

December 2009

# SOFTWOOD LUMBER ACT OF 2008

Customs and Border  
Protection  
Established Required  
Procedures, but  
Agencies Report Little  
Benefit from New  
Requirements



GAO

Accountability \* Integrity \* Reliability



Highlights of [GAO-10-220](#), a report to congressional committees

### Why GAO Did This Study

In 2006, the United States and Canada signed the Softwood Lumber Agreement. The agreement, among other things, imposed export charges and quotas on Canadian lumber exports to the United States. To assist in monitoring compliance with the agreement, in 2008 Congress passed the Softwood Lumber Act, which imposed several data collection and analysis requirements on the Department of Homeland Security's U.S. Customs and Border Protection (CBP) and required two reports from GAO.

This report discusses (1) CBP's processes for meeting the act's requirements and (2) how these requirements contribute to U.S. efforts to monitor compliance with the 2006 Softwood Lumber Agreement. GAO issued a report in June 2009 on U.S. agency efforts to monitor compliance with the 2006 agreement. This report includes an update on these efforts.

GAO analyzed information from relevant U.S. agencies, interviewed knowledgeable officials, and discussed these issues with U.S. and Canadian industry representatives.

### What GAO Recommends

GAO recommends that the Secretary of DHS direct the Commissioner of CBP to report to Congress on how CBP plans to fulfill the requirements of the act upon the expiration of international agreements related to softwood lumber. CBP concurred with the recommendation.

[View GAO-10-220 or key components.](#)  
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## SOFTWOOD LUMBER ACT OF 2008

### Customs and Border Protection Established Required Procedures, but Agencies Report Little Benefit from New Requirements

### What GAO Found

Key Elements of the 2006 Softwood Lumber Agreement and the Softwood Lumber Act of 2008

Softwood Lumber Agreement 2006	U.S. Softwood Lumber Act 2008	2013
<p><b>Overview:</b> Bilateral agreement between the United States and Canada establishing a framework for managing the U.S.-Canadian softwood lumber trade</p> <p><b>Key provisions:</b></p> <ul style="list-style-type: none"> <li>• export charge and quota on Canadian exports</li> <li>• information exchange requirements</li> <li>• anticircumvention measures</li> <li>• dispute settlement mechanisms</li> </ul>	<p><b>Overview:</b> U.S. legislation creating additional requirements for CBP regarding softwood lumber trade</p> <p><b>Key provisions:</b></p> <ul style="list-style-type: none"> <li>• importer declaration</li> <li>• reconciliation of export price data</li> <li>• periodic verification of information on U.S. entry forms</li> <li>• semiannual reports on implementation of act requirements</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Softwood Lumber Agreement</b> expires, unless extended</li> <li>• <b>Softwood Lumber Act</b> continues</li> </ul>

Source: GAO.

CBP has developed processes to reconcile and verify data provided by the exporter and importer as required by the act, but officials acknowledge continuing issues with data quality. CBP reconciles aggregated export prices from the U.S. entry forms with aggregated export prices from Canadian export permits. To meet the act's verification requirement that the importer has correctly reported the export price, the tax to be paid by exporters to the Canadian government (the export charge), and other information, CBP has created a process within its existing data system to collect these data. However, CBP has acknowledged continuing problems with data quality. For example, CBP port officials manually enter data into this system, which could lead to miscoding. CBP reported that the initial implementation of the act required extensive effort for the agency, but officials stated that ongoing activities need fewer resources.

According to CBP, Department of Commerce, and Office of U.S. Trade Representative officials, the information produced through the reconciliation and verification requirements under the act adds little assurance of compliance with the 2006 Softwood Lumber Agreement. Some of the act's requirements are to ensure the proper operation of international agreements on softwood lumber and enforcement of these obligations. The agreement with Canada contains mechanisms for monitoring compliance, and, according to U.S. government officials, the added requirements of the 2008 U.S. legislation do not provide the U.S. government with additional assurance of compliance with the bilateral trade agreement. Specifically, CBP officials told GAO the requirements under the act do not provide the United States with assurance that the Canadian exporter paid the export charge, because the United States does not have access to company-level tax data from Canada. While the agreement is scheduled to expire in 2013, the act does not have an expiration date. CBP officials said they have not yet determined how they will fulfill their requirements under the act when the agreement expires, but they would no longer have the estimated export charge data that are used in implementing the act.

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**Abbreviations**

CBP	U.S. Customs and Border Protection
DFAIT	Canada's Department of Foreign Affairs and International Trade
ESCM	Entry Summary Compliance Measurement
SLA 2006	2006 Softwood Lumber Agreement
TIB	Temporary Importation under Bond
USTR	Office of the United States Trade Representative

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United States Government Accountability Office  
Washington, DC 20548

December 18, 2009

The Honorable Max Baucus  
Chairman  
The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Charles B. Rangel  
Chairman  
The Honorable Dave Camp  
Ranking Member  
Committee on Ways and Means  
House of Representatives

The United States and Canada have been involved in a decades-long dispute regarding trade in softwood lumber. Canada is the primary exporter of softwood lumber to the United States. In 2008, Canada exported approximately \$3.2 billion worth of softwood lumber products to the United States, about 17 times the amount supplied by the next biggest exporter to the United States. After several years of litigation related to U.S. allegations of unfair Canadian subsidies, the United States and Canada signed the 2006 Softwood Lumber Agreement.<sup>1</sup> The agreement ended ongoing litigation and requires, among other things, the Canadian federal and provincial governments to establish export charges and quotas<sup>2</sup> for Canadian lumber exports. It also requires the two countries to exchange information to support monitoring compliance with the agreement.<sup>3</sup>

In 2008, the United States passed the Softwood Lumber Act that requires, among other things, that the U.S. government reconcile and verify

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<sup>1</sup>Softwood Lumber Agreement between the Government of Canada and the Government of the United States of America, September 12, 2006 (hereafter referred to as "SLA 2006" in the footnotes of this report).

<sup>2</sup>The agreement uses the term "volume restraint." However, for the purposes of this report, we use the term "quota" as an equivalent for the term "volume restraint."

<sup>3</sup>SLA 2006, arts. VI and VII.

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softwood lumber trade data.<sup>4</sup> The act also requires GAO to report on (1) whether countries that export softwood lumber or softwood lumber products to the United States are complying with international agreements entered into by those countries and the United States<sup>5</sup> and (2) the effectiveness of the U.S. government in carrying out the reconciliations and verifications mandated by the Softwood Lumber Act.<sup>6</sup> In response to the first mandate, GAO reported in June 2009 that the U.S. and Canadian governments have established mechanisms to monitor compliance with the 2006 Softwood Lumber Agreement, but face operational challenges.<sup>7</sup>

This report primarily addresses the second mandate on U.S. efforts to reconcile and verify softwood lumber data as required by the act. In addition, in accordance with our agreement with the Senate Committee on Finance and the House Committee on Ways and Means, in appendixes III and IV we include updated information on U.S. efforts to monitor compliance, on which we first reported in June 2009.<sup>8</sup> This report (1) describes U.S. Customs and Border Protection's (CBP) processes for meeting the act's requirements and (2) describes how these requirements contribute to U.S. efforts to monitor compliance with the 2006 Softwood Lumber Agreement.

To address these objectives, we obtained and reviewed planning and programmatic documents describing CBP reconciliation and verification procedures to implement the requirements of the act. We also interviewed officials from CBP, the Department of Commerce (Commerce), and the Office of the United States Trade Representative (USTR), to obtain their perspectives on how the act's requirements contribute to monitoring compliance with the bilateral trade agreement and to obtain updated information on compliance concerns with the agreement. We traveled to

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<sup>4</sup>Softwood Lumber Act of 2008, Pub. L. No. 110-246, § 3301, 122 Stat. 1651, 1844-1853 (codified at 19 U.S.C. §§ 1683-1683g). The act named the Department of the Treasury to implement these requirements, which Treasury delegated to the Department of Homeland Security's U.S. Customs and Border Protection.

<sup>5</sup>To address this mandate, we reviewed U.S. efforts to monitor compliance with the 2006 Softwood Lumber Agreement. We did not conduct a legal compliance review.

<sup>6</sup>19 U.S.C. § 1683g.

<sup>7</sup>GAO, *U.S. and Canadian Governments Have Established Mechanisms to Monitor Compliance with the 2006 Softwood Lumber Agreement but Face Operational Challenges*, [GAO-09-764R](#) (Washington, D.C.: June 18, 2009).

