UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-122-854
Investigation
Public Document
E&C/OI: Team

July 27, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Supercalendered Paper from Canada

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I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of supercalendered paper (SC paper) in Canada, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On February 26, 2015, the Coalition For Fair Paper Imports[1] (the petitioner) filed a petition with the Department seeking the imposition of countervailing duties (CVDs) on imports of SC paper from Canada.[2] We sent supplemental questions to the petitioner on March 3, 2015.[3] On March 9, 2015, the petitioner submitted its supplemental petition response.[4] In accordance with section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the Government of Canada

[1] The Coalition For Fair Paper Imports is comprised of Madison Paper Industries and Verso Corporation.
[2] *See* letter from the petitioner, "Petition for the Imposition of Countervailing Duties on Supercalendered Paper From Canada," (February 26, 2015) (Petition).
[3] *See* letter from the Department to the petitioner, "Petition for the Imposition of Countervailing Duties on Imports of Supercalendered Paper From Canada: Supplemental Questions," (March 3, 2015).
[4] *See* letter from the petitioner to the Department, "Supercalendered Paper From Canada/Petitioner's Response To The Department's Questions Regarding The Petition," (March 9, 2015).

(GOC) in the Herbert C. Hoover Building on March 12, 2015.[5] On March 18, 2015, the Department initiated a CVD investigation on SC paper from Canada.[6]

We stated in the *Initiation Notice* that we would conduct respondent selection subsequent to the initiation. On March 19, 2015, the Department released Customs and Border Protection (CBP) entry data under administrative protective order (APO).[7] We received timely-filed comments from Irving Paper Limited (Irving) on March 24, 2015; from Port Hawkesbury Paper LP (Port Hawkesbury) on March 24, 2015; from Catalyst Paper Corporation (Catalyst) on March 25, 2015; the petitioner on March 25, 2015; and from Resolute Paper FP Canada Inc. (Resolute) on March 25 and March 27, 2015.[8] On March 30, 2015, we also received and accepted comments that the GOC originally submitted on March 27, 2015.[9] Based upon the CBP entry data, we selected Port Hawkesbury and Resolute as mandatory respondents on April 3, 2015.[10] We received additional comments on our respondent selection from Irving on April 8, 2015, and from Catalyst on April 9, 2015.[11]

On April 6, 2015, we sent our CVD investigation questionnaire to the GOC to request information regarding the alleged subsidies.[12] We received affiliation responses from Port Hawkesbury and Resolute on April 20, 2015.[13] We sent supplemental questionnaires on these

[5] *See* Department Memorandum, "Ex-Parte Memorandum – Consultations with the Government of Canada on the Countervailing Duty Petition on Supercalendered Paper from Canada," (March 13, 2015).
[6] *See Supercalendered Paper from Canada: Initiation of Countervailing Duty Investigation,* 80 FR 15981 (March 26, 2015) (*Initiation Notice*), and Countervailing Duty Investigation Initiation Checklist: Supercalendered Paper from Canada (March 18, 2015) (Initiation Checklist).
[7] *See* Department Memorandum, "Release of U.S. Customs and Border Protection Data," (March 19, 2015).
[8] *See* letter from Irving, "Supercalendered Paper from Canada: Comments of Irving Paper Limited on Release of CBP Data and Request for Voluntary Respondent Treatment," (March 24, 2015); letter from Port Hawkesbury, "Supercalendered Paper from Canada – Respondent Selection Comments," (March 24, 2015); letter from Catalyst, "Supercalendered Paper from Canada: Catalyst Paper's Comments on CBP Data," (March 25, 2015); letter from the petitioner, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Petitioner's Comments on Respondent Selection," (March 25, 2015); letter from Resolute, "Supercalendered Paper from Canada: Respondent Selection," (March 25, 2015); and second letter from Resolute, "Supercalendered Paper from Canada: Respondent Selection," (March 27, 2015).
[9] *See* letter from the GOC to the Department, "Supercalendered Paper from Canada: Request for Reconsideration of Rejection of March 27th Comments," at Attachment 1.
[10] *See* Department Memorandum, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Respondent Selection," (April 3, 2015) (Respondent Selection Memo). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.
[11] *See* letter from Irving, "Supercalendered Paper from Canada: Request of Irving Paper Limited for Reconsideration of the Department's Respondent Selection Decision," (April 8, 2015); and letter from Catalyst, "Supercalendered Paper from Canada: Catalyst Paper's Request for Reconsideration of Respondent Selection and Request for Meeting," (April 9, 2015).
[12] *See* letter from Department to the GOC, "Investigation of Supercalendered Paper from Canada: Countervailing Duty Questionnaire," (April 6, 2015) (IQ).
[13] *See* letter from Port Hawkesbury, "Supercalendered Paper from Canada – Affiliated Companies Response," (April 20, 2015) (Port Hawkesbury Affiliation Response); and letter from Resolute "Supercalendered Paper from Canada Questionnaire Response," (April 20, 2015).

affiliation responses to Port Hawkesbury and Resolute on April 24, 2015.[14] We received responses to these supplemental questionnaires from Port Hawkesbury and Resolute on May 1, 2015.[15] We sent a second supplemental questionnaire on affiliation issues to Port Hawkesbury on May 8, 2015.[16] We received a response to this questionnaire from Port Hawkesbury on May 15, 2015.[17]

We received responses to our initial questionnaire (IQ) from the GOC, Port Hawkesbury, and Resolute on May 27, 2015.[18] We sent supplemental questionnaires to Resolute on June 2, 2015; to Port Hawkesbury on June 17, 2015; and to the GOC on June 19, 2015.[19] Resolute replied on June 12, 2015; Port Hawkesbury replied on July 6, 2015; and the GOC replied on July 7, 2015.[20] We sent a second supplemental questionnaire to Resolute on July 10, 2015, to which Resolute replied on July 15, 2015.[21]

On May 28, 2015, Catalyst and Irving submitted voluntary responses to our IQ.[22] However, on April 3, 2015, we notified all interested parties that we are examining only Port Hawkesbury and Resolute as respondents in this investigation.[23] Moreover, on May 1, 2015, we confirmed our determination that we did not have the resources to select additional mandatory respondents, nor were we able to select Catalyst or Irving as voluntary respondents because to do so would be

[14] *See* letter from Port Hawkesbury, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Affiliated Parties Supplemental Questionnaire," (April 24, 2015); and letter from Resolute, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Affiliated Parties Supplemental Questionnaire," (April 24, 2015).
[15] *See* letter from Resolute, "Supercalendered Paper from Canada: Supplemental Affiliated Parties Questionnaire Response," (May 1, 2015) (Resolute Supplemental Affiliation Response); and letter from Port Hawkesbury, "Supercalendered Paper from Canada – Reply to Supplemental Affiliation Questionnaire," (May 1, 2015).
[16] *See* letter from Department to Port Hawkesbury, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Affiliated Parties Second Supplemental Questionnaire," (May 8, 2015).
[17] *See* letter from Port Hawkesbury, "Supercalendered Paper From Canada – Second Supplemental Affiliation Questionnaire Response," (May 15, 2015) (Port Hawkesbury Second Affiliation Response).
[18] *See* letter from GOC, "GOC Volume I: Narrative Response and Exhibits GOC-GEN-1 to GOC-GEN-8," (May 27, 2015) (GQR); *see also* letter from Port Hawkesbury, "Supercalendered Paper from Canada – Initial Questionnaire Response," (May 27, 2015) (PQR); *see also* letter from Resolute, "Supercalendered Paper from Canada: Section III Questionnaire Response," (May 27, 2015) (RQR).
[19] *See* letter to Resolute, "Countervailing Duty Investigation of Supercalendered Paper from Canada: First Supplemental Questionnaire," (June 2, 2015); *see also* letter to Port Hawkesbury, "Countervailing Duty Investigation of Supercalendered Paper from Canada: First Supplemental Questionnaire," (June 17, 2015); *see also* letter to the GOC, "Countervailing Duty Investigation of Supercalendered Paper from Canada: First Supplemental Questionnaire," (June 19, 2015).
[20] *See* letter from Resolute, "Supercalendered Paper from Canada: First Supplemental Questionnaire Response," (June 12, 2015) (RSQR); *see also* letter from Port Hawkesbury, "Supercalendered Paper from Canada – Supplemental Questionnaire Response," (July 6, 2015) (PSQR); *See also* letter from the GOC, "Supercalendered Paper from Canada: First Supplemental Questionnaire Response," (July 7, 2015) (GSQR).
[21] *See* letter to Resolute, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Pre-Preliminary Supplemental Questionnaire," (July 10, 2015); *see also* letter from Resolute, "Resolute's Response to Pre-Preliminary Supplemental Questionnaire," (July 15, 2015) (RSQR2).
[22] *See* letter from Irving dated May 28, 2015, "Supercalendered Paper from Canada: Response of Irving Paper Limited to Section III of the Countervailing Duty Questionnaire; *see also* letter from Catalyst dated May 28, 2015, "Supercalendered Paper from Canada: Catalyst's Questionnaire Response and Request for Reconsideration of Voluntary Respondent Treatment."
[23] *See* Respondent Selection Memo.

unduly burdensome and would inhibit the timely completion of this investigation.[24] Therefore, we have not analyzed any voluntary responses.[25]

Postponement of the Preliminary Determination: On April 9, 2015, the petitioner requested that the Department postpone the preliminary determination.[26] The Department granted the petitioner's request and, on April 15, 2015, postponed the preliminary determination until July 27, 2015, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[27]

B. Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.[28] We did not receive comments on the scope.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is supercalendered paper (SC paper). SC paper is uncoated paper that has undergone a calendering process in which the base sheet, made of pulp and filler (typically, but not limited to, clay, talc, or other mineral additive), is processed through a set of supercalenders, a supercalender, or a soft nip calender operation.[29]

The scope of this investigation covers all SC paper regardless of basis weight, brightness, opacity, smoothness, or grade, and whether in rolls or in sheets. Further, the scope covers all SC

[24] *See* Respondent Selection Memo; *see also* Memorandum to James Maeder, Senior Director, Office I, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Whether to Select Additional Mandatory and/or Voluntary Respondents," (May 1, 2015).
[25] On June 2, 2015, Irving requested that the Department revise its respondent selection determination based upon information contained in parties' questionnaire responses. *See* letter from Irving to the Department dated June 2, 2015, "Supercalendered Paper from Canada: Request of Irving Paper Limited for Mandatory Respondent Status Based on Questionnaire Response Information." Consistent with its practice, however, the Department made its respondent selection determination at the outset of the investigation based upon CBP entry data. *See* Respondent Selection Memo. Therefore, we are not granting Irving's request.
[26] *See* letter from the petitioner, "Supercalendered Paper From Canada: Request For Postponement Of The Preliminary Decision" (April 9, 2015).
[27] *See Supercalendered Paper From Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 80 FR 22477 (April 22, 2015).
[28] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice*, 80 FR at 15982.
[29] Supercalendering and soft nip calendering processing, in conjunction with the mineral filler contained in the base paper, are performed to enhance the surface characteristics of the paper by imparting a smooth and glossy printing surface. Supercalendering and soft nip calendering also increase the density of the base paper.

paper that meets the scope definition regardless of the type of pulp fiber or filler material used to produce the paper.

Specifically excluded from the scope are imports of paper printed with final content of printed text or graphics.

Subject merchandise primarily enters under Harmonized Tariff Schedule of the United States (HTSUS) subheading 4802.61.3035, but may also enter under subheadings 4802.61.3010, 4802.62.3000, 4802.62.6020, and 4802.69.3000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

V. INJURY TEST

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On April 14, 2015, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of SC paper from Canada.[30]

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 13 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[31] The Department notified the respondents of the 13-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

[30] *See Supercalendered Paper from Canada; Determination*, 80 FR 21263 (Preliminary) (April 17, 2015).
[31] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard.[32] According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[33]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[34]

Port Hawkesbury

Port Hawkesbury identified the following companies and their roles, and responded to the Department's questionnaires on their behalf:[35]

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[32] *See Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*).
[33] *Id.*, 63 FR at 65401.
[34] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[35] *See generally* PQR.

- 6879900 Canada Inc.
- Port Hawkesbury Investments Ltd. (Port Hawkesbury Investments)
- Port Hawkesbury Paper GP (Port Hawkesbury GP)
- Port Hawkesbury Paper Holdings Ltd. (Port Hawkesbury Holdings)
- Port Hawkesbury Paper Inc. (Port Hawkesbury Inc.)
- Port Hawkesbury Paper LP (Port Hawkesbury)
- Pacific West Commercial Corporation (PWCC)

Port Hawkesbury reports the following roles for each of the companies:[36]

- 6879900 Canada Inc. – Holding company.
- Port Hawkesbury Investments – Holding company.
- Port Hawkesbury GP – Holding company, ownership interest in Port Hawkesbury LP.
- Port Hawkesbury Holdings – Holding company.
- Port Hawkesbury Inc. – Holding company, ownership interest in Port Hawkesbury LP.
- Port Hawkesbury – Producer of subject merchandise.
- PWCC – Involved in the purchase of NewPage Port Hawkesbury Corporation (NPPH) through the *Companies' Creditors Arrangement Act* (*CCAA*) procedure.

Port Hawkesbury's responses identify 6879900 Canada Inc., Port Hawkesbury Investments, Port Hawkesbury GP, Port Hawkesbury Holdings, and Port Hawkesbury Inc. as holding companies of Port Hawkesbury. Therefore, we preliminarily find that these companies are cross-owned with Port Hawkesbury within the meaning of 19 CFR 351.525(b)(6)(vi). Because 6879900 Canada Inc., Port Hawkesbury Investments, Port Hawkesbury GP, Port Hawkesbury Holdings, and Port Hawkesbury Inc. are holding companies, we would normally attribute the benefit from subsidies received by any one of these holding companies to that holding company's consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii). As discussed below under the "Programs Preliminarily Determined to Be Countervailable" section, however, we preliminarily find no evidence that these holding companies received countervailable subsidies.

Regarding PWCC, Port Hawkesbury explained that on September 6, 2011, NPPH filed for protection from its creditors under the *CCAA*.[37] Following normal *CCAA* procedures, pursuant to the Supreme Court of Nova Scotia's (Court's) initial order, Ernst & Young, Inc. was appointed as the Court's Monitor (Monitor) of NPPH during the *CCAA* proceedings.[38] NPPH and the Monitor, with the approval of the Court, hired U.S. based investment bankers Sanabe & Associates LLC (Sanabe) to assist in a sale of NPPH through a bidding/auction process.[39] The Applicant, the Monitor, and Sanabe developed a list of 110 potential strategic and financial parties, including PWCC, and eventually designated 14 qualified bidders.[40] Eight of the 14

[36] *Id.* at 10; *see also* Port Hawkesbury Affiliation Response at 4 and 10.
[37] *See* PQR at 6.
[38] *Id.*
[39] *Id.*
[40] *Id.* at 6-7.

qualified bidders submitted offers for NPPH's assets by October 24, 2011, of which four were invited on October 28, 2011, to submit formal and final offers by December 16, 2011.[41] Of those four final offers, two were from parties wishing to continue the operations as a going concern (one of which was PWCC) and two were from parties intending to liquidate NPPH's assets.[42]

As part of its evaluation of the opportunity, PWCC conducted due diligence and developed a restructuring plan.[43] NPPH and Sanabe evaluated the offers, and the Monitor reviewed the evaluation.[44] After that review, NPPH, Sanabe, and the Monitor recommended to NPPH's Board of Directors that the offer from PWCC should be pursued as the highest and best going concern proposal.[45] On July 12, 2012, the Court approved the presentation of PWCC's offer, and on September 25, 2012, the Court issued a "Sanction Order" approving the sale.[46] The sale was completed on September 28, 2012.[47]

Port Hawkesbury stated that PWCC has no ownership interest in Port Hawkesbury and has never had any involvement in the operations of Port Hawkesbury.[48] Port Hawkesbury also stated that Port Hawkesbury and PWCC are affiliated only through common ownership by an ultimate owner.[49] Because Port Hawkesbury and PWCC have the same ultimate common ownership, we preliminarily find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Further, based on PWCC's involvement in the purchase of Port Hawkesbury, we are preliminarily attributing to Port Hawkesbury's sales the benefit from any subsidies that PWCC received and transferred to Port Hawkesbury, in accordance with 19 CFR 351.525(b)(6)(v). *See* the "Analysis of Programs - Programs Preliminarily Determined To Be Countervailable" section below for a full discussion of the subsidy programs that PWCC originally received and transferred to Port Hawkesbury.

