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Investigation
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November 1, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of the Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Issues and Decision Memorandum for the Final Determination

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Summary

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain softwood lumber products, as provided in section 705 of the Act. These countervailable subsidies are provided throughout the jurisdiction of Canada. Additionally, the Department determines that critical circumstances do not exist with regard to lumber from Canada. Below is a complete list of the issues in this investigation for which we received comments from interested parties.

General Issues

General Stumpage Issues

Comment 11: Whether the Provision of Stumpage Rights Is a Financial Contribution
Comment 12: Whether Evidence Establishes No Market Distortion and Tier-One Benchmarks Should Be Applied
Comment 13: Whether the Department Must Compare Average Benchmark Prices to Average Transaction Prices
Comment 14: Whether the Department Must Conduct a Pass-Through Analysis
Comment 15: Whether the Net Benefit Calculation for Stumpage for LTAR is Correct

Alberta Stumpage Issues

Comment 16: Benchmarking Alberta
Comment 17: Whether the Department Should Use a U.S. Log Benchmark to Compare Respondents' Alberta Stumpage Purchases

British Columbia Stumpage Issues

Comment 18: Whether Crown Auctions in British Columbia Generate Valid Market Prices
Comment 19: Whether the Department Should Use Conversion Factors from the BC Dual Scale Study
Comment 20: Whether the Department Should Rely on Log Prices from Forest2Market Instead of WDNR Prices as a Benchmark to Compare Respondents' BC Stumpage Purchases
Comment 21: Whether U.S. PNW Log Prices Should Not Be Used as a Benchmark Because They Do Not Reflect Prevailing Market Conditions in British Columbia
Comment 22: Whether the Department Should Use a Timbermark-Specific Annual Average Stumpage Price
Comment 23: Whether the Department Should Consider BC Stumpage Prices on a "Stand as a Whole" Basis
Comment 24: Whether the Department Should Grant Cost Adjustments in British Columbia
Comment 25: Whether the Department Should Account for Differences in Grading Systems in British Columbia and the United States
Comment 26: Whether the Department Should Adjust for a Non-Contract Profit Rate
Comment 27: Whether the Department Should Adjust the U.S. Benchmark Price to Account for Tenure Security

New Brunswick Stumpage Issues

Comment 28: Whether Private Stumpage Prices in New Brunswick Should be Used as Tier-One Benchmarks
Comment 29: Whether the Department Should Use the New Brunswick Survey as a Benchmark for Stumpage for LTAR

Ontario Stumpage Issues

Comment 30: Whether Stumpage for Ontario Crown Timber Was Subsidized During the Period of Investigation
Comment 31: Whether Ontario's Private Market Is Distorted and Whether Ontario's Private Prices Are an Appropriate Benchmark
Comment 32: Whether the Ontario Log Benchmark Relied on by the Department in *Lumber IV* Would Demonstrate that Ontario Crown Timber is Not Subsidized
Comment 33: Whether Stumpage Charges Distort Ontario's Domestic Log Market and Whether a Log Price Benchmark Shows No Subsidy
Comment 34: Whether to Estimate Ontario's Crown Timber Prices with Québec's Transposition Equation

Québec Stumpage Issues

Comment 35: Whether the Québec Stumpage Market Is Distorted
Comment 36: Whether the Department Made a Clerical Error in Its Calculation of the Québec Stumpage Benefit That It Should Correct in Its Final Determination
Comment 37: Whether Resolute Pays Competitive Prices for Its Purchases of Non-TSG or Non-Tenured Timber
Comment 38: Whether the Department Should Account for the Premiums Resolute Pays Over Auction Prices in Québec

Nova Scotia Benchmark Issues

Comment 39: Whether NS Private Stumpage Prices Can Serve as a Tier-One Benchmark
Comment 40: Whether the Nova Scotia Benchmark Is Comparable to the Provinces at Issue
Comment 41: Whether Nova Scotia's Private Stumpage Survey Data Are Flawed
Comment 42: Whether the Department Should Make Adjustments to the Nova Scotia Benchmark
Comment 43: Whether the Department Should Make Adjustments to Stumpage Rates in Alberta, Ontario, Québec, and New Brunswick

