CHECKOFF PROGRAMS IN THE FOREST PRODUCTS INDUSTRY: EXAMINING AND COMPARING THE PROPOSED SOFTWOOD AND HARDWOOD INDUSTRY CHECKOFFS

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I. INTRODUCTION

The forest products industry is a major sector of the United States economy.[1] The forest products industry is made up of many smaller market segments including the softwood industry, hardwood industry, engineered wood products, paper and packaging products, and furniture to name a few.[2] In the current economic environment, the industry has seen declining sales and production across all of its market segments. Historically, the performance of the forest products industry has closely followed the housing market, and the current decline in the forest products industry is tied to the struggling housing market.[3] Given the tough economic times, the industry has recently begun to explore options to help bolster the industry and help improve its economic outlook. One option that different market segments are considering is the use of a checkoff program administered by the United State Department of Agriculture's Agriculture Marketing Service ("USDA-AMS").[4] Currently, the softwood industry has a proposal for a checkoff program[5] and the hardwood industry is in the preliminary stages

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1. 2007 U.S. Economic Census data for Wood Products Manufacturing, available online at: http://factfinder.census.gov/servlet/IQRSelectIndustryServlet?_ts=321968864252 (2007 U.S. Economic Census data indicates that there were 16,868 wood product manufacturing facilities employing 523,889 people. These facilities generated $101,711,917,000 in sales. More specifically concerning the softwood and hardwood industries, combined softwood and hardwood sawmills produced $22,075,666,000 in sales while employing 90,044 people at 3,589 facilities. 303 hardwood veneer and plywood operations employed 18,152 people and produced $3,327,139,000 in sales. There were 123 softwood veneer and plywood manufactures producing $4,203,546,000 in sales while employing 18,553 people. Additionally, there were 4,988 paper manufacturing facilities that employed 418,241 people. Paper manufacturing facilities resulted in sales of $176,687,641,000.)

2. Steven A. Sinclair, Forest Products Marketing (1992).

3. U.S. Endowment, Commodity "Check-off": The Potential for North American Softwood Lumber (2008), 1, available online at: http://www.softwoodlumber.org/pdfs/Commodity-Check-off.pdf.

4. *Id.*

5. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

of establishing a proposal to submit to the United States Department of Agriculture ("USDA") for consideration.[6] This paper will present the content of the proposed softwood industry checkoff and preliminary content of the hardwood industry checkoff and compare the two programs with an examination of differences.

Part II of this paper will provide background information concerning checkoff programs including the statutory authority behind checkoff programs, current checkoffs administered by the USDA-AMS, the process to implement a new checkoff program, and the authority and availability of checkoffs for the forest products industry. Part III and Part IV will give an overview of the softwood and hardwood industries and set out the content of the softwood and hardwood industry checkoffs concentrating on entities covered under the checkoffs, the amount and structure of the assessment, and goals of the programs. Part V of this paper will compare the softwood and hardwood checkoffs again concentrating on covered entities, the assessment, and goals while providing possible reasons for differences in the programs based on the different structure of the market segments. Finally, Part VI will provide a summary of the paper as well as provide insight into future use of checkoff programs by the forest products industry.

II. BACKGROUND ON CHECKOFF PROGRAMS

A. Description of Checkoff Programs

Checkoff programs "are designed to strengthen the position of the industry in the marketplace and to maintain and expand domestic and foreign markets" for agricultural commodities.[7] The Commodity Promotion, Research, and Information Act of 1996

6. Hardwood Checkoff Website, available at: http://hardwoodcheckoff.org/.

7. United States Department of Agriculture Agricultural Marketing Service, Research and Promotion Programs website, available at:

authorizes the United States Department of Agriculture to oversee checkoff programs for agricultural commodities and appoint a checkoff board to implement the checkoff program.[8] Funding for the checkoff programs comes from mandatory assessments collected from producers of the covered agricultural commodity.[9] The collected assessment payments are then used to fund such things as the generic advertising for the agricultural commodity and research projects and programs concerning the agricultural commodity.[10] These funds are prohibited from being used for lobbying purposes by the checkoff board.[11]

B. Current Checkoff Programs

There are currently eighteen checkoff programs administered by the USDA Agricultural Marketing Service.[12] Seventeen of the eighteen checkoff programs cover food products with the one exception being the checkoff for cotton.[13] These checkoff programs use well known slogans in generic advertising such as "The Incredible, Edible Egg™," "Beef: It's What's for Dinner®," "Pork, the Other White Meat®," and "Got

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http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateB&navID=ResearchandPromotion&leftNav=ResearchandPromotion&page=ResearchandPromotion&acct=AMSPW.

8. 7 U.S.C. §§ 7411-7425 (2006).

9. *Id.* at § 7414.

10. Jennifer W. Zwagerman, *Checking Out the Checkoff: An Overview and Where We Are Now That the Legal Battles Have Quieted*, 14 Drake J. Agric. L. 149, 172 (2009).

11. *Id.*

12. United States Department of Agriculture Agricultural Marketing Service, Research and Promotion Programs website, available at: http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateB&navID=ResearchandPromotion&leftNav=ResearchandPromotion&page=ResearchandPromotion&acct=AMSPW (listing the following agricultural commodities as having a current checkoff program: beef, blueberries, cotton, dairy products, eggs, fluid milk, Hass avocados, honey packers and importers, lamb, mangos, mushrooms, peanuts, popcorn, pork, potatoes, sorghum, soybeans, and watermelons)

13. *Id.*

Milk?®." All of the existing federal checkoff programs and any future programs must be authorized by federal statute.[14] Many of the existing checkoff programs were created under the authority of the Commodity Promotion, Research, and Information Act of 1996[15] while others were created under the authority of specific federal legislation concerning the covered agricultural commodity.[16]

C. Implementing a New Checkoff

The process for implementing a new checkoff program is contained in the Commodity Promotion, Research, and Information Act of 1996.[17] The first step in the process is to prepare a proposed order for the program.[18] This order may be prepared by the USDA secretary or be submitted to the secretary from the affected industry.[19] If the

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14. *Id.*

15. Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. §§ 7411-7425 (2006) (authorized the checkoff programs for blueberries, honey packers and importers, lamb, mangos, peanuts, and sorghum).

