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C-122-839  
New Shipper Review  
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Operations, Office 3: KJ

**MEMORANDUM TO:** Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

**FROM:** Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum: Final Results of  
Countervailing Duty New Shipper Review: Certain Softwood  
Lumber Products from Canada

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### Summary

We have analyzed the comments submitted by interested parties<sup>1</sup> in the new shipper review of the countervailing duty (CVD) order on certain softwood lumber products from Canada. Seed Timber Co. Ltd. (Seed Timber) is the producer/exporter of subject merchandise covered by this review. The review period is January 1, 2003, through December 31, 2003.

As a result of our analysis, we have not made any modifications to the Preliminary Results.<sup>2</sup> The "Analysis of Programs" section below describes the decisions made in this new shipper review. Also below is the "Analysis of Comments" section in which we discuss the issues raised by interested parties. We recommend that you approve the positions which we have developed below in this memorandum.

We received comments on the following issues:

Comment 1: U.S. Log Data  
Comment 2: Lower-Grade Cedar  
Comment 3: Pond Values

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<sup>1</sup> Case briefs were submitted on behalf of the Coalition of Fair Lumber Imports Executive Committee (the petitioners), the Government of Canada, and the Government of British Columbia.

<sup>2</sup> See Certain Softwood Lumber Products from Canada: Preliminary Results of Countervailing Duty New Shipper Review, 70 FR 22848 (May 3, 2005) (Preliminary Results).

Comment 4: Domestic Log Prices

Comment 5: Cross-Border U.S. Log Price Benchmarks

Comment 6: Net Benefit Calculation

## **Company History**

Seed Timber, located in the province of British Columbia (B.C.), was incorporated in July 2001 and commenced active operations in September 2001. Seed Timber purchases logs from various suppliers and then rents either a sawmill or remanufacturing facility to custom cut the logs into softwood lumber products, which the company sells directly to customers in Canada and the United States. During the review period, Seed Timber purchased Western Red Cedar (WRC) Crown-origin logs from a number of suppliers. Until December 1, 2003, Seed Timber was affiliated with and cross-owned by Storey Creek Trading Ltd. (Storey Creek), a log broker, also located in B.C. Storey Creek reported that it does not and has never produced or exported the subject merchandise.

## **I. ANALYSIS OF PROGRAMS**

### ***A. Program Determined to Be Countervailable***

#### **1. B.C. Provincial Stumpage Program**

In the Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada, 69 FR 75917 (December 20, 2004) (Final Results of 1st Review), we found the Government of British Columbia's (GOBC) stumpage program to be countervailable. Specifically, we found that the GOBC's stumpage program constitutes a financial contribution in the form of a provision of a good within the meaning of section 771(5)(D)(iii) of the Tariff Act of 1930, as amended (the Act), is specific under section 771(5A)(D)(iii)(I) of the Act because the provincial stumpage subsidy program is used by a limited number of enterprises, and confers benefits through the provision of a good for less than adequate remuneration under section 771(5)(E)(iv) of the Act. In addition, we determined that the stumpage and log markets are closely intertwined and therefore Crown stumpage prices affect both stumpage and log prices. See Issues and Decision Memorandum: Final Results of Administrative Review of Certain Softwood Lumber Products from Canada (Final Results of 1st Review Memorandum) (December 13, 2004) at 14. No new information has been provided in this review to warrant reconsideration of our earlier findings.

During the review period, Seed Timber purchased Crown-origin WRC logs. Because of the Department's prior findings that Crown logs are subsidized, we have reason to believe that those purchases may have provided Seed Timber with a "competitive benefit" within the meaning of section 771A(b) of the Act. Therefore, we evaluated whether a competitive benefit was, in fact, bestowed on Seed Timber.