Log Export Restraint Issues

Comment 44: Whether the Log Export Restraint in British Columbia Restrains Log Exports
Comment 45: Whether Log Export Restraints Impact the British Columbia Interior
Comment 46: Whether the Log Export Process in British Columbia is a Financial Contribution
Comment 47: Whether the Constructed Benchmark for Log Export Restraints in the *Preliminary Determination* was Correct

Purchase of Goods for MTAR Issues

Comment 48: Whether Electricity is a Service and Therefore Whether the Purchase of Electricity by BC Hydro is a Financial Contribution
Comment 49: Whether BC Hydro's Purchase of Electricity is Tied to Electricity

Comment 50: Whether BC Hydro's EPA Program is Specific
Comment 51: Which Benchmark Should the Department Use for the Purchase of Electricity for MTAR by BC Hydro
Comment 52: Whether the GOQ's Purchase of Electricity Is Specific
Comment 53: Whether Resolute's Electricity Sales Are Tied to Non-Subject Merchandise
Comment 54: Whether the Department Should Use the Industrial L Rate as the Benchmark for the GOQ's Purchase of Electricity Under PAE 2011-01
Comment 55: Whether the Industrial L Rate Benchmark Was Improperly Calculated

Grant Program Issues

Comment 56: Whether the Canada-New Brunswick Job Grant Program is Regionally Specific
Comment 57: Whether the Alberta Bioenergy Producer Credit Program is Countervailable
Comment 58: Whether the Department Incorrectly Analyzed the BC Hydro Power Smart: Load Curtailment Program
Comment 59: Whether the Department Correctly Found That the Three BC Hydro Power Smart Programs Countervailed in the *Preliminary Determination* Are *De Jure* Specific
Comment 60: Whether Benefits Under the Load Displacement Component of the BC Hydro Power Smart Incentives Subprogram Were Tied to Non-Subject Merchandise
Comment 61: Whether the GNB's Reimbursement of Silviculture and License Management Expenses is Countervailable
Comment 62: Whether the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund Are *De Facto* Specific
Comment 63: Whether the PCIP Is Countervailable

Tax Program Issues

Comment 64: Whether the Federal and Provincial SR&ED Tax Credits Are Specific
Comment 65: Whether the Department Should Countervail the Federal and Provincial SR&ED Tax Credits That are Purportedly Tied to Non-Subject Merchandise
Comment 66: Whether the Department is Using the Correct Applicable Tax Rate for ACCA for Class 29 Assets
Comment 67: Whether the Department Should Use an Alternative Methodology for Calculating the Benefit of the ACCA for Class 29 Assets
Comment 68: Whether the ACCA for Class 29 Assets Program is Specific
Comment 69: Whether the ACCA for Class 29 Assets is a Tax Deferral
Comment 70: Whether the AJCTC is Specific
Comment 71: Whether the Department Must Account for Gains and Losses in Tax Savings in the AITC Program
Comment 72: Whether the Benefit for the Atlantic Investment Tax Credit Should be Adjusted
Comment 73: Whether the Alberta TEFU Marked Fuel Program Provides a Countervailable Subsidy
Comment 74: Whether the Coloured Fuel Program Evaluated in the *Preliminary Determination* Provides Countervailable Subsidies
Comment 75: Whether the GNB's Gasoline and Fuel Tax Exemptions and Refund Program Provides a Financial Contribution and Is Specific

Comment 106: Whether the Department Should Exclude Softwood Lumber Products from New Brunswick
Comment 107: Whether the Department Should Finalize the Exclusion of Softwood Lumber Products from the Atlantic Provinces

Background

Case History

The selected mandatory company respondents in this investigation are Canfor, Resolute, Tolko and West Fraser.[1] The Department also accepted JDIL as a voluntary respondent.[2] On April 26, 2017, the Department published the *Preliminary Critical Circumstances Determination*. On April 28, 2017, the Department published the *Preliminary Determination* and aligned this final CVD determination with the final AD determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).