16. *See* Beef Promotion and Research Act of 1985, 7 U.S.C. §§ 2901-2918 (2006) (authorized the beef checkoff); Cotton Research and Promotion Act of 1966, 7 U.S.C. §§ 2101-2118 (2006) (authorized the cotton checkoff); Dairy Production Stabilization Act of 1983, 7 U.S.C. §§ 4501-4514 (2006) (authorized the dairy products checkoff); Egg Research and Consumer Information Act of 1974, 7 U.S.C. §§ 2701 et seq. (2006) (authorized the egg checkoff); Fluid Milk Promotion Act of 1990, as amended, 7 U.S.C. §§ 6401 et seq. (2006) (authorized the fluid milk checkoff); Hass Avocado Promotion, Research, and Information Act of 2000, 7 U.S.C. §§ 7801-7813 (2006) (authorized the Hass avocado checkoff); Mushroom Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. §§ 6101-6112 (2006) (authorized the mushroom checkoff); Popcorn Promotion, Research, and Consumer Information Act, 7 U.S.C. §§ 7481-7491 (2006) (authorized the popcorn checkoff); Pork Promotion, Research, and Consumer Information Act of 1985, 7 U.S.C. §§ 4801-4819 (2006) (authorized the pork checkoff); Potato Research and Promotion Act, 7 U.S.C. §§ 2611-2627 (2006) (authorized the potato checkoff); Soybean Promotion, Research, and Consumer Information Act, 7 U.S.C. §§ 6301-6311 (2006) (authorized the soybean checkoff); and Watermelon Research and Promotion Act of 1985 7 U.S.C. §§ 4901-4916 (2006) (authorized the watermelon checkoff).

17. *See* Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. §§ 7411-7425 (2006) (authorized the checkoff programs for blueberries, honey packers and importers, lamb, mangos, peanuts, and sorghum).

18. 7 U.S.C. § 7413(b)(1) (2006).

19. *Id.*

order is submitted by industry it may be drafted by either an association of producers of the covered commodity or by any party that would be affected by the implementation of the checkoff program for the covered agricultural commodity.[20] The second step in the process is for the Secretary of the USDA to publish the proposed order in the Federal Register if the Secretary finds it consistent with and will effectuate the purpose of the Commodity Promotion, Research, and Information Act of 1996.[21] In making the determination of whether to publish the proposed order the Secretary may consider whether any currently available checkoff programs cover the agricultural commodity for which the new checkoff program is being established.[22] The public and affected entities then have the opportunity to comment on the proposed order.[23] After considering the public comments the USDA Secretary may prepare a final order for publication in the Federal Register.[24] After publishing the final order in the Federal Register the checkoff program will become effective no later than 270 days after the publication of the proposed order that was the foundation of the final order.[25]

D. Availability of Checkoffs for the Forest Products Industry

The Promotion, Research, and Information Act of 1996 authorizes checkoff products for agricultural commodities.[26] Therefore, products from the forest products

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20. *Id.*

21. 7 U.S.C. § 7413(b)(2) (2006).

22. 7 U.S.C. § 7413(b)(3) (2006).

23. 7 U.S.C. § 7413(b)(2) (2006).

24. 7 U.S.C. § 7413(b)(4) (2006).

25. 7 U.S.C. § 7413(c) (2006).

26. *See* Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. §§ 7411-7425 (2006).

industry must be considered agricultural commodities in order to come under the act for authorization of a checkoff.[27] The Act specifically authorizes checkoffs for the forest products industry by including in the definition of agricultural commodity "the products of forestry."[28] Since all products manufactured in the forest products industry begin with a forestry operation harvesting trees for raw materials, all products made of wood are theoretically covered under this definition of agricultural commodity. However, the farther from harvesting of logs, the more the lumber is manufactured, the more value-added products become, and the more layers of ownership following harvesting may limit the potential coverage as an "agricultural commodity" for some products manufactured by the forest products industry. Since the softwood and hardwood proposed checkoff programs cover lumber products that are usually the first step in any manufacturing process they should easily fall within this definition of agricultural commodity. Therefore, the current proposed checkoffs for softwood and hardwood lumber appear to be authorized by the Promotion, Research, and Information Act of 1996.

Checkoff programs are not entirely new to the forest products industry. The hardwood industry examined implementing a checkoff during the first half of the 1990s.[29] The National Hardwood Lumber Association (NHLA) examined the potential of a checkoff program for the hardwood industry beginning in the 1993.[30] The NHLA

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27. U.S. Endowment, Commodity "Check-off": The Potential for North American Softwood Lumber (2008), 1, available online at: http://www.softwoodlumber.org/pdfs/Commodity-Check-off.pdf.

28. 7 U.S.C. § 7412(1)(D) (2006).

29. U.S. Endowment, Commodity "Check-off": The Potential for North American Softwood Lumber (2008), 37, available online at: http://www.softwoodlumber.org/pdfs/Commodity-Check-off.pdf.

