWOOD LUMBER SURVEY PARTICIPANTS

Canada	U.S
AbitibiBowater, *John Weaver*	**Anthony Forest Products,** *Aubra Anthony*
Canfor, *Ken Higginbotham*	*__Bennett Forest Industries,__ *Scott Atkison*
Interfor, *Duncan Davies*	*__Boise Cascade,__ *Tom Lovlien*
J.D. Irving, *Gaston Poitras*	*__Curt Bean Lumber Company,__ *Curt Bean*
Mill and Timber, *David Gray*	*__Gilman,__ *Victor Garrett*
Tembec, *Jim Lopez*	**Georgia-Pacific,** *Michael T. Rehwinkel*
Tolko, *Al Thorlakson*	**Green Diamond/Simpson,** *Colin Moseley*
Western Forest Products, *Reynold Hert*	*__Gulf Lumber,__ *Fred Stimson*
West Fraser Timber, *Hank Ketcham*	**Hampton Affiliates,** *Steve Zika*
*__Kruger__	**Hancock Lumber,** *Kevin Hancock*
*__Dunkley Lumber__	**Harrigan Lumber Co.,** *Patrick Harrigan*
*__Domtar__	**Hedstrom Lumber,** *Howard Hedstrom*
*__Materiaux Blanchet__	**McShan Lumber Company,** *Hunter McShan*
*__Winton Global Lumber__	*__Mendocino Redwood Company,__ *Sandy Dean*
*__Carrier Lumber__	**Ochoco Lumber Company,** *Bruce Daucsavage*
	Plum Creek, *Bob Jirsa*
	Potlatch, *Michael J. Covey*
	Robbins Lumber, *Jim Robbins*
	Roseburg Forest Products, *Allyn Ford*
	Riley Creek Lumber, *Mark Brinkmeyer*
	Seneca Sawmill Company, *Dale Riddle*
	Sierra Forest Products, *Kent Duysen*
	Sierra Pacific Industries, *Mark Emmerson*
	Stimson Lumber, *Andrew Miller*
	Swanson Group, Inc., *Steve Swanson*
	Temple Inland, *Jack C. Sweeny*
	Tolleson Lumber Co., *Jay Galloway*
	Westervelt, *Mike Case*
	Weyerhaeuser, *Steve Rogel, Cassie Phillips*

Waiting reply

State Check-off and Similar Programs Interviewed

Betty Munis
Executive Director
Idaho Forest Products Commission
208/3345-3292

Don Zea
Executive Director
California Forest Products Commission
530/823-2363

Leslie Raymond
Executive Director (ret.)
Oregon Forest Resources Institute
971/673-2954

Mark Doumit
Executive Director
Washington Forest Protection Association
360/352-1500

Appendix H

GOVERNANCE EXAMPLES AMONG EXISTING CHECK-OFF PROGRAMS

Mango: National Mango Board (NMB) members work with the NMB staff, providing guidance and input on the strategic direction and specific activities to help increase mango awareness and consumption. All budgets and major initiatives of the NMB are reviewed and approved by the Board Members. Results are also presented to them for review and feedback, to fine-tune the programs.

Several times throughout the year, Board Members are asked to travel for multi-day Board Meetings, and each Member serves on at least one committee. Each committee holds additional meetings and teleconference.

Board positions include eight importers, seven foreign producers and two domestic producers, as well as a first handler, and two retailers and/or wholesalers. Each position comes with a term end date. Each year, the mango industry goes through a nominations process to fill positions that will be available at the end of that year.

When nominations are open, the NMB staff will post details on its web site, include them in the industry newsletter, and provide the information to industry associations and trade media in the affected area.

For each type of position, the process is slightly different. What they have in common is that the industry and the U.S. Secretary of Agriculture each have a role in selecting the individuals who will serve. The NMB staff does not have any role or influence over these decisions.

Simplified descriptions providing an overview of the process follow.

Importer, Domestic Producer & First Handler Nominations:

- Two nominees per position. Secretary of Agriculture makes the final decision.
- During the open nominations period, qualified industry members can nominate themselves or other individuals.
- The industry votes to select two nominees for each open position.
- Each nominee submits a completed background form.
- Once the NMB staff has two complete nomination packets for each open position, they are forwarded to USDA.
- The Secretary of Agriculture appoints one of the two nominees to serve in the position.