Following the *Preliminary Determination*, on May 1, 2017, the Department received ministerial error comments pertaining to the Department's *Preliminary Critical Circumstances Determination*.[3] On May 15, 2017, the petitioner submitted rebuttal ministerial error comments.[4] From May 2, 2017, through May 5, 2017, the Department received scope comments from various interested parties. On May 5, 2017, the petitioner filed an amendment to the Petition.[5]

Between May 5, 2017, and May 18, 2017, the Department requested additional information from the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ.[6] Between May 22, 2017, and June 2, 2017, the Department received timely responses from the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ.[7] Between May 26, 2017, and May 30, 2017, various interested parties requested that the Department hold a hearing.[8]

Between May 31, 2017, and June 16, 2017, the Department issued verification outlines to the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ.[9] From June 5, 2017, to June 29,

[1] See Appendix I for abbreviations, document submissions, and citations.
[2] *See* Respondent Selection Memorandum; *see also* JDIL Voluntary Respondent Memorandum.
[3] *See* GOC Etal Ministerial Error Comments and JDIL Ministerial Error Comments.
[4] *See* Petitioner Comments Critical Circumstances 3.
[5] *See* Petitioner Amendment to the Petition.
[6] *See* Primary QNR – Correction 2, Canfor Supp QNR 4, Canfor Supp QNR 4 Addendum, JDIL Supp QNR 1, Resolute Supp QNR 8, Tolko Supp QNR 2, Tolko Supp QNR 2 Addendum, West Fraser Supp QNR 3, GOA Supp QNR 2, GOA Supp QNR 2 Addendum, GBC Supp QNR 4, GNB Supp QNR 2, GNS Supp QNR, GOO Supp QNR 2, and GOQ Supp QNR 2.
[7] *See* Canfor Supp QNR 4 Response, JDIL Supp QNR 1 Response, Resolute Supp QNR 8 Response, Tolko Supp QNR 2 Response, Part 1, Tolko Supp QNR 2 Response, Part 2, West Fraser Supp QNR 3 Response, GOA Supp QNR 2 Response, GBC Supp QNR 4 Response, GNB Supp QNR 2 Response, GNS Supp QNR 3 Response, GNS Supp QNR 3 Response, Errata, GOO Supp QNR 2 Response, and GOQ Supp QNR 2 Response.
[8] *See* GOC Etal Hearing Request, Canfor Hearing Request, GNS Hearing Request, Petitioner Hearing Request, Resolute CIFQ, and OFIA Hearing Request, RILA Hearing Request, and Tolko Hearing Request.
[9] *See* GOO Verification Outline, Canfor Verification Outline, Tolko Verification Outline, West Fraser Verification Outline, JDIL Verification Outline, GBC Verification Outline, GNB Verification Outline, GOA Verification Outline, GNS Verification Outline, GOQ Verification Outline, and Resolute Verification Outline.

2017, the Department conducted verification of the questionnaire responses of the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ. The Department released the verification reports between July 11, 2017, and July 18, 2017.[10]

On June 14, 2017, the Department put information on the record concerning the GOC's June 1, 2017, announcement of C$867 million in funding for its softwood lumber producers.[11] On June 17, 2017, the petitioner submitted new factual information concerning the GOC's announcement.[12] On June 20, 2017, the Department issued a questionnaire to the GOC regarding its announcement of C$867 million in funding for its softwood lumber producers.[13] On June 22, 2017, the GOC submitted a letter objecting to the Department's supplemental questionnaire.[14] On July 7, 2017, the GOC responded to the Department's questionnaire regarding the funding.[15]

On June 23, 2017, the Department issued a preliminary scope memorandum, in connection with the preliminary determination of the AD investigation.[16] Also on June 23, 2017, the Department issued a memorandum preliminarily excluding certain softwood lumber products certified by the ALB as being first produced in the provinces of Nova Scotia, Labrador and Newfoundland, and Prince Edward Island (the Atlantic Provinces) from logs harvested in the Atlantic Provinces.[17]

On July 26, 2017, the Department placed GTA data on the record for use in the final critical circumstances determination.[18] On July 31, 2017, the GOC placed rebuttal factual information on the record in response.[19]

On July 27, 2017, various interested parties submitted timely filed case briefs.[20] On August 4, 2017, and August 7, 2017, various interested parties submitted timely filed rebuttal briefs.[21] On August 17, 2017 and August 18, 2017, the Department held public hearings.[22]