<sup>8</sup>[GAO-09-764R](#).

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the ports in Buffalo, New York, and Blaine, Washington, to meet with CBP port officials as well as customs brokers representatives. In addition, we interviewed officials from Canada's Department of Foreign Affairs and International Trade (DFAIT). We also interviewed industry representatives in both the United States and Canada to obtain their perspectives on the act's requirements and the implementation of the bilateral trade agreement. We determined that the information used is sufficiently reliable for the purposes of this report. (See app. I for more information about our scope and methodology.)

We conducted this engagement from December 2008 to December 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In this report, we recommend that the Secretary of the Department of Homeland Security direct the Commissioner of CBP to report to Congress on how CBP plans to fulfill the requirements of the act upon the expiration of international agreements related to softwood lumber. We provided a draft of this report to CBP, Commerce, and USTR. CBP concurred with the report recommendation, stating that it will consult with Congress on how to proceed when the Softwood Lumber Agreement expires. Commerce also responded that it concurred with the report. We received technical comments from CBP and USTR, and incorporated these comments as appropriate. We also provided relevant sections to Canadian officials for technical comment, which we incorporated as appropriate.

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## Background

Since the 1980s, the United States and Canada have been engaged in a trade dispute regarding softwood lumber.<sup>9</sup> One of the main causes of the dispute is differences in costs for timber harvested on public land in Canada as compared with timber from private land in the United States. In Canada, federal and provincial governments own approximately 90 percent of the timberlands and set harvest fees and allocations. In

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<sup>9</sup>Softwood lumber is obtained primarily from evergreen, coniferous trees, mainly from the spruce, pine, and fir families. The main use of softwood lumber products is for new home and building construction and remodeling.

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contrast, in the United States, only about 40 percent of the timberland is publicly owned, and the timber from that land is sold through competitive auctions. The U.S. lumber industry is concerned that the use of government-set fees in Canada raises the possibility that private industry in Canada has access to timber at less than market prices.

The decades-long softwood lumber dispute has alternated between periods with a softwood lumber trade agreement and periods of litigation without an agreement. In 2006, the United States and Canada ended a period of antidumping and countervailing duty proceedings by signing the Softwood Lumber Agreement, a 7-year agreement with an option for a 2-year renewal. The agreement established a framework for managing Canadian exports of softwood lumber to the United States. Key provisions of the agreement include variable export measures,<sup>10</sup> information exchange requirements, anticircumvention measures, dispute settlement mechanisms, and a settlement agreement to end numerous claims that were pending when the agreement was signed. (App. II contains more information on the provisions of the 2006 Softwood Lumber Agreement.)

In 2008, Congress passed the Softwood Lumber Act imposing additional requirements on CBP for monitoring the softwood lumber trade. According to the legislation, the required reconciliations are to ensure the proper operation and implementation of international agreements related to softwood lumber.<sup>11</sup> Furthermore, the importer declaration program established by the act is intended to assist in the enforcement of any international obligations arising from international agreements related to softwood lumber. The act does not contain language specifying an end date for these efforts. Under the act, CBP is to implement the following requirements related to softwood lumber imports from all countries:

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<sup>10</sup>The bilateral trade agreement allows Canadian regions to choose between two export control systems, with export measures that vary according to the prevailing monthly price of lumber. All of the regions were allocated a percentage of U.S. softwood lumber consumption based on the regions' historic exports to the United States. That share of a region's U.S. consumption is used by the Canadian government to calculate quotas. Option A consists of an export charge, but no quota. Additionally, a region is subject to a surge penalty if the total volume of exports for that region exceeds its trigger volume, which is calculated, in part, by its share of U.S. consumption in a month. Option B consists of an export charge and a quota. The export charge is paid by the exporter to the Canadian federal government.

<sup>11</sup>Canada is the only country with which the United States has an agreement specifically related to softwood lumber.

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- *Importer declaration program:* CBP is to establish an importer declaration program requiring that importers from any country declare, among other things, that they have made an appropriate inquiry and that to the best of the person's knowledge and belief
    - the export price is determined as defined in accordance with the act;
    - the export price is consistent with the export price on the export permit, if any, granted by the country of export; and
    - the exporter has paid, or committed to pay, all export charges.
  - *Reconciliation:* To ensure the proper implementation and operation of international agreements related to softwood lumber, CBP is to reconcile the export price (or revised export price) declared by the importer with the export price (or revised export price) on the export permit, if any.
  - *Verification:* To verify the importer declaration, the act requires CBP to periodically verify that (1) the export price declared by the importer is the same as the export price provided on the export permit, if any, issued by the country of export and (2) the estimated export charge is consistent with the applicable export charge rate as provided by Commerce.
  - *Semiannual reports:* CBP is to report to Congress every 6 months
    - describing the reconciliations and verifications programs and identifying the manner in which the U.S. importers subject to reconciliations and verifications were chosen;
    - identifying any penalties imposed under the act and any patterns of noncompliance with the act; and
    - identifying any problems or obstacles encountered in the implementation and enforcement of the act.

## CBP Has Developed Processes to Meet the Requirements of the Act but Acknowledges Data Weaknesses

As shown in table 1, CBP has taken a variety of steps to implement key provisions of the Softwood Lumber Act of 2008.

**Table 1: CBP Implementation of Key Requirements in the Softwood Lumber Act of 2008**

Softwood Lumber Act of 2008 requirements	CBP implementation
<p>Establish an importer declaration program, including that the importer has made an appropriate inquiry, and that to the best of the person's knowledge and belief</p> <ul style="list-style-type: none"> <li>• the export price is determined as defined in accordance with the act;</li> <li>• the export price is consistent with the export price on the export permit, if any, granted by the country of export; and</li> <li>• the exporter has paid, or committed to pay, all export charges.</li> </ul>	<p>Created a rule for importers of certain softwood lumber products exported from any country to the United States, including the provision of the following data requirements on the U.S. entry form:</p> <ul style="list-style-type: none"> <li>• The export price for each line of softwood lumber.</li> <li>• The estimated export charge, if any.</li> <li>• An importer declaration.</li> </ul>
<p>Reconcile the export price declared by the importer with the export price on the export permit.</p>	<p>Collects export price data from the U.S. entry form (importer) and Canadian export permit (exporter).</p> <ul style="list-style-type: none"> <li>• Reconciliation is done monthly.</li> <li>• Reconciliation is done at the aggregate Canadian regional level.</li> </ul>
<p>Verify the export price, estimated export charge, and importer declaration.</p>	<p>Created a softwood lumber subcomponent in its existing Entry Summary Compliance Measurement program.</p> <ul style="list-style-type: none"> <li>• Entries selected by random statistical sampling.</li> <li>• CBP port officials review entry forms to check that required information is included.</li> <li>• CBP port officials request documentation from importers to verify that the information on the entry form is correct and enter findings into a database.</li> </ul>
<p>Report semiannually on implementation of the act.</p> <ul style="list-style-type: none"> <li>• Describe the reconciliation and verification processes and results.</li> <li>• Identify penalties imposed under the act and patterns of noncompliance under the act.</li> <li>• Identify problems or obstacles to implementation.</li> </ul>	<p>Issued reports in May and October 2009.</p>

Source: GAO analysis of the Softwood Lumber Act of 2008 and CBP data.

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## CBP Revised Its Entry Form and Databases to Collect Additional Data Required by the Act

CBP added three new fields to the U.S. entry form to collect data on the export price, estimated export charge, and importer declaration needed for the reconciliation and verification processes. CBP started enforcing the new requirements imposed by the act in September 2008. The act and CBP require these three data elements for softwood lumber imports from all countries.<sup>12</sup> However, according to CBP officials, only imports from Canada include export charge information because of the 2006 Softwood Lumber Agreement. Furthermore, CBP reported in October 2009 that importers of softwood lumber products from non-Canadian countries have a difficult time in determining the correct amount to list as the export price because the export price definition in the act contains references specific to Canadian softwood lumber, such as “remanufacturer.”