To determine whether a competitive benefit exists, section 351.523(c)(1) of the Department's regulations states that the Department will compare the price for the subsidized

input product (*i.e.*, logs) to a benchmark input price and outlines five benchmark input price alternatives in order of preference. Based on information available to the Department, we determined that, under tier (v) of the benchmark hierarchy,<sup>3</sup> U.S. log prices for WRC are the most appropriate benchmark input prices to use. See the April 25, 2005, Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, from Melissa G. Skinner, Director, AD/CVD Operations, Office 3, concerning Benchmark Input Price Hierarchy (Benchmark Hierarchy Memorandum).<sup>4</sup> The U.S. log prices are from private transactions between log sellers and sawmills for logs harvested from private lands and are thus market-determined prices.<sup>5</sup> Use of a U.S. log price benchmark is also consistent with our benefit calculation in the Final Results of 1st Review Memorandum (see pages 16-18).

We selected U.S. Pacific Northwest (U.S. PNW) log prices for WRC as the appropriate benchmark to evaluate whether a competitive benefit was bestowed on Seed Timber through the purchase of Crown-origin WRC logs from various B.C. log suppliers. We obtained U.S. log prices for WRC for calendar year 2003, from publicly available materials, which are on the record of this new shipper review. See the April 20, 2005, Memorandum to the File concerning U.S. Log Price Data (Log Price Memorandum).<sup>6</sup>

Based on our analysis, we find that Seed Timber received a competitive benefit through some of its purchases of Crown-origin logs because the price paid for those logs was lower than the benchmark U.S. log price and that the subsidized logs (the only input product for the production of softwood lumber) had a significant effect on Seed Timber's cost of producing the subject merchandise. Therefore, in accordance with section 771A of the Act, we determine that Seed Timber received countervailable subsidies in 2003.

To calculate the countervailable benefit conferred on Seed Timber, we multiplied the calculated price differential between the benchmark log price and the price Seed Timber paid for the Crown-origin logs by the volume of the Crown-origin logs purchased. Because these are non-recurring subsidies, we then expensed the total benefit bestowed on Seed Timber in the year of receipt, *i.e.*, the year in which the logs were purchased and entered a sawmill for processing. See 19 CFR 351.524(a). As in the Final Results of 1st Review, we did not include in our calculation those logs which Seed Timber acquired and resold without any processing (*i.e.*, logs that did not enter a sawmill). Also, consistent with our approach in the expedited reviews, we calculated a subsidy rate which applies only to the softwood lumber produced by Seed Timber by dividing the benefit by the appropriate value of Seed Timber's sales (*i.e.*, scope and non-scope softwood lumber products and softwood lumber by-products, net of resales). See, e.g., page 3 of

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<sup>3</sup> Tier (v) permits the use of any surrogate price deemed appropriate by the Secretary. See section 351.523(c)(1)(v) of the Department's regulations.

<sup>4</sup> This public document is on file in the Department's Central Records Unit (CRU), Room B-099 of the Main Commerce building.

<sup>5</sup> State and Federal timber is sold as stumpage. Some of the transactions in question may represent logs harvested from these lands and resold in a separate private transaction. Private land accounts for the majority of logs.

<sup>6</sup> This public document is available in the CRU.

the Issues and Decision Memorandum that accompanies the Final Results, Reinstatement, Partial Rescission of Countervailing Duty Expedited Reviews, and Company Exclusions: Certain Softwood Lumber Products From Canada (69 FR 10982) (March 9, 2004). On this basis, we determine a net countervailable subsidy of 2.22 percent *ad valorem* for Seed Timber.

B. *Programs Determined to Be Not Used*

Seed Timber and its previously affiliated company, Storey Creek, reported that they did not apply for, use, or benefit from the programs listed below; therefore, we determine that neither company used these programs.

1. Non-Stumpage Programs of the Government of British Columbia

- a. Grants, Loans, and Loan Guarantees Provided from Forest Renewal BC
- b. Payments Associated with Tenure Reclamation
- c. Land-Base Investment Program
- d. Forestry Innovation Investment Program
- e. Allowances for Harvesting Beetle-Infested Timber
- f. Tax Breaks for Timber Harvesters on Private Timber Land

2. Non-Stumpage Programs of the Federal Government of Canada

- a. Non-Repayable Grants and Conditionally Repayable Contributions from the Department of Western Economic Diversification
- b. Workers Assistance Packages
- c. Softwood Marketing Subsidies
- d. Litigation Related Payments to Lumber Trade Associations

**II. TOTAL AD VALOREM RATE**

The total net subsidy rate for Seed Timber is 2.22 percent *ad valorem* for the period January 1, 2003, through December 31, 2003.