30. *Id.*

finalized a plan for the checkoff in 1995 which required that the checkoff board work with existing industry non-profit organizations so that the program did not appear to be "another government program" and to reduce administrative costs.[31] This first hardwood checkoff program was designed to enforce an assessment on sawmills, wholesalers, distributors, and concentration yards based on sales of hardwood lumber or lumber board feet equivalent for veneer and hardwood plywood.[32] The NHLA polled member companies to examine industry support for the program and found that 41 percent of its members had a positive opinion of the potential program while 22.2 percent had a negative opinion with 35.2 percent being neutral or undecided.[33] However, the poll also found that 61 percent of the member companies believed the checkoff would result in greater government intervention and 71.8 percent thought the program would lead to more red tape and paperwork.[34] In the end, the NHLA member companies voted to not pursue the proposed checkoff program and it was abandoned and never submitted to USDA for publication in the Federal Register.[35]

In addition to the NHLA attempt at a checkoff for the hardwood industry, three states, California, Idaho, and Oregon, have checkoff or similar programs at the state

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31. *Id.*

32. *Id.* at 38 (The specific assessments included in the proposed NHLA checkoff were broken down by grade of product with higher quality products assessed at a higher rate than lower value products. The specific assessment raters by grade of products were as follows: (1) Selects and Betters - $1 per thousand board feet; (2) No. 1 Common - $1 per thousand board feet; (3) No. 2 Common - $1 per thousand board feet; (4) No. 3A Common - $1 per thousand board feet; (5) Frame Stock - $1 per thousand board feet; (6) Pallet Lumber & Cants - $0.50 per thousand board feet; (7) Ties - $0.50 per thousand board feet; and (8) Timbers - $0.50 per thousand board feet.).

33. *Id.*

34. *Id.*

35. *Id.*

level.[36] These programs were enacted in the early 1990s at the request of the forest products industry.[37] The checkoff program in California collects an assessment only on sawmill operations producing lumber which purchase at least 5 million board feet of logs per year.[38] Similarly, the Idaho program collects an assessment based on production but expands included entities required to pay the assessment to loggers and landowner in addition to sawmills.[39] The Oregon program is not a true checkoff because it is structured as a severance tax on the harvesting of logs from private land and only allows collected funds to be used for public and landowner education and not any generic promotion activities for the industry.[40]

III. THE SOFTWOOD INDUSTRY CHECKOFF

The softwood checkoff proposal was originally submitted to the USDA in February 2010.[41] The process of implementing the checkoff has progressed through various steps including gathering input from the industry and publishing a proposed order.[42] The USDA published the final order in the Federal Register on October 1, 2010. The referendum period was scheduled to be held from January to March 2011 with the

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36. *Id.* at 41.

37. *Id.* (California's program was enacted in 1990, Idaho's in 1992, and Oregon's in 1991).

38. *Id.*

39. *Id.*

40. *Id.*

41. Binational Softwood Lumber Council, Softwood Checkoff website, available at: http://www.softwoodlumber.org/check-off/timeline.html

42. *Id.*

checkoff board nominations taking place in April.[43] The current plan is for USDA to appoint the finalized checkoff board and turn over duties to the board in June 2011.[44]

A. Softwood Industry Structure

The softwood industry is comprised of sawmills and other manufacturing facilities that use softwood timber such as spruce, pine, and firs to process into end products such as lumber and plywood. The United States softwood industry is characterized by a number of large firms producing a large bulk of the products manufactured.[45] In 2010, the softwood industry produced about 24,795 million board feet of softwood lumber.[46] The top twenty producers in the United States accounted for about 57 percent or 14,246 million board feet of the softwood lumber production.[47] The softwood industry has been hit hard by the economic recession and particularly by the poor housing market.[48] Over the period from 2006 to 2009 the use of softwood lumber in residential construction fell from 21.4 billion board feet in 2006 to 14.2 billion board feet in 2009.[49] Over this same period of time the number of softwood sawmills declined greatly from 1,025 to 875.[50]

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43. *Id.*

44. *Id.*

45. *See* Timber-Mart South, Inc., Timber-Mart South Market News Quarterly, Vol. 16 No. 1, 23, available online at: *www.superiorpine.com/uploads/1Q2011news_email.pdf.*

46. *Id.*

47. *Id.*

48. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61004 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

49. *Id.* at 61004.

50. Henry Spelter, David McKeever, and Daniel Toth, 2009 Profile: Softwood Sawmills in the United States and Canada, Research Paper FPL-RP-659. Madison, WI: U.S. Department of Agriculture,

The United States softwood industry is characterized by several concentrated production regions. The western United States and the Pacific Northwest in particular accounts for the largest portion of the softwood lumber production in the United States.[51] Of the 29.5 billion board feet of softwood lumber produced in 2007-2009, 14.4 billion board feet was produced in the western region of the United States.[52] The western region is characterized by hemlock and Douglas-fir production that is used in construction applications.[53] Other more specialized softwoods grown and harvested in the western United States for softwood lumber include redwood, ponderosa pine, and lodgepole pine.[54] The southern region of the United States produced the second largest percent of softwood lumber from 2007 to 2008.[55] Of the total 29.5 billion board feet produced, 12.6 billion board feet was from sawmills in the southern region.[56] The southern region is characterized by pines that grow quickly in twenty-five to thirty years.[57] The softwood lumber that is produced from this timber is usually treated with preservatives and used in

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Forest Service, Forest Products Laboratory, (2009), 2, available online at: http://www.fpl.fs.fed.us/documnts/fplrp/fpl_rp659.pdf.

51. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61003 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

52. *Id.*

53. Henry Spelter, David McKeever, and Daniel Toth, 2009 Profile: Softwood Sawmills in the United States and Canada, Research Paper FPL-RP-659. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory, (2009), 8, available online at: http://www.fpl.fs.fed.us/documnts/fplrp/fpl_rp659.pdf.

54. *Id.* at 7.

55. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61003 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

56. *Id.*

57. Henry Spelter, David McKeever, and Daniel Toth, 2009 Profile: Softwood Sawmills in the United States and Canada, Research Paper FPL-RP-659. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory, (2009), 7, available online at: http://www.fpl.fs.fed.us/documnts/fplrp/fpl_rp659.pdf.

the construction industry.[58] The northern region of the United States produced a considerably smaller amount of softwood lumber from 2007 to 2008 with the majority of this production occurring in Maine.[59] The northern region is characterized by growths of red pine, white spruce, and balsam fir.[60] These softwoods are of a lower structural quality than those grown in other regions of the United States and are thus used less often in construction and more in end uses such as millwork, joinery, and paneling.[61]

Besides domestic production, the United States also imports a large amount of softwood lumber.[62] From 2007 to 2009 softwood lumber imports averaged approximately 13 billion board feet annually.[63] Twelve billion board feet annually or approximately 92 percent of total imports into the United States originated in Canada accounting for the vast majority of the softwood lumber imports.[64] The remaining softwood lumber imports were from Western Europe (434 million board feet or 3 percent of total imports) and Chile (255 million board feet or 2 percent of total imports) with the remaining 3 percent originating from other countries.[65]

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58. *Id.*

59. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61003 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

60. Henry Spelter, David McKeever, and Daniel Toth, 2009 Profile: Softwood Sawmills in the United States and Canada, Research Paper FPL-RP-659. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory, (2009), 7-8, available online at: http://www.fpl.fs.fed.us/documnts/fplrp/fpl_rp659.pdf.

