

**BILL C-24: SOFTWOOD LUMBER  
PRODUCTS EXPORT CHARGE ACT, 2006**

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## LEGISLATIVE HISTORY OF BILL C-24

### HOUSE OF COMMONS

Bill Stage	Date
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### SENATE

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Statutes of Canada 2006, c. 13

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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## TABLE OF CONTENTS

	<b>Page</b>
BACKGROUND .....	1
DESCRIPTION AND ANALYSIS .....	2
A. Short Title, Interpretation, and Application (Clauses 1-9) .....	2
B. Export Charge (Clauses 10-18).....	3
1. Application.....	3
2. Calculation of the Export Charge .....	3
3. <b>Exclusions From the Application of the Export Charge</b> .....	4
4. Exemptions to Export Charge through Regulations .....	5
5. Charge on Refund of Duty Deposits.....	5
C. General Provisions Concerning Export Charge (Clauses 19-63) .....	5
D. Offences, Punishment, Inspections, Investigations and Confidentiality (Clauses 64 to 83) .....	6
E. Payment to Provinces (Clause 99).....	7
F. Regulations (Clause 100-102) .....	7
G. Amendments to <i>Export and Import Permits Act</i> (Clauses 109-117).....	8
H. Coming into Force .....	8



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## BACKGROUND

On 12 September 2006, the Minister of International Trade and the United States Trade Representative signed the Softwood Lumber Agreement (Agreement) between Canada and the United States. Prior to this, the parties had signed an agreement in principle on 27 April 2006 and initialled a legal text on 1 July 2006.

The Agreement entered into force on 12 October 2006. Exporters of softwood lumber to the United States are liable for the new export charge envisaged by the Agreement on shipments made on or after 12 October 2006.

In order to implement the Agreement, on 20 September 2006, the government introduced in the House of Commons Bill C-24, An Act to Impose a Charge on the Export of Certain Softwood Lumber Products to the United States and a Charge on Refunds of Certain Duty Deposits paid to the United States, to Authorize Certain Payments, to Amend the Export and Import Permits Act and to Amend other Acts as a Consequence. The bill provides the legal and administrative framework to impose export charges on softwood lumber products exported from Canada to the United States. It sets out how the export charge will be calculated in accordance with the terms of the Agreement and provides certain exemptions from the application of the charge. Included in these exemptions are exports from the Atlantic provinces and the Territories, if the exported products are produced from logs originating from these regions or from the State of Maine.

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\* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

The Minister of National Revenue is responsible for the administration and enforcement of the bill.

With some exceptions, all provisions of the bill **came** into force on **12** October 2006.

## DESCRIPTION AND ANALYSIS

### A. Short Title, Interpretation, and Application (Clauses 1-9)

Bill C-24 may be cited as the Softwood Lumber Products Export Charge Act, 2006 (clause 1).

Clause 2 contains a number of definitions for the purposes of the bill. The term “region” is defined by reference to subsection 6.3(1) of the *Export and Import Permits Act*, an amendment to that Act found at Clause 111 of the bill. By virtue of this new definition, each of the provinces of Quebec, Ontario, Manitoba, Saskatchewan and Alberta forms a region. The province of British Columbia is divided into two regions – the BC Coast region and the BC Interior region. The Atlantic provinces and the Territories, which are exempt from the application of the export charge, are not included in the definition.

The bill defines “Minister” as the Minister of National Revenue.

Clause 4 discusses how interest will be calculated for the purposes of the bill. According to Clause 5, a softwood lumber product is considered to be exported at the time it is placed on a vehicle that will carry it across the border. **However, if the product is exported by rail, it is considered to be exported at the time at which the rail car that contains the product was released to the railway for assembly to form part of a train for export.** All charges are assessed on a monthly basis.

The bill is binding on the federal and provincial Crowns (clause 8). It will apply only to softwood lumber products for which the final destination of export is the United States. It does not apply to those products that pass in transit through the United States while being exported to another country. It does, however, apply to those products that are exported to the United States through another country (clause 9).

## B. Export Charge (Clauses 10-18)

This section deals with various matters such as the application and calculation of the export charge, various exemptions to the export charge under the bill and exemptions to the export charge through regulations.

### 1. Application

The bill states that an export charge will apply to products exported to the United States after **11 October** 2006 (clause 10).

### 2. Calculation of the Export Charge

Under the Agreement, Canada is to apply an export charge that may vary from 5% to 15% (Option A), or, to use a combination of an export charge and a cap on the volume of the exports (Option B). The rate of the export charge and the volume cap are dependent on the price of lumber.