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## CBP Reconciles Aggregated Export Price Data from Canada with Aggregated Export Price Data from U.S. Entry Forms

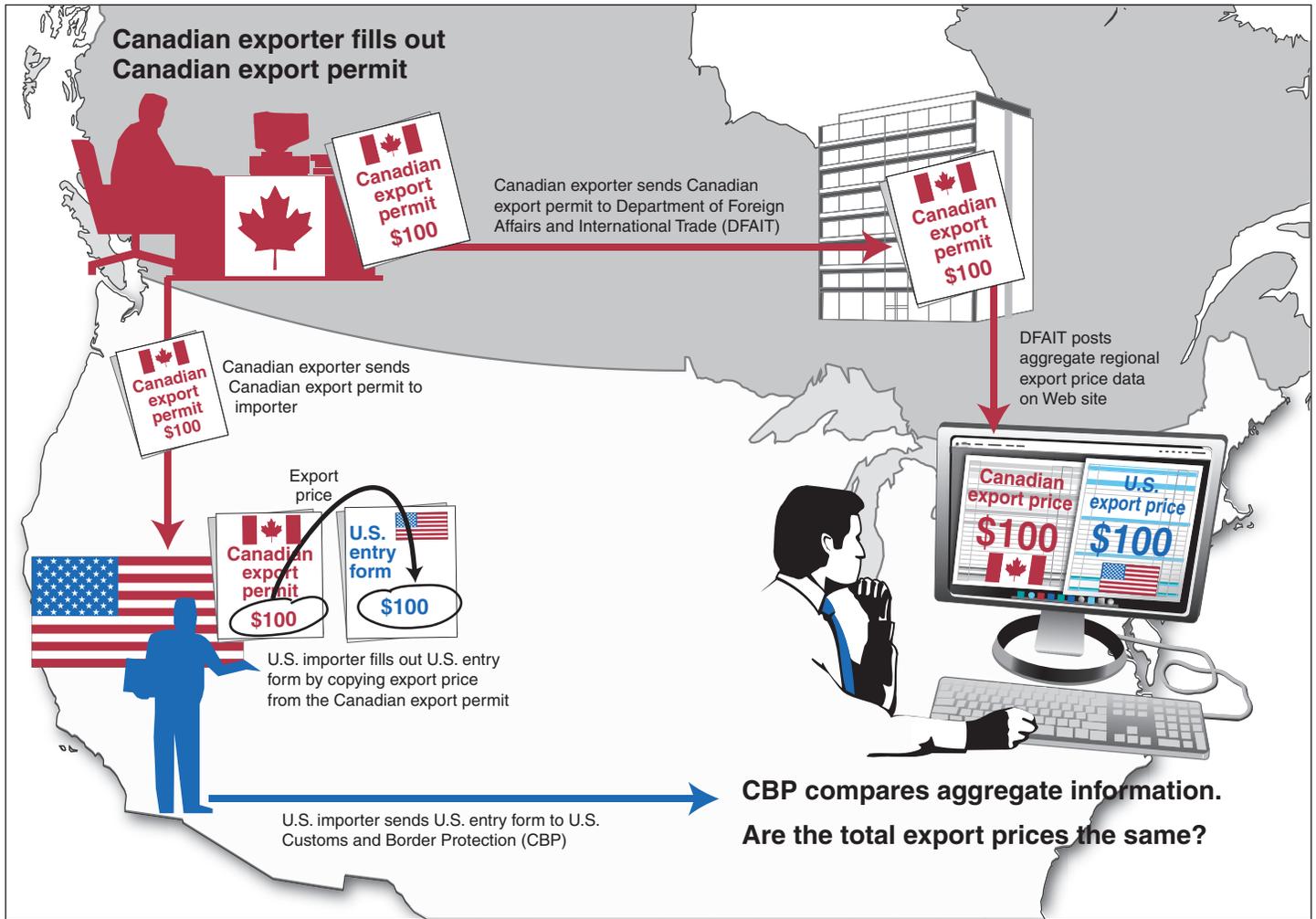
To implement the act’s reconciliation requirement,<sup>13</sup> CBP compares publicly available aggregate regional export price data from Canada with aggregate export price data from the U.S. entry form. (Under the act, CBP is reconciling this information only for Canadian exports because Canada is the only country with which the United States has an international agreement specifically on softwood lumber.) As shown in figure 1, CBP obtains the export price from the U.S. entry form, which the U.S. importer should copy from the Canadian export permit. CBP then compares aggregate monthly data from the U.S. entry forms with the publicly available export price data that are posted on the Web site of Canada’s DFAIT.

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<sup>12</sup>19 U.S.C. § 1638a and 19 C.F.R. § 12.142.

<sup>13</sup>19 U.S.C. § 1683d.

**Figure 1: CBP's Process for Reconciling Export Price Data under the Act**



Sources: GAO analysis of CBP data; map (Map Resources); clip art (Art Explosion).

According to CBP officials, on a monthly basis, they reconcile aggregate export price data based on the Canadian region of export. CBP first combines the individual-level export price data from each U.S. entry form for all shipments during a 1-month period and reconciles these values with the aggregate Canadian export data. According to CBP, each month, analysts run a computer program to compare the U.S. and Canadian data and to identify discrepancies. In its October 2009 semiannual report to Congress, CBP reported that the overall variance between the export price on the entry summary form and the export price received from the

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“country of export” for the 6-month period between October 2008 and March 2009 was 1 percent.

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**CBP Adapted Existing Mechanisms to Comply with the Verification Requirements under the Act**

As required by the act, CBP has developed processes to verify the importer declaration,<sup>14</sup> which includes verifying that

- the export price declared by the importer is the same as the export price provided on the export permit, if any, issued by the country of export;
- the estimated export charge is consistent with the applicable export charge rate as provided by Commerce; and
- importers have “made appropriate inquiry, including seeking appropriate documentation from the exporter,” and to the best of the importer’s knowledge and belief that the exporter has paid or committed to pay all applicable export charges.<sup>15</sup>

To meet these legislative requirements, CBP adapted its existing Entry Summary Compliance Measurement program<sup>16</sup> to include softwood lumber as a subcomponent. The program selects softwood lumber entries for verification via random statistical sampling. When an entry is selected for verification, import specialists at the ports review the entry form to ensure that all of the required information is included and request supporting documentation from the importers to verify that the information on the entry document has been recorded correctly. The import specialists then enter the results into an electronic database system that CBP headquarters accesses and analyzes.

In its October 2009 semiannual report to Congress, CBP reported that approximately 82 percent of the samples its officials verified during the

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<sup>14</sup>19 U.S.C. § 1683e.

<sup>15</sup>19 U.S.C. § 1683a.

<sup>16</sup>According to CBP, the Entry Summary Compliance Measurement (ESCM) program is a primary method by which the agency measures risk in the areas of trade compliance and revenue collection. The program is also a key performance indicator used to determine whether CBP’s internal controls are operating effectively as they pertain to ensuring compliance with laws and regulations. ESCM is intended to provide an indication of how compliant the importer universe is based on a random sample and statistical weighting of all import transactions. CBP utilizes ESCM to measure the effectiveness of its control mechanisms currently in place and the execution in collecting revenue rightfully due.

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first 6 months of the process, from October 2008 to March 2009, correctly reported the export price—with a higher rate, almost 85 percent, for imports from Canada.<sup>17</sup> Regarding the export charge, about 77 percent of the entries CBP sampled from Canada had that value reported correctly. In addition, CBP reported that about 90 percent of the importer declarations were reported properly. According to CBP, the requirements did not apply to an additional 5 to 10 percent of the selected Canadian samples because they were exempt from the provisions of the bilateral trade agreement. Officials stated that the combination of samples that were reported correctly and those for which the requirements were not applicable brought the overall results for the softwood lumber samples for Canada close to what they see for other commodities.

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### CBP Officials Attribute Discrepancies Partly to Data Entry Errors

Because the importer or customs broker should copy the export price from the Canadian export permit onto the U.S. entry form, CBP officials said they expect discrepancies in the data to result mainly from the following: (1) human errors in copying the export price from one form to another and (2) differences caused by converting from Canadian to U.S. dollars. In addition, CBP officials explained that the export price for a shipment could be listed as one line on the Canadian export permit, but broken into multiple lines on the U.S. entry form. CBP has instructed importers in how to resolve this issue,<sup>18</sup> but officials said that importers sometimes do not perform this calculation correctly.

In its October 2009 report to Congress, CBP reported that discrepancies between the export price reported on the Canadian export permit and the export price reported on the U.S. entry form have decreased over time. CBP reported a variance of almost 16 percent between the U.S. and Canadian data in October 2008, the first month of reconciliations under the act. By March 2009, the variance between the U.S. and Canadian export prices had decreased to approximately 2 percent.

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<sup>17</sup>CBP analyzed 309 entries of softwood lumber from all countries occurring between October 2008 to March 2009. Of these entries, 194 were from Canada.