61. *Id.*

62. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61004 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

63. *Id.*

64. *Id.*

65. *Id.*

B. Goals of the Softwood Checkoff

The overall goal of the proposed softwood checkoff is "to strengthen the position of softwood lumber in the marketplace, maintain and expand markets for softwood lumber, and develop new uses for softwood lumber within the United States."[66] More specifically the goals of the softwood checkoff are to: (1) stop the decline of softwood lumber products market share in the single family residential housing market; (2) increase softwood lumber products market share in the multi-family residential housing market; (3) increase softwood lumber products market share in non-residential building markets; and (4) stop the decline and boost market share of softwood lumber products in the outdoor living market.[67]

C. Proposed Softwood Checkoff

The proposed softwood checkoff will apply to domestic softwood lumber manufacturers and importers.[68] The program specifically exempts producers and importers that deal with less than 15 million board feet of softwood lumber in a fiscal year.[69] Additionally, all producers and importers will not pay an assessment on the first 15 million board feet of softwood lumber and any exports of softwood lumber will be exempt from the program.[70] The checkoff program defines domestic softwood

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66. *Id*. at 61002.

67. Binational Softwood Lumber Council, Potential Program website, available online at: http://www.softwoodlumber.org/check-off/potential-program.html.

68. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61002 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

69. *Id.*

70. *Id.*

manufacturers as entities that process softwood logs into softwood lumber.[71] Importers are defined as entities that import softwood lumber that has been manufactured outside of the United States into the United States with the purpose to sale the softwood lumber.[72]

The assessment will be collected on all products as described in the Softwood Lumber Act of 2008.[73] Covered products are generally lumber, flooring, and siding produced from softwood logs.[74] Other products such as stringers, radius-cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts are also covered softwood products subject to specific exemptions.[75] There are also softwood products that are excluded from the softwood checkoff as specifically specified in the Softwood Lumber Act of 2008.[76] These products are characterized as more value-added products that have gone through additional processing and include trusses, I-joist beams, assembled box-spring frames, completed pallets, garage doors, edge-glued wood, complete door and window frames, and furniture.[77]

The initial assessment rate under the softwood checkoff is $0.35 per thousand board feet of softwood lumber shipped domestically or imported into the United States.[78]

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71. *Id.* at 61006.

72. *Id.* at 61017.

73. *Id.* at 61006.

74. 19 U.S.C. § 1683(b) (2006).

75. 19 U.S.C. § 1683(b) (2006).

76. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61006 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

77. 19 U.S.C. § 1683(b) (2006).

78. Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 75 Fed. Reg. 61002, at 61005 (proposed Oct. 1, 2010) (to be codified at 7 C.F.R. pt. 1217.).

The program allows for an increase in the assessment rate up to $0.50 per thousand board feet of domestically shipped or imported softwood lumber.[79] The checkoff calls for the board to reexamine and suggest any necessary changes to the assessment rate two years following the effective date of the program and periodically thereafter.[80] Manufacturers subject to the assessment are required to submit their assessments payments to the board by the 30th calendar day following the end of each quarter that the covered products were shipped.[81] Assessments on importers are intended to be collected by the United States Customs Service ("Customs"), and any importer will be responsible for paying the assessment directly to the checkoff board if Customs does not collect the assessment.[82]

The softwood checkoff board will be constituted of eighteen or nineteen members depending on whether an additional member is appointed for softwood lumber importers.[83] The twelve board members representing domestic manufacturers will be appointed based upon regional production with each softwood producing region having a proportionate amount of representation on the board based on production levels.[84] The remaining six or seven members will represent importers and be proportionately divided based on import levels of softwood lumber.[85]

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79. *Id.*

80. *Id.* at 61010.

81. *Id.*

82. *Id.*

83. *Id.* at 61018.

84. *Id.*

85. *Id.*

As currently proposed, the softwood lumber board will have twelve members representing domestic softwood production manufacturers.[86] Six of the twelve manufacturing member will be appointed from the United States South Region representing the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.[87] The Western Region of the United States will be represented by five board members from manufacturers in the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.[88] The Northeast and Lake States Regions of the United States will be represented by two members on the softwood checkoff board.[89] These two members will be appointed from manufacturers from the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, Wisconsin, and any other state not specifically included in any of the other United States regions.[90]

As currently proposed, the softwood checkoff board will have six or seven members representing importers of softwood lumber.[91] Four of the members will be from importers from the Canadian West Region which consists of the provinces of

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86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

British Columbia and Alberta.[92] The Canadian East Region will be represented by two members from importers located in all other Canadian provinces and territories.[93] The seventh member may be appointed at the request of the softwood checkoff board or at the discretion of the Secretary of the United States Department of Agriculture.[94] This seventh member would represent a region outside of Canada that imports softwood lumber into the United States.[95] In order to be appointed as a board member, the seventh importer representative would have to prove that a majority of the exports of softwood lumber from its region is imported into the United States.[96]

IV. THE HARDWOOD INDUSTRY CHECKOFF

The hardwood industry checkoff is still in the preliminary stages of establishing a proposed order to submit to the USDA. The initial plan was to have a draft order completed and submitted to USDA by February 2011.[97] The checkoff program is scheduled to be finalized and submitted for a referendum by March 2012.[98]

A. Hardwood Industry Structure

The hardwood lumber industry is comprised of manufacturing facilities that transform hardwood logs such as oak, maple, cherry, and walnut into lumber. This lumber is then usually sold to another manufacturing facility that utilizes the lumber to

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92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. Hardwood Checkoff Timeline website, available online at: http://hardwoodcheckoff.org/timeline.php.

