

**Blue Ribbon Commission for Check-off
Ad Hoc Committee on Import Issues
Important Information Regarding Importer Concerns**

Meeting held on February 10, 2011 at 1:30 PM in the "Cokebottle" office, 35th Flr, 1055 Dunsmuir Street, Vancouver, BC, Canada V7X 1H7

Present:

Al Thorlakson, Chairman
Cecil McRae
Paul Krabbe

Steve King
Charles Tardif
Larry Broadfoot

David Gray
Gerry Pankratz
Steve Lovett

1. Issues addressed:

The Committee addressed the following issues:

- a. The Importer of Record (IOR) will be required to assume additional costs associated with the check-off over and above the assessment in the form of Customs broker/agent fees.
- b. IOR under 15 Mmbf will also bear the Customs broker/agent fees in addition to having the capital tied up in the assessments that will be ultimately refunded.
- c. Small manufacturers under 15 Mmbf who are exempt from the check-off nevertheless may be required to pay the assessment by a wholesaler who is larger than 15mmbf if they export to the US through that wholesaler.

2. Summary of decisions taken:

- a. Issues 1a and 1b above can best be resolved if an alternative to using US Customs and Border Protection (USCBP) as the collection agent for check-off assessments can be found. As soon as the check-off board is formed, it should petition USDA for a rulemaking authorizing the Check-off Board to issue invoices to IORs for their check-off assessments, with invoices based on US Customs data by control number for reconciliation purposes.
- b. Issue 1c can best be resolved as follows: small manufacturers who sell through wholesalers should request that wholesalers list them as the importer of record. In this way they will receive the 15mmbf exemption directly.
- c. The Committee decided to submit its recommendations to the Blue Ribbon commission for Check-off, to be transmitted to the Check-off Board for action as soon as the Board is formed.

3. Other issues:

- a. The Committee discussed compliance options for IORs who fail to pay assessments. The Chairman asked Mr. Lovett to report back on USDA enforcement procedures. See Attachment I.
- b. The Committee requested information on the timing of the rulemaking to resolve the import issues. The Chairman asked Mr. Lovett to report back on the USDA rulemaking process and expected timing. See Attachment II.

4. Materials:

The Committee's discussions were based on the issue analysis prepared for meeting participants, provided here as Attachment III.

Conclusion:

The Ad Hoc committee on Import Issues adjourned at 2:30 PM.

Attachment I

USDA Enforcement Procedures for Non-Compliance

After repeated attempts to collect, the Check-off Board may request USDA to intervene and collect from a company in default. USDA collection procedures follow:

1. USDA calls/writes company to collect. If unsuccessful,
2. Case is sent to USDA Office of the General Counsel for collection:
 - a. If collection letter is not successful, then USDA will
 - b. Subpoena importer records.
3. USDA (AMS) then audits importer records to confirm outstanding amounts owed. By this point it is rare that companies in default have not paid past due amounts.
4. USDA makes every effort to avoid litigation, but at this point USDA will pursue court action against any company still in default, whether a US company or an importer of record, and whether or not domiciled in the US.
5. USDA also requests the U.S. Department of Justice to intervene in extreme cases.

Attachment III

USDA Rulemaking Process

The average USDA rulemaking process takes six months from the time the Check-off Board submits its request to USDA for the rulemaking, as follows:

1. Check-off Board discussion, decision and vote.
2. Check-off board submits draft of rulemaking to USDA with full justification of why the rulemaking is needed.
3. USDA prepares the Proposed Rule.
4. USDA's Office of the General Counsel reviews and approves Proposed Rule.
5. Proposed Rule goes through USDA Clearance Process:
 - a. AMS Deputy Administrator
 - b. AMS Administrator
 - c. USDA Under Secretary for Marketing and Regulatory Programs
 - d. Secretary of Agriculture
6. Proposed Rule is published in Federal Register for comment.
7. AMS prepares Proposed Final Rule.
8. USDA's Office of the General Counsel reviews and approves Proposed Final Rule.
9. Proposed Rule goes through USDA Clearance Process:
 - a. AMS Deputy Administrator
 - b. AMS Administrator
 - c. USDA Under Secretary for Marketing and Regulatory Programs
 - d. Secretary of Agriculture
10. Final Rule published; rulemaking goes into effect.