<sup>18</sup>On its Web site for frequently asked questions about the act, CBP provided the following example of how to perform this calculation: “If the export price listed on the export permit is \$1,000 and you have two lines on the entry summary, divide the \$1,000 [between] the two lines. If 75 percent of the entered value is on one line and 25 percent is on the other, then list \$750 as the export price on the first line and \$250 as the export price on the other line. The export price listed on both lines on the entry summary should add up to the export price on the one line of the export permit.”

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CBP officials told us that 5 to 10 percent of the entries randomly selected for review as part of the verification process were not recorded correctly due to data entry errors by either the importer or CBP's import specialists. These errors may have been caused by an import specialist incorrectly recording the verification data in CBP's database or not following the instructions consistently. CBP officials added, however, that the errors are not surprising considering that the requirements are new, and that the importers and the CBP import specialists are still learning how to correctly record information.

We identified the following two reasons for data entry errors:

- *Miscoding*: Import specialists manually type specially developed softwood lumber codes into the remarks section of CBP's existing electronic database system, which could lead to miscoding. For example, preliminary results from the first round of the verification cycle from October 2008 to March 2009 show "over-reporting" for the importer declaration. The verification involves the import specialist obtaining documentation to substantiate the importer declaration. There is no calculation or number associated with the declaration itself; correct reporting would be considered either "not reported" or "reported correctly." There should be no over- or underreporting.

Officials told us they are migrating from the existing system and will be using a new system, Automated Commercial Environment, starting January 2010. They stated that the new system will allow them to create custom data entry fields, which they believe will most likely diminish errors associated with miscoding.

- *Inconsistent application of guidance*: Guidance for the import specialists conducting the verifications at the ports states that the export price on the U.S. entry form could be within a 2 percent margin of the export price reported on the Canadian export permit to be considered correctly reported. However, at one of the two ports we visited, we observed that some, but not all, import specialists had inappropriately applied the 2 percent margin to the export charge as well. CBP officials at headquarters stated that they were unaware of the differences in the application of the guidance, but that they were continuing to provide outreach to import specialists regarding how to correctly conduct the verifications and record the results.

CBP officials attribute issues with the quality of the data used in the reconciliation and verification processes to the relative newness of the process. The act was enacted in June 2008 and went into effect in August

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2008, 60 days later. According to CBP's May 2009 report to Congress, CBP delayed enforcement of the importer declaration program 30 days, to give CBP time to publish the interim rule describing the new entry requirements and to give the trade community time to make the necessary changes to provide the three new data elements required for each line of softwood lumber articles on the entry form. Industry representatives also said they had very little time to reprogram their computer systems to collect the necessary data. CBP began selecting random samples of softwood lumber entry summaries on October 1, 2008.

CBP officials told us they conducted a series of training and outreach programs to educate import specialists and importers on how to correctly fulfill the new requirements the act imposed on shipments of softwood lumber. For example, they established an e-mail box to receive questions and a "Frequently Asked Questions" section on the agency's Web site to address the new requirements. CBP officials told us they consider the first 6 months of the verification process a dry run to observe the process and determine areas that need improvement. The officials stated that they have ongoing efforts to provide further guidance and clarification. As an example, they cited memorandums sent to import specialists every 6 months identifying specific examples that were entered into the system incorrectly and needed to be corrected. In addition, headquarters conducts quarterly conference calls with staff at the ports and hosts an annual meeting to discuss issues related to the overall Entry Summary Compliance Measurement process used for all commodities, with softwood lumber being one subcomponent of this process.

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**CBP Reported Incurring Initial Costs to Implement the Act, but Indicated That Ongoing Resource Requirements Are Very Limited**

In CBP's May and October 2009 reports on the agency's implementation of the act, CBP reported that it undertook extensive changes to its systems to collect the required data elements on the U.S. entry form. The reprogramming of these systems, training personnel, and providing advice to the trade community on changes to the entry form required extensive effort for the agency. CBP further reported that headquarters had to divert resources from import safety, intellectual property rights, and other areas to implement the act. However, CBP officials told us that, now that they have established the reconciliation and verification processes required by the act, the agency's ongoing efforts related to the act's requirements do not consume as much time as did its initial efforts. For example, CBP officials at headquarters and at the ports we visited said that work on softwood lumber verifications in particular is not time intensive.

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**Agency Officials Believe That the Act's Requirements Add Little to Their Efforts to Monitor Compliance with the Bilateral Trade Agreement; Requirements Are Likely to Continue after the Agreement Expires**

CBP, Commerce, and USTR officials stated that the information produced through the reconciliation and verification requirements under the act do not directly help them monitor compliance with the 2006 Softwood Lumber Agreement with Canada. The purpose of some of these legislative requirements is to ensure the proper implementation and operation of international agreements on softwood lumber and assist in the enforcement of these obligations.<sup>19</sup> The 2006 agreement with Canada contains mechanisms for monitoring compliance, and, according to U.S. government officials, the added reconciliation and verification requirements of the Softwood Lumber Act of 2008 do not provide the U.S. government with additional assurance of compliance with the bilateral agreement. Specifically, CBP officials told us the requirements of the act do not provide them with direct assurance that the Canadian exporter paid the export charges owed to the Canadian government under the agreement.

CBP officials said that comparing the aggregate export price data from the Canadian export permits with the aggregate export price data from the U.S. entry forms provides no additional information on the collection of the Canadian export charge. CBP does not examine any export charge data in the reconciliation process under the act. The export price, as defined in the act,<sup>20</sup> does not contain any information on the export charge. The export price on the export permit is an estimated price at the time of shipment. According to CBP officials, because the export price on the Canadian export permit and the U.S. entry form is not the final revised export price reported by the exporter to the Canada Revenue Agency, it does not represent the value upon which the export charge is paid.<sup>21</sup>

Similarly, CBP officials said the verification process for imports from Canada does not provide the agency with additional information about whether Canadian exporters are complying with the provisions of the

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<sup>19</sup>19 U.S.C. § 1683d and H.R. Rep. No. 110-627.

<sup>20</sup>19 U.S.C. § 1683(5).

<sup>21</sup>The act states that CBP is to reconcile the export price (or revised export price) declared by the importer with the export price (or revised export price) on the export permit, if any. In its semiannual reports to Congress, CBP has stated that it does not receive revised export price data from any country and therefore is unable to reconcile revised export price data. The revised export price data would provide more information about the final export price upon which the Canadian export charges under the agreement would actually be based. However, since the Canadian government is not obligated to provide that information to the United States, CBP cannot reconcile the revised export price.

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bilateral trade agreement, because the U.S. government does not have access to the Canadian government's tax records and therefore has no means to confirm whether Canadian companies actually paid the export charge. None of the data elements the act requires CBP to verify—the export price, estimated export charge, or importer declaration—provide additional evidence that the exporter paid the export charge, according to CBP officials. As with the reconciliation process, the export price is copied from the Canadian export permit to the U.S. entry form and does not contain export charge information. The estimated export charge on the entry form is reported by the importer based on the estimated export price and Commerce's determination of the export charge rate for that month and province. Furthermore, the importer declaration only requires importers to affirm that they made the appropriate inquiry that the exporter has paid, or committed to pay, any applicable export charges. Finally, for CBP to impose a penalty on importers who violate the act, CBP is required to prove that the importer committed a "knowing violation."<sup>22</sup> CBP officials told us that this violation is harder to prove than other violations of customs laws. In October 2009, CBP reported that it has not initiated any penalty actions for violations of the act.

The requirements of the act, however, may have an indirect effect on Canadian exporters' compliance with the bilateral trade agreement, according to USTR and Commerce officials, because the act's requirements demonstrate that the United States is looking closely at softwood lumber imports. A representative of the U.S. softwood lumber industry said that the act's requirements may also have improved the accuracy of the Canadian data, and that the importer declaration program is useful because he believes that it provides additional information on whether the export charge was paid.

Some of the act's requirements are to ensure the proper implementation and operation of international agreements on softwood lumber and assist in the enforcement of these obligations.<sup>23</sup> The 2006 Softwood Lumber Agreement is in force until 2013; however, the act does not have an expiration date. As a result, it is unclear whether, or to what extent, CBP will need to continue to implement the U.S. legislative requirements when the bilateral trade agreement expires. CBP officials said they have not yet determined how they will fulfill their requirements under the act when the

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<sup>22</sup>19 U.S.C. § 1683f.

<sup>23</sup>19 U.S.C. § 1683d and H.R. Rep. No. 110-627.