The basic charge on exports and its calculation is provided for in clause **12**. The export charge becomes payable at the time of export (clause 10(2)). Clause **12(3)** sets out the rate of charge applicable to regions governed by Option B, while clause **12(4)** sets out the rate of charge applicable to regions that choose Option A. Regions that choose Option B are subject to a quota that will be allocated under the *Export and Import Permits Act*. These regions will pay a lower charge compared to that paid by regions that choose Option A. Regions that choose Option A are not subject to a quota, but pay a higher rate of export charge.

The calculation of an export charge under clause **12(3)** (Option B) and clause **12(4)** (Option A), is given below:

Reference Price (per thousand board feet)	Applicable Export Charge (%) Under clause 11(4) (Option A)	Applicable Export Charge (%) Under Clause 11(3) (Option B)
Over US\$355	0	0
US\$336-355	5	2.5
US\$316-335	10	3
US\$315 or under	15	5

Clause **12(3)** **came** into force on **1 January 2007 through an order in council issued on 21 December 2006** (clause 126(2)). Until then, export charges **were** calculated under clause **12(4)**. **All** regions **were** deemed to have chosen Option A, until clause **12(3)** **came** into force. The bill allows producers in a region that chooses Option B to receive a refund of a portion of any charges paid under Option A (export charges are higher in this case), during the transition period, if certain conditions are satisfied (clause 104).

Except in certain cases, a product is deemed to be exported from the region where the product underwent the first primary processing (clause **12(2)**). This provision helps to determine whether the export charge must be calculated on the basis of Option A or Option B.

The charge on exports depends on the reference price – the price of lumber per thousand board feet (MBF) – as well as the option chosen by the region where the export originates. The reference price is calculated on a monthly basis as provided for in clause **12(5)**.

Clause **13** sets out the rules to determine the export price of a product. This clause also identifies the changes that should be made to a softwood lumber product in order for it to be considered as “remanufactured.” Similarly, an “independent remanufacturer” has been defined as person who has been certified as such under the bill. The export price of remanufactured products is calculated differently from the export price of other products.

The bill caps the export price of all products at US\$500 per MBF. As a result, the export price of a product whose value is over US\$500 per MBF will be calculated on a US\$500 per MBF basis.

The export charge on products exported from regions that choose Option A may be subject to an additional charge (surge charge) under the “surge mechanism” if exports from the regions exceed the “trigger volume” (Clause **14**). This clause provides a formula on the basis of which the trigger volume is calculated.

### **3. Exclusions and Exemptions From the Application of the Export Charge**

Clause **11(1)** **excludes** exports from the Atlantic provinces (Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador) **from the application of** the export charge. A product is deemed to be exported from these provinces if it is produced in one of these provinces from logs originating from there or from the State of Maine.

**This clause also excludes** exports from the Yukon, the Northwest Territories and Nunavut from the application of the export charge, if such exports are produced from logs originating in these territories.

Certain persons whose names are set out in the schedule to the bill are also exempted from the application of the export charge **if they fulfill the prescribed conditions** (clause 16). The list of persons provided for in the schedule may be amended through the regulations.

#### 4. Exemptions to Export Charge through Regulations

The Governor in Council may, on the recommendation of the Minister of International Trade, make regulations exempting the export from any region or exempting any softwood lumber product from the application of an export charge (clause 17). Under the Agreement, a region that is found to use timber pricing and management systems could qualify for exemptions from export measures. Similarly, the Agreement also states that the parties may agree to additional exclusions for lumber produced from logs originating in the United States and logs originating from private lands in Canada. Clause 17 will enable the Governor in Council to give effect to such exemptions through regulations.

#### 5. Charge on Refund of Duty Deposits

Clause 18 imposes a charge on the refund of all softwood duty deposits paid under the anti-dumping and countervailing duty orders in the United States from 22 May 2002 onward. The provision sets out how this charge will be calculated.

#### C. General Provisions Concerning Export Charge (Clauses 19-63)

The Minister of National Revenue is responsible for the administration and enforcement of the bill. The Commissioner of National Revenue may exercise the powers and perform the duties of the Minister under the bill (Clause 19).

The bill states that every person who exports a softwood lumber product to the United States must submit an application for registration in the prescribed form and must be registered (clause 22). Certain persons may be exempted from registration on the basis of regulations (clause 22(2)). The Minister may certify qualifying producers as “independent remanufacturers” (clause 25).

Clauses 26 to 33 deal with the filing of returns under the bill and the payment of export charges to the Government.

Article IX of the Agreement provides for a third-country trigger on export charges. Under certain conditions, there will be a refund of export charges up to 5%. The third-country trigger will occur when the third country's share of the lumber consumption in the United States increases by 20% while the Canadian share decreases during the same period. An increase in the domestic producers' market share during this period is also required to trigger this mechanism. Clause 40 provides for the refund of charges in such cases.

Clauses 45 **and 46** set out the rules that apply in case of bankruptcies and corporate reorganizations.