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[10] *See* GNS Verification Report, Canfor Verification Report, GBC Verification Report, GOO Verification Report, GOQ Verification Report, Tolko Verification Report, West Fraser Verification Report, GNB Verification Report, GOA Verification Report, JDIL Verification Report, and Resolute Verification Report.
[11] *See* New Aid Package Memorandum.
[12] *See* Petitioner Comments GOC Etal QNR Response Aid.
[13] *See* GOC Etal Supp QNR 4.
[14] *See* GOC Etal Comments Objection to Supp QNR 4.
[15] *See* GOC Etal Supp QNR 4 Response.
[16] *See* Preliminary Scope IDM.
[17] *See* Preliminary Exclusion Memorandum.
[18] *See* GTA Data Additional Data.
[19] *See* GOC Etal Comments GTA Data.
[20] *See* Canfor Case Brief, Central Canada Alliance Case Brief, GBC Case Brief, GBC Case Brief Log Exports, GNB Case Brief, GOA Case Brief, GOC Case Brief, GOC Etal Common Issues Case Brief, GOM Case Brief, GOO Case Brief, GOQ Case Brief, GOS Case Brief, JDIL Case Brief, OCFP Case Brief, Petitioner Case Brief, Resolute Case Brief, Tolko Case Brief, and West Fraser Case Brief.
[21] *See* Central Alliance Canada Rebuttal Brief, GBC Rebuttal Brief, GNB Rebuttal Brief, GNS Rebuttal Brief, GOC Rebuttal Brief, GOC Etal Common Issues Rebuttal Brief, GOO Rebuttal Brief, GOQ Rebuttal Brief, JDIL Rebuttal Brief, Petitioner Rebuttal Brief, Resolute Rebuttal Brief, and West Fraser Rebuttal Brief.
[22] *See* Hearing Transcript Day 1, addressing scope matters, and Hearing Transcript Day 2, addressing CVD issues; *see also* GOC Etal Hearing Transcript Comments.

Period of Investigation

The POI is January 1, 2015, through December 31, 2015.

Scope of the Investigation

The product covered by this investigation is certain softwood lumber from Canada. For a full description of the scope of this investigation, as amended in this final determination, see the accompanying *Federal Register* notice for this final determination at Appendix I.

On August 11, 2017, the Department issued a memorandum outlining certain revisions made to the scope of the instant investigation, pursuant to a request made by CBP to eliminate certain erroneous HTSUS subheadings and replace them with the correct HTSUS subheadings. Specifically, CBP requested that the Department add HTS numbers 4421.99.7040 and 4421.99.9780 to the ACE module, and remove HTS numbers 4421.91.7040 and 4421.91.9780 from the ACE module. These updates were made for the scope of the countervailing duty and the companion antidumping investigations of softwood lumber from Canada.[23]

I. Scope Comments

On July 28, 2017, the Department invited interested parties to submit comments on scope issues that had been raised on the record of this proceeding and the concurrent AD investigation. In response, on or before August 7, 2017, the Department received scope briefs from OCFP; GNB; Canfor; RILA; Barrette; EACOM; Central Canada Alliance; NBLP [24]; GNS; JDIL; Woodtone and Maibec; NAFP; and the petitioner.[25]

On August 14, 2017, the Department received scope rebuttal comments from: UFP; IKEA; Central Alliance Canada; RILA; and the petitioner.[26]

Subsidies Valuation Information

A. Allocation Period

The Department made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.

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[23] *See* Updated to HTS Numbers Memorandum.

[24] The member companies of the NBLP are: Chaleur Sawmills Assoc.; Delco Forest Products Ltd.; Devon Lumber Co. Ltd.; Fornebu Lumber Co. Ltd.; H.J. Crabbe & Sons Ltd.; JDIL; Marwood Ltd.; MP Atlantic Wood Ltd.; NAFP.; and Twin Rivers Paper Co., Inc.

[25] *See* OCFP Case Brief; GNB Scope Case Brief; Canfor Scope Brief; RILA Scope Brief; BarretteWood and EACOM Scope Brief; Central Canada Alliance Case Brief; NBLP Scope Brief; GNS Scope Brief; JDIL Scope Brief; Woodtone Scope Brief; NAFP Scope Brief; Woodtone/Maibec Scope Brief; Petitioner Case Brief.

[26] *See* UFP Scope Rebuttal (refiling UFP's August 14, 2017 scope comments at the direction of the Department); IKEA Scope Rebuttal; Central Canada Alliance Scope Rebuttal; RILA Scope Rebuttal; Petitioner Scope Rebuttal.