**III. ANALYSIS OF COMMENTS**

*Comment 1: U.S. Log Data*

Petitioners note that the Department, to establish the market value of Seed Timber's WRC log inputs, used U.S. log price data submitted on the record of the ongoing second administrative review. Specifically, the petitioners state that the Department used U.S. WRC log prices from western Washington, as reported by Log Lines, and from western Oregon, as reported by the Oregon Department of Forestry (ODF), and that the Department considered the value of logs only from Log Lines' Region 1 (Puget Sound area) and ODF Region 1 (northwest

Oregon). See Log Price Memorandum at 1. Petitioners argue that there is no reason to exclude log price data from other portions of coastal Washington and Oregon (i.e., Log Lines' Regions 2 through 6 and ODF Region 2/3), where prices for WRC, from those areas, are on the record.

*Department's Position*

For these final results, we continue to use only Region 1 for U.S. log prices reported by Log Lines and ODF, respectively. The record indicates that the specific log prices for WRC are reported in Region 1 of these data sources. In the other regions suggested by petitioners, log prices are reported for Red Cedar (see, e.g., Region 2/3 reported by ODF). Red Cedar is a species group comprised of WRC, Incense Cedar, and Eastern Red Cedar as defined by *Random Lengths*.<sup>7</sup> Seed Timber, however, reported that it purchased only WRC logs during the review period.<sup>8</sup> Therefore, we have taken a conservative approach in constructing our U.S. log benchmark using only WRC prices to conduct the most accurate "apples-to-apples" comparison between U.S. PNW and B.C. Coast log prices. Because log prices reported as Red Cedar may include logs other than WRC, we find that it is not appropriate to include Red Cedar log prices in the construction of the U.S. log price benchmark for WRC.

*Comment 2: Lower-Grade Cedar*

Petitioners note that some of Seed Timber's log purchases were of salvaged logs from old logs that had been used for bridges and other applications. They argue that while some salvaged logs are of lower quality and value than new logs, salvaged logs can sometimes have higher value (e.g., old logs may have unique appearance properties due to aging and patina). Therefore, the petitioners contend, the Department should examine whether the salvaged logs are actually of low value by comparing the prices paid by Seed Timber with the average prices for logs paid in the Vancouver Log Market, which have been provided to the Department by the GOBC in the course of the second administrative review.<sup>9</sup> Petitioners argue that if Seed Timber paid an above-average price for salvaged WRC logs, it would be incorrect to compare those prices to a lower-value "wormy" log benchmark.

*Department's Position*

There is no information on the record of this review which indicates that the salvaged logs purchased by Seed Timber were anything but lower quality, lower value logs. Therefore, for these final results, we continue to compare the price paid by Seed Timber for the salvaged logs to a U.S. log price benchmark constructed from similar quality logs. See the September 22, 2005,

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<sup>7</sup> See *Terms of the Trade*, Random Lengths Publications, Inc. (2000), 4<sup>th</sup> Edition at 271.

<sup>8</sup> See Seed Timber's April 7, 2005, Questionnaire Response at 2.

<sup>9</sup> See GOBC's November 22, 2004, Questionnaire Response at exhibits BC-S-7 and BC-LER-27.

Final Results Calculation Memorandum (Final Calculations) at 2 for further discussion of the salvaged logs and construction of the U.S. log benchmark.

*Comment 3: Pond Values*

Petitioners note that the ODF data used by the Department is comprised of “pond values,” which are estimated delivered values that a mill “will pay” for logs rather than actual reported log transaction prices. See Log Price Memorandum at Tab A, “Log Terms Definitions.” Instead of using the ODF data, petitioners argue that the Department should use data reported by Log Lines for Oregon, which reflect actual transaction prices.