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agreement expires, but assume that they will have to continue implementing the verification and importer declaration requirements. However, without the bilateral trade agreement, CBP would no longer have the data for the export charge calculation that are included as part of the verification process. A senior CBP official said that the agency would probably devote more attention to this issue closer to 2013.

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## Conclusions

One purpose of the Softwood Lumber Act of 2008 is to ensure the proper operation and implementation of international agreements related to softwood lumber. CBP has established mechanisms to comply with its requirements. However, officials from USTR, Commerce, and CBP told us the act's requirements add little direct benefit to their efforts to monitor compliance with the 2006 Softwood Lumber Agreement, although U.S. officials and some industry representatives stated there may be some indirect benefit resulting from the increased scrutiny of softwood lumber imports from Canada. The act does not state what CBP's reconciliation and verification requirements would be in 2013—when the bilateral trade agreement is currently scheduled to expire. It is unclear how CBP would implement its continuing requirements under the act and what purpose these requirements would have in the absence of an international agreement.

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## Recommendation for Executive Action

To provide Congress with sufficient time to clarify the U.S. Customs and Border Protection's requirements under the Softwood Lumber Act of 2008, we recommend that the Secretary of Homeland Security direct the Commissioner of CBP to report to Congress on how the agency plans to fulfill the requirements of the act upon the expiration of international agreements related to softwood lumber.

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## Agency Comments

We provided a draft of this report to the U.S. Customs and Border Protection, Department of Commerce, and Office of the U.S. Trade Representative. We received written comments from CBP and Commerce, which are reprinted in appendixes V and VI. CBP concurred with the report recommendation, stating that it will consult with Congress on how to proceed when the Softwood Lumber Agreement expires. Commerce also concurred with the draft report. We also received technical comments from CBP and USTR, which we incorporated as appropriate. We also provided relevant sections to Canadian officials for technical comment, which we incorporated as appropriate.

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We are sending copies of this report to interested congressional committees, the Secretary of Commerce, the Secretary of Homeland Security, and the U.S. Trade Representative. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact Loren Yager at (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Individuals who made key contributions to this report are listed in appendix VII.

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager  
Director, International Affairs and Trade

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# Appendix I: Scope and Methodology

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To describe U.S. Customs and Border Protection's (CBP) processes for meeting the reconciliation and verification requirements of the Softwood Lumber Act of 2008, we reviewed related documents and interviewed CBP officials. We analyzed planning and programmatic documents describing CBP reconciliation and verification procedures, reviewed CBP reports covering the results of its efforts and discussed these results with CBP officials in Washington, D.C. We also traveled to Blaine, Washington, and Buffalo, New York, to interview CBP port officials to determine how they conduct verifications under the act. We met with lumber industry and customs brokers in Washington, D.C.; Blaine; and Buffalo to discuss the impact of the act's requirements on industry.

To better understand how the act's requirements for reconciliations and verifications contribute to U.S. monitoring of the 2006 Softwood Lumber Agreement,<sup>1</sup> we interviewed knowledgeable officials, and obtained information from the Department of Commerce (Commerce), the Office of the U.S. Trade Representative (USTR), and CBP. We also met with lumber industry representatives and customs brokers in Washington, D.C.; Blaine; and Buffalo to discuss the effect of the act's reconciliation and verification processes on U.S. government agencies' monitoring efforts of compliance with the bilateral trade agreement.

To update our June 2009 report<sup>2</sup> about the U.S. government's efforts to monitor compliance with the 2006 Softwood Lumber Agreement, we obtained documents summarizing the LCIA (formerly the London Court of International Arbitration) decisions and agency documents on compliance concerns. We also discussed the status of current compliance concerns with officials from Commerce, USTR, and CBP. Our review focused on Canada because it is the only country with which the United States has an agreement specifically related to softwood lumber and is by far the largest exporter of softwood lumber to the United States. Shipment-level data for the reconciliations under the bilateral trade agreement were not publicly available. GAO did not independently verify the results of these reconciliations done under the agreement. CBP provided data on U.S. imports from Canada at the regional level. We compared these CBP

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<sup>1</sup>Softwood Lumber Agreement between the Government of Canada and the Government of the United States of America (Sept. 12, 2006).

<sup>2</sup>GAO, *U.S. and Canadian Governments Have Established Mechanisms to Monitor Compliance with the 2006 Softwood Lumber Agreement but Face Operational Challenges*, [GAO-09-764R](#) (Washington, D.C.: June 18, 2009).

regional-level data with Census data for volume and value to assess the accuracy and consistency of the two data sets. We interviewed officials from Canada's Department of Foreign Affairs and International Trade (DFAIT) to update the status of Canadian efforts to comply with the bilateral trade agreement and its related coordination efforts with U.S. agencies.

We conducted this performance audit from December 2008 to December 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Key Provisions of the 2006 Softwood Lumber Agreement

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The 2006 Softwood Lumber Agreement established a framework for managing the U.S.-Canadian softwood lumber trade and includes key provisions that are summarized below:

- *Export measures:*<sup>1</sup> The agreement allows Canadian regions<sup>2</sup> to choose between two export control systems, with export measures that vary according to the prevailing monthly price of lumber (see table 2).<sup>3</sup> All of the regions were allocated a percentage of U.S. softwood lumber consumption based on the regions' historic exports to the United States.<sup>4</sup> That share of a region's U.S. consumption is used by the Canadian government to calculate quotas.

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<sup>1</sup>(SLA 2006, art. VII.) The export measures do not apply to certain softwood lumber products that are first produced in the Maritimes from logs originating in the Maritimes. (See SLA 2006, art. X(1) for more details on excluded products from the Maritimes.) The export measures also do not apply to softwood lumber products first produced in and from logs originating in the Yukon, Northwest Territories, or Nunavut. (SLA 2006, art. X.) The agreement also excludes certain companies from the export measures. (SLA 2006, annex 10.)

<sup>2</sup>The agreement defines "region" as Alberta, the British Columbia Interior, the British Columbia Coast, Manitoba, Ontario, Saskatchewan, or Quebec. (SLA 2006, art. XXI(45).)

<sup>3</sup>The prevailing monthly price is defined by annex 7A of the agreement. In January 2010, the provinces will have their first opportunity to change which export control option they implement. (SLA 2006, art. VII(9).)

<sup>4</sup>The regions' shares of U.S. consumption are set forth in table 1 of annex 7B of the agreement.

- Option A consists of an export charge, but no quota.<sup>5</sup> Additionally, a region is subject to a surge penalty if the total volume of exports for that region exceeds its trigger volume, which is calculated, in part, by its share of U.S. consumption in a month.<sup>6</sup>
- Option B consists of an export charge and a quota.<sup>7</sup>

**Table 2: Export Control Options under the 2006 Softwood Lumber Agreement**

Prevailing monthly price per thousand board feet (US\$)	Option A – export charge rate (percentage of export price)	Option B – export charge plus quota	
		Export charge rate (percentage of export price)	Quota (based on region’s share of U.S. consumption)
Over \$355	No export charge	No export charge	No quota
\$336-\$355	5.0%	2.5%	Region’s share of 34% of the expected U.S. consumption for the month
\$316-\$335	10.0%	3.0%	Region’s share of 32% of the expected U.S. consumption for the month
\$315 or under	15.0%	5.0%	Region’s share of 30% of the expected U.S. consumption for the month

Source: GAO analysis of the 2006 Softwood Lumber Agreement.

- *Information exchange:*
  - The United States and Canada are required to exchange information to identify changes in Canadian federal and provincial forest management and timber pricing policies.<sup>8</sup> Canada is required to notify the United States of changes made to certain timber pricing or forest management systems and, among other information, provide evidence of how these

<sup>5</sup>Option A was chosen by Alberta, the British Columbia interior, and the British Columbia coastal regions. (The agreement divides British Columbia into two regions.)

<sup>6</sup>Under article VIII of the agreement, if the volume of exports from a region exceeds its trigger volume by 1 percent or less in a month, Canada shall reduce the applicable trigger volume for that region during the next month equal to the overage. Furthermore, if the volume of exports from a region exceeds the region’s trigger volume by more than 1 percent in a month, Canada shall retroactively apply to all exports to the United States from that region an additional export charge equal to 50 percent of the applicable export charge for that month. Trigger volume is calculated in annex 8 of the agreement.

<sup>7</sup>The quota for option B is calculated in annex 7B of the agreement. Option B was chosen by Saskatchewan, Manitoba, Ontario, and Quebec.