Attachment III

Softwood Lumber Check-off—Import Issues

Issues

- a. The Importer of Record (IOR) will be required to assume additional costs associated with the check-off over and above the assessment in the form of Customs broker/agent fees.
- b. IOR under 15 Mmbf will also bear the Customs broker/agent fees in addition to having the capital tied up in the assessments that will be ultimately refunded.
- c. Small manufacturers under 15 Mmbf who are exempt from the check-off nevertheless may be required to pay the assessment by a wholesaler who is larger than 15mmbf if they export to the US through that wholesaler.
- d. Administrative burden on the check-off board; see Attachment II.

Issue Summary

In each of these issues the IOR or affected company will have to assume an unnecessary expense not born by US domestic manufacturers. The majority of the issues related to imports can be addressed or completely resolved if an alternative to using US Customs and Border Protection (USCBP) as the collection agent can be found.

Background

USDA's analysis of U.S. Customs data indicates that there are 883 importers of record, with 103 over 15 Mmbf. 88%, or 780 importers, would be exempt from paying an assessment. Further, of the 103 importers of record who are over 15 Mmbf, 25 are established importers representing eight overseas countries. The majority of the remaining 78 are significant Canadian manufacturers of softwood lumber.

Guiding Principles

1. IORs should not bear check-off costs not born by US domestic manufacturers.
2. Participation in the check-off should be efficient and effective for all, and involve no new administrative procedures or costs related to exporting to the US.
3. The exemption process should work equally well for IORs and US domestic manufacturers.
4. IOR assessments should be based on transparent, reconcilable shipment volumes.

Objectives

1. Level the playing field for all check-off participants, IOR and domestic manufacturers.
2. Eliminate broker fees.
3. Certify small IORs who verify that they consistently import less than 15 Mmbf into the US so that they will not pay or be invoiced for assessments associated with the check-off.

Process

The import issues raised in this paper cannot be resolved until the check-off board is established. Nevertheless, it is helpful for the industry to understand that there are options to resolve these issues before the referendum. Once the board is established and has had the opportunity to consult with USDA's Agricultural Marketing Service (AMS—the agency that oversees check-offs), the board can request a rulemaking which may include one or more options presented here, or a better option that emerges through consultation with AMS.

Timing:	May, 2011	Referendum
	June, 2011	Board nominated
	August, 2011	Board appointed
	4 th Quarter, 2011	Consultation and rulemaking
	1 st Quarter, 2012	Rulemaking completed, new rule promulgated
	April, 2012	1 st invoices mailed; covering 1 st quarter 2012

Options

1. Using USCBP to collect check-off assessments creates the first two issues raised above. Alternatives to USCBP and the associated Customs broker/agent fees might include:

- a. Canadian DFIAT Softwood Lumber Import/Export Control Division could collect the assessment concurrently with payment for the export permit. Assessment funds would be forwarded to the check-off board with a report of imports to reconcile with USCBP records. USCBP would not collect the assessment, and there would be no additional broker fee borne by the IOR.

Under this scenario, the check-off board would provide a list of overseas (non-North American) companies from whom USCBP would collect the assessment, as the IORs representing overseas shipments would not be covered by DFIAT. This approach would require a dual system which would increase complexity and might not be supported by US government agencies.

- b. The US Government (AMS) could provide USCBP data to the check-off board from which assessment invoices for IORs could be generated. See Attachment I for a description of this option from Paul Krabbe, Vice President, Business Analysis and Control for Tembec.

2. The exemption process.

- a. Companies covered by the check-off must annually report shipments to the check-off board.
- b. In response to requests for “certificates of exemption” based on shipment reports, the check-off board will issue certificates to companies manufacturing less than 15 Mmbf exempting them from paying the assessment. Should shipments exceed 15 Mmbf, the check-off board would issue invoices on amounts over 15 Mmbf at the end of the year.
- c. Should USCBP collect the assessment, the check-off board could provide USCBP with the list of exempt IOR, from whom the exemption would not be collected.
- d. Should an alternative to USCBP be found, the certificate of exemption would apply.

3. The refund process.

- a. Companies obtaining a certificate of exemption (above) will not be invoiced for assessments. All other companies will be invoiced and pay assessments.
- b. Should an alternative to USCBP not be found, small IORs under 15 Mmbf will be refunded, probably quarterly (to be determined by the check-off board).
- c. IORs over 15mmbf will be refunded for their first 15 Mmbf (if Customs collects the assessment), or have their first 15 Mmbf deducted, if invoiced by the check-off board.
- d. Should an IOR or domestic manufacturer that pays an assessment ship less than 15 Mmbf into the US market in a fiscal year, they will be issued a refund by the check-off board at the end of the year.