*Department’s Position*

ODF does report log prices in “pond values,” i.e., the amount a mill will pay for a log delivered to the mill location. Similarly, the Log Lines data also contain offer prices along with actual prices. The Log Lines’ 2004 Statistical Yearbook states that, “Log Lines sources are asked to quote offered and actual prices in effect during the second half of the month for delivered loads . . .” of logs. See Log Price Memorandum at Tab B, “Data Timeliness” at 1. Since both data sources include approximate log prices, we find no basis to exclude the ODF log prices in constructing the U.S. log benchmark.

*Comment 4: Domestic Log Prices*

The Government of Canada (GOC) and GOBC argue that the Department cannot conclude that Seed Timber did not pay market prices for the logs it purchased in arm’s-length transactions. The GOC and GOBC make three specific arguments. They first argue that the Department’s theory that stumpage prices determine log prices represents a departure from its position in the ongoing North American Free Trade Agreement (NAFTA) remand proceeding that log prices are driven by prices for downstream products. In that proceeding, the GOC and GOBC argue the Department explained the application of the derived demand principle. See First Remand Determination at 12 and n. 23. The GOC and GOBC contend that the Department has cited no reasons why those principles should not apply in Seed Timber’s review.

The GOC and GOBC also argue that this review contains no evidence that logs purchased by Seed Timber from unaffiliated suppliers in arm’s-length transactions do not reflect market prices. They contend that while the Department incorporated its conclusion from the final results of the first administrative review that stumpage prices drive log prices, it disregarded evidence, also on the record of the first review, which shows that B.C. has large and robust log markets with profit-maximizing participants conducting arm’s-length transactions on a commercial basis.

Further, the GOC and GOBC argue that the Department cannot legally presume that any alleged stumpage subsidy conferred on Seed Timber’s suppliers passed through in arm’s-length transactions to Seed Timber. See *United States – Final Countervailing Duty Determination With Respect To Certain Softwood Lumber From Canada*, Report of the Appellate Body, WT/DS257/AB/R, para. 146. The GOC and GOBC argue that the Department must establish

that a subsidy conferred on input producers is passed through, at least in part, to downstream processors operating at arm's length from the input producers.

*Department's Position*

The arguments which the Department made before the NAFTA panel were based on specific evidence and arguments submitted on the record of the underlying aggregate investigation. As such, those arguments are not relevant to this new shipper review, the conclusions of which are based on a company-specific examination and different evidence. As explained above, because Seed Timber purchased Crown-origin logs, we evaluated whether a competitive benefit was bestowed on the company. We determined that Seed Timber received a competitive benefit through its purchases of Crown-origin logs because the price paid for those logs was lower than the benchmark U.S. log price and the subsidized logs have a significant effect on Seed Timber's cost of producing the subject merchandise.

Concerning the governments' arm's-length and pass-through arguments, we did not make any presumptions regarding whether Seed Timber's log purchases were or were not arm's-length transactions. A new shipper review involves a company-specific analysis by which the Department determines and assigns a subsidy rate to a particular company. As instructed by section 771A of the Act, we conducted a competitive benefit analysis to determine whether a countervailable benefit was bestowed on Seed Timber through its purchases, from both affiliated and unaffiliated suppliers, of Crown-origin logs, which we earlier determined are subsidized by the GOBC.<sup>10</sup> In this instant review, we have found that Seed Timber did receive competitive benefits from its purchases of Crown-origin logs during the review period. As discussed in section 771A(b)(1) of the Act, the Department will determine whether a competitive benefit has been bestowed when the price for the input product is lower than the benchmark input price. This is precisely what the Department determined in this review. As such, the governments are incorrect to say that the Department in any way presumed that the alleged stumpage subsidy conferred on Seed Timber's suppliers passed through in arm's-length transactions to Seed Timber.