Port Hawkesbury is the producer of the subject merchandise. In accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Port Hawkesbury to its own sales.

Resolute

Resolute responded to the Department's questionnaires on behalf of the following companies:[50]

- Resolute FP Canada Inc. (Resolute)
- Fibrek General Partnership (Fibrek)
- Forest Products Mauricie LP (Mauricie)

[41] *Id.* at 7.
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.* at 7-8.
[47] *Id.* at 8. Additional information on the sale is business proprietary. *See* PQR at 6-10.
[48] *Id.* at 4.
[49] *See* Port Hawkesbury Second Affiliation Response at 1.
[50] *See generally* RQR.

- Produits Forestiers Petit-Paris Inc. (Petit-Paris)
- Société en Commandite Scierie Opitciwan (Opitciwan)

Resolute reports the following for each of the companies:[51]

- Resolute – Produces SC Paper, inputs used in making SC Paper, and a wide range of other products. It is also a holding company for Resolute's ownership in affiliates making other products in Canada.
- Fibrek – Wholly owned subsidiary of Resolute that operates a kraft pulp[52] mill.
- Mauricie – Resolute owns 93.2 percent of this company, which operates a sawmill.
- Opitciwan – Resolute owns 45 percent of this company, which operates a sawmill.
- Petit-Paris – Joint venture sawmill in which Resolute holds a 50 percent ownership stake.

Because Resolute is a parent company, we are preliminarily attributing the benefit from subsidies that Resolute received to Resolute's consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii).[53]

As shown above, Resolute identified Fibrek as a wholly owned subsidiary of Resolute. Based on Resolute's full ownership of Fibrek, we preliminarily determine that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). During the POI, Fibrek supplied Resolute with kraft pulp to add tensile strength to paper that Resolute produced, including SC paper.[54] We preliminarily determine that the kraft pulp that Fibrek supplied to Resolute is primarily dedicated to production of SC paper and other downstream paper products, pursuant to 19 CFR 351.525(b)(6)(iv).

Regarding Mauricie, Opitciwan, and Petit-Paris, regardless of whether cross-ownership under 19 CFR 351.525(b)(6)(vi) exists between Resolute and Mauricie, Opitciwan, and Petit-Paris, we preliminarily find no evidence that Mauricie, Opitciwan, or Petit-Paris received assistance under any of the programs under investigation.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. We have identified the denominator we used to calculate the

[51] *Id.* at 4. Resolute designated the specific details of the relationships between Resolute and these companies as business proprietary information. *See* Resolute Supplemental Affiliation Response at 2-3; *see also* Department memorandum, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Resolute Paper FP Canada Inc., Calculations for the Preliminary Determination," dated concurrently with this memorandum (Resolute Preliminary Calculation Memo).
[52] Kraft pulp is a reinforcing pulp that is added, as required for paper strength, to a paper machine. *See* RQR at 6.
[53] *See, e.g., Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying Issues and Decision Memorandum at Comment 39.
[54] *Id.* at 3. *See also* RQR at Exhibit 4, page 3 (identifying the types of "specialty papers" that Resolute produces, including SC paper).

countervailable subsidy rate for each program, as discussed below and in the calculation memoranda prepared for this preliminary determination.[55]

D. Loan Interest Rate Benchmarks and Discount Rates

The Department is examining loans provided to Port Hawkesbury and to Resolute that were outstanding during the POI. The loans are denominated in Canadian dollars (C$). We are also investigating non-recurring, allocable subsidies that the respondents received.[56] In the section below, we discuss the derivation of the benchmarks and discount rates for the POI and previous years.

Long-Term Loan Interest Rate Benchmark

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes.[57] If the firm did not receive any comparable commercial loans during the relevant periods, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."[58] When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan.

Port Hawkesbury submitted interest rates, along with the underlying data, that it paid on other long-term commercial loans.[59] Resolute submitted an interest rate for "financial instruments with similar characteristics and maturities" as identified in the notes to its 2013 financial statements.[60]

Based on Port Hawkesbury's response in the PQR, we preliminarily find that the structure of Port Hawkesbury's other loans is not similar to the government-provided loans.[61] Therefore, we preliminarily find that these loans do not meet the definition of a "comparable commercial loan" under 19 CFR 351.505(a)(2).

As noted above, the interest rate that Resolute submitted is for 2013; therefore, it is not contemporaneous with the government loans we are examining. Moreover, the record does not show any information on the structure of the loans that are the basis of this interest rate. Thus,

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[55] *See* Resolute Preliminary Calculation Memo; *see also* Department memorandum, "Countervailing Duty Investigation of Supercalendered Paper from Canada: Port Hawkesbury Paper LP Calculations for the Preliminary Determination," dated concurrently with this memorandum (Port Hawkesbury Preliminary Calculation Memo).
[56] *See* 19 CFR 351.524(b)(l).
[57] *See* 19 CFR 351.505(a)(3)(i).
[58] *See* 19 CFR 351.505(a)(3)(ii).
[59] *See* PQR at Exhibit 15-2.
[60] *See* RQR at Exhibit 3, page 89. The financial statements do not identify the source of the interest rate.
[61] *See* 19 CFR 351.505(a)(2)(i) – (iii). Information on these loans is business proprietary. *See* the Port Hawkesbury Preliminary Calculation Memo for additional details on the benchmark loans.

consistent with 19 CFR 351.505(a)(2), we preliminarily find that this is not an interest rate for a "comparable commercial loan."

Where such benchmark rates for comparable commercial loans are unavailable, 19 CFR 351.505(a)(3)(ii) provides that we may use a national average interest rate as a benchmark. In this case, the GOC submitted the Bank of Canada's prime business loan rates for 2003-2014.[62] We are preliminarily using these rates as our national average interest rates under 19 CFR 351.505(a)(3)(ii) to measure the benefit from Port Hawkesbury's and Resolute's long-term loans.

See the "Analysis of Programs" section below for a description of the loan programs for which we required interest rate benchmarks.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate described above for the year in which the government approved non-recurring subsidies.

Uncreditworthy Allegation

The petitioner alleged that Port Hawkesbury was uncreditworthy in 2011 and 2012, and in accordance with 19 CFR 351.505(a)(4), the Department should use an uncreditworthy benchmark to determine the benefit from long-term loans and non-recurring subsidies allocated over time.[63] Port Hawkesbury did not receive any of the alleged subsidies in 2011; therefore, we examined whether the company was uncreditworthy only in 2012.

Under 19 CFR 351.505(a)(4)(i), the Department will consider a firm to be uncreditworthy if, at the time the long-term loan or allocated subsidy was provided, the firm could not have obtained loan-term loans from conventional commercial sources. In the case of firms not owned by the government, under 19 CFR 351.505(a)(4)(ii), the receipt by a firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy. During 2012, Port Hawkesbury was able to obtain a comparable long-term loan from a commercial bank without a government guarantee.[64] Therefore, we preliminarily determine Port Hawkesbury to be creditworthy in 2012.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

With regard to the Federal Pulp and Paper Green Transformation Program (FPPGTP), the GOC provided information in its initial GQR (submitted on May 27, 2015) about the purpose and operation of the program, and indicated that the mandatory respondent Resolute had received

[62] *See* GQR at Government of Quebec Response, Volume I, Exhibit QC-GEN-4, page 53; *see also* GSQR at Exhibit NS-SUPP1-1E.
[63] *See* Petition, Volume II at 12.
[64] Because the details of this loan are business proprietary information, we have discussed the analysis in additional detail in the Port Hawkesbury Preliminary Calculation Memo.

benefits under this program for two projects at its mills in Thunder Bay and Fort Francis. Similarly, Resolute reported its receipt of assistance under this program for these two projects. On July 22, 2015, five days before the scheduled date for this preliminary determination, the GOC, however, submitted a "revision" to its May 27, 2015, response in which it indicated that assistance had also been provided under this program to Fibrek S.E.N.C. (Fibrek), a company owned by Resolute. On the same date, Resolute submitted a "supplemental response" which it deemed necessary under the certification requirements provided in section 782(b) of the Act. This information detailed previously unreported assistance received by Fibrek under the FPPGTP.

The GOC and Resolute characterized these submissions as either "revised" or "supplemental" responses to the Department's April 6, 2015, initial questionnaire. Responses to the initial questionnaire were due on May 27, 2015. In their July 22, 2015, submissions, neither the GOC nor Resolute requested that the Department extend the May 27, 2015, deadline and accept the new factual information contained in their revised responses, pursuant to 19 CFR 351.302(c). Normally, the failure of an interested party to submit factual information in a manner consistent with 19 CFR 351.301 and 351.302 would require the Department's rejection of that information as untimely. However, the rejection of the July 22, 2015 responses would place the Department, as the administering authority under the Act, in an untenable position. If the Department rejects the submissions, the Department would be forced to use the information in the GOC's and Resolute's initial responses for this program in our preliminarily determination. This information is information that the Department knows is materially incomplete. However, 19 CFR 351.302(b) allows the Department to extend a deadline for good cause. Therefore, in order to ensure, before the preliminary determination, that the information on the record includes evidence that the questionnaire responses of the GOC and Resolute contain a material misreporting of program usage, we find good cause to extend the GOC's and Resolute's May 27, 2015 deadline for responding to the April 6, 2015 questionnaire. Thus, we have determined that it is appropriate to accept the submissions provided.

However, we have determined that these submissions represent more than a revision or a supplement to the GOC's and Resolute's initial questionnaire responses. Rather, they represent a significant change to the information provided in the initial questionnaire responses in that they identify assistance to a cross-owned subsidiary of Resolute that the GOC and Resolute were expressly required to report in response to the questionnaire. Moreover, all of Resolute's questionnaire responses indicate that it "is including in its response" Fibrek, among other cross-owned companies for which the Department requested complete responses. Thus, as part of their initial questionnaire response, the GOC and Resolute understood their obligation to report assistance received by Resolute and any of the cross-owned companies under all programs under investigation, and the GOC and Resolute failed to satisfy this obligation.

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly

impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Because the GOC and Resolute were aware of their obligation to respond fully to the Department's questionnaires with regard to the receipt of assistance under all of the programs under investigation for the mandatory respondents and cross-owned companies for which the Department requested responses, for this preliminary determination, we find that the GOC and Resolute withheld necessary information that was requested, which significantly impeded our ability to examine Resolute's receipt of assistance under the FPPGTP. The information provided in the initial questionnaire responses was materially incomplete. Moreover, given the timing of the submission of information regarding Fibrek's receipt of assistance under the FPPGTP, three business days prior to the deadline for this preliminary determination, the Department has been impeded in its ability to analyze this information, to determine if any clarifying information is needed, to request such additional information, to allow the parties time to respond, and to review the information and incorporate it into the preliminary determination. At this stage of the proceeding, we lacked sufficient time to solicit additional necessary information before issuance of this preliminary determination. Because this information is unusable in the form that it has been presented, we preliminarily determine, in accordance with sections 776(a)(1) and (2) and 776(b) of the Act that it is appropriate to rely on facts available and apply an adverse inference with respect to Resolute's receipt of assistance under this program. The selection of a CVD rate for this purpose is discussed below in the section "The Federal Pulp and Paper Green Transformation Program."

We are, however, able to rely on information timely provided by the GOC in its initial questionnaire response for purposes of analyzing the financial contribution and specificity of this program.

VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

A. Programs Preliminarily Determined To Be Countervailable

1. Government of Nova Scotia (GNS) Loan for Working Capital

In response to PWCC's request for financial assistance in connection with its acquisition of the Port Hawkesbury mill, the GNS established a credit facility for PWCC.[65] In August 2012, the GNS's Department of Economic and Rural Development and Tourism (ERDT), on behalf of the Minister of Nova Scotia, provided a letter of offer to PWCC for a credit facility of C$40

[65] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume II, NS.II-2.

million.[66] The Minister of Nova Scotia ultimately determined the amount of assistance, subject to approval by the Governor in Council.[67] The GNS provided the assistance pursuant to the Nova Scotia Jobs Fund Act.[68] The GNS offered and provided the assistance only to PWCC, which was not obligated to pay any interest on the loan during its term.[69]

In September 2012, in contemplation of the completion of the *CCAA* process, the involved parties ultimately assigned the loan to Port Hawkesbury.[70] The loan remained outstanding during the POI.[71] The loan is eligible for forgiveness, but only if certain conditions are fulfilled each calendar year and confirmed by the GNS.[72] The GOC reported that as of the date of the GQR, the GNS had not forgiven any amount under the terms of the Letter of Offer, and the loan is still repayable in full as reflected in the financial accounts of the GNS.[73]

We preliminarily determine that this loan conferred a countervailable subsidy within the meaning of section 771(5) of the Act and constitutes a financial contribution in the form of a direct transfer of funds from the GNS under section 771(5)(D)(i) of the Act. We also preliminarily determine that a benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amounts paid by the company for the loan during the POI and the amounts the company would have paid on a comparable commercial loan. Finally, we also preliminarily determine that the program is specific in accordance with section 771(5A)(D)(i) of the Act because the GNS offered and provided the assistance only to PWCC.

To calculate the benefit under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1), we relied on the benchmarks described above under the "Loan Interest Rate Benchmarks and Discount Rates" section to determine the amount of interest that Port Hawkesbury would have paid on a comparable commercial loan during the POI. Because Port Hawkesbury received the loan in 2012, must fulfill certain conditions each calendar year (*i.e.*, more than one year after the receipt of the loan), and no forgiveness of any portion of the loan has been provided by the GNS, we are preliminarily treating the loan as a contingent liability interest-free loan and using a long-term interest rate benchmark.[74]

In accordance with 19 CFR 351.525(b)(6)(i), we calculated the countervailable subsidy rate by dividing this benefit amount by Port Hawkesbury's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we preliminarily determine that the net countervailable subsidy rate for this program is 0.48 percent *ad valorem* for Port Hawkesbury.

[66] *Id.* at NS.II-2 and Exhibit NS-CF-1.
[67] *Id.* at NS.II-10.
[68] *Id.* at NS.II-7 and Exhibit NS-CF-4.
[69] *Id.* at NS.II-12. *See also* letter from the GNS, "Supercalendered Paper from Canada: Pre-Preliminary Comments Submitted by the Government of Nova Scotia," (July 13, 2015) (GNS Pre-Preliminary Comments) at 20.
[70] *See* PQR at 38 and Exhibit 3-3.
[71] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume II, NS.II-6.
[72] *Id.* at NS.II-2, Exhibit NS-CF-1, and Exhibit NS-CF-2.
[73] *Id.* at NS.II-4 - NS.II-5.
[74] *See* 19 CFR 351.505(d).