Foreign Producer Nominations:

- Each producing country may send two nominees per position. Secretary of Agriculture makes the final decision.
- During the open nominations period, qualified industry members can nominate themselves or other individuals. This is handled through the organizations of foreign mango producers in each producing country.
- Each nominee submits a completed background form.
- NMB staff collects the complete nomination packets from all countries and forwards to USDA.
- The Secretary of Agriculture appoints the nominee to serve in each position.

Retailer & Wholesaler Nominations:

- Two nominees per position. Secretary of Agriculture makes the final decision.
- During the open nominations period, industry members recommend retailers and wholesalers for consideration.
- Board selects two candidates for any open position.
- Each nominee submits a completed qualification form.
- Once the NMB staff has two complete nomination packets for each open position, they are forwarded to USDA.
- The Secretary of Agriculture appoints one of the two nominees to serve in the position.

Beef: The program is administered by the Cattlemen's Beef Promotion and Research Board, usually referred to as the Cattlemen's Beef Board, consisting of 104 members, including domestic beef, dairy and veal producers, as well as importers of live cattle or beef and beef products.

The number of Board members is established according to the number of cattle in the State or region; 500,000 head for the first Board member and 1,000,000 head for each additional member. Importer numbers are established in the same manner. States that do not have total cattle inventories equal to or greater than 500,000 head of cattle are grouped into geographically contiguous units and have one representative Board member. The 96 producers and eight importers on the board represent 35 States, four geographical units, and one additional unit for the importers.

Each year, the Secretary of Agriculture appoints one-third of all Board members from cattle producers and importers nominated by industry. The Board administers the Order, approves budgets, and elects 10 members to a Beef Promotion Operating Committee. This Committee is responsible for developing budgets, awarding contracts, and approving projects for beef promotion and research activities.

It is up to each individual cattle farmer to pay their check-off expense. Civil fines of up to $5,500 on top of check-off dollars owed can be levied against farmers failing to pay the check-off. A fee of $1 per head of cattle bought or sold must be paid into the check-off program. The buyer is generally responsible for collecting $1 per head from the seller. By law, both buyer and seller are equally liable to see that $1-per-head has been collected and paid.

Soybeans: The program is administered by the United Soybean Board, which has 64 members representing 29 States and 2 combined units. The initial Board was appointed by the Secretary, from soybean producers nominated by eligible organizations, for 1-, 2-, or 3-year terms. During each subsequent year, the Secretary appoints approximately one-third of all Board members for 3-year terms. The Board develops budgets and contracts to carry out a coordinated program of promotion, research, consumer information, and industry information.

The Soybean check-off assesses 0.5 percent of the selling price on the first purchase of soybean bushels for the soybean check-off.

Cotton: Based in Memphis, Tennessee, the Cotton Board is the oversight and administrative arm of the Cotton Research & Promotion Program, representing U.S. Upland cotton. The Cotton board has 37 members, each with an alternate, 15 of which are importers representing foreign grown cotton.

To fund the Program, the Cotton Board collects a per-bale assessment of all Upland cotton harvested and ginned in the U.S., as well as an importer assessment for all Upland cotton products imported into the U.S. To conduct the Program, the Cotton Board contracts with Cotton Incorporated to carryout the actual research and promotion activities for U.S. producers and importers of cotton.

While Cotton Incorporated is consumer and trade focused, it is a charged function of the Cotton Board's mission to keep U.S. producers and importers of cotton informed on the innovative developments stemming from the Cotton Research & Promotion Program.

Appendix O

SOFTWOOD LUMBER PRODUCTION: POTENTIAL FOR CONTRIBUTIONS TO A CHECK-OFF PROGRAM

A rough calculation suggests that there are fewer than 150 companies in North America producing at least 100mmbf of softwood lumber.