*Comment 5: Cross-Border U.S. Log Price Benchmarks*

The GOC and GOBC argue that the Department unlawfully used U.S. log price benchmarks under tier (v) of its upstream subsidy regulation to calculate Seed Timber's stumpage benefit, ignoring clear directives from both NAFTA and World Trade Organization (WTO) panels that cross-border benchmarks cannot be used in the circumstances present in this

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<sup>10</sup> We determined, based on evidence submitted on the record of the underlying investigation and the first administrative review, that the GOBC's stumpage program is countervailable. See Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada (May 21, 2001) at 74-75, and the Final Results of 1<sup>st</sup> Review Memorandum at 8-10.

proceeding. The GOC and GOBC state that the NAFTA panel reviewing the underlying final determination held that “Commerce has not presented substantial evidence to support that market conditions in Canada and the United States are comparable, nor that its attempted adjustments adequately account for such conditions.” See the August 13, 2003, Decision of the NAFTA Panel at 32. The NAFTA panel also noted, in overturning the Department’s cross-border methodology in the investigation, that “the statute requires an analysis based on market conditions in Canada.” See Report of the Appellate Body, *U.S.-CVD Final*, at paras. 108-109.

The GOC and GOBC argue that nothing on the record of this new shipper review justifies the use of cross-border U.S. log price benchmarks, emphasizing that the Department simply incorporated its findings from the Final Results of 1st Review “that the forest products industry in B.C. and the U.S. Pacific Northwest are comparable.” See Benchmark Hierarchy Memorandum at 3. Moreover, the GOC and GOBC contend that the Department has cited no evidence in the Preliminary Results in support of its conclusion that “logs harvested in the U.S. Pacific Northwest are not only representative of the logs harvested in B.C., but also representative of the market value of logs sold in B.C.” See Id. The GOC and GOBC also argue that the Department has not shown that the MBF-to-m<sup>3</sup><sup>11</sup> conversion factor of 6.76 used to convert the U.S. logs to a B.C. equivalent volume is appropriate for the specific comparisons in this review. See the April 26, 2005, Memorandum to the File concerning Preliminary Calculations (Preliminary Calculations) at 2. The GOC and GOBC further contend that the record of the first administrative review contains evidence that Canadian log market conditions are substantially different from U.S. log market conditions (e.g., differences in log characteristics and transportation costs). The GOC and GOBC argue that economic evidence on the record of the first review shows that logs do not obey the Law of One Price<sup>12</sup> and that log prices do not equilibrate within jurisdictions, much less across borders.

#### *Department’s Position*

At the outset, we note that the NAFTA and WTO decisions in question are not precedent that must be followed in this segment of the proceeding; they related to determinations made in an aggregate examination, not the type of company-specific examination undertaken here, and they did not address a competitive benefit analysis under section 351.523(c)(1) of the Department’s regulations. Moreover, under tier (v) of the benchmark input price hierarchy at section 351.523(c)(1) of the regulations, the Department can use *any other surrogate price deemed appropriate by the Secretary* after evaluating the feasibility and appropriateness of benchmark options in tier (i) through (iv). The regulations do not specify how the Secretary is to determine an appropriate surrogate. Therefore, such an analysis depends upon information publicly available to the Department and must be developed on a case-by-case basis. As articulated in the April 25, 2005, Benchmark Hierarchy Memorandum, absent other benchmark

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<sup>11</sup> Thousand Board Feet to Cubic Meters.

<sup>12</sup> The “law of one price” holds that market prices for goods can be expected to be the same in different geographic areas, allowance being made for transportation costs.



prices, we determined that U.S. log prices are reasonable surrogate prices for assessing whether Seed Timber received a competitive benefit from its purchases of Crown-origin logs. The U.S. log prices used by the Department are from private transactions between log sellers and sawmills for logs harvested from private lands and are thus market-determined prices.