2. GNS Loan to Improve Productivity and Efficiency

In response to PWCC's request for financial assistance in connection with its acquisition of the Port Hawkesbury mill, the GNS's ERDT also provided a Letter of Offer to PWCC for a loan of C$24 million.[75] The GNS approved and provided the funds to PWCC in August 2012.[76] The Minister of Nova Scotia ultimately determined the amount of assistance, subject to approval by the Governor in Council.[77] The GNS provided the assistance pursuant to the Nova Scotia Jobs Fund Act.[78] The GNS offered and provided the loan, which has an interest rate of zero, only to PWCC.[79]

PWCC assigned the loan to Port Hawkesbury after its receipt, and the loan remained outstanding during the POI.[80] Under the terms of the Letter of Offer, the loan is eligible for forgiveness, but only if certain conditions are fulfilled each calendar year and confirmed by the GNS.[81] The GOC reported that as of the date of the GQR, the GNS had not forgiven any amount under the terms of the Letter of Offer.[82]

We preliminarily determine that this loan conferred a countervailable subsidy within the meaning of section 771(5) of the Act and constitutes a financial contribution in the form of a direct transfer of funds from the GNS under section 771(5)(D)(i) of the Act. We also preliminarily determine that a benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amounts paid by the company for the loan during the POI and the amounts the company would have paid on a comparable commercial loan. Finally, we preliminarily determine that the program is specific in accordance with section 771(5A)(D)(i) of the Act because the GNS only offered and provided the assistance to PWCC.

To calculate the benefit under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1), we relied on the benchmarks described above under the "Loan Interest Rate Benchmarks and Discount Rates" section to determine the amount of interest that Port Hawkesbury would have paid on a comparable commercial loan during the POI. Because Port Hawkesbury received the loan in 2012, must fulfill certain conditions each calendar year (*i.e.*, more than one year after the receipt of the loan), and no forgiveness of any portion of the loan has been provided by the GNS, we are preliminarily treating the loan as a contingent liability interest-free loan and using a long-term interest rate benchmark.[83]

In accordance with 19 CFR 351.525(b)(6)(i), we calculated the countervailable subsidy rate by dividing the benefit amount by Port Hawkesbury's total sales during the POI, as described above

[75] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume III, NS.III-2 and Exhibit NS-LN-1.
[76] *Id.* at NS.III-2 and NS.III-5.
[77] *Id.* at NS.III-9.
[78] *Id.* at NS.III-5 and Exhibit NS-LN-4.
[79] *Id.* at NS.III-11; *see also* GNS Pre-Preliminary Comments at 23.
[80] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume III, NS.III-5; *see also* PQR at 42.
[81] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume III, NS.III-2, Exhibit NS-LN-1, and Exhibit NS-LN-2.
[82] *Id.* at NS.III-3.
[83] *See* 19 CFR 351.505(d).

in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we preliminarily determine that the net countervailable subsidy rate for this program is 0.29 percent *ad valorem* for Port Hawkesbury.

3. PWCC Indemnity Loan

Port Hawkesbury explained that during the course of the sales process for NPPH, PWCC incurred transaction costs and expenses for due diligence work and restructuring planning in connection with its acquisition of NPPH.[84] The GNS, as represented by the Minister of Natural Resources, agreed during the negotiation to reimburse PWCC for a portion of these costs and expenses, in recognition of the significant complexity, resources, and completion risk involved in pursuing, evaluating, negotiating, and implementing a possible transaction.[85] To memorialize this arrangement, PWCC and the GNS entered into an indemnity agreement, effective November 28, 2011, and amended on September 28, 2012 (Indemnity Agreement).[86] Under the Indemnity Agreement, if PWCC or any of its affiliates completed the acquisition of NPPH prior to October 31, 2012, PWCC (delegated to Port Hawkesbury) was obligated to repay the GNS all reimbursed amounts in three installments from 2013 – 2016.[87] Both the GNS and Port Hawkesbury reported the outstanding balances that Port Hawkesbury owed to the GNS during the POI under the Indemnity Loan, which has an interest rate of zero.[88]

We did not initiate an investigation into this program in the *Initiation Notice*. However, section 775 of the Act provides that if the Department "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition … then the administering authority (1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding,..." *See also* 19 CFR 351.311(b). Accordingly, based upon our discovery of a practice which appears to be a countervailable subsidy from Port Hawkesbury's and the GNS's questionnaire responses, the statute authorizes us to investigate this program.

We preliminarily determine that the Indemnity Loan conferred a countervailable subsidy within the meaning of section 771(5) of the Act and constitutes a financial contribution in the form of a direct transfer of funds from the GNS under section 771(5)(D)(i) of the Act. We also preliminarily determine that a benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amounts paid by the company for the loan during the POI and the amounts the company would have paid on a comparable commercial loan. Finally, we preliminarily determine that the program is specific in accordance with section 771(5A)(D)(i) of the Act because the GNS only provided assistance to PWCC for the due diligence work and restructuring planning in connection with the acquisition of NPPH.

[84] *Id.* at 94.
[85] *Id.*
[86] *Id.*
[87] *Id.* at 95. *See also* GNS Pre-Preliminary Comments at 25.
[88] *Id.* at NS.I-17 – NS.I-18. *See also* PQR at Exhibit 15-2a. *See also* GNS Pre-Preliminary Comments at 26.

To calculate the benefit under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1), we relied on the benchmarks described above under the "Loan Interest Rate Benchmarks and Discount Rates" section to determine the amount of interest that Port Hawkesbury would have paid on a comparable commercial loan during the POI. In accordance with 19 CFR 351.525(b)(6)(i), we calculated the countervailable subsidy rate by dividing this benefit amount by Port Hawkesbury's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we preliminarily determine that the net countervailable subsidy rate for this program is 0.02 percent *ad valorem* for Port Hawkesbury.

4. GNS Grants for Maintaining Hot Idle Status

The GNS reports that funds were provided by the GNS to maintain the Port Hawkesbury mill in "hot idle" status through to the completion of the sale of the mill to PWCC during the *CCAA* process. All payments by the GNS were made under the supervision of the court-appointed monitor in the context of the *CCAA* proceeding to maintain the NPPH assets in hot idle status pending the sale of the assets to potential buyers.[89] The reason for maintaining the mill in "hot idle" status is that machinery and equipment at mills like the Port Hawkesbury mill must be in constant operation in order to maintain their efficiency, and even operability. Any prolonged "cold" shutdown results in degradation of the machinery and equipment that can be very expensive, and sometimes impossible, to repair, thereby imperiling a successful restart.[90]

NPPH and NewPage Corporation (NewPage), NPPH's U.S. parent company, entered into a Settlement and Transition Agreement, under which NewPage committed approximately US$22 million for a "hot-idle" fund under the oversight of a court-appointed monitor to maintain the hot idle status of the mill. However, by December 2011, these funds were nearly depleted.[91] Therefore, the Treasury Board of the GNS approved additional funding, to be provided by the Department of Natural Resources (DNR) to maintain the hot idle status of the mill. These approvals were granted in December 2011 and on March 26, 2012.[92] The amount of assistance was based on the actual costs of maintaining the hot idle status as reported by the court-appointed monitor under the *CCAA* proceeding,[93] and funds were disbursed based on the monitor's approval of invoices for services rendered. Specifically, NPPH staff would receive invoices and periodically submit them to the monitor, who was responsible for vetting them to ensure they were for activities performed during the hot idle period, and upon approval would release funds for payment of the invoice.[94] Additionally, any excess funds remaining at the conclusion of the *CCAA* proceedings were repaid to the GNS.[95]

[89] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume VIII, NS.VIII-6.
[90] *See* PSQR at 12.
[91] *See* GQR at Government of Nova Scotia Questionnaire Response at Volume VIII, NS.VIII-5.
[92] *See e.g.* GSQR at Exhibit NS-SUPP1-12, Appendix A.
[93] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume VIII, NS.VIII-9.
[94] *See* PQR at 16-17.
[95] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume VIII, NS.VIII-9 and Exhibit NS-HI-11.

With respect to the sales process of the mill under the *CCAA* process, 21 letters of intent were received on September 28, 2011, from parties interested in purchasing the mill assets; 14 of these were designated as qualified buyers. On October 24, 2011, eight formal offers for the purchase of NPPH's assets were received by the monitor. On October 28, 2011, the monitor advised four of the eight bidders that they were being invited to continue as participants in the Sales Process, and they were advised to submit formal offers by December 16, 2011.[96] PWCC submitted its bid on December 16, 2011. The monitor announced, in a press release issued on January 4, 2012, that PWCC was chosen as the bidder to acquire NPPH.[97] Once the price set out in PWCC's letter of December 16, 2011, was accepted, it did not change throughout the duration of the process and the closing of its acquisition of the mill occurred based on that price.[98]

Port Hawkesbury argues that it did not receive any of the funds during the hot idle period,[99] and the GNS argues that any benefit conferred under this program was provided to NPPH and was extinguished when the mill was sold to PWCC.[100] However, the Department's prior notice with respect to agency practice regarding privatization is instructive in evaluating the hot idle assistance.[101] This *Notice of Final Modification* addressed the treatment of prior subsidies with respect to change-in-ownership, including the treatment of concurrent subsidies provided to encourage or facilitate privatization.[102] For the purposes of this methodology, the Department stated that it intends to scrutinize very carefully any instances of concurrent subsidies, and will normally determine that the value of concurrent subsidies is fully reflected in the fair market value price of an arm's length change in ownership/privatization and, therefore, is fully extinguished in any such transaction, if the following criteria are met:

1. The nature and value of the concurrent subsidies were fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders;
2. The concurrent subsidies were bestowed prior to the sale; and
3. There is no evidence otherwise on the record demonstrating that the concurrent subsidies were not fully reflected in the transaction price.[103]

With respect to the hot idle funds provided by the GNS, the funds were bestowed prior to the conclusion of the sale of the former NPPH to its new owners and, thus the second criterion was met. However, we preliminarily determine that the other two criteria were not satisfied. The solicitation for bids for the Port Hawkesbury mill and the selection of the four qualified bidders were completed by October 28, 2011, and the deadline for submitting bids was December 16,

[96] See GSQR at 10.
[97] *See* PSQR at 10.
[98] *See* PSQR at 11.
[99] *See* PQR at 17.
[100] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume VIII, NS.VIII-6 - NS.VIII 7.
[101] *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act Section 123 Modification,* 68 FR 37125 (June 23, 2003) (*Notice of Final Modification).*
[102] The *Notice of Final Modification* explicitly addresses full privatization, but the Department later determined to apply this methodology to private-to private sales. *See e.g., Certain Pasta From Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review* (*Pasta from Italy)*, 70 FR 17971; 17972 (April 8, 2005).
[103] *See Notice of Final Modification,* 68 FR 37125, 37137.

2011. The decisions by the GNS to provide hot idle funds were made in December 2011 and on March 26, 2012, after the solicitation for bids and after the submission of all bids.[104] Thus, at the time the bids were submitted, the nature and the value of the hot idle funds were not "fully transparent to all potential bidders," as articulated in the first criterion above. The potential bidders would not have been aware of the provision of hot idle funds from the GNS; therefore, the bids submitted could not have reflected the provision of the assistance by the GNS to maintain hot idle status.

Moreover, there is evidence otherwise on the record that demonstrates that the hot idle funds were not fully reflected in the transaction price. Because the hot idle funds were not in existence before the bid price was established and approved, the value of the GNS hot idle funds could not have been reflected in the transaction price. As Port Hawkesbury admits, the price set forth in the bid that was submitted and accepted on December 16, 2011, did not change throughout the duration of the sales process, and the closing of the acquisition of the mill ultimately occurred on the pricing terms submitted in the December 16, 2011, bid.[105] Thus, even if that bid price initially reflected the fair market value of the Port Hawkesbury mill, and even though the hot idle funds were bestowed prior to the final sale, the value of the GNS hot idle funds could not have been reflected in the final transaction price, which was set before the hot idle funds were proposed and approved by the GNS. Therefore, even assuming an arm's length transaction for fair market value, because the actual transaction price could not have accounted for the amount of the subsidy, we preliminarily determine that the subsidy could not have been extinguished.

We, therefore, preliminary determine that the grants provided by the GNS in order to maintain the Port Hawkesbury mill in "hot idle" status through to the completion of the sale of the mill to PWCC constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily determine that a benefit exists under 19 CFR 351.504(a), equal to the amount of the grant. Finally, we preliminarily determine that the program is *de jure* specific, in accordance with section 771(5A)(D)(i) of the Act, because the GNS authorized the assistance only to Port Hawkesbury.

Because NPPH did not receive these benefits on an on-going basis and the assistance was to be provided only during the pendency of the *CCAA* process, we are treating these subsidies as non-recurring grants. Additionally, because Port Hawkesbury reported the total amount of payments it received, and it was not able to identify the source of funds (GNS, New Page Corporation or NPPH) for the payments it received,[106] we have used in our calculation the total amount of GNS funds disbursed under the court-appointed monitor's approval, as reported by the GNS.[107] Using this total, we conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2) and we found that the benefits were greater than 0.5 percent of Port Hawkesbury's total sales in the year the grants were approved. Thus, we allocated the total benefit over the AUL using the discount rate discussed above in the section "Loan Interest Rate Benchmarks and Discount Rates," to

[104] *See, e.g.*, GSQR at Exhibit NS-SUPP1-12, Appendix A.
[105] *See* PSQR at Exhibit 8, page 6.
[106] *See* PSQR at 14.
[107] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume VIII, NS.VIII-17.

determine the amount attributable to the POI. We then divided the amount attributable to the POI by Port Hawkesbury's total sales during the POI. On this basis, we preliminarily determine that Port Hawkesbury received a net countervailable subsidy of 0.73 percent *ad valorem* under this program.