Every person who is required to make a payment under the bill must keep sufficient records (clause 48). The Minister may require any person (except a third party) to provide **any information or any record** that is necessary for the **administration or** enforcement of the bill.

The Minister may assess a person for any charge or amount payable under the bill (Clause 50). A person who has been assessed by the Minister may file a notice of objection to the assessment within 90 days (clause 54). On the receipt of such a notice, the Minister shall reconsider the assessment and vacate or confirm it or make a reassessment (clause 54(8)). On the fulfilment of certain conditions, an assessment made by the Minister may be appealed to the Tax Court of Canada (Clause 56). The Tax Court may either dismiss or allow an appeal. If the appeal is allowed, the Tax Court may vacate the assessment or refer it back to the Minister for reconsideration and reassessment (clause 61).

#### D. Offences, Punishment, Inspections, Investigations and Confidentiality (Clauses 64 to 83)

Clause 64 provides for the payment of a penalty for the failure to file a return. This provision comes into force on 1 April 2007 (clause 126(3)).

Clauses 65 to 67 set penalties for the failure to answer a demand to file a return, failure to provide information and for making false statements or making omissions.

Clauses 68 to 76 deal with offences and punishment under the Act. According to clause 68, a person may be guilty of an offence for various matters such as failure to file or make

a return and failure to keep accurate records. A person who is convicted of an offence under this provision is liable for a fine of not less than \$1,000 and not more than \$25,000, or for imprisonment for a term not exceeding 12 months, or to both a fine and imprisonment. A person who wilfully fails to pay a charge as and when required under the enactment is guilty of an offence. If convicted, such person is liable for a fine or imprisonment or, in some cases, both.

Clauses 77 to 82 provide for inspections. Clause 77 provides that an authorized person may, for the purposes of administration and enforcement of the bill, inspect, audit or examine records, processes, property or premises of any person. An authorized person cannot enter a dwelling house without the consent of the occupant or without a warrant issued by a judge.

Clause 83 provides the rules for the investigation of offences under the bill. Clause 84 provides for confidentiality of the information provided to the Minister under the provisions of the bill.

#### E. Payment to Provinces (Clause 99)

This clause provides that the federal government will, after making certain deductions (**including refunds**), distribute the revenue collected from the export charge to the provinces from which products originated. The federal government will retain the costs incurred:

- in the administration of the bill;
- in the administration of the Agreement; and
- in relation to any litigation under the bill or the Agreement.

#### F. Regulations (Clause 100-102)

The Governor in Council may make regulations on several aspects of the bill (clause 100(1)). This includes regulations:

- respecting any requirements or conditions that must be met to be certified as an independent remanufacturer; and
- generally to carry out the purposes and provisions of the bill.

On the recommendation of the Minister of International Trade, the Governor in Council may make regulations establishing conditions of payment to provinces and the amount that shall be paid to a province (clause 100(2)).

Regulations made under clause 100 and under certain other provisions of the bill may take effect earlier than the date on which they are made (clause 107).

It is possible that the provisions of any of clauses 10 to 15 shall cease to be in force, if so declared through regulations (Clause 102).

#### G. Amendments to *Export and Import Permits Act* (Clauses 109-117)

According to the *Export and Import Permits Act*, the Governor in Council may establish three lists: the Import Control List, the Export Control List, and the Area Control List in order to control the import or export of goods. All goods on the Export Control List require an export permit in order to be exported from Canada.

Section 3 of the *Export and Import Permits Act* is amended to authorize the inclusion in the Export Control List of softwood lumber products subject to the Agreement, (clause 110).

Section 6 of the *Export and Import Permits Act* is amended to authorize the appropriate minister (the Minister of Foreign Affairs) to determine export access quantities and establish methods for allocating such quantities (clause 111). The Minister may determine the quantity of products that may be exported from a region during a month. If the Minister has determined the quantity of products that may be exported from a province in a month, he may also establish a method for allocating the quantity of exports to exporters who are registered under the provisions of the bill.

Section 12 of the *Export and Import Permits Act* is amended to authorize the Governor in Council to make regulations regarding export allocations as well as regulations dealing with certificates of origin of logs (Clause 115).

#### H. Coming into Force

With some exceptions, the provisions of the **bill came** into effect on **12** October 2006 (clause 126). **Most** aspects of the bill **came into force with** retroactive effect. Retroactive

legislation is permissible in Canadian law except where an individual may be found guilty of an offence for acts that were not unlawful when it took place. Section 11(g) of the *Canadian Charter of Rights and Freedoms* prohibits the retroactive application of legislation that creates offences. In the case of Bill C-24, a person cannot be found guilty of an offence under the provisions of the bill, for actions carried out before the bill's passage.