Further, in the Final Results of 1st Review, we undertook a thorough analysis of the record evidence that included several expert studies which compared the forest products industry in the U.S. PNW and B.C. As a result of that analysis, we concluded that the species in the U.S. PNW are most representative of the species in B.C., and that log prices in the U.S. PNW are the most representative available data regarding the market value of the timber harvested in B.C. See Final Results of 1<sup>st</sup> Review Memorandum at 16-18. These expert studies attested to the comparability of the U.S. PNW and B.C. forest products industries, identifying many underlying similarities across the geographic region, specifically that the same species of softwood timber are harvested and produced in the U.S. PNW and in B.C., and that the commercially important species are highly comparable. We therefore determined that we can rely on the prices for U.S. logs for those same species that are located and harvested in B.C.

Concerning the conversion factor, there has been substantial discussion since the underlying investigation regarding the appropriateness of various figures. In the Final Results of 1st Review, we concluded that the *Conversion of Board Foot Scaled Logs to Cubic Meters in Washington State 1970-1998* study authored by the United States Forest Service (USFS) presented the most appropriate information for converting logs from MBF-to-m3. See the December 13, 2004, Memorandum to the File concerning Final Calculations for the Province of British Columbia: First Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada at 2. Specifically, the study measured the average diameter of sawlogs entering sawmills over the last 28 years and found a conversion factor of 6.76 for Scribner Long logs. We determined that the USFS study is the most appropriate source for the MBF-to-m3 conversion factor because: (1) it covered the actual sawmills which pay the log prices used to construct the U.S. log price benchmark; (2) it is current; (3) it is peer reviewed; and (4) it was created outside the context of litigation. As such, for these final results, we continue to source from the USFS study the MBF-to-m3 conversion factor to perform Seed Timber's benefit calculations.

*Comment 6: Net Benefit Calculation*

The GOC and GOBC argue that the Department disregarded individual log price comparisons which yielded negative benefits. They argue that this methodology violates the statutory mandate to calculate the "net countervailable subsidy" (see 19 U.S.C. § 1677(6)) and is inconsistent with the ruling of the NAFTA panel in the appeal of the underlying investigation that the Department must calculate the "net countervailable subsidy" in British Columbia. See Decision of the NAFTA Panel, *Certain Softwood Lumber from Canada*, Secretariat File No. USA-CDA-2002-1904-03 (June 7, 2004) at 18 (June 2004 Panel Decision). The GOC and GOBC state that a calculation of the "net countervailable subsidy" should account for all price comparisons whether they yield positive or negative results. By contrast, the treatment of

negative benefit amounts as zeros distorts the net calculation by inflating the total benefit found and, therefore, the Department should correct Seed Timber's calculations accordingly.

*Department's Position*

In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions. As such, the GOC and GOBC are seeking an impermissible offset – a credit for transactions that did not provide a subsidy benefit. Such an adjustment is not permitted under the statute and is inconsistent with the Department's practice. A list of permissible offsets is provided under 19 U.S.C. § 1677(6)); however, offsetting the benefit calculated with a “negative” benefit is not one of them.<sup>13</sup>

Regarding the Canadian Parties' citation to the June 2004 Panel Decision, as indicated above in Comment 5, that decision is not binding precedent on the Department. In addition, as discussed above in Comment 4, the arguments which the Department made before the NAFTA panel in question were based on specific evidence and arguments submitted on the record of the underlying aggregate investigation and, as such, those arguments are not relevant to this new shipper review, the conclusions of which are based on a company-specific examination, and on different evidence.

Moreover, the facts of this new shipper review are distinct from those of the June 2004 Panel Decision. In the June 2004 Panel Decision, the Panel determined that standing timber of Crown-origin in B.C. is sold by the tree stand and, thus, instructed the Department to calculate the benefit attributable to individual tree stands, as opposed to calculating the benefit on a species-specific basis. This ruling resulted in the Department cumulating the “negative” and “positive” benefits within tree stands. In contrast, in this new shipper review, we are analyzing Seed Timber's purchase of Crown-origin logs.

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<sup>13</sup> The three offsets permitted by 19 U.S.C. § 1677(6)) are:

For the purposes of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of –

- A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive the benefit of the countervailable subsidy,
- B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and
- C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this new shipper review in the Federal Register.

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Agree

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Disagree

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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Date