5. Forestry Infrastructure Fund

The GNS reports that the Forestry Infrastructure Fund (FIF) was created pursuant to an agreement between the GNS and NPPH dated September 16, 2011, which was put into effect by the Supreme Court of Nova Scotia on September 23, 2011, pursuant to its authority under the *CCAA* process. According to the GNS, the purpose of the FIF was to pass payments through NPPH to providers of certain services that the GNS deemed beneficial for the province.[108] Specifically, the GNS determined that because NPPH intended to shut down its mill, ancillary forestry operations which are directly beneficial to the province and the provincial economy would cease immediately. Therefore, the GNS engaged with NPPH to continue the forestry infrastructure activities of third party contractors and subcontractors.[109] These activities included silviculture (including ongoing silviculture activities that were only partially completed when NPPH sought creditor protection), road maintenance, forestry training program, and design, harvesting and transportation of timber.[110] The GNS submitted internal documents which described the FIF as follows:

> This $14 million fund was established to support NewPage's supply chain while keeping the facility ready to be sold to a new owner. This fund helped to maintain woodlands operation. (Over a six month period, approximately 300 jobs were financed by the Fund.) Originally the fund was scheduled to end in December 2011; however, it was extended until March 31, 2012, to give more time to complete the sale. This initial expansion did not require additional funding.[111]

Initial funding for the FIF was approved on September 16, 2011, in the amount of C$14 million, to be provided by the ERDT.[112] The order approving this original agreement was announced publicly on or before October 1, 2011.[113] The FIF was amended three times subsequent to its establishment.[114] Notably, on March 7, 2012, the ERDT amended the agreement to extend it until September 30, 2012, and to provide an additional amount to the FIF of C$12 million.[115]

As discussed above under the "GNS Grants for Maintaining Hot Idle Status" section, PWCC submitted its bid to purchase the mill on December 16, 2011, and once the price set out in its bid

[108] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume X, NS.X-2.
[109] *Id.* at NS.X-3.
[110] *Id*.
[111] *See* GSQR at Exhibit 98B.
[112] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume X, NS.X-5.
[113] *Id.* at Exhibit NS-FI-5.
[114] *Id.* at NS.X-6.
[115] *Id.* at Exhibit NS-FI-8.

was accepted, it did not change throughout the duration of the process and the closing of the acquisition of Port Hawkesbury occurred based on that price.[116]

Port Hawkesbury argues that it was not a party to the transactions under the FIF and received no benefits from it.[117] The GNS argues that the program was "cost and cash flow" neutral to NPPH, and the services provided under the program were designed to accrue to the benefit of the GNS.[118] However, the internal documentation submitted by the GNS demonstrates that the FIF was provided to support the ongoing operations of the mill during the bankruptcy process and to maintain the mill ready for sale as an ongoing concern,[119] which demonstrates that this program was established to support the mill through the *CCAA* and sale process, rather than only to support unrelated contractors. Additionally, the GNS argues that even if there was a benefit to NPPH, the benefit was extinguished when NPPH was sold to PWCC in a private-to-private transaction, made at arm's length, and at fair market value.[120] However, as discussed above, the Department looks for guidance in the *Notice of Final Modification*, which addresses the treatment of concurrent subsidies with respect to change-in-ownership.

The first step in our analysis is to determine whether the purchase of the mill from NPPH by PWCC was at arm's length for fair market value. In analyzing whether a sales transaction was for fair market value, the Department will normally examine whether the seller acted in a manner consistent with the normal sales practice of private commercial sellers in that country. Where an arm's-length sale occurs between private parties, we would normally expect the private seller to act in a manner consistent with the normal sales practices of private commercial sellers in that country.[121]

The sale of the company was undertaken through the *CCAA* under the general supervision of the Supreme Court of Nova Scotia.[122] The sale of the company occurred under the normal restructuring process of the *CCAA*, which is similar to the process undertaken under Chapter 11 of the U.S. Bankruptcy Code. The Court appointed an independent party, Ernst and Young, as the Monitor to oversee the day-to-day administration of the sale of the company. The notice of the potential sale was advertised in the Canadian and international press including an industry journal for the pulp and paper industry. Upon initiation of the sales process, 110 potential purchasers were contacted which resulted in the submission of 21 non-binding Letters of Intent (LOI). Fourteen of the parties that submitted LOIs were designated qualified bidders and eight of these qualified bidders submitted offers. Four of these bidders were then selected to submit formal and final offers. PWCC was then selected as the purchaser and the sale of the company by NPPH to PWCC was approved by the company's American bondholders and Canadian creditors. Based upon the manner in which the company was sold, we preliminarily determine

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[116] *See* PSQR at 11.
[117] *See* PQR at 18.
[118] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume X, NS.X-3 – NS.X-4.
[119] *See* GSQR at Exhibit 98B.
[120] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume X, NS.X-2.
[121] *See, e.g., Pasta From* Italy. 70 FR at 17972.
[122] The information on the sales process of the company cited in this paragraph can be found in the PSQR at Exhibit 8.

that this private-to-private party transaction between NPPH and PWCC was at arm's-length for fair market value.

After determining that the change-in-ownership was a private-to-private transaction at fair market value, we must then determine whether any subsidies were extinguished. The *Notice of Final Modification* establishes the criteria to be used in determining whether a subsidy is fully extinguished in a fair market value price of an arm's-length change in ownership/privatization. As noted above, these criteria are:

1. The nature and value of the concurrent subsidies were fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders;
2. The concurrent subsidies were bestowed prior to the sale; and
3. There is no evidence otherwise on the record demonstrating that the concurrent subsidies were not fully reflected in the transaction price.[123]

With respect to the initial FIF approval amount of C$14 million provided by the GNS, those funds were bestowed prior to the conclusion of the sale of the former NPPH to its new owners and, thus, the second criterion was met. Additionally, as noted above, the order approving this original agreement was announced publicly on or before October 1, 2011,[124] which is prior to the submission of formal offers for the purchase of the mill on October 24, 2011, and prior to the submission of PWCC's final bid on December 16, 2011.[125] Therefore, the first criterion was also met, as the nature and value of the initial FIF funds were fully transparent to all potential bidders. Additionally, there is no evidence otherwise on the record demonstrating that the amounts related to the first FIF approval were not fully reflected in the transaction price. Therefore, we preliminarily determine that the subsidies related to the initial FIF approval were extinguished in the fair market price of an arm's-length sale of NPPH to PWCC.

With respect to the second FIF approval amount of C$12 million, those funds were also bestowed prior to the conclusion of the sale of the former NPPH to its new owners and, thus, the second criterion was met. However, we preliminarily determine that the other two criteria were not satisfied with respect to the second FIF approval amount. Specifically, as noted above, PWCC's final bid was submitted on December 16, 2011, whereas the second FIF amount was approved by the GNS and the ERDT after that date. Thus, at the time the bids were submitted, the nature and the value of the second FIF was not "fully transparent to all potential bidders," as articulated in the first criterion above. The potential bidders would not have been aware at the time they submitted their bids that the second FIF was forthcoming, and it is not possible that the bids submitted prior to this date could have reflected the provision of the assistance under the FIF.

Moreover, there is evidence otherwise on the record that demonstrates that the second FIF was not fully reflected in the transaction price. Because those funds were not disbursed before the bid price was established and approved, the value of the second FIF could not have been

[123] *See Notice of Final Modification*, 68 FR 37125, 37137.
[124] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume X, Exhibit NS-FI-5.
[125] *See* GSQR at 10.

reflected in the transaction price. As Port Hawkesbury admits, the price set forth in PWCC's bid that was submitted and accepted on December 16, 2011, did not change throughout the duration of the sales process and the closing of the acquisition of the mill occurred on the pricing terms submitted in the December 16, 2011, bid.[126] Thus, even if that bid price initially reflected the fair market value of the Port Hawkesbury mill, and even though the concurrent subsidy was bestowed prior to the final sale, the value of the second FIF could not have been reflected in the final transaction price, which was set before the concurrent subsidies were proposed and approved by the GNS. Therefore, because the actual transaction price could not have accounted for the amount of the subsidy, we preliminarily determine that the subsidy could not have been extinguished.

We preliminary determine that the grants provided by the GNS and the ERDT under the second FIF constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily determine that a benefit exists under 19 CFR 351.504(a), equal to the amount of the grant. Finally, we preliminarily determine that the program is *de jure* specific, in accordance with section 771(5A)(D)(i) of the Act, because the GNS authorized the assistance only to Port Hawkesbury.

Because NPPH did not receive these benefits on an on-going basis and the assistance was to be provided only up until September 30, 2012,[127] we are treating these subsidies as non-recurring grants. Therefore, we conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2) and we found that the benefits were greater than 0.5 percent of Port Hawkesbury's total sales in the year the grants were approved. Thus, we allocated the total benefit over the AUL using the discount rate discussed above in the section "Loan Interest Rate Benchmarks and Discount Rates," to determine the amount attributable to the POI. We then divided the amount attributable to the POI by Port Hawkesbury's total sales during the POI. On this basis, we preliminarily determine that Port Hawkesbury received a net countervailable subsidy of 0.55 percent *ad valorem* under this program.

6. GNS Grants for the Sustainable Forest Management and Outreach Program Agreement

Based on the petitioner's allegation, the Department initiated an investigation of a program titled "GNS Grants for the Promotion of Forest Management and Sustainable Harvesting" under which the GNS agreed "to provide C$3.8 million annually for 10 years in a forestry restructuring fund to support sustainable harvesting and forest land management."[128] The GNS states that the petitioner misstated the nature, content, and name of this funding agreement, but it confirms that the "Sustainable Forest Management and Outreach Program Agreement" (Outreach Agreement) does provide funding of up to C$3.8 million per year for up to ten years.[129] The GNS reported that the Outreach Agreement provides payment to Port Hawkesbury for providing certain

[126] *See* PSQR at Exhibit 8, page 6.
[127] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume X, Exhibit NS-FI-8.
[128] *See Initiation Notice* at 14.
[129] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume XI.

services for the benefit of the province.[130] Port Hawkesbury explains that the funds are used for the following activities: road planning and maintenance, forestry planning and administration, resource inventory and data sharing, research, silviculture, operation of a silviculture program on private lands, forest planning, and forest certification.[131] In order to receive the funds from the GNS and the DNR, Port Hawkesbury files quarterly reports outlining activities and expenses.[132]

We preliminarily determine that the grants under the Outreach Agreement that Port Hawkesbury received from the GNS constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily determine that a benefit exists under 19 CFR 351.504(a), equal to the amount of the grant. Finally, we preliminarily determine that the program is specific in accordance with section 771(5A)(D)(i) of the Act because the GNS provided the assistance only to Port Hawkesbury.[133]

In accordance with 19 CFR 351.524(c)(2), we find that the funds provided under this program constitute recurring benefits. Therefore, we calculated the countervailable subsidy rate by dividing the amount of the grants received during the POI under the Outreach Agreement by Port Hawkesbury's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we preliminarily determine that Port Hawkesbury received a net countervailable subsidy of 1.62 percent *ad valorem* under this program.

7. GNS Provision of Funds for Worker Training and Marketing

Port Hawkesbury reports that as part of PWCC's plan for restructuring NPHH, it sought a commitment by the GNS to provide funding going forward, in the event that PWCC was successful in purchasing NPPH. The GNS agreed to two grants: 1) a C$1.5 million grant for workforce training at the Port Hawkesbury mill, and 2) C$200,000 annually for 5 years (C$1 million total) for the marketing of products produced at the Port Hawkesbury mill.[134] Although there was not a specific application process, PWCC's Letter of Offer, dated August 14, 2012, and the final amended offer, dated September 22, 2012, document the agreement with respect to these funds.[135]

This grant is administered by the ERDT acting on behalf of the Minister.[136] In order to receive funds for workforce training under this program, Port Hawkesbury provided the ERDT with schedules of estimated training initiatives and related costs.[137] In order to receive the annual

[130] *Id.*
[131] *See* PQR at 22-23.
[132] *Id.*
[133] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume XI, NS.XI-12.
[134] *See* PQR at 26-27.
[135] *Id.* at 26-27 and Exhibit 3-1 and 3-2.
[136] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume XII, NS.XII-2.
[137] *See* PQR at 30 and Exhibit 3-4.

grant for marketing, Port Hawkesbury must provide the GNS with an annual marketing plan prior to the disbursement of funds, which it has done for 2013 and 2014.[138]

We preliminarily determine that the grants for workforce training and marketing that Port Hawkesbury received from the GNS and ERDT constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily determine that a benefit exists under 19 CFR 351.504(a), equal to the amount of the grant. Finally, we preliminarily determine that the program is specific in accordance with section 771(5A)(D)(i) of the Act because the GNS and ERDT provided the assistance only to Port Hawkesbury.

Under 19 CFR 351.513(c), the Departments treats worker training subsidies and promotion assistance subsidies, which would include marketing subsidies, as recurring benefits. Therefore, we calculated the countervailable subsidy rate by dividing the amount of the grants received for worker training and marketing during the POI under this program by Port Hawkesbury's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we preliminarily determine that Port Hawkesbury received a net countervailable subsidy of 0.19 percent *ad valorem* under this program.

8. The Federal Pulp and Paper Green Transformation Program

The GOC reported that Resolute received grants during the POI under the FPPGTP.[139] The GOC also reported that Resolute's cross-owned affiliate, Fibrek, received assistance under this program.[140] The purpose of the program was to improve the environmental performance of Canada's pulp and paper industry. The program is authorized by the national government and administered by Natural Resources Canada. Under the program, participant companies which register and submit the required application materials receive a credit in the amount C$0.16 per liter of black liquor used/burned during the period January 1, 2009 through December 31, 2009, up to a C$1 billion cap for the total program.[141] Following the credit application process, companies receive a confirmation of the value of the credits generated, and the total credit value. Companies can then submit project proposals for funding consideration.[142] Eligible projects must be capital investments in a Canadian pulp and paper mill that are directly related to the mill's industrial process and result in demonstrable improvements in environmental performance. Additionally, the project must be located at a pulp and paper mill in Canada.[143] This program ended on March 31, 2012; project expenses incurred by participating companies after that date would not be funded by the program.[144]

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[138] *See* PQR at 30 and Exhibit 3-5.
[139] *See* GQR at Government of Canada Questionnaire Response, Volume V, GOC-4.
[140] *See* "Revised Response of the Government of Canada to the Department's April 6 Questionnaire," July 22, 2015.
[141] *Id* at 1 and 8.
[142] *Id.* at 8.
[143] *See* GQR at Government of Canada Questionnaire Response, Volume V, GOC-12 – GOC-13 and Exhibit GOC-PPGTP-1.
[144] *Id.* at GOC-2.

We preliminarily determine that grants from the GOC under the FPPGTP constitute a financial contribution in the form of a direct transfer of funds from the government, and bestow a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act and 19 CFR 351.504(a). We also preliminarily determine that this program is specific under section 771(5A)(D)(i) of the Act because the grants provided under the program are limited to the pulp and paper industry.

As discussed above in the section, "Use of Facts Otherwise Available and Adverse Inferences," we have determined that the GOC and Resolute impeded our investigation such that the reliance of facts available with an adverse inference is warranted for this preliminary determination. Because the record lacks information that is necessary for calculating the benefit and the countervailable subsidy rate, we are relying on the use of facts available and making an adverse inference in identifying a CVD rate to apply for this program.

In accordance with our practice, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not *de minimis*. If there is no identical program match within the investigation, or if the rate is *de minimis*, the Department uses the highest non-*de minimis* rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[145] As such, for this preliminary determination, we are applying as the countervailable subsidy rate for this program the rate we preliminarily calculated for the Sustainable Forest Management and Outreach Program Agreement, a program that provides assistance in the form of grants. Thus, we preliminarily determine the countervailable subsidy for the FPPGTP to be 1.62 percent *ad valorem*. We do, however, intend to determine whether it is necessary to solicit additional information with regard to this program and to conduct verification of the July 22, 2015, submissions.

Additionally, based on proprietary information submitted by the GOC and Resolute related to Resolute's receipt of benefits under this program, we preliminarily find that Resolute may have received additional benefits under other funding mechanisms. We intend to examine these additional potential benefits at verification and address them in the final determination.

9. Ontario Northern Industrial Electricity Rate Program

The Government of Ontario (GOO) and Resolute report that Resolute's Thunder Bay, Fort Frances, and Iroquois Falls mills received grants during the POI under the Ontario Northern Industrial Electricity Rate (NIER) program, established on April 1, 2013.[146] The purpose of the program is to assist Northern Ontario's largest qualifying industrial electricity consumers which

[145] *Id*.; *see also, e.g., Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying I&D Memo at "Selection of the Adverse Facts Available Rate."