North American Production in billion board feet (Spelter):

2002	2003	2004	2005	2006	2007
68.7	68.8	73.9	74.9	72.3	64.8

Potential for check-off: Assuming production in the neighborhood of 65 bbf for North America participates in the check-off program, the following amounts could be collected:

$ 0.10/mbf x 65bbf = $ 6.5 million
$ 0.25/mbf x 65bbf = $ 16.25 million
$ 0.50/mbf x 65bbf = $ 32.5 million
$ 0.75/mbf x 65bbf = $ 48.75 million
$ 1.00/mbf x 65bbf = $ 65.00 million

Assuming that a *de minimis* exemption would be necessary to gain majority support in a check-off referendum, and estimating that a voting group of the top 150 producers would represent 80% of production, or 52 bbf, assessments from a softwood lumber check-off might look like this:

$ 0.25/mbf x 52bbf = $ 13 million (too little to be effective)
$ 0.50/mbf x 52bbf = $ 26 million (a reasonable campaign)
$ 0.75/mbf x 52bbf = $ 39 million (a strong campaign)
$ 1.00/mbf x 52bbf = $ 52 million (strong campaign plus reserve)

At lumber market prices of $ 250/mbf, the $1.00 rate would be 0.4% per thousand board feet.

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Appendix R

RESOURCE LIST OF EXPERTS

General Information—Check-off

Agricultural Marketing Service

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Appendix T

DISCUSSION GUIDE: SUBJECTS TO BE PROBED

For U.S. and Canadian Forest Industry Executives

Key Objectives for Discussion:

1. Determine under what conditions the interviewee would support a North American program for the promotion of softwood products within and outside of North America.
2. Does the interviewee think that long-term continuous generic promotion is important and valuable?
3. Determine why interviewee will or will not support a North American softwood check-off program to support promotion of softwood products within and outside of North America. If not it, under what conditions would they support it? What are their concerns? Free riders? Costs? Is this not the time? Find hot buttons.
4. Determine who interviewee believes are thought leaders on the subject.

Discussion Guide

Introduction: Why we are seeking an interview:

- Background on Study and U.S. Endowment
- Scope and objectives for interview

I. Economic considerations

- What are the market conditions that could be improved through a generic promotion program?
- Are there are any particular segments that drive the market?
- How big of an impact are competing products making?
    - Steel
    - Concrete
    - Oil (composite lumber)
- How about imports from offshore?

Key Question: Are competing materials and offshore competition a real issue?

II. **Market opportunities and priorities**

- Do you think that there are opportunities for the industry to work together to improve market conditions?
  - To expand the pie, create market pull—grow demand?
- Commercial—share from steel? Concrete?
- Multi-family residential?
- Take share away from imports from off-shore?

Key Question: Should the N.A. softwood industry work together to grow the market?

III. **Generic promotion versus product and company specific efforts**

- What are the conditions that favor generic promotion?
- Under what conditions have you or could you support generic vs. company specific promotion programs?
- Views about
  - barriers
  - effectiveness
- Other experiences and success stories

Key Question: What are your views about generic-promotion programs vis-à-vis company specific efforts (for example)?

IV. **Role of research and branding to support market expansion**

- Do we know what sells lumber?
  - Beef: independence, forceful decisions
  - Milk: nurturing, personal well-being, youth, future generations
- Opportunities for softwood lumber?
  - Climate-friendly carbon stamp

Key Question: Are there some specific generic-promotion opportunities for softwood lumber – that come to mine?

V. **Potential support for generic promotion**

- Are you aware of check-off programs? Have you had any experience with them?
- For what purposes might you support a check-off program?
  Under what conditions might you support a check-off program
- If you were designing a "grow the market" program with a check-off system , what would you focus on?
- Thinking about generic promotion programs that the softwood lumber industry has established in the past, if you were to establish a program like this again, what would you differently?

Key Question: Have you heard of and how do you feel about check-off programs?

VI. **Success stories**

- Again, thinking of past generic promotion programs,
- What for you constituted success?
- Can the industry use successes to maintain support for the program?
- Do you have any compelling anecdotal evidence?

Key Question: Under what conditions might you support a check-off system and what would you do with the money?

VII. **Who else should we talk to?**

- Who has given check-off or generic promotion some thought?

Key Question: Who are the critical individuals or groups that must be on-side for a check-off program to reach the critical mass of support required?

Key Question: Would you be willing to sit down with some of your peers to discuss check-off?

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