98. *Id.*

manufacture value-added products such as furniture, pallets, millwork, cabinets, and flooring.[99] Traditionally, the hardwood lumber industry has been dominated by small family-owned sawmills.[100] There have been some within the industry that believe that hardwood sawmills should consolidate into larger regional operations and some consolidation that has taken place.[101] However, the industry is still largely dominated by small, single sawmill operators.[102] There are an estimated 1,800 hardwood sawmills in the United States.[103] Approximately 90 percent of these 1,800 sawmills employ less than 50 employees and have sales below $5 million annually.[104] In fact, there is some evidence smaller operations are able to concentrate their efforts on custom jobs within small geographic areas and have been better able to cope with the current economic downturn in the industry.[105]

While hardwood lumber is not used directly in the construction of housing structures like softwood lumber, its demand is still greatly correlated to the housing

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99. Scott A. Bowe, Robert L. Smith, and Philip A. Araman, A National Profile of the U.S. Hardwood Sawmill Industry, Forest Products Journal, Vol. 51, No. 10, 25 (2001).

100. *Id.*

101. *See* William G. Luppold, The Number of Hardwood Sawmills Continues to Decrease – Is that Bad?, Hardwood Market Report: Lumber Newsletter (2005); and McGladrey Capital Markets, LLC, The Hardwood Sawmill Market – A Time for Consolidation, (2009).

102. Urs Buehlmann, Omar Espinoza, Matthew Bumgardner, and Bob Smith, Trends in the US Hardwood Lumber Distribution Industry: Changing Products, Customers, and Services, Forest Products Journal, Vol. 60, No. 6, 547 (2010).

103. McGladrey Capital Markets, LLC, The Hardwood Sawmill Market – A Time for Consolidation, 3 (2009).

104. *Id.*

105. Urs Buehlmann, Omar Espinoza, Matthew Bumgardner, and Bob Smith, Trends in the US Hardwood Lumber Distribution Industry: Changing Products, Customers, and Services, Forest Products Journal, Vol. 60, No. 6, 548 (2010).

market.[106] This is because many of the value-added products, such as flooring, cabinets, and millwork, are used in the home building process.[107] Over the period from 1999 to 2008 the hardwood industry has seen production decline from a peak in 1999 of 13.3 billion board feet to 8.6 billion board feet in 2008, the lowest levels since 1981.[108] The 36 percent decline in hardwood production fueled by weak demand also caused hardwood lumber prices to fall from 10 to 30 percent further putting economic stress on manufacturing facilities.[109] As a result, there has been a 25 to 35 percent permanent decline in hardwood lumber processing and manufacturing capacity as larger operators reduced the number of shifts worked at some sawmills and closed unprofitable sawmills and some smaller single sawmill operation exited the market.[110] The market downturn has seen more hardwood materials being utilized in lower value products, such as railroad ties and pallets, while the demand in higher value market segments, such as furniture and cabinets, has declined.[111]

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106. McGladrey Capital Markets, LLC, The Hardwood Sawmill Market – A Time for Consolidation, 3 (2009).

107. *Id.*

108. *Id.* at 2.

109. *Id.*

110. *Id.*

111. Urs Buehlmann, Omar Espinoza, Matthew Bumgardner, and Bob Smith, Trends in the US Hardwood Lumber Distribution Industry: Changing Products, Customers, and Services, Forest Products Journal, Vol. 60, No. 6, 550 (2010) (indicating the percentage change of hardwood lumber going into different markets from 2003 to 2007 as follows: railroad ties increased 103%, retail increased 40%, flooring increased 34%, exports increased 29%, other increased 23%, millwork increased 14%, pallets increased 5%, cabinets decreased 3%, and furniture decreased 37%).

The hardwood lumber industry in the United States is largely the story of two polar opposites when comparing the eastern United States to the western United States.[112] Roughly 90 percent of the hardwood timber stock is located in the eastern United States while only 10 percent is located in the western half of the country.[113] This naturally leads to the vast majority of the hardwood lumber production taking place in the eastern United States with sawmills located in areas where hardwood timber is readily available.[114] All of the leading states in hardwood lumber production are in the Eastern half of the United States with Pennsylvania as the leading state for hardwood production followed by Kentucky, Tennessee, Mississippi, and Virginia.[115] The predominance of hardwoods in the eastern United States versus the western United States can be seen when examining United States Department of Agriculture Forest Service pulpwood and lumber production statistics by region. Hardwood pulpwood production is greatest in the South with 20.4 million cords followed by the North with 8.6 million cords and the West with only 1.1 million cords of hardwood pulpwood production.[116] The regional distinction for hardwood production is even greater when examining lumber production statistics by

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112. McGladrey Capital Markets, LLC, The Hardwood Sawmill Market – A Time for Consolidation, 3 (2009).