[146] *See* GQR at Government of Ontario Questionnaire Response, Ontario-1 – Ontario-2; *see also* RQR at Appendix B.

commit to developing and implementing an energy management plan to manage their energy usage and improve energy efficiency and sustainability. Specifically, participants receive a rebate of two cents per kilowatt hour, capped at 2011-12 consumption levels or C$20 million, whichever is lower.[147] The program is administered by the GOO Ministry of Northern Development & Mines. Companies eligible for assistance are industrial facilities located in Northern Ontario. The program has been extended indefinitely.[148] Companies which have been accepted into the program are not required to reapply and can expect to receive rebates in variable amounts based on the amount of eligible electricity consumed, not subject to the GOO Ministry of Northern Development & Mines' discretion.[149]

We preliminarily determine that the electricity rebates that Resolute received from the GOO constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily determine that this program is specific under section 771(5A)(D)(iv) of the Act because the rebates provided under the program are limited to companies located in a certain designated geographical region, *i.e.*, Northern Ontario, within the jurisdiction of the authority providing the subsidy. We also preliminarily determine that a benefit exists under 19 CFR 351.504(a), equal to the amount of the grant.

In accordance with 19 CFR 351.524(c)(2), we find that the electricity rebates provided under the program constitute recurring benefits. Therefore, we calculated the countervailable subsidy rate by dividing the amount of rebates received under this program during the POI by Resolute's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we preliminarily determine that Resolute received a net countervailable subsidy of 0.42 percent *ad valorem* under this program.

10. GNS Preferential Electricity Rate for Port Hawkesbury

The petitioners alleged that Nova Scotia Power, Inc. (NSPI) provides electricity to Port Hawkesbury for less than adequate remuneration (LTAR).

On September 6, 2011, NPPH sought protection under the *CCAA* and suspended operations at the Point Hawkesbury mill.[150] On September 28, 2012, PWCC restarted the SC paper production line.[151] Throughout the *CCAA* process, PWCC negotiated with NSPI and the Nova Scotia Utility and Review Board (NSUARB) to establish an electricity rate that would allow it to reopen the mill.[152] The result of these discussions was the development of a Load Retention Rate (LRR) that met PWCC's requirements and received approval from the NSUARB.[153]

[147] *Id.*
[148] *Id.* at 2.
[149] *Id.* at 25-26.
[150] *See* PQR at 6.
[151] *See* PQR at 5. *See* also PSQR Exhibit 43-1, NSPI 2014 Load Forecast at 29 and PQR at 51 (At that time, PWCC also chose not to restart the newsprint production line, reducing the annual electricity demand of the facility by 35 percent).
[152] *See* PQR at 3.
[153] *Id.*

The NSUARB, which regulates certain NSPI operations, originally approved a Load Retention Tariff (LRT) framework for NSPI on May 24, 2000 that required NSUARB to determine that an LRR is in the public interest before an LRR could be approved.[154] This framework remained unchanged and unused until November 29, 2011, when the NSUARB approved a modification that expanded the reasons for applying the LRT to include extra-large industrial customers that are in economic distress, in particular, NPPH and Bowater Mersey Paper Company Limited (Bowater Mersey).[155] The NSUARB also approved an amendment which required the full recovery of variable incremental costs and changed the term from five years to three (*i.e.*, 2012-2014).[156] This LRT was further amended on April 27, 2012 by the NSUARB in response to an application from NSPI and PWCC to accommodate their plan to acquire the Port Hawkesbury mill through the *CCAA* process and to own and operate it jointly.[157]

NSUARB issued a supplemental decision and order approving a LRT applicable to the mill for PWCC and NSPI on August 20 and September 12, 2012, respectively.[158] That order was conditioned on a favorable Advance Tax Ruling (ATR) from the Canada Revenue Agency which was not granted to NSPI and PWCC.[159] Failing receipt of the ATR, and the resulting withdrawal of NSPI from the plan, PWCC applied to the NSUARB to amend the terms of the LRT yet again on September 22, 2012 to exclude the conditions dependent on the ATR and on NSPI joint ownership.[160] On September 27, 2012, NSUARB approved PWCC's application for an amended LRT and issued the related order on September 28, 2012.[161] This version of the LRT is applicable from inception through December 31, 2019.[162]

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[154] *See* GSQR at NS.XIII.11 and GSQR Exhibit NS-EL-20 (Faced with the potential of NSPI's largest customers building gas turbine-based generation to supply their own electricity, NSUARB determined that the LRR offered the potential to continue to recoup some fixed costs rather than lose the load entirely and that this was in the public interest as long as revenue outweighed incremental cost of serving the potentially lost customer). *See also* PQR at Exhibit 23-5.

[155] *See* GSQR at NS.XIII.11 *and* NSUARB November 29, 2011 decision at GSQR Exhibit NS-EL-21 at 5, decision at paragraphs 96-224; 284-288 (NPPH and Bowater Mersey applied for a LRR based on proposed amendments to the LRT on June 22, 2011); at 37 (paragraph 102 - the economic distress provision states that the rate is granted in circumstances where it can be shown that the rate is required to respond to the competitive challenge of business closure for extra-large industrial customers.); and at 65 (paragraph 175 - the public interest is served when making the LRR available to the customer is necessary and sufficient for retaining the load, and the total revenue received from the LRR customer exceeds the total incremental cost of serving that customer). *See also* PQR Exhibit 23-6.

[156] *See* GSQR Exhibit NS-EL-21 at 94-97 (p.281-288 – Amendments by NSUARB and justification of its jurisdiction).

[157] *See* PQR Exhibit 23-7, NSPI's application for an LRR *and* Exhibit 23-8, PWCC's application (Payments for the electricity were to be handled through dividend payments to NSPI.). *See also* NSUARB's April 27, 2012 decision in the Petition at Exhibit II-32.

[158] *See* PSQR Exhibit 47-1 NSUARB August 20, 2012 Decision. *See* GSQR Exhibit NS-EL-23 for the NSUARB September 28, 2012, Order at 1.

[159] *See* GSQR at NS.XIII.16.

[160] *See* PQR at Exhibit 23-9.

[161] *See* GSQR at Exhibit NS-EL-22 for the NSUARB September 27, 2012, Supplemental Decision. *See* GSQR at Exhibit NS-EL-23 for the NSUARB September 28, 2012, Order (LRT Order).

[162] *See* GSQR at Exhibit NS-EL-23 for the NSUARB September 28, 2012, Order at 2.

Throughout this process, NSPI was also seeking NSUARB approval of the LRR, the specific price points of the LRT for 2013 and 2014. On May 8, 2012, NSPI submitted to the NSUARB its General Rate Application which included increases to the LRR prices for 2013 and 2014.[163] The NSUARB issued a decision with respect to the 2013/2014 General Rate Application on December 21, 2012, and issued Order M04972 setting the rates for 2013 and 2014 on February 1, 2013.[164]

Determining Financial Contribution

Under section 771(5)(D)(iii) of the Act, a financial contribution can be in the form of a provision of a good or service. Under section 771(5)(B) of the Act, a financial contribution is provided by an "authority" which is defined as a government or any public entity within the territory of the country, or when an "authority" entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments.

The provision of electricity within Nova Scotia is governed by the following legislation and regulations: (1) *Public Utilities Act*; (2) *Utility and Review Board Act*; (3) *Electricity Act*; (4) *Maritime Link Act*; (5) *Renewable Electricity Regulations*; (6) *Renewable Electricity Retail Sale Regulations*; (6) *Wholesale Market Rules Regulations*; (7) *Board Regulatory Rules*: (8) *Utility and Review Board Regulations*; (9) *Public Utilities Rules*; and (10) *Maritime Link Cost Recovery Process Regulations*.[165] Under the *Electricity Act*, the Minister of Energy has responsibility for the general supervision and management of Nova Scotia's electricity system. The Minister of Energy may establish and administer policies, programs, standards, guidelines, objectives, codes of practices, directives, and approval processes pursuant to the *Electricity Act*.[166]

The Government of Nova Scotia has delegated the regulatory oversight for the sale of electricity to the NSUARB which was established pursuant to the *Utility and Review Board Act of 1992*.[167] The NSUARB is an independent agency of the Government of Nova Scotia.[168] Pursuant to the *Public Utilities Act*, the NSUARB exercises general supervision over all electric utilities operating as public utilities within the Province of Nova Scotia. This jurisdiction includes setting rates, tolls and charges; regulations for the provision of service; approval of capital expenditures in excess of C$250,000, and any other matter the NSUARB feels is necessary to properly exercise its mandate.[169] In addition, the annual rate of return for public utilities is

[163] *See* GSQR at Exhibit NS-EL-17 for the GRA. For specifics of the 2014 LRR rates *see* GSQR at Exhibit NS-EL-17 DE-03 – DE-04 at 143 (section 11.4.3.3 establishes the Variable Incremental Rate, Contribution to Fixed Costs, and Energy Charge for 2014); Appendix P at 21-29 (reiterates terms of the LRT based on NSUARB September 28, 2012, LRT Order).
[164] *See* GSQR at Exhibit NS-SUPP1-30 (Order M04972). The final version of the LRT (based on the LRT Order) and the rates for 2014 are stated in Order M04972 at Schedule D and at Attachment A thereto at GSQR 1456-1492.
[165] *See* GSQR at NS.XIII-4.
[166] *See, e.g.,* Section 2B of the *Electricity Act* provided as GSQR at Exhibit NS-EL-3.
[167] *See* GSQR at NS.XIII-2.
[168] *See* GSQR at NS.XIII-2.
[169] *See, e.g.,* GSQR at NS.XIII-2; *Public Utilities Act* provided as Exhibit NS-EL-1; Nova Scotia Utility and Review Board "Electricity" at Attachment 17 of the July 2, 2015 Memorandum to the File regarding Placement of Documents on the Record Relating to Public Utilities.

determined by the NSUARB.[170] The NSUARB's rules for regulation of the electricity market in Nova Scotia are provided in the *Board Regulatory Rules*, the *Public Utilities Rules*, and the *Utility and Review Board Regulations*.[171]

Under section 5(1) of the *Utility and Review Board Act*, the Governor in Council of the Province of Nova Scotia appoints the members of the NSUARB. The Governor in Council is required under section 6(1) of the *Utility and Review Board Act* to designate the Chair and the Vice-Chair of the NSUARB. Under section 10(1) of the *Utility and Review Board Act*, each full-time member and each full-time employee of the NSUARB is deemed to be a person employed in the public service of the Province of Nova Scotia.

Pursuant to the *Public Utilities Act*, NSPI, an investor-owned public utility, generates, transmits and distributes electricity throughout the Province of Nova Scotia.[172] NSPI is the successor to the Nova Scotia Power Corporation (NSPC), a crown corporation owned by the Province of Nova Scotia.[173] The powers, rights, privileges and obligations of public utilities such as NSPI are explicitly set forth by the GNS in law and regulation.

The approval and provision of the LRR for Port Hawkesbury was made pursuant to the laws and regulations established by the GNS. Indeed, the NSUARB on November 29, 2011, modified the reasons for applying the LRR to include extra-large industrial customers such as the Port Hawkesbury mill that are in economic distress. The negotiation and approval of the LRR was one of the critical factors to ensure the purchase of NPPH by PWCC as a going concern, a policy goal of the GNS after NPPH applied to enter *CCAA* proceedings.[174] Absent the approval of the GNS through its established agency, the NSUARB, the public utility NSPI could not have provided electricity to Port Hawkesbury under the terms and conditions of the LRR. For these reasons, we preliminarily determine that under section 771(5)(B)(iii) of the Act, the GNS entrusted or directed the public utility NSPI to provide a financial contribution in the form of the LRR to Port Hawkesbury. Therefore, we preliminarily determine that Port Hawkesbury received a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act under this program.

Determining Specificity

When determining whether a program is countervailable, we must examine whether it is an export subsidy or whether it provides benefits to a specific enterprise, an industry, or group thereof, either in law (*de jure* specificity) or in fact (*de facto* specificity) pursuant to section 771(5A) of the Act. The provision of the LRR is not an export subsidy because there are no export requirements in the legislation with respect to industrial rate setting for electricity utilities. However, this LRR was approved and expressly limited to one company, Port Hawkesbury.

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[170] *See* GSQR at Exhibit NS-EL-1, section 45 of the *Public Utilities Act.*
[171] *See* GSQR at NS.XIII-3.
[172] *See, e.g.*, Nova Scotia Utility and Review Board "Electricity" at Attachment 17 of the July 2, 2015, Memorandum to the File regarding Placement of Documents on the Record Relating to Public Utilities.
[173] *Id.*
[174] *See* GSQR at 14.

Therefore, we preliminarily determine that this program is specific under section 771(5A)(D)(i) of the Act.

Determining the Appropriate Benchmark

Under 19 CFR 351.511(a)(2), the Department determines whether a good or service is provided for LTAR by comparing, in order of preference: (i) the government price to a market-determined price for actual transactions within the country such as prices from private parties (a "Tier 1" Benchmark); (ii) the government price to a world market price where it would be reasonable to conclude that such a world market price is available to consumers in the country in question (a "Tier 2" Benchmark); or (iii), if no world market price is available, by assessing whether the government price is consistent with market principles (a "Tier 3" Benchmark).

With respect to a Tier 1 Benchmark for the provision of electricity, NSPI is the primary electric utility company in Nova Scotia providing electricity to most provincial consumers,[175] with independent power producers generating a minimal amount of electricity by comparison and supplying that electricity over NSPI's transmission and distribution network.[176] Furthermore, the GNS regulates the rates that NSPI charges for electricity through the NSUARB. When the government provider constitutes a majority or a substantial portion of the market, the Department determines that prices within the country are distorted, that these prices do not satisfy the regulatory requirement for a market-determined price, and therefore cannot be used as a benchmark for determining the adequacy of remuneration.[177] Therefore, we preliminary determine that a Tier 1 Benchmark is not available.

Pursuant to 19 CFR 351.511(a)(2)(ii), the Department will only use a Tier 2 Benchmark based on world market prices where it is reasonable to conclude that the good or service is actually available to the purchaser in the country under investigation. The Department has specifically stated that electricity prices from countries in the world market are normally not available to purchasers in the country under investigation, due to the unique nature of electricity.[178] NSPI

[175] *See* GSQR at NS.XIII.9 and Exhibit NS-EL-17 at DE-03/DE-04 Appendix H at 9 (NSPI provides 95 percent of the total electrical consumed in Nova Scotia.). *See* also GSQR at NS.XIII.7 (There are also six regulated municipal electric utilities which either source electricity from NSPI generation, Independent Power Producers or self-generate.).

[176] *See* GSQR at Exhibit NS-EL-17 at DE-03/DE-04 Appendix L at 4.

[177] *See CVD Preamble*, 63 FR at, 65377: "We normally do not intend to adjust such prices to account for government distortion of the market. While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy."

[178] *See CVD Preamble*, 63 FR at 65377: "Paragraph (a)(2)(ii) provides that, if there are no useable market-determined prices stemming from *actual* transactions, we will turn to world market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America."

has stated that there is no international cross-border transmission or distribution of electricity into Nova Scotia.[179] Therefore, we preliminarily determine that we cannot rely on world market prices as a benchmark for determining whether electricity is provided for LTAR.