<sup>8</sup>SLA 2006, art. XV(13).

changes improve statistical accuracy and reliability of a timber pricing or forest management system or maintain and improve the extent to which stumpage charges<sup>9</sup> reflect market conditions.<sup>10</sup> The agreement requires each party to respond to requests from the other for information relevant to the operation of the agreement.<sup>11</sup>

- The United States and Canada also are required to exchange information to reconcile value and volume data on a region-specific basis.<sup>12</sup> If the two countries are unable to reconcile region-specific aggregated data, the agreement requires the two countries to compare more specific data, including comparing information on the Canadian export permit with that on the U.S. entry summary form.<sup>13</sup> The agreement calls for “complete reconciliation” within 9 months of each quarter where the parties cannot reconcile region-specific data.<sup>14</sup>
- *Anticircumvention:* Under article XVII of the agreement, neither party shall take action to circumvent or offset commitments made under the agreement, including any action having the effect of reducing or offsetting the export measures or undermining the commitments set forth in article V.<sup>15</sup> Article XVII(2) of the agreement provides clarification with respect to the types of actions parties consider would or would not reduce or offset the export measures. Some of the actions listed under article XVII(2) include provincial timber pricing and forest management systems as they existed on July 1, 2006, any modifications or updates to those systems that meet specified criteria, and other government programs that provide benefits on a nondiscretionary basis in the form and total aggregate amount in which they existed and were administered on July 1, 2006. For an elaboration of the programs, please see the 2006 Softwood Lumber Act, article XVII(2).

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<sup>9</sup>According to a Congressional Research Service report, stumpage charges are fees for the right to harvest timber from province-owned timberlands.

<sup>10</sup>SLA 2006, art. XV(14).

<sup>11</sup>SLA 2006, art. XV(B)(13).

<sup>12</sup>SLA 2006, art. XV(6).

<sup>13</sup>SLA 2006, art. XV(8).

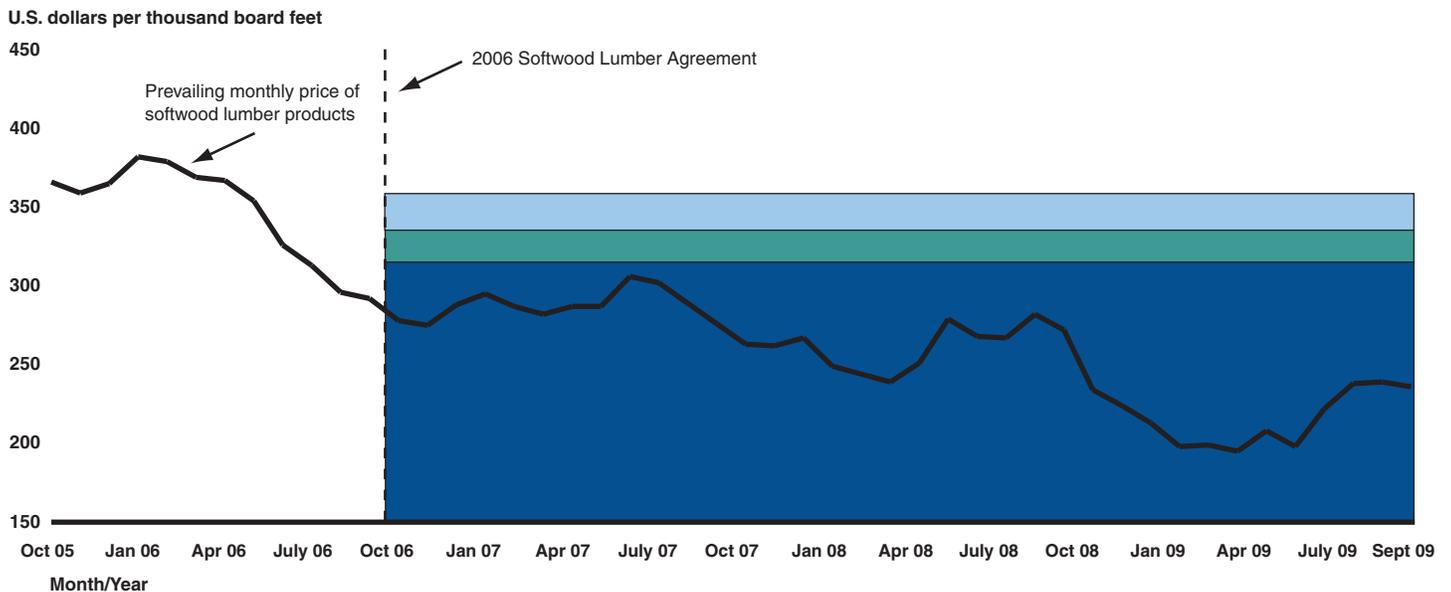
<sup>14</sup>SLA 2006, art. XV(8).

<sup>15</sup>SLA 2006, art. XVII(1).

- *Dispute settlement:* The agreement has mechanisms to resolve disputes over compliance, which includes arbitration under the auspices of the LCIA.

In addition, the agreement ended existing U.S. trade remedy investigations. It also established the Softwood Lumber Committee, with joint Canadian-U.S. representation, and several technical working groups to oversee implementation of the agreement. Because of recent low softwood lumber prices, the Canadian softwood lumber industry has been paying the highest export charge rates mandated by the agreement since the enactment of the agreement. (See fig. 2.)

**Figure 2: Lumber Price and Export Charge Rates, October 2005 through September 2009**



Option A Provinces		Option B Provinces	
0.0% Export charge rate	0.0% Export charge rate and no quota	0.0% Export charge rate	0.0% Export charge rate and no quota
5.0% Export charge rate	2.5% Export charge rate and quota <sup>a</sup>	2.5% Export charge rate and quota <sup>a</sup>	2.5% Export charge rate and quota <sup>a</sup>
10.0% Export charge rate	3.0% Export charge rate and quota <sup>b</sup>	3.0% Export charge rate and quota <sup>b</sup>	3.0% Export charge rate and quota <sup>b</sup>
15.0% Export charge rate	5.0% Export charge rate and quota <sup>c</sup>	5.0% Export charge rate and quota <sup>c</sup>	5.0% Export charge rate and quota <sup>c</sup>

Source: GAO analysis of Department of Commerce and 2006 Softwood Lumber Agreement data.

<sup>a</sup>Region's share of 34 percent of the expected U.S. consumption for the month.

<sup>b</sup>Region's share of 32 percent of the expected U.S. consumption for the month.

<sup>c</sup>Region's share of 30 percent of the expected U.S. consumption for the month.

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# Appendix III: CBP Continues to Address Challenges to Reconciling Value Data under the 2006 Softwood Lumber Agreement

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In June 2009, GAO reported on the challenges that U.S. and Canadian officials identified in reconciling the U.S.-entered value and the Canadian export price data.<sup>1</sup> Under the 2006 Softwood Lumber Agreement, the United States and Canada are required to compare and reconcile the import volume and value data from the United States to the export volume and value data from Canada by region on a quarterly basis.<sup>2</sup> As of early November 2009, the two countries had reconciled 6 quarters of volume data but had not been able to fully reconcile the value data for any quarter since the 2006 Softwood Lumber Agreement went into effect. (CBP stated that they planned to have additional meetings with Canadian officials about the reconciliations in November 2009.) We previously reported the factors that U.S. and Canadian officials have identified that make comparing and matching the U.S. import values to Canadian export values challenging. The Canadian value data on the Canadian export permit uses an approximate value determined at the time of shipment based on the export price definition in the 2006 Softwood Lumber Agreement, while the U.S.-entered value on the U.S. entry summary form is defined by statute<sup>3</sup> and is expected to be higher because it may include export charges, which are not part of the Canadian export price data. More broadly, factors that may cause the U.S. values to be different from the Canadian values include the following: (1) inconsistent units of measurement, (2) estimated versus actual values, (3) inconsistent inclusion of export charges in the prices, (4) remanufactured goods, (5) a \$500 cap, and (6) a mismatch of shipment dates and entry dates. (For a more detailed discussion of each of these factors, see [GAO-09-764R](#).)

CBP officials stated that they have made progress in value reconciliation as the quality of data has improved. They acknowledged that, despite this improvement, larger differences persist at regional levels compared with

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<sup>1</sup>[GAO-09-764R](#).

<sup>2</sup>SLA 2006, art. XV(6).