113. *Id.*

114. *Id.*

115. Daniel Cassins, Using Forest Survey Data in Marketing Strategic Supply Decisions, available online at: http://www.fnr.purdue.edu/inwood/past%20issues/using%20forest%20survey%20data.htm

116. James L. Howard, U.S. Timber Production, Trade, Consumption, and Price Statistics 1965 to 2005, Research Paper FPL-RP-637. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory, (2007), 54, available online at: http://www.fpl.fs.fed.us/documnts/fplrp/fpl_rp37.pdf (the West region of the United States includes the states of Alaska, Arizona, California, Idaho, Montana, Oregon, and Washington, the South region of the United States includes the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and the North region of the United States includes Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, and Wisconsin).

region. The North region of the United States produces the most hardwood lumber with 6.7 billion board feet, followed by the South region with 4.5 billion board feet, and the West region only produces 0.5 billion board feet of hardwood lumber.[117]

B. Goals of the Hardwood Checkoff

The overall goal of the hardwood checkoff is to increase demand for hardwood lumber products in the United States.[118] To fulfill this overall goal of increased demand, the hardwood checkoff is being designed to: (1) promote hardwood products along throughout the buying process to architects, specifiers, and consumers; and (2) fund research on hardwood forests in the United States and hardwood lumber and plywood production.[119]

C. Preliminary Hardwood Checkoff

The preliminary plans for the hardwood checkoff indicate that it will apply to producers of hardwood lumber, plywood, and value-added products.[120] Value-added products proposed to be included for assessment under the hardwood checkoff include unfinished strip flooring, hardwood plywood panels, and substantially machined lumber such as dimension parts.[121]

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117. *Id.* at 58 (the West region of the United States includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming, the South Region of the United States includes Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, the North region of the United States includes the remaining 24 states).

118. Hardwood Checkoff PowerPoint Presentation, Hardwood Manufacturers Association Annual Meeting, Mar. 16, 2011, Charleston, SC, available online at: http://hardwoodcheckoff.org/Presentations/checkoffslides6.pptx.

119. *Id.*

120. *Id.*

121. Hardwood Checkoff Frequent Questions website, available online at: http://hardwoodcheckoff.org/questions.php.

The biggest producer of hardwood lumber which the checkoff program will apply to is sawmills.[122] All hardwood sawmills with sales of hardwood lumber over $2 million will be required to pay the assessment under the hardwood checkoff.[123] Concentration yards and dry kiln facilities producing hardwood lumber will also have to pay the assessment under the preliminary hardwood checkoff program.[124] Again, only dry kiln operations and concentration yards with sales over $2 million will be subject to the assessment.[125] Additionally, these facilities will be able to deduct the purchase price of green hardwood lumber from their sales to avoid having the assessment applied twice to the same products.[126] Facilities such as sawmills and dry kiln operations that include integrated operations to produce value-added products such as hardwood moldings and millwork will also have to pay the assessment on value-added product sales in excess of $2 million.[127] However, two major categories of value-added hardwood products, furniture and cabinets, are exempt from the assessment on value-added sales.[128] The last category of hardwood facilities subject to the assessment under the hardwood checkoff are hardwood plywood producers.[129] Hardwood plywood producers with more than 10

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122. Hardwood Checkoff PowerPoint Presentation, Hardwood Manufacturers Association Annual Meeting, Mar. 16, 2011, Charleston, SC, available online at: http://hardwoodcheckoff.org/Presentations/checkoffslides6.pptx.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

million square feet of plywood production will be required to pay the assessment under the hardwood checkoff as it is currently being proposed.[130]

As currently proposed, the initial assessment rate under the hardwood checkoff varies based on the entity that is paying the assessment and the product being produced.[131] Hardwood sawmills will be assessed $1 per $1,000 on sales of hardwood lumber.[132] Concentration yards and dry kiln facilities will also be required to pay an assessment of $1 per $1,000 in sales of hardwood lumber, but can subtract the purchase price of green lumber purchased from entities that have already paid an assessment on the green lumber.[133] Integrated facilities such as sawmills and dry kiln operations that produce value-added products will pay a reduced rate of $0.75 per $1,000 of sales of the value-added hardwood products.[134] Unlike producers of hardwood lumber and value-added hardwood products, producers of hardwood plywood will pay an assessment rate based on production volume instead of sales.[135] Hardwood plywood producers will be required to pay an assessment of $4 per 1,000 square feet of hardwood plywood produced.[136]

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130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

V. COMPARING THE SOFTWOOD AND HARDWOOD CHECKOFFS

While the softwood and hardwood checkoff programs are at different stages of implementation, some of the differences between the softwood checkoff program as proposed and the preliminary indications of the content of the hardwood checkoff program may be attributable to the very different industry structures of these two market segments. This section will compare the softwood and hardwood checkoff programs specifically examining the affected industry participants, the assessment structure, and the goals of the two checkoffs. Next, this section will suggest possible explanations for why some of the differences between the checkoff programs may be attributable to the fact that the softwood industry and hardwood industry are very different market segments. Lastly, this section will briefly suggest how the hardwood industry should follow the lead of the softwood industry when deciding how to structure the hardwood checkoff board.

A. Affected Industry Participants

The first main difference in the softwood lumber checkoff and the hardwood lumber checkoff is the industry participants to which each applies. The proposed softwood checkoff applies to domestic manufacturers and importers of softwood lumber.[137] The softwood checkoff program is applicable to products that are produced by sawmills from softwood logs such as lumber, flooring, and siding while more value-added products that require additional manufacturing, such as trusses, I-joist beams, and complete window and door frames are exempt from the assessment.[138]

137. *See supra* notes 68, 71-72 and accompanying text.

138. *See supra* notes 73-77 and accompanying text.

The preliminary hardwood checkoff applies to hardwood sawmills, kiln drying operations, concentration yards, and hardwood plywood manufacturers.[139] Unlike the softwood checkoff, the hardwood checkoff does not include importers of hardwood lumber. Another difference between the softwood and hardwood checkoffs is that the hardwood checkoff specifically applies to value-added products while the softwood checkoff specifically does not apply to value-added products.[140]

The first difference between the two checkoffs concerning the affected industry entities is that the softwood checkoff applies to importers as well as domestic producers while the hardwood checkoff only applies to domestic producers. This difference is likely because the United States softwood industry imports a much larger amount of lumber than does the domestic hardwood industry.[141] For example, the United States imported 24,626.2 million board feet of softwood lumber in 2005 compared to only 1,075.1 million board feet of hardwood lumber the same year.[142] Another possible explanation for the difference in inclusion of importers in the checkoff may be from the nature of the products themselves. Softwood products are more homogenous in nature and are used mainly in the construction industry for structural purposes. The majority of the United States softwood imports come from Canada and the species of lumber imported are also produced by manufacturers domestically. Since the products being imported and domestically produced are essentially the same, it makes sense to include

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139. *See supra* notes 120, 122-30 and accompanying text.