Because there are no market-determined prices or world market prices that satisfy the regulatory requirements, we preliminarily determine that it is appropriate to rely on the final alternative in the benchmark hierarchy set forth under 19 CFR 351.511(a)(2)(iii): to determine whether the government price is consistent with market principles.[180] We have done so in this case by assessing whether the prices charged under the LRR are established in accordance with market principles through an analysis of factors such as the price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination in the rate making.[181]

NSUARB sets electricity rates in Nova Scotia using standard rate of return regulation which guarantees a reasonable return on common equity electricity generation, transmission, and

[179] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume XIII, NS.XIII-9. (There are transfers from outside the province but there is not information on the record that any of these transfers cross international boundaries.)

[180] *See CVD Preamble*, 63 FR at 65378: "Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. *See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) and *Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997)."

[181] *See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) (*Magnesium from Canada*) ("As a general matter, the first step the Department takes in analyzing the potential preferential provision of electricity – assuming a finding of specificity – is to compare the price charged with the applicable rate on the power company's non-specific rate schedule. If the amount of electricity purchased by a company is so great that the rate schedule is not applicable, we will examine whether the price charged is consistent with the power company's standard pricing mechanism applicable to such companies. If the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity, we would probably not find a countervailable subsidy.").

distribution as determined by a cost-of-service methodology.[182] NSPI submits to NSUARB complex analyses of its expected cost, revenue, and demand structure during the rate setting period for each tariff, as well as current period financial statements to support its suggested price structure.[183] Customers are often involved in requesting tariff designs and take part in the yearly application approval process for setting prices under the existing tariffs. As explained above, PWCC (for its subsidiary Port Hawkesbury) was heavily involved in the development of the LRT and the application for the 2014 LRR.

Each year NSPI submits a General Rate Application for the approval of the NSUARB which establishes a schedule of rates for each of the tariffs corresponding to a variety of rate payer classifications based on characteristics related to the electrical service they receive. At the outset of this process, costs for "below-the-line" rates classes are segregated from the costs of serving "above-the-line" classes, and these costs are not included in the allocation of costs for the calculation of above-the-line rates. Additionally, there is no cost-to-revenue requirement for below-the-line rate classes; they do not cover fixed costs nor contribute to the guaranteed return on regulated equity.[184] Under-recovered costs are deferred and held as regulatory assets which are recovered from customers paying above-the-line rates across planned future intervals.[185] Most electricity rates are considered "above-the-line" rates and are determined using the cost-of-service method in which costs associated with forecast demand are allocated to each tariff class.[186] For example, large industrial users connected at the transmission level of the electrical grid, such as Port Hawkesbury, are not charged for the fixed costs associated with commercial and residential customer classes. Above-the-line rates are set to produce revenue streams within a band of 95 to 105 percent of the costs incident to the class.[187] Above-the-line rate setting is

[182] *See Public Utilities Act* at section 45 available on the record at GSQR Exhibit NS-EL-1 at 14. *See* also, explanation of the Fair Return Standard and supporting case precedent in Canada (as in the United States) in GSQR Exhibit NS-EL-17 at DE-03/DE-04 Appendix H at 5-7 (A fair return gives a regulated utility the opportunity to (1) earn a return on investment commensurate with that of comparable risk enterprise; (2) maintain its financial integrity; and, (3) attract capital on reasonable terms and conditions). NSPI applies to NSUARB for rate approval *see* GSQR at NS.XIII.4-6 (NSPI forecasts its costs, adds a reasonable rate of return and "proposes these rates to NSAURB" either through the GRA or the Fuel Adjustment Mechanism (FAM). The GRA application process is adversarial and often includes the Province as intervener, the electric utility, and a customer advocate; the process begins with cross-party written questioning, continues through a rate hearing, and ends with a NSUARB written decision and order. FAM addresses over or under recovery of fuels costs, is adversarial, and considers an independent audit of actual versus forecast fuel costs.) Further, regulated common equity must be maintained at nearly 40 percent of capitalization (regulated common equity plus long-term debt plus retained earnings). *See* also, GSQR Exhibit NS-EL-17 at DE-03/DE-04 at 117, and 126. Actual POI average common equity is 38.8 percent in NSPI's 2014 financial statement at GSQR Exhibit NS-SUPP1-36 at Attachment 1 at 6.

[183] *See* GSQR at Exhibit NS-EL-17 at DE-03/DE-04 at 110-111.

[184] *Id.* at Exhibit NS-EL-17 at DE-03/DE-04 at 139, and SR-01 Attachment 1 at 3.

[185] *Id.* at Exhibit NS-EL-17 at DE-03/DE-04 at 8. (During the POI, under-recovered fixed costs, mainly from the LRR, were deferred under the Rate Stabilization Plan; however, not all under-recovered costs are attributable to the LRR. Some stranded costs are the result of previous capital expenditures to meet previously forecast demand growth which did not materialize due to the 2008 economic downturn, the slow subsequent recovery, and the unexpected shift to a much reduced level of demand from the paper industry in general.).

[186] *Id.* at Exhibit NS-EL-17 at DE-03/DE-04 at 139-145, and at SR-01 Attachment 1 at 3.

[187] *Id.* at Exhibit NS-EL-17 at DE-03/DE-04 at 139-145, and at SR-01 Attachment 1 at 3-12.

NSUARB's standard pricing mechanism with respect to NSPI. Port Hawkesbury's 2014 LRR, in contrast, is a below-the-line rate.[188]

NSPI has tariffs for 12 above-the-line rate payer classes in its 2014 schedule of rates.[189] NSPI also has several below-the-line classes, including the LRT, which were approved by NSUARB.[190] Port Hawkesbury is connected to NSPI at the transmission level of the electrical grid with a 185,000 kV service.[191] Port Hawkesbury owns its own transformers, receives its service on the high voltage side of the transformer, and does not have its own generation capacity.[192] Under its previous owner, the paper mill used the Extra Large Industrial 2 Part Real Time Pricing (ELI2P-RTP) rate, which is an above-the-line rate.[193] However, NPPH was in the process of negotiating a below-the-line rate when it ceased operations and entered *CCAA* protection in 2011.[194] No ELI2P-RTP rate was set for the POI because no customers intended to use it.[195] Among the other alternative pricing schedules available to large industrial customers, the GRLF did not apply to Port Hawkesbury,[196] no rate was set for the One Part Real Time Price for 2014 and rates applicable to Bowater Mersey were not applicable to Port Hawkesbury because they were only available to Bowater Mersey.[197] Thus, in 2014, other than the LRR, there were no electrical tariffs applicable to a customer with an extra-large connection size in the NSPI rate schedule.

The electricity rate setting process in Nova Scotia is usually conducted on a year-ahead basis; however, NSPI applied for approval of its 2013 and 2014 tariffs simultaneously in 2012 because of significant upward price pressures related to the loss of some of its largest customers and conversion from coal-based generation to the use of renewable energy sources.[198] NSPI addressed these price pressures with a Rate Stabilization Plan that held rate increases at 3 percent for its above-the-line rate classes for 2014, rather than the 5.4 percent increase demanded by its increased cost structure, by factoring in under-recovered cost deferrals to the above-the-line rate

[188] *See* PQR at 64. *See* PQR Exhibit 23-5, NSUARB May 24, 2000 Decision at 24. *See* also, GSQR Exhibit NS-EL-17 at DE-03/DE-04 at 142 (Below-the-line tariffs have predominantly and historically served NSPI's two largest customers: NPPH, now Port Hawkesbury, and Bowater Mersey, which ceased operation in June 2012).
[189] *See* GSQR Exhibit NS-EL-17 at DE-03 – DE04 Appendix P, Attachment 4, at 40-76 (above-the-line tariffs 2014). *See also* GSQR at Exhibit NS-SUPP1-30 at Schedule D.
[190] *See* Order M04972 at Schedule D. *See* also, GSQR Exhibit NS-EL-17 at DE-03 - DE-04 at 141 (stating that Mersey Basic, Mersey Additional Energy, Generation Replacement and Load Following (GRLF), and the LRT are below-the-line rates). *See also* GSQR Exhibit NS-EL-17 at SR-01, Attachment 1, at 110 (Revenue Analysis 2014 Exhibit 7, (showing below-the-line rates as direct revenue and including real time pricing (albeit with no revenue). This line item is for One Part Real Time Price but there was no planned usage during the POI).
[191] *See* PSQR at 33.
[192] *Id.*
[193] *See* GSQR Exhibit NS-EL-17 at DE-03/DE-04 at 128.
[194] *Id.* at Exhibit NS-EL-2 at 5 (The NSUARB November 29, 2011 Decision explains that NPPH applied for an LRT/LRR on June 22, 2011, but ceased operations September 6, 2011).
[195] *Id.* at Exhibit NS-EL-17 at DE-03/DE at 130 (Section 10.2.3 Suspension of ELI2P-RTP Rate Class).
[196] *See* PSQR Exhibit 43-1 at 39 (GRLF is for customers who have their own generation capacity of no less than 2,000 kV).
[197] *See* Order M04972 at Schedule D. The Mersey Basic and Mersey Additional Energy rates discussed in the General Rate Agreement were not used during the POI because the General Rate Agreement was submitted prior to the June 2012 closure of Bowater Mersey.
[198] *See* GSQR Exhibit NS-EL-17 at DE-03/DE-04 at 8.

classes from the 2010 Fuel Adjustment Mechanism (FAM), Balance Adjustment.[199] FAM, Balance Adjustments were used to lower the 2014 above-the-line rates, while above-the-line rates were held at cost-to-revenue ratios of 95 to 105 percent in line with the cost-of-service methodology.[200] The use of FAM adjustments does not distort the standard pricing mechanism because specific under- or over-recovered fuel expenses are tracked and charged or credited to the applicable individual above-the-line rate classes.[201] The Rate Stabilization Plan continues the deferral of system-wide unrecovered costs (*i.e.*, those from below-the-line rates, and stranded costs[202]) for recovery from above-the-line rate classes. The deferrals of 2013-2014 costs are planned to be recovered in the 2015-2022 period.[203] In addition, the Rate Stabilization Plan extends a program of cost shifting that began in 2012 with the Fixed Cost Recovery mechanism.[204] The 2014 above-the-line rates include amounts for deferred cost recovery from 2012 under the Fixed Cost Recovery mechanism.[205] Although Bowater Mersey and NPPH were both shut down for portions of 2012, the rates in effect at that time were designed with that eventuality in mind. The 2012 rate structure was set with Bowater Mersey and NPPH load included. Above-the-line rates covered their own costs. Stranded costs, from the lost paper mill load, were not allocated to above-the-line classes during the year that the rate was applied, but were rather deferred to 2013-2014 and spread over all above-the-line rate classes in a manner consistent with the standard pricing mechanism.[206] Some costs that were deferred to 2014 under the Fixed Cost Recovery Mechanism were the uncovered fixed costs associated with Port Hawkesbury's LRR. This is a departure from the standard pricing mechanism, but, although this process is continued in the Rate Stabilization Plan, it appears to be a limited arrangement that does not affect how rates are normally set.

As guided by the *CVD Preamble*, we preliminarily determine that under their normal rate setting philosophy, the NSUARB and NSPI set above-the-line rates in accordance with market principles for regulated monopolies when the cost-of-service method is employed (including the FAM). These rates fully incorporate the costs of fuel, generation, transmission, and distribution. Under this method of rate setting, there is a sufficient guaranteed rate of return to ensure future operations because all costs are covered, and, in order to ensure adequate investment, investors

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[199] *Id. at* Exhibit NS-EL-17 at DE-03/DE-04 at 8, 149-150; Exhibit NS-EL-17 at DE-03/DE-04, Appendix N at 11; and Exhibit NS-EL-17 at DE-03/DE-04 at 11,. *See also* GSQR Exhibit NS-EL-17 at DE-03/DE-04 at 27.
[200] *Id.* at Exhibit NS-EL-17 at SR-01, Attachment 1, at 130 (Exhibit 10 – Revenue and Expense Comparison for 2014)
[201] *Id.* at Exhibit NS-EL-17 at DE-03/DE-04 at 27.
[202] Stranded costs represent redundant existing investments in infrastructure which must still be paid for (either as idled or at reduced output), *e.g.*, generation facilities built to serve paper industry load which is now much smaller than forecast.
[203] *See* GSQR Exhibit NS-EL-17 at DE-03/DE-04 at 15, 26. The Fixed Cost Recovery mechanism was approved in the NSUARB's November 29, 2011, decision on the 2012 General Rate Agreement to defer lost fixed non-fuel cost contributions associated with the loss of load of NPPH and Bowater Mersey. By this method above-the-line rates did not have to shoulder the fixed costs associated with those companies in 2012. At the time of the application, NSPI did not know if those facilities would operate. Accordingly, the unrecovered fixed costs were to be deferred and recouped in 2013 and 2014 based on actual figures.
[204] *Id.*
[205] *See* GSQR at Exhibit NS-EL-21 at 77. *See also* PSQR at 42.
[206] *See* GSQR Exhibit NS-EL-17 at DE-03/DE-04 at 15.

are guaranteed a rate of return on equity that is competitive with similarly risky investments available in the market.

Before the LRR was approved for Port Hawkesbury on September 27, 2012, the applicable tariff for the paper mill was the above-the-line ELI2P-RTP rate. During the POI, there was no rate set for the ELI2P-RTP tariff.[207] There was a Large Industrial rate in effect during the POI, but Port Hawkesbury states that its electricity consumption is so large that the Large Industrial rate would not apply to its electricity purchases.[208] And, as discussed above, other rates for users of Port Hawkesbury's size were inapplicable to Port Hawkesbury or not in effect during the POI. Thus, the LRR is the only rate in the 2014 schedule of rates in Nova Scotia that is applicable to Port Hawkesbury.

In *Magnesium from Canada*, the Department stated that "if the amount of electricity purchased by a company is so great that the rate schedule is not applicable, we will examine whether the price charged is consistent with the power company's standard pricing mechanism."[209] The above-the-line electricity rates set in Nova Scotia include all costs plus return on equity. The LRR approved for Port Hawkesbury is based upon only the incremental costs for providing electricity as well as only a very small portion of fixed costs. Therefore, consistent with 19 CFR 351.511(a)(2)(iii) and *Magnesium from Canada*, we preliminarily determine the LRR rate provided to Port Hawkesbury is not set according to the standard pricing mechanism, which is a price that is approved by the NSUARB, upon application of NSPI (here the General Rate Agreement applicable to the POI), as determined via the cost-of-service methodology for the above-the-line prices. Rather, the LRR is a below-the-line price which does not cover all fixed costs or profits. Thus, in order to determine an appropriate Tier 3 benchmark, we have increased the LRR by including all applicable fixed costs plus the return on equity (ROE).

NSPI admitted that the LRR covers only C$2/MWh of fixed costs incident to supplying electricity to Port Hawkesbury compared to the C$26/MWh recoverable fixed cost under the 2012 ELI2P-RTP, leaving C$24/MWh in unrecovered fixed costs.[210] The LRR itself covers all incremental costs. We can allocate ROE to the Port Hawkesbury LRR's proportion of the yearly electric load of the system. Adding together these three pricing factors results in a Tier 3 benchmark that is consistent with market principles because it includes all fixed costs, all variable costs, and an amount for profit.