<sup>3</sup>19 U.S.C. § 1401a.

aggregate countrywide data. CBP officials believe remanufactured goods<sup>4</sup> account for the majority of differences, based on their review of an analysis conducted by Canadian officials. As provided in the 2006 Softwood Lumber Agreement, the U.S. value reported on the U.S. entry summary form is the value of the final finished product, while the Canadian value on the export permit should be the original cost of the wood and should not include the value-added by the remanufacturer. According to CBP, the difference between the value of the original wood and the final product can exceed thousands of dollars. According to CBP officials, they reviewed an analysis by Canada of 1 quarter, which showed that remanufactured goods accounted for about 5 percent of the total value of softwood lumber shipments for that quarter, but 95 percent of the total value discrepancies.<sup>5</sup> CBP officials told us they have not independently analyzed the impact of remanufacturers on the value differences observed in value reconciliation. They told us that they have not yet developed the programming capacity to identify and separate exports from remanufacturers from other exports.

Representatives from the U.S. industry group continue to be skeptical of the reconciliation under the bilateral trade agreement and believe Canada may be undercollecting export charges based on its own data analysis. This analysis, using publicly available data from the U.S. Census Bureau, showed that the actual tax collected is consistently lower than the amount that the representatives estimate should be collected. Representatives from the group told us that they do not believe it is possible for the factors identified by the U.S. and Canadian officials to explain the level of differences in the values they observed. The U.S. and Canadian trade data used in the official reconciliation are not publicly available. GAO did not conduct independent evaluation of the reconciliation results.

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<sup>4</sup>An export charge is applied to the price at primary processing, rather than after it has undergone additional processing by a remanufacturer. The agreement defines remanufactured softwood lumber products as softwood lumber that has been processed to “produce components, semi-finished and/or finished Softwood Lumber Products.” Specifically, article XXI of the agreement states: “Remanufactured Softwood Lumber Products’ means Softwood Lumber Products that are produced by reprocessing lumber inputs by subjecting such inputs to one or more of the following: a change in thickness; a change in width; a change in length; a change in profile; a change in texture; a change in moisture; a change in grading; joining together by finger jointing; turning; or other processes that produce components, semi-finished and/or finished Softwood Lumber Products.”

<sup>5</sup>According to officials from Canada’s DFAIT, they have conducted this analysis for other quarters as well.

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**Appendix III: CBP Continues to Address  
Challenges to Reconciling Value Data under  
the 2006 Softwood Lumber Agreement**

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However, CBP provided us with data on U.S. imports from Canada at the regional level. Our analysis comparing the CBP data with the Census data revealed many differences and inconsistencies. For example, the regional differences between CBP value and Census data are not in proportion with the size of exports from the region. Quebec accounts for about 20 percent of the exports from Canada, but close to 40 percent of the value differences between CBP and Census. In addition, the differences between CBP and Census data are usually proportionally larger for the value data than for the volume data. CBP officials stated it is not possible to replicate the official reconciliation using the Census data.

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# Appendix IV: U.S. Agencies Continue Monitoring the 2006 Softwood Lumber Agreement and Have Identified Concerns

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U.S. agencies continue to monitor Canada's compliance with the 2006 Softwood Lumber Agreement and have identified a number of concerns.<sup>1</sup> U.S. agencies monitor compliance through a variety of sources, including notifications from Canada that are required under the agreement, news reports, and provincial and federal government Web sites for announcements of changes to forest policies and programs. According to U.S. officials, they have spent substantial resources to determine whether some Canadian or provincial programs represent a new or substantial change to existing programs that might be exempted from the anticircumvention provision of the agreement.<sup>2</sup> U.S. agencies state that they investigate their concerns and, where appropriate, request additional information from Canada. Should the concerns remain unaddressed, the United States may resort to the dispute settlement mechanisms contained in the agreement, which can include arbitration under the auspices of the LCIA.

## **LCIA decisions regarding Canada's calculation of volume measures.**

The first arbitration regarding Canada's calculation of volume measures began in August 2007 (LCIA Case No. 7941). The Canadian government contended that adjusting U.S. consumption only applied to provinces under the quota provision, and that the adjustment mechanism only applied beginning in July 2007. The United States contended that the adjustment mechanism applied to calculating expected U.S. consumption for all provinces and should have been used beginning the first quarter of 2007. The arbitration tribunal found that, although the adjustment of expected U.S. consumption did not apply to the provinces without a quota, Canada should have begun applying the adjustment mechanism to the provinces with quotas in January 2007.

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<sup>1</sup>Our June 2009 report ([GAO-09-764R](#)) discussed a variety of compliance concerns. We provide in this report an updated status of these issues as well as descriptions of more recent concerns.

<sup>2</sup>Under article XVII of the agreement, neither party shall take action to circumvent or offset commitments made under the agreement, including any action having the effect of reducing or offsetting the export measures or undermining the commitments set forth in article V. Article XVII(2) of the agreement provides clarification with respect to the types of actions parties consider would or would not reduce or offset the export measures. Some of the actions listed under article XVII(2) include provincial timber pricing and forest management systems as they existed on July 1, 2006, any modifications or updates to those systems that meet specified criteria, and other government programs that provide benefits on a nondiscretionary basis in the form and total aggregate amount in which they existed and were administered on July 1, 2006. For an elaboration of the programs, please see SLA 2006, art. XVII(2).

The arbitration tribunal determined that 30 days from the remedy award was a reasonable period of time for Canada to cure its breach of the agreement. Pursuant to the agreement, the arbitration tribunal determined that if Canada failed to cure the breach within the 30 days, as compensation for the breach, Canada shall be required to collect an additional 10 percent export charge on softwood lumber products exported to the United States from the option B regions until they had collected CDN\$68.26 million (US\$54.8 million).<sup>3</sup>

On April 2, 2009, the Canadian government requested arbitration to determine whether its proposed payment of US\$34 million plus interest to the United States had cured the breach (LCIA Case No. 91312). The U.S. government did not consider Canada's offer to make a payment as having cured the breach. In addition, because the United States considered that Canada failed to either cure its breach or impose the compensatory measures determined by the arbitration tribunal, on April 15, 2009, pursuant to the agreement, the United States imposed a 10 percent customs duty on imports of softwood lumber products from Ontario, Quebec, Manitoba, and Saskatchewan.<sup>4</sup>

In September 2009, the LCIA issued a decision in which it did not consider Canada's tender of US\$36.66 million (US\$34 million plus interest) to the U.S. government as having cured the breach and determined that the remedy required Canada to impose export charges on the involved regions. The LCIA decision did not issue any ruling on whether the United States was required to remove its 10 percent ad valorem customs duty on softwood lumber products from the involved Canadian provinces at this time. The decision encouraged both parties to agree on an amicable settlement regarding this issue. According to Canadian government officials, the Canadian government has developed mechanisms to collect the 10 percent export charge from these provinces. Canada has proposed

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<sup>3</sup>The tribunal ruling is in Canadian dollars. The U.S. dollar amount is based on the exchange rate at the time of the award.

<sup>4</sup>In the *Federal Register* notice announcing the imposition of the duty, USTR stated that the 2006 Softwood Lumber Agreement provides that in the event the complaining party finds that the defending party has failed to cure the breach or impose the compensatory adjustments determined by the tribunal within 30 days of an award, the complaining party is entitled to impose the compensatory measures itself. Accordingly, with regard to Canada's 2007 breach of the agreement, the agreement authorizes the United States to impose duties in an amount not to exceed the additional export charges that the tribunal has specified as compensation for the breach. 74 Fed. Reg. 16436 (Apr. 10, 2009).

to the United States that the two countries coordinate on establishing a mutually acceptable date to lift the U.S. duty and impose a Canadian export charge. According to USTR officials, the United States is considering Canada's proposal.

**U.S. request to LCIA regarding Ontario and Quebec provincial programs.** In January 2008, the United States requested arbitration to determine whether six provincial programs or other measures in Ontario and Quebec circumvent the agreement (LCIA Case No. 81010). The U.S. government contends that these measures include a number of grants, loans, loan guarantees, tax credits, and programs to promote wood production that circumvent the commitments made by Canada in the agreement. Canada maintains that these measures are in full compliance with the agreement. A decision on this case is expected in 2010.