140. *See supra* notes 75-77, 127-28 and accompanying text.

141. James L. Howard, U.S. Timber Production, Trade, Consumption, and Price Statistics 1965 to 2005, Research Paper FPL-RP-637. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory, (2007), 60, available online at: http://www.fpl.fs.fed.us/documnts/fplrp/fpl_rp37.pdf

142. *Id.*

both in the checkoff because promoting softwood products will increase demand for products manufactured both domestically and abroad since there is no way to distinguish the two. In contrast, hardwood lumber is heterogeneous in nature. Different species of lumber are often better suited and preferred in different end applications. Additionally, it is easy to distinguish between domestic hardwood lumber and imported hardwood lumber because the species of hardwood lumber that are imported cannot be grown or produced in the United States. Therefore, it makes sense to exclude importers from the hardwood checkoff because the products being imported are distinctly different than the products being produced domestically, therefore, there will be no free-rider problem with imported products.

The next difference between the two checkoffs concerning the affected industry entities is that the softwood checkoff does not cover value-added products while the hardwood checkoff specifically includes value-added products.[143] This difference may be explained based on the different production practices in the softwood and hardwood industries. The softwood industry is comprised of large high volume sawmills that produce softwood lumber from harvested softwood logs. Usually, the sole function of a softwood sawmill is to break down logs into lumber. This lumber is then sold on the market for use in construction or sold to other manufacturing for further processing into value-added end products. In contrast, the hardwood industry is comprised of numerous small low volume sawmills. Like softwood sawmills the main function of hardwood sawmills is to produce lumber from harvested hardwood logs. However, many hardwood sawmills also contain operations to further produce value-added products such as flooring

143. *See supra* notes 73-77, 121, 127-28 and accompanying text.

and millwork. Therefore, it makes sense to have producers of hardwood value-added products pay the assessment since they are the same producers that are producing hardwood lumber and the same products will not be assessed twice. Similarly, it makes sense to exclude value added products from the softwood checkoff because different manufacturers than the one that manufactured the softwood lumber are producing these products. If the softwood checkoff were assessed on value-added products, then the assessment would be collected twice on the same piece of wood, once from the producer of the softwood lumber itself and again from the manufacturer of the value-added product made from the softwood lumber.

B. Assessment Structure

The second main difference between the softwood and hardwood checkoff programs is in how each structures the assessment rate. The softwood checkoff assessment will be collected based on production volume of softwood lumber.[144] The softwood checkoff program exempts softwood producers and importers that sale domestically or import less than 15 million board feet per fiscal year and larger producers will not have to pay the assessment on the first 15 million board feet of production.[145]

Unlike the softwood checkoff, the hardwood checkoff assessment is mainly based on sales of hardwood lumber rather than production volume.[146] The assessment based on sales will be collected from hardwood sawmills, concentration yards, and kiln drying operations with sales in excess of $2 million.[147] Also unlike the softwood checkoff, the

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144. *See supra* notes 69-70, 79-80 and accompanying text.

145. *See supra* notes 69-70 and accompanying text.

146. *See supra* notes 123-27, 132-36 and accompanying text.

147. *See supra* notes 123-27, 132-36 and accompanying text.

hardwood checkoff program does not include an exemption for the first $2 million in sales for all producers similar to how the softwood checkoff exempts the first 15 million board feet of production for all producers.[148] However, like the softwood checkoff, the hardwood checkoff is structured based on production volume for the assessment for hardwood plywood producers.[149]

The reason for the differences and similarities between the assessment structure in the softwood and hardwood checkoff programs is likely due to the nature of the two industries. The softwood industry is made up of fewer producers operating large volume sawmills to produce softwood lumber. Softwood producers often have more than one sawmill that they operate. In contrast, the hardwood lumber industry is made up of numerous producers operation smaller volume sawmills. Many hardwood producers also only operate a single sawmill as opposed to softwood producers who operate multiple sawmills. To illustrate this point one can see the difference in the production volume based on a comparison of production numbers from Pennsylvania, a leader in hardwood production, and Oregon, a leader in softwood production.[150] Based on the 2007 economic census, Pennsylvania contained 286 sawmills which produced $1,071,965,000 in business.[151] In contrast, Oregon had 115 sawmills which produced $2,296,580,000 in

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148. *See supra* notes 69-70, 132-34 and accompanying text.

149. *See supra* notes 135-36 and accompanying text.

150. 2007 U.S. Economic Census data for Sawmills available online at: http://factfinder.census.gov/servlet/IQRTable?_bm=y&-ds_name=EC0700A1&-NAICS2007=321113&-_lang=en.

151. *Id.*

business.[152] Therefore, even though Pennsylvania had more than double the amount of sawmills, Oregon sawmills produced over double the amount of business. This is likely attributable to the Pennsylvania sawmills being smaller low volume hardwood producers while the Oregon sawmills are likely large high volume softwood producers. Since the hardwood industry contains smaller operations, it is likely harder to track actual production numbers and production is likely to be more variable than in the softwood industry. Therefore, it makes sense that the hardwood checkoff assess hardwood producers based on sales that are more easily traceable in the fragmented market and that the softwood checkoff assess producers based on volume which is likely easier to trace with larger volume producers.

The reason that the hardwood checkoff assessment structure for hardwood plywood operations is based on production volume, like the assessment structure contained in the softwood checkoff, is also likely attributable to the nature of the industries. Unlike the hardwood lumber sector of the hardwood industry, the hardwood plywood industry consists of larger volume producers. To illustrate, again Pennsylvania contained 286 sawmills, of which nearly all are likely hardwood sawmills, that produced $1,071,965,000 in business.[153] In contrast, based on the 2007 economic census there were only 303 hardwood plywood manufacturers that produced $3,327,139,000 in business in the entire United States.[154] This appears to indicate that hardwood plywood producers operate fewer larger volume facilities. As discussed above, since hardwood

152. *Id.*

153. *Id.*

154. 2007 U.S. Economic Census data for Hardwood Veneer and Plywood Manufacturing available online at: http://factfinder.census.gov/servlet/IQRTable?_bm=y&-ds_name=EC0700A1&-NAICS2007=321211&-_lang=en.

plywood manufacturers tend to be larger producers it is likely that production volume of these producers can be more easily traced. Therefore, it makes sense to base the assessment on production volume for hardwood plywood manufacturers like the softwood checkoff because this sector of the hardwood market is more similar to the softwood industry than the other hardwood market segments.