To calculate the benefit pursuant to section 771(5)(e)(iv) of the Act, we subtracted from the amount that Port Hawkesbury would have paid for the electricity it consumed during the POI the actual amount paid by Port Hawkesbury for electricity during the POI. The difference represents the benefit to Port Hawkesbury for the provision of electricity for LTAR. We then divided the benefit by the total sales of Port Hawkesbury during the POI. Based upon this methodology, we

[207] Information on the record reports some information regarding the 2010 and 2012 ELI2P-RTP rates. However, the record lacks the required information to determine an appropriate ELI2P-RTP rate for the POI. *See* PSQR at 4 and GSQR at SUPP1-50A at 30-4 and PSQR Exhibit 45-2 at 1.
[208] *See* PSQR at 32-33.
[209] *See Magnesium from Canada*, 57 FR 30946, 30954.
[210] *See* GSQR Exhibit NS-EL-17 DE-03/DE04 at 19.

preliminarily calculated a countervailable subsidy rate of 14.69 percent *ad valorem* for Port Hawkesbury. Resolute did not use this program.

11. GNS Provision of Stumpage and Biomass Material for Less Than Adequate Remuneration (LTAR)

The petitioner contends that the GNS offered Port Hawkesbury a 20-year "Forest Utilization License Agreement" (FULA), providing a company-specific plan for sourcing pulpwood and biomass fuel from Crown (*i.e.*, government) lands.[211] The petitioner claims that the FULA stipulates certain volumes of pulpwood and biomass material which Port Hawkesbury is required to purchase from private suppliers. As such, the petitioner argues that under the FULA, Port Hawkesbury is able to obtain approximately two-thirds of its pulpwood from Crown lands and is only obligated to obtain one-third of its pulpwood from private sources. The petitioner states this demonstrates that the FULA program for stumpage and biomass material from Crown lands constitutes a subsidy on the production of subject merchandise.

During 2014, the GNS's stumpage prices recognized 17 product/species categories, including distinct categories for hardwood and softwood products, as well as distinct categories for pulpwood, biomass, and saw fiber products. The Province includes a regional distinction for two product categories – pulpwood and biomass. Port Hawkesbury is located in the Eastern Region and had no authority to harvest pulpwood or biomass from the Western Region during the POI.[212] The authority of the Minister of Natural Resources to set stumpage rates is derived from the Nova Scotia *Crown Lands Act*.[213]

The DNR provides for three instruments for the use of Crown timber: (1) Short Term Permits under Section 28 of the *Crown Land Acts*; (2) License Agreements under Section 31 of the *Crown Land Acts*; and (3) Forest Utilization License Agreements (FULAs), which can be area-based or volume-based, provided for under Section 32 of the *Crown Land Act*.[214]

These agreements delineate various rights and obligations for DNR and the licensee. For example, DNR agrees to provide the licensee with the right to harvest a specified amount of Crown timber, and the licensee agrees to harvest the timber. The licensee must provide its own equipment and labor for harvesting and must provide an Operating Plan to the DNR for harvesting under the license, which DNR must approve before the harvesting can occur. The agreements include specific requirements for the building, maintenance and restoration of roads and infrastructure. The agreements also indicate whether any allowances will be applied for overhead or other obligations. Finally, the agreements prescribe how the harvested wood may be used, the silviculture fees to be imposed, and the stumpage rates to be charged.[215]

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[211] The petitioner, in addition to making its allegation on Stumpage for LTAR to cover both pulpwood stumpage and biomass stumpage, also references the government provision of biomass under the allegation of "Provision of Steam for LTAR." We are only addressing the allegation of biomass under this stumpage program because the provision of biomass is only provided to Port Hawkesbury by the GNS under the FULA.
[212] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume XXII, NS.XXII-5.
[213] *Id.*
[214] *Id.* at NS-XXII-6
[215] *Id.*

The FULA is the only agreement instrument applicable to Port Hawkesbury.[216] The FULA with Port Hawkesbury reflects many of the general terms present in all agreements; however, some of the specifics of the Port Hawkesbury FULA differ from other agreements and are unique to the FULA for Port Hawkesbury.[217] The primary difference is that the 2012 Port Hawkesbury agreement is a long-term (20 years), area-based agreement, whereas other agreements are shorter in length and/or based upon volume rather than area.[218] Such distinctions result, for example, in differences in the administrative/overhead allowance amount, which can vary depending upon the type of the agreement and the attendant obligations borne by the Crown licensee. In addition, the methodology for determining pulpwood stumpage and biomass stumpage rates in the Port Hawkesbury FULA differs from that in other agreements across the Province.[219] The principal difference in the methodology for determining stumpage rates is that Port Hawkesbury's FULA departs from the standard FULA's reliance on particular market-related data for establishing the rates, and instead relies on completely different market-related information.[220] Under the FULA, Port Hawkesbury has the right to harvest stumpage and biomass and has obligations relating to road building and maintenance; site preparation and clean up; and silviculture.

We preliminarily determine that the provision of stumpage from Crown land by the Government of Nova Scotia to Port Hawkesbury under the FULA constitutes a financial contribution as a provision of a good or service within the meaning of 77(5)(D)(iii) of the Act. The Government of Nova Scotia has stated that both the terms and the methodology for determining stumpage rates in the Port Hawkesbury FULA differs from those in other agreements within the Province of Nova; therefore, we preliminarily determine the provision of stumpage under terms of the FULA is expressly limited tor PHP and, therefore, is *de jure* specific under section 771(5A)(D)(i) of the Act

The provision of stumpage provides a benefit within section 771(5)(iv) of the Act, to the extent that the GNS received less than adequate remuneration when measured against an appropriate benchmark for stumpage. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying benchmarks to determine whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. This hierarchy reflects a logical preference for achieving the objectives of the statute.

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[216] *Id.*

[217] *See* Port Hawkesbury's QR at Exhibit 25-3 for the FULA.

[218] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume XXII, XXII-7.

[219] *Id.*

[220] According to the GNS, the stumpage rates in Nova Scotia are based upon the fair market value of stumpage sold by private landowners to commercial harvesters, with adjustments made for Crown overhead/administrative costs and Crown silviculture fees. The fair market value is based upon surveys of private stumpage transactions in the Maritime Region (*id.* at Exhibit NS-ST-4), updated to reflect changes in market conditions over time. Stumpage rates were updated for the fiscal years April 2013 - March 2014 and April 2014 – March 2015, respectively. *Id.* at NS.XXII-4-5.

The most direct means of determining whether the government received adequate remuneration is a comparison with private transactions for a comparable good or service in the country, *i.e.*, using a Tier 1 benchmark. We base this on an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country or outside the country (the latter transaction would be in the form of an import). Our preference for Tier 1 is based on the expectation that such prices would generally reflect most closely the commercial environment of the purchaser under investigation.[221]

In accordance with the first preference in the hierarchy, to determine the existence and extent of the benefit, we analyzed the stumpage market in Nova Scotia during the POI. Each year the DNR issues a Registry of Buyers annual report indicating the total harvest in Nova Scotia from both Crown land and from private land.[222] The last published annual report was issued in June 2014 and covers calendar year 2013. According to the 2013 Registry of Buyers, stumpage harvest from Crown land accounted for 19 percent of the total harvest during 2013.[223] Thus, the harvest from private land accounted for 81 percent of the total harvest in Nova Scotia during 2013. The Registry of Buyers annual report for 2014 has not yet been published (we have requested the Government of Nova Scotia to provide a copy of the 2014 annual report upon its publication); however, the Government of Nova Scotia provided the preliminary information, which is proprietary.[224]

Because the participation of the Province in the stumpage market is small, and is well below a majority, we preliminarily determine that it does not have a distortive impact on the private stumpage market or the stumpage prices therein. Thus, for this preliminary determination, it is appropriate to rely on observed market prices for stumpage as the Tier 1 benchmark. Moreover, Port Hawkesbury itself purchased a significant amount of pulpwood and biomass stumpage from private parties during the POI; we preliminarily determine that these prices constitute observed market prices that satisfy the requirements of 19 CFR 351.511(a)(2)(i), and we are relying on them as the benchmark for determining the adequacy of remuneration.

During the POI, Port Hawkesbury purchased stumpage from private lands under both Lease Agreements and Purchase Agreements.[225] Under Lease Agreements, Port Hawkesbury pays private woodlot owners for access to land and the right to build and maintain roads and harvest wood for both pulpwood and biomass. Port Hawkesbury also incurs regeneration obligations such as replanting under its Lease Agreements.[226] These obligations are the same as the

[221] *See CVD Preamble*, 63 FR at 65377.
[222] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume XXII, NS.XXII-3
[223] *Id.* at Exhibit NS-ST-1, Registry of Buyers at page 25.
[224] *Id.* at NS.XXII-4.
[225] *See* PQR at Exhibit 25-1 for purchases during the POI, Exhibit 25-2 for purchases of Biomass and Exhibit 25-3 for the FULA. For lease agreements that Port Hawkesbury had with private suppliers please *see* Exhibit 25-5 of the same submission.
[226] Under the terms of the Forrest Management Agreement (FMA) the Port Hawkesbury mill will sustainably manage crown forest land for the benefit of multiple users, while receiving for itself a guaranteed annual supply of 400,000 gross metric tons per annum of logs. The FMA seeks to ensure sustainable regeneration of crown forests

obligations that Port Hawkesbury incurs under the FULA. Under Purchase Agreements, Port Hawkesbury purchases the already-harvested wood. Because the Lease Agreements reflect the same rights and obligations that are set forth in the FULA, we are relying on purchases under Lease Agreements as the basis for our benchmark.

The FULA for Port Hawkesbury sets separate stumpage rates for (1) softwood pulpwood; (2) hardwood pulpwood; (3) hardwood fuelwood (biomass); (4) fuelwood greater than 75 percent hardwood; (5) softwood fuelwood (biomass); and (6) fuelwood greater than 75 percent softwood.[227] For each of the separate stumpage rate categories set by the DNR within the FULA, we compared that rate to the stumpage rate for the identical pulpwood and fuelwood harvested by Port Hawkesbury under private Lease Agreements during the POI.

To calculate the benefit received under this program, we compared the stumpage prices paid by Port Hawkesbury to the GNS under the FULA to the prices Port Hawkesbury paid under private Lease Agreements. For pulpwood, because the private leases had the same infrastructure obligations as the FULA, and the information provided by Port Hawkesbury for its harvest under the FULA showed the wood only price and separately reported all associated additional costs (*e.g.*, silviculture, road building and maintenance). As well, the information provided about the pulpwood harvest from private lease holders was reported on the same basis, separately showing the stumpage price and each of the additional costs.[228] Thus, for pulpwood, we have relied on the stumpage only price under private leases as our basis for comparison to the stumpage paid under the FULA. For the biomass harvest under the FULA, the information provided by Port Hawkesbury shows the fully inclusive price of the stumpage fee and all other costs. Port Hawkesbury reported its purchases of fuel logs used for biomass under private leases also on this fully cost-inclusive basis. Therefore, we compared the fully cost-inclusive price of biomass stumpage obtained under the FULA to the fully cost-inclusive price of fuel logs, used for biomass material.[229] We summed the total benefits for pulpwood and biomass material to derive a total for benefit for stumpage provided at LTAR. We then divided the stumpage benefit by the total sales of Port Hawkesbury to calculate a net countervailable subsidy rate of 1.33 percent *ad valorem* for this program.[230]

12. GNS Purchase of Land for More than Adequate Remuneration (MTAR)

The Department initiated on an allegation that the GNS agreed to purchase land owned by Port Hawkesbury for almost C$400 per acre, or C$20 million total.[231] Citing a separate June 2013 purchase of land by the GNS for a lower price, the petitioner alleged that the GNS overpaid for Port Hawkesbury's land. Specifically, in that separate transaction, the GNS paid C$16,500,000,

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according to Forest Stewardship Council Principles. *See* PSQR at Exhibit 29-1 for more information on their obligations for forest regeneration of Crown Lands under the FMA.

[227] *See* PSQR at 52 and Exhibit 67-1 and 67-2 for Stumpage Fees and PQR at Exhibit 25-3.

[228] *See* PQR at Exhibit 25-1 for Crown Purchases. For purchases from private leaseholders, *see* PSQR at Exhibit 65.2.

[229] *See* PSQR at Exhibit 65-5.

[230] *See* Port Hawkesbury Preliminary Calculation Memo.

[231] *See* Initiation Checklist at 12.

or C$300 per acre, for 55,000 acres of forestry land from an unrelated private company, Northern Pulp.[232]

In its initial questionnaire response, the GNS reported that the DNR first approached NPPH about purchasing land in September 2011.[233] After negotiating the price with Port Hawkesbury, the DNR purchased 50,858 acres of land from Port Hawkesbury for C$20 million, or C$393/acre, on September 28, 2012.[234] Regarding the specificity of the program, the GNS stated, "The Government of Nova Scotia stipulates specificity, as the Department of Natural Resources purchased land from PHP."[235]

We preliminarily determine that this land purchase conferred a countervailable subsidy within the meaning of section 771(5) of the Act and constitutes a financial contribution in the form of the GNS purchase of a good from Port Hawkesbury under section 771(5)(D)(iv) of the Act. We also preliminarily determine that the program is specific in accordance with section 771(5A)(D)(i) of the Act because the GNS provided the assistance only to Port Hawkesbury.

Regarding benefit, section 771(5)(D)(iv) of the Act states that in the case where goods are purchased by a government authority, a benefit shall normally be treated as conferred if such goods are purchased for more than adequate remuneration. This section of the Act also states the following:

> For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.[236]

The Department has not developed regulations with respect to the purchase of goods.[237] While the Department has had relatively few proceedings involving allegations of the purchase of a good for MTAR, we have in the past relied on prices within the country to determine a benchmark to measure the benefit. The most recent proceeding in which the Department made a final determination involving the purchase of a good for MTAR, other than on an adverse facts available basis under section 776(b) of the Act, was *LEU from France*.[238] In *LEU from France*, we used prices within the country to determine whether the government purchase of LEU was for more than adequate remuneration.

Therefore, we must first determine whether there are market prices from actual sales transactions involving private buyers and sellers within the country under investigation that we can use to

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[232] *See* Petition at Exhibit II-38.
[233] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume VII, NS.VII-2.
[234] *Id.* at NS.VII-2; *see also* GNS Pre-Preliminary Comments at 29.
[235] *See* GNS Pre-Preliminary Comments at 30.
[236] *See* section 771(5)(D)(iv) of the Act.
[237] *See* 19 CFR 351.512.
[238] *See Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium From France*, 66 FR 65901 (December 21, 2001) (*LEU from France*), and accompanying Issues and Decision Memorandum.

determine whether the GNS purchased Port Hawkesbury's land for MTAR. In the PSQR and GSQR, Port Hawkesbury and the GNS submitted the Property Valuation Services Corporation's (PVSC's) records of private party transactions for forest land parcels in Nova Scotia covering the period September 29, 2011, through September 27, 2013.[239] We are preliminarily relying on these transactions to measure the adequacy of remuneration from the GNS purchase of Port Hawkesbury's land because these represent market prices from actual sales transactions involving private buyers and sellers in Nova Scotia.

Section 771(5)(E)(iv) of the Act states that the adequacy of remuneration shall be determined in relation to the prevailing market conditions of the good being purchased. Therefore, we are using the private transactions of forest land made in the same month as the GNS purchase of Port Hawkesbury's land because contemporaneity is a factor that has considerable impact on comparability of prices in the real property market. Moreover, these transactions reflect the prevailing market conditions at the time the GNS purchased the land from Port Hawkesbury. The selection of a monthly benchmark is also consistent with the benchmarks used to measure the provision of a good or service for less than adequate remuneration. We are preliminarily using a simple average price per acre of private transactions occurring in September 2012, the same month as the GNS's purchase. The PVSC database identifies five land transactions during September 2012. Further considering the factors affecting comparability, we have also preliminarily excluded one of these five transactions from the benchmark. This transaction is one-fifth of the size of the smallest of the remaining four benchmark parcels. Moreover, its price per acre appears to be aberrational in that it is over 33 times higher than the average of the all private forest land transactions during the period from September 2011 through September 2013.[240]

We preliminarily find that the land prices of the four remaining private transactions serve as a comparable commercial benchmark. To determine the benefit, we first calculated a simple average price per acre of the four private land transactions from the PVSC database. Because the benchmark price per acre was less than the price per acre that the GNS paid Port Hawkesbury, we subtracted the price per acre that the GNS paid to Port Hawkesbury from the simple average benchmark price per acre to determine the per-acre benefit. Finally, we multiplied the per-acre benefit by the acreage that Port Hawkesbury sold to the GNS to determine the total benefit.

