Blue Ribbon Commission for Check-off

A Few Points About Check-off

On Constitutionality, the Role of Government, and the Fair and Equitable Sharing of Check-off Governance in North America

From the Blue Ribbon Commission

The check-off assessment is ***not*** a tax.

- The assessment rate, and the assessment itself, must be approved by industry in a vote on the check-off. Every affected company has a vote. The government has not had, and will not have in the future, any role in determining this rate. All the government does is ensure that the process is fair, and that everyone has a say.
- The assessment affects ALL producers and importers equally.
- The money is to be invested in marketing our products; resulting demand increases—above those expected in normal cycles—should lead to significant increases in price. If the investment does not generate substantial returns, it can, and will, be terminated by industry, not government.
- We don't call this a tax.

The check-off program ***will not*** be run by the U.S. Secretary of Agriculture, and will not be controlled and directed by the US government.

- The check-off was developed and designed by industry.
- It will be set up under authority granted by the 1996 Farm Bill and will be overseen by the US Department of Agriculture, BUT
- It will be governed and run by an industry board consisting of 12 US and 6 Canadian members, representing the historic ratio of supply to the US market.
- This industry board will:
    - develop the check-off business plans;
    - decide where funds are to be spent; and
    - outsource programs to experts and associations with proven track records.

- The government's role in check-off will be to:
    - ensure that the check-off board is faithful to the open, fair, and equitable nominations process that industry itself designed;
    - appoint the industry board ***nominated by industry***;
    - ensure that funds are not misspent on lobbying or activities that are misleading or create a conflict of interest; and
    - ensure that the program is fully and fairly supported by the entire industry. This means that all companies paying an assessment, regardless of whether U.S., Canadian, or overseas, shall have a fair and equitable role in voting and governance.

It is industry's recommendation that imports from Canada be collected by the check-off board, not by the U.S. Customs Service at the border.

- A Canadian industry group led by Al Thorlakson, Chairman of Tolko, developed a recommendation to change the collection process to eliminate the role of U.S. Customs along with the related brokers fees and transaction costs. This recommendation was reviewed and accepted by the 21 CEOs and heads of business comprising the Blue Ribbon Commission, who will recommend it to the check-off board. Details are available at www.softwoodlumber.org.

The check-off program is not "Unconstitutional," nor is it a violation of free speech.

- The Supreme Court has ruled on the constitutionality of check-off programs three times, the most recent of which occurred in May 2005.
- In *Johanns v. Livestock Marketing Association*, the Supreme Court's third and most recent decision concerning a check-off program (beef), the Court ruled that the generic advertising under the program was the government's own speech, and was therefore not susceptible to the First Amendment challenge before it.
- The Court came to its conclusions primarily because:
    (1) Congress and the Secretary set out the overarching definitions of "information" "research," and "promotion" in legislation (in softwood lumber's case a USDA Regulation authorized by Congress in the 1996 Farm Bill), originally drafted by industry, but approved by government;
    (2) all promotional messages are developed by industry, but are reviewed for substance by USDA officials; and
    (3) officials of the USDA attend and participate in the open meetings at which proposals are developed.
- The check-off places no limits on anyone's speech. The check-off board will decide how and where to spend the promotional dollars, and what the messages are, but that doesn't prevent anybody from promoting their own product in their own way.

The central feature of the program, research and promotion softwood lumber, need not take place exclusively in or for the benefit of the United States.

- When the program was first developed, North American producers expressed little if any interest in non-US markets.
- Canada's recent success in China has awakened an interest in untapped opportunities offshore.
- As a result, the BRC has petitioned USDA's Foreign Agricultural Service (FAS) for overseas market development funding to complement Canadian government funding; funding should be available as early as October 2011.
- One of the check-of board's first actions will be to expand the check-off program to allow industry assessments (in addition to the FAS funds) to be used for promotion outside the US, including Canada and overseas markets.
- The bottom line: the check-off provides enormous opportunities to fund, and to tap substantial US government funding for overseas market development, to bolster the Canadian government funding for promotion in North America's offshore markets.

The check-off will be governed by an industry board consisting of 12 US and 6 Canadian members, representing the historic ratio of supply to the US market. The U.S. will pay approximately 69% of check-off assessments, and Canadians will pay approximately 28%. The remainder will be paid by imports from offshore.

- Apportioning seats by regional production is the fundamental requirement of a check-off board.
- Development of the softwood lumber check-off moved forward only when Canadian companies understood that the importers of record in the United States are actually Canadian manufacturers (and a few Canadian wholesalers), and therefore Canadian CEOs and business leaders would be able to vote for the check-off and be appointed to the check-off board and have a strong role in governance.
- In recommending the provisions of the regulation establishing the check-off, the industry specified that four board seats be assigned to Western Canada, and two to Eastern Canada.
- The reasoning behind this distribution of seats derives from USDA policy that board seats must fairly represent the assessment paying industry. The key way this is accomplished is by apportioning seats based on regional production.
- Increasing the seats in any region, for example Canada, would require adding seats in the other regions to maintain the correct proportions and balance, creating a board of a size that would be unwieldy and potentially dysfunctional.
- To address this concern, board seats will be regularly reapportioned to be sure the regional balance is correct, and board rotation (3 year terms), ensures that all sub-regions will be involved in governance over time.

There appears to be a mistaken notion that the Binational Softwood Lumber Council (BSLC) and other similar programs can pay for the promotion of softwood lumber.

- The Binational Softwood Lumber Council (BSLC), as well as three other meritorious initiatives—the U.S. Endowment for Communities and Forests, Habitat for Humanity, and the American Forest Foundation—were established and/or funded under the Softwood Lumber Agreement.
- Only the mission of the BSLC calls for promoting softwood lumber. The other "Initiatives" have other mandates, and use their funds in other ways.
- The industry is fortunate to benefit from the BSLC funding for programs such as WoodWorks, SLMA's Real Outdoor Living and SFPA's Raised Floor Living.
- The BSLC funding invested in these programs is a lump sum that will not be replenished.
- There are no other broad industry funding organizations capable of investing in programs at the scale necessary to be effective. As such, programs that are achieving real results, and other new programs, will be left without adequate, or any, support to achieve their goals.
- A check-off program is the only proposal to date that will fill the gap.