C. Checkoff Goals

The last area for comparison of the softwood and hardwood checkoff programs is the goals that each industry intends to achieve through its respective checkoff. The softwood checkoff has an overall goal of increasing demand for softwood products with a focus on specific market segments and developing new markets for softwood lumber.[155] Likewise, the overall goal of the hardwood checkoff is to increase demand for hardwood lumber and plywood with a focus on promoting hardwood materials to specifiers in the building industry and funding research to examine hardwood lumber and plywood production.[156]

The overall goals of both the softwood and hardwood checkoff are basically the same, increase demand for wood products manufactured by the industry. This makes sense since both the softwood and hardwood industries are highly dependent upon the housing market for demand and have seen decreasing production levels due to the poor housing market. However, there are slight differences in how each checkoff appears to want to achieve this overall goal of increased demand. The softwood checkoff appears to have a focus on specific market segments and developing new market segments for

155. *See supra* notes 66-67 and accompanying text.

156. *See supra* notes 118-19 and accompanying text.

softwood lumber products. In contrast, the hardwood checkoff appears to have a greater focus on specifiers, like architects and builders, within the construction industry, and research focused on production rather than new markets. The difference in focus may be due to the fact that softwood lumber competes with different materials such as steel and concrete in the construction for structural applications while hardwood products are more likely to compete against other hardwoods in applications like cabinets and flooring. Therefore, a promotion strategy aimed at existing markets and developing new markets may help softwood products compete against other materials and increase demand through these new markets. While a promotion strategy aimed at actual specifiers and improving production may help increase demand and profit margins for hardwood products overall by lowering costs and making specifiers more aware of the benefits of specifying hardwood products.

D. Checkoff Board Structure

The proposed softwood checkoff has established a structure for the softwood checkoff board while the preliminary information on the hardwood checkoff does not contain a structure for the checkoff board. As proposed, the softwood checkoff board will be appointed based on regional production and import volume.[157] This structure insures that the regions actually producing the softwood products being assessed will have a proportionate amount of representation on the checkoff board, so that theoretically a majority decision of the board will reflect the majority of the industry. In constructing its checkoff board, the hardwood industry would be wise to follow a similar board member representation model based on production volume. Since the hardwood industry

157. *See supra* notes 91-96 and accompanying text.

is so highly concentrated, the hardwood checkoff board may be best comprised of members from specific states instead of regions for the highest producing states and groups of states or regional representatives for lower producing areas. Like the softwood checkoff board, this would help insure that the majority view of the hardwood checkoff board is best aligned with the majority view of the hardwood industry.

VI. CONCLUSION

The use of checkoff programs in the forest products industry is in its infancy. Currently, both the softwood and hardwood market segments are exploring the implementation of a checkoff. The softwood checkoff program is further along the process and has been published as a final order in the Federal Register. If the softwood program gains the required amount of support it should be put in place within the year. The hardwood checkoff program is still in its preliminary development stages with industry leaders working on producing a draft order to submit to the United States Department of Agriculture's Agricultural Marketing Service. The current information concerning the hardwood checkoff indicates that it will be in place within the next two to three years if it gains enough industry approval. The main differences between the two proposed checkoff programs appears to be related to the very different market structures of the softwood and hardwood industries.

As proposed, the softwood checkoff program will require domestic manufacturers and importers of softwood lumber to pay an assessment. This assessment is based upon production volume with an exemption included for small producers and importers. The softwood checkoff will cover all softwood products as defined by the Softwood Lumber Act of 2008, the major products being softwood lumber, flooring, and siding.

The hardwood checkoff is being designed to require an assessment from domestic manufacturers of hardwood lumber products and also includes an exemption for small producers. Unlike the softwood checkoff, the hardwood checkoff is designed to calculate the required assessment based upon sales instead of production volume for hardwood lumber products. Like the softwood checkoff, the hardwood checkoff will calculate the assessment based on volume for hardwood plywood manufacturers. The hardwood checkoff also differs from the softwood check because it is designed to reach more value-added products but still does exempt products such as furniture and completed pallets. In addition to value-added products, the hardwood checkoff will be assessed on hardwood lumber and plywood.

While the proposed checkoffs for the softwood and hardwood industries contain different provisions to account for the different market segments that they represent, both are being developed to increase demand for domestic forest products and lumber in particular. These markets have been greatly affected by the decline in the housing market. This makes it a good time to implement the checkoff programs to help increase demand and better help companies make it through the tough economic times until the housing market recovers. If properly implemented the softwood and hardwood checkoff programs may prove to be a valuable tool for the forest products industry.

If the checkoffs prove to be successful, other forest products market segments could examine whether they could also benefit by implementing a similar checkoff.[158] These market segments would benefit by having the softwood and hardwood market

158. U.S. Endowment, Press Release, March 12, 2010, Endowment Extends Check-off Work to Paper and Packaging, available online at: *www.usendowment.org/images/NEWS_US_Endowment_3.12.pdf* (indicating that a study has begun on the feasibility of a checkoff program for the paper and packaging market segment of the forest products industry).

segments breaking ground for using a checkoff program in the forest products industry and could use either program as a framework for developing its own checkoff program. The very different market structure of the softwood and hardwood industries will allow additional forest products market segments to base their checkoff program on the one that has a more similar market segment. Overall, time will tell how successful the softwood and hardwood checkoff programs are and whether any additional forest products market segments decide to follow course.