Because the purchase of land was an exceptional event, Port Hawkesbury cannot expect to receive additional subsidies on an on-going basis, and the receipt of benefits is not automatic, we are treating the benefit from the purchase of the land as a non-recurring benefit. Therefore, we conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2). We found that the benefits were greater than 0.5 percent of Port Hawkesbury's total sales in the year in which the purchase of land was approved. Thus, we allocated the total benefit over the AUL using the discount rate discussed above in the section "Loan Interest Rate Benchmarks and Discount Rates" to determine the amount attributable to the POI. Using this methodology, we calculated the

[239] *See* PSQR at Exhibit 91-1; *see also* GSQR at Exhibit NS-SUPP1-99. The lists of purchases in the PSQR and the GSQR are the same.
[240] *See* the Port Hawkesbury Preliminary Calculation Memo for details on this transaction and the other four benchmark land parcels.

countervailable subsidy rate by dividing the benefit amount by Port Hawkesbury's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we preliminarily determine that the net countervailable subsidy rate for this program is 0.43 percent *ad valorem* for Port Hawkesbury.

B. Programs Preliminarily Determined To Be Not Used or Not to Confer a Benefit During the POI

1. Richmond County (Nova Scotia) Promissory Note for Property Taxes

On September 27, 2012, NPPH, Richmond County (Nova Scotia), and PWCC entered into an agreement that set the property taxes payable on Port Hawkesbury at C$1,326,227 for the balance of the taxation year commencing September 28, 2012, and ending March 31, 2013.[241] The property taxes under the agreement were partly payable through a C$450,000 interest-free loan granted in the form of a promissory note, repayable in four annual installments from 2013 to 2016, due by September 28 of each year.[242] The payment of taxes in this manner was contingent on the GNS passing the Richmond Port Hawkesbury Paper Ltd. Taxation Act, which gave effect to the September 2012 agreement.[243] The GNS reported that it offered this assistance only to Port Hawkesbury.[244] The Municipality of the County of Richmond is responsible for administering the loan.[245]

Although PWCC was the party to the agreement, Port Hawkesbury records the loan in its accounts.[246] Port Hawkesbury's 2013 and 2014 audited financial statements include the loan in its Accounts Payable and Accrued Liabilities.[247]

To calculate the potential benefit under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1), we relied on the benchmarks described above under the "Loan Interest Rate Benchmarks and Discount Rates" section to determine the amount of interest that Port Hawkesbury would have paid on a comparable commercial loan during the POI. In accordance with 19 CFR 351.525(b)(6)(i), we calculated the potential countervailable subsidy rate by dividing the benefit amount by Port Hawkesbury's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section.

We preliminarily find that the benefit to Port Hawkesbury under this program was less than 0.005 percent *ad valorem* during the POI. Thus, without determining whether this program provides a financial contribution or is specific, and consistent with our practice, we are not including the assistance that Port Hawkesbury received under this program in the countervailing duty rate because there is no measurable benefit.[248]

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[241] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume IV, NS.IV-2.
[242] *Id.* at NS.IV-2, Exhibit NS-RL-1, and Exhibit NS-RL-2.
[243] *Id.* at NS.IV-4.
[244] *Id.* at NS.IV-9.
[245] *Id.* at NS.IV-3.
[246] *See* PQR at 48.
[247] *Id.*
[248] *See, e.g., Coated Paper from the PRC* and accompanying Issues and Decision Memorandum at 23.

2. Government of Québec (GOQ) Support for the Forest Industry Program

Resolute reported that Fibrek and an additional cross-owned company had loans outstanding under the "Government of Quebec Support for the Forest Industry Program" (PSIF) during the POI.[249] In response to our questions, the GOC explained that the PSIF sought to support the consolidation of, investment in, and modernization of businesses of the forestry sector, namely forest management companies (harvest and silviculture works), pulp and paper businesses, businesses of the first transformation of wood, and businesses which produced wood transformation and forestry exploitation machinery.[250] The Quebec Council of Ministers approved the PSIF in 2006, and the program ended in 2010.[251] The GOQ's Investissement Québec, a government corporation owned by the GOQ, administered the program.[252]

To calculate the benefit under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1), we relied on the benchmarks described above under the "Loan Interest Rate Benchmarks and Discount Rates" section to determine the amount of interest that Resolute would have paid on a comparable commercial loan during the POI. We subtracted from that amount the actual interest paid on these loans during the POI. In accordance with 19 CFR 351.525(b)(6), we calculated the potential countervailable subsidy rate by dividing the benefit amount by the appropriate sales denominator. For loans to Fibrek, we preliminarily attributed the benefit that Fibrek received under the program to the sales of Fibrek plus the unconsolidated sales of Resolute (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv).[253] Because Resolute designated the relationship between it and the other recipient of the loans as business proprietary information, we have described the appropriate sales denominator for measuring the benefit for this company in the Resolute Preliminary Calculation Memo.

We preliminarily find that any potential benefit to Resolute under this program was less than 0.005 percent *ad valorem* during the POI. Thus, without determining whether this program provides a financial contribution or is specific, and consistent with our practice, we are not including the assistance that Resolute received under this program in the countervailing duty rate because there is no measurable benefit.[254]

3. Richmond County (Nova Scotia) Property Tax Reduction

We initiated on an allegation that the Richmond County council agreed to reduce Port Hawkesbury's annual property taxes by half through 2016 from C$2.6 million to C$1.3 million.[255] The GNS reported that the reduction resulted from an agreement between Richmond County, NPPH, and PWCC on September 12, 2012, to amend a 2006 tax agreement between Richmond County and Stora Enso Port Hawkesbury Limited, a former owner of the Port

[249] *See* RQR at 26-31. Resolute designated the names of the other companies as business proprietary information.
[250] *See* GQR at Government of Quebec Questionnaire Response, Volume I, QC-8.
[251] *Id.* at QC-8, Exhibit QC-PSIF-3, and Exhibit QC-PSIF-4.
[252] *Id.* at QC-9.
[253] *See, e.g., Coated Paper from the PRC* and accompanying Issues and Decision Memorandum at Comment 35.
[254] *Id.* at 23.
[255] *See* Initiation Checklist at 10.

Hawkesbury mill.[256] The amended tax agreement reduced the annual amount of property taxes to be paid to Richmond County by Port Hawkesbury from C$2.5 million to C$1.3 million.[257]

Under section 771(5)(D)(ii) of the Act, the financial contribution from a tax program is the amount of foregone revenue that is otherwise due. Under the amended tax agreement, the amount of property tax that Port Hawkesbury paid to Richmond County during the POI was C$1.3 million. In its initial questionnaire response, the GNS reported that during the POI, Richmond County assessed property tax at the rate of C$2.07 per C$100 of assessed value.[258] At this tax rate, according to the GNS, Port Hawkesbury would normally be assessed between C$550,000 – C$650,000 in property taxes during the POI.[259] Thus, the property tax that Port Hawkesbury paid during the POI under the amended tax agreement exceeds the property tax otherwise due. As a result, we preliminarily find that there is no revenue foregone under section 771(5)(D)(ii) of the Act during the POI; without any foregone revenue, Port Hawkesbury did not receive a benefit during the POI under this program pursuant to 19 CFR 351.509(a). Because we preliminarily find that there is no financial contribution or benefit, it is not necessary to address whether this program is specific.

4. Retention of Accumulated Tax Loss to Carry Forward

We initiated an investigation into whether PWCC obtained accrued tax losses by purchasing Port Hawkesbury.[260] Port Hawkesbury reported that under the *Income Tax Act (Canada*) (*CITA*), Port Hawkesbury Inc. is entitled, within specified circumstances, to use the accumulated non-capital tax losses accrued prior to the purchase of NPPH through the *CCAA* process.[261] Port Hawkesbury also explained that it does not have the ability to access the non-capital loss carry-forwards reported by Port Hawkesbury Inc. and, therefore, cannot derive any tax savings from Port Hawkesbury Inc.'s tax loss carry-forward.[262] Further, Port Hawkesbury explains that, as a partnership under Canadian law, Port Hawkesbury is not subject to Canadian income taxes and, accordingly, also cannot derive any tax savings from Port Hawkesbury Inc.'s tax loss carry-forwards.[263] Finally, Port Hawkesbury stated that no other responding cross-owned affiliates can, under Canadian tax law, use these tax losses to derive any reductions in their tax obligations.[264]

Income tax deductions provide a financial contribution under section 771(5)(D)(ii) of the Act in the form of foregone revenue that is otherwise due to a government. The benefit is the extent to which the taxes paid by the firms as a result of the program are less than the tax the firms would otherwise pay in the absence of the program. *See* 19 CFR 351.509(a)(1). Citing the blank line for "Non-capital losses of previous tax years applied in the current tax year" in Port Hawkesbury

[256] *See* GQR at Government of Nova Scotia Questionnaire Response, Volume V, NS.V-3 - NS.V-4.
[257] *Id.* at NS.V-4; *see also* PQR at 50.
[258] *Id*.
[259] *Id.* at NS.V-11.
[260] *See* Initiation Checklist at 11-12.
[261] *See* PQR at 57.
[262] *Id.* at 61.
[263] *Id.*
[264] *Id.* at 56.

Inc.'s 2013 tax year return (filed during the POI), Port Hawkesbury claims that Port Hawkesbury Inc. did not derive any tax savings from its accumulated tax losses during the POI.[265] Based on this information and additional business proprietary information from Port Hawkesbury Inc.'s income tax return filed during the POI, we preliminarily determine that Port Hawkesbury received no benefit under this program during the POI.[266] Because we preliminarily find that there is no benefit, we need not address whether this program provides a financial contribution or is specific.

5. **The Federal Atlantic Innovation Program**
6. **Government of New Brunswick (GNB) Funds for J.D. Irving**
7. **The Federal Transformative Technologies Pilot Scale Demonstrative Program**
8. **The British Columbia Ministry of Forests, Mines and Land Program**
9. **New Brunswick Climate Action Fund Grants**
10. **British Columbia Power Smart Program**
11. **BC Bioenergy Network Grants**
12. **New Brunswick Energy Rebate Fund**
13. **Loan from the Government of New Brunswick**
14. **The Powell River City Revitalization Tax Exemption Program**
15. **Efficiency New Brunswick Grant**
16. **Grants Under the Federal Forestry Industry Transformation Program**

C. Program Preliminarily Determined To Be Not Countervailable

Provision of Steam for LTAR

The petitioners allege that a cogeneration facility located at the Port Hawkesbury mill provides electricity and steam to the mill for LTAR, and further that the GOC provides stumpage from Crown lands at LTAR to fuel the biomass boiler. NSPI operates the boiler, but Port Hawkesbury provides the fuel biomass.

During the POI, Port Hawkesbury purchased all of its electricity from NSPI under the LRR; therefore, it is not necessary to separately determine whether electricity from the cogeneration facility is provided for LTAR. All electricity purchases under the LRR are addressed in the *GNS Provision of Electricity for LTAR* section above.

Similarly, with respect to the provision of biomass fuel by the GNS to Port Hawkesbury, all stumpage that Port Hawkesbury obtains from Crown lands is governed by the FULA which we have separately addressed in the *GNS Provision of Stumpage for LTAR* section above.

In 2010, before NPPH entered the *CCAA* process, NSPI entered into a set of agreements with NPPH and began improving an electricity and steam "co-generation" facility at the paper mill.[267] Among other investments, NSPI purchased a biomass-fired boiler and added a steam turbine

[265] *Id.* at 60.
[266] *See* Port Hawkesbury Preliminary Calculation Memo for additional details on this analysis.
[267] *See* PQR at 51, 74.

generator to the facility to produce electricity (an arrangement that also allowed NSPI to partially meet its own legislated targets for renewable electricity generation).[268] At that time NSPI and NPPH concluded several agreements considering the shifting of asset ownership between the parties, construction, operations and maintenance, and for the supply of steam. When the company was reconstituted out of the *CCAA* process as Port Hawkesbury in late 2012, the company signed a new agreement with NSPI covering its purchase of process steam from NSPI.[269] The cogeneration facility came online in 2013 and served the mill during the POI.[270]

The intention of the cogeneration facility is to provide steam to the mill and to generate electricity that can be dispatched either to the mill or to other NSPI customers via NSPI's transmission grid.[271] When Port Hawkesbury purchased the mill in 2012 it took over the contracts with NSPI and renegotiated the steam supply agreement.[272] NSPI and Port Hawkesbury entered into a long-term agreement through which NSPI annually provides process and heating steam to the mill.[273] The mill uses the steam for drying paper and heating the mill.[274]

Unlike the rates for electricity which must be approved by the NSUARB, the NSUARB has ruled that it has no jurisdiction with respect to the provision and pricing of steam between NSPI and Port Hawkesbury.[275]

Accordingly, because the GNS and the regulating agency, the NSUARB, are not involved in the pricing of steam between NSPI and Port Hawkesbury, we preliminarily determine that there is no financial contribution by an authority under section 771(5)(B) of the Act, nor is there the entrustment or direction of a private entity, the NSPI, to make a financial contribution. Because we preliminarily find that there is no financial contribution, we need not address whether this program is specific or confers a benefit.

IX. CALCULATION OF THE ALL OTHERS RATE

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an "all others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents by those companies' exports of the subject merchandise to the United States. The "all-others" rate does not include zero and *de minimis* rates or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(5)(A) of the Act, we have not calculated the "all others" rate by weight averaging the rates of Resolute and Port Hawkesbury because doing so risks disclosure of proprietary information. Therefore, we calculated a simple average of

[268] *Id.* at 73 and GSQR at NS-SM-6 at 4. *See* also GSQR at NS-SM-6 at 6-7.
[269] *See* PQR at 74.
[270] *Id.* at 71-72.
[271] *See* GSQR at Exhibit NS-SM-6 at 6. *See* also GSQR at XX-4 and Exhibit NS-SM-9 at 1.
[272] *See* PQR at 74.
[273] *Id*. *See also* PQR at Exhibit 24-4 at 6.
[274] *Id.* at 71, 75.
[275] *Id.* at Exhibit 24-3. *See* also GSQR at 62 (provision of industrial process steam is not a function of a regulated utility in Nova Scotia to or for the public).

Resolute's and Port Hawkesbury's rates.

X. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our preliminary determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after we make our final determination.

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[276] Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[277]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[278] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[279] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[280] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[281] on the due dates established above.

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[276] *See* 19 CFR 351.224(b).
[277] *See* 19 CFR 351.309.
[278] *See* 19 CFR 351.309(c)(2) and (d)(2).
[279] *See* 19 CFR 351.310(c).
[280] *See* 19 CFR 351.303(b)(2)(i).
[281] *See* 19 CFR 351.303(b)(1).

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 July 2015
(Date)