**Concern about the large amount of low-grade timber harvested in Central British Columbia.** U.S. agency officials remain concerned about the large amount of lumber being produced from low-grade timber from the mountain pine beetle-infested British Columbia interior region. Although the grade definitions existed prior to the agreement,<sup>5</sup> U.S. agencies question whether the grading system is being appropriately applied. Lumber producers pay the minimum harvest fee of CDN\$0.25 per cubic meter for this low-grade wood. Since the mid-1990s, large sections of central British Columbia have been infested with the mountain pine beetle, a bark beetle that attacks and kills mature lodgepole pine trees. Natural Resources Canada, a federal agency, anticipates that the beetle will kill 80 percent of British Columbia's mature pine forests by 2013. As a result of the beetle infestation, lumber companies in the British Columbia interior region are currently harvesting a large volume of dead trees. British Columbia's lumber industry has adopted the practice of heating mountain pine beetle-infested timber to reveal any preexisting cracks, a process that

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<sup>5</sup>Under article XVII of the agreement, neither party shall take action to circumvent or offset commitments made under the agreement, including any action having the effect of reducing or offsetting the export measures or undermining the commitments set forth in article V. Article XVII(2) of the agreement provides clarification with respect to the types of actions parties consider would or would not reduce or offset the export measures. Some of the actions listed under article XVII(2) include provincial timber pricing and forest management systems as they existed on July 1, 2006, any modifications or updates to those systems that meet specified criteria, and other government programs that provide benefits on a nondiscretionary basis in the form and total aggregate amount in which they existed and were administered on July 1, 2006. For an elaboration of the programs, please see SLA 2006, art. XVII(2).

they contend allows for correct lumber grading. U.S. industry contends that this process inflates the amount of low-grade timber and thus reduces cost for British Columbia lumber producers.

U.S. agency officials visited British Columbia in summer 2008 to investigate the grading of beetle-killed timber. Subsequently, the United States sent Canada a number of technical questions, including questions on the grading system. In spring 2009, a delegation from British Columbia traveled to Washington, D.C., and briefed U.S. government officials on grading and the mountain pine beetle issues. In October 2009, the delegation again met with U.S. government officials and provided specific responses to each of the outstanding questions that the United States had sent to the province prior to this meeting. According to USTR and Commerce officials, the United States is now reviewing and analyzing these data and other information provided.

**Concern about reduced fees for harvesting timber in coastal British Columbia.** U.S. government officials have questions about the January 2009 reduction in the fees charged for harvesting timber in the British Columbia coast. The British Columbia Ministry of Forests and Range uses an equation, under the coast market pricing system, to determine the fees charged for harvesting timber from public land. The equation is updated annually to account for changes in the market value of timber and in other factors, such as the cost of road construction or replanting trees, and is also adjusted quarterly to reflect changes in market conditions. The equation was grandfathered into the agreement; however, U.S. officials are concerned with how British Columbia has adjusted the equation. According to British Columbia officials, the January 2009 fee reduction was the result of the confluence of the annual and quarterly updates of the timber fee equation. U.S. agency officials have requested additional information from Canada. USTR officials stated in September 2009 that Canadian officials have invited U.S. econometricians to British Columbia to discuss the details of the adjustments with the British Columbia provincial officials who made the adjustments to the equation.

**Concern about potential abuse of the Temporary Importation under Bond program.** CBP headquarters and port officials expressed concern that the Temporary Importation under Bond (TIB) program could be abused by the softwood lumber industry. According to data from CBP, a comparison of TIB imports to total softwood imports shows that TIB represented less than 0.08 percent of total softwood lumber imports for fiscal year 2009. Although officials acknowledge that TIB imports are a small amount of total imports, they stated that they are examining the

issue. TIB is a procedure whereby, under defined circumstances, merchandise may enter into a U.S. Custom's territory temporarily, for a period of up to 1 year.<sup>6</sup> Such goods must be covered by a bond, and the importer must agree to export or destroy the merchandise within a specified time or pay liquidated damages, normally double the estimated duties applicable to the entry.<sup>7</sup> Although softwood lumber products from Canada covered under the Softwood Lumber Agreement are subject to the export measure and export charge, they are not subject to a U.S. import duty.<sup>8</sup> The liquidated damages for products under TIB is limited to \$100 per entry. For example, according to CBP port officials in Blaine, some softwood lumber products that enter the United States from Canada under TIB are not required to be accompanied by a permit issued under the Canadian export permit program, because the intent is to manufacture the lumber into wood siding at a U.S. plant. Port officials pointed to the positive economic benefits for local U.S. businesses from such shipments. However, these port officials also raised concerns that they are limited to applying a \$100 liquidated damages fee if they are not supplied with proof of export. These officials stated that the \$100 liquidated damages would represent a small fraction of the 15 percent Canadian export tax that would normally be applied to softwood lumber exports. The port officials stated that in recent years, about 9 percent of softwood lumber entries at that port were under the TIB program and that for fiscal year 2009, about 5 percent of these entries had not been properly closed out showing export. The officials stated that they are not certain whether the failure to close these TIB movements was a paperwork oversight or represented cases where the goods had stayed in the United States without making formal entry and without paying the Canadian export charge.

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<sup>6</sup>An item imported under TIB must be exported within 1 year from the date of importation. However, upon application, this period may be extended but cannot exceed a total of 3 years. The importer must present proof to CBP that the item was exported to avoid paying liquidated damages. See 19 C.F.R. §§ 10.31-10.40

<sup>7</sup>19 C.F.R. § 10.39.

<sup>8</sup>However, softwood lumber imports from Ontario, Quebec, Manitoba, and Saskatchewan are subject to the current ad valorem tax of 10 percent.

# Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

December 9, 2009

Mr. Loren Yager  
Director, International Affairs  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Mr. Yager:

*RE: Draft Report GAO 10-220 (Reference # 320645) Softwood Lumber Act of 2008: Customs and Border Protection Established Required Procedures, but Agencies Report Little Benefit from New Requirements*

Thank you for providing us with a copy of the Government Accountability Office's (GAO) draft report entitled, "SOFTWOOD LUMBER ACT OF 2008: Customs and Border Protection Established Required Procedures, but Agencies Report Little Benefit from New Requirements." This report discusses Customs and Border Protection's (CBP) processes for meeting the Softwood Lumber Act's requirements and how these requirements contribute to the United States' (U.S.) efforts to monitor compliance with the 2006 Softwood Lumber Agreement. GAO analyzed information from relevant U.S. agencies, interviewed knowledgeable officials from those agencies, and discussed these issues with U.S. and Canadian industry representatives.

The draft report contains one recommendation. CBP concurs with this recommendation. The recommendation and CBP's actions to address them are described below.

**Recommendation:** "In order to provide Congress with sufficient time to clarify CBP's requirements under the Softwood Lumber Act of 2008, we recommend that the Secretary of DHS direct the Commissioner of CBP to report to Congress on how the agency plans to fulfill the requirements of the act upon the expiration of international agreements related to softwood lumber."

**CBP Response:** CBP concurs with this recommendation. The Softwood Lumber Agreement does not expire until 2013 (and it can be extended). In the absence of the current Softwood Lumber Agreement (including extensions), CBP will not have data to reconcile nor verify any information to report to Congress. As the expiration date approaches, CBP will consult with the Congress on how to proceed when the Softwood Lumber Agreement expires.

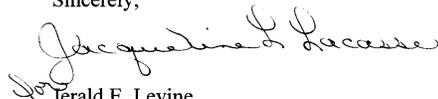
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**Appendix V: Comments from the Department  
of Homeland Security**

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Thank you for the opportunity to comment on this Draft Report and we look forward to working with you on future homeland security issues.

Sincerely,

  
Jerald E. Levine  
Director  
Departmental GAO/OIG Liaison Office

# Appendix VI: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary for International Trade  
Washington, D.C. 20230

NOV 30 2009

Dr. Loren Yager  
Director, International Affairs and Trade  
U.S. Government and Accountability Office  
441 G. Street, N.W.  
Washington, DC 20548

Dear Dr. Yager:

Thank you for forwarding the draft report, *Softwood Lumber Act of 2008: Customs and Border Protection Established Required Procedures, but Agencies Report Little Benefit from New Requirements*, GAO-10-220, for the Department of Commerce's review. The International Trade Administration (ITA) concurs with the report and does not have any comments.

We appreciate the opportunity to provide comments on the draft report. If you have any comments about ITA's review of the draft, please contact Mr. Victor E. Powers, Director, Office of Management and Operations, at (202) 482-1422.

Sincerely,

  
Michelle O'Neill, Acting



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# Appendix VII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Loren Yager, (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Celia Thomas, Assistant Director; Jason Bair; Ming Chen; Karen Deans; David Dornisch; Tim Fairbanks; Rachel Girshick; Grace Lui; and Christina Werth made key contributions to this report. Kate Brentzel and Etana Finkler provided technical support.

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