B. Attribution of Subsidies

The Department made no changes to the attribution of subsidies. For a description of the methodologies used for this final determination, *see* the *Preliminary Determination*.

C. Denominators

Interested parties raised issues in their case briefs regarding the denominators we used to calculate the countervailable subsidy rates for the subsidy programs described below. For information on the denominators used in the final determination, *see* the *Preliminary Determination*, the "Analysis of Comments" section below, and the final determination calculation memoranda.

D. Loan Interest Rate Benchmarks and Discount Rates

The Department made no changes to, and interested parties raised no issues in their case briefs regarding, the benchmark interest rates used to calculate the benefit for the ACOA Loans – Atlantic Innovation Fund program. For information on the long-term interest rate benchmarks used in in the final determination, *see* the *Preliminary Determination* and the final determination calculation memoranda.

Analysis of Programs

A. Programs Determined To Be Countervailable[27]

Provision of Stumpage for LTAR[28]

1. Provision of Stumpage for LTAR – Alberta

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[29] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[30]

Canfor: 2.02 percent *ad valorem*
Tolko: 3.89 percent *ad valorem*
West Fraser: 8.67 percent *ad valorem*

2. Provision of Stumpage for LTAR – British Columbia

[27] For additional information on the below subsidy rate calculations, *see* the *Preliminary Determination* and the final determination calculation memoranda.
[28] Consistent with the *Preliminary Determination*, we continue to find that none of the mandatory respondents or the voluntary respondent purchased sawlogs in Manitoba or Saskatchewan during the POI. Therefore, we have not included these provinces in our LTAR subsidy benefit analysis.
[29] *See* Comments 16-17.
[30] *See* PDM at 56-57.

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[31] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[32]

Canfor: 10.29 percent *ad valorem*
Tolko: 6.82 percent *ad valorem*
West Fraser: 7.42 percent *ad valorem*

3. Provision of Stumpage for LTAR – New Brunswick

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[33] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[34]

JDIL: 1.40 percent *ad valorem*

4. Provision of Stumpage for LTAR – Ontario

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[35] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[36]

Resolute: 3.73 percent *ad valorem*

5. Provision of Stumpage for LTAR – Québec

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[37] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[38]

Resolute: 9.90 percent *ad valorem*

Export Restraints

1. British Columbia Log Export Restraints

Interested parties submitted comments in their case briefs regarding this program, which are

[31] *See* Comments 11-15 and 18-27.
[32] *See* PDM at 54-55.
[33] *See* Comments 28-29.
[34] *See* PDM at 53-54.
[35] *See* Comments 30-34.
[36] *See* PDM at 56.
[37] *See* Comment 35, 36, 37, and 38.
[38] *See* PDM at 55-56.

addressed below.[39] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[40]

Canfor: 0.00 percent *ad valorem*
Tolko: 3.56 percent *ad valorem*
West Fraser: 0.85 percent *ad valorem*

Federal Grant Programs

1. Canada-New Brunswick Job Grant Program

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[41] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[42]

JDIL: 0.04 percent *ad valorem*

Alberta Grant Programs

1. BPCP

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[43] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[44]

Canfor: 0.10 percent *ad valorem*
West Fraser: 0.27 percent *ad valorem*

British Columbia Grant Programs

1. BC Hydro Power Smart: Energy Manager

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[45] Additionally, the Department is now calculating a subsidy rate for Tolko for this program.[46] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[47]

[39] *See* Comments 44-47.
[40] *See* PDM at 57-63.
[41] *See* Comment 56.
[42] *See* PDM at 64.
[43] *See* Comment 57.
[44] *See* PDM at 64-65.
[45] *See* Comment 59.
[46] *See* Tolko Final Calculation Memorandum.
[47] *See* PDM at 65-66.

Canfor: 0.01 percent *ad valorem*
Tolko: 0.01 percent *ad valorem*

2. BC Hydro Power Smart: Load Curtailment

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[48] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[49]

West Fraser: 0.01 percent *ad valorem*

3. BC Hydro Power Smart: Incentives

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[50] Additionally, the Department is now calculating a subsidy rate for Tolko for this program.[51] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[52]

Canfor: 0.16 percent *ad valorem*
Tolko: 0.01 percent *ad valorem*

New Brunswick Grant Programs

1. New Brunswick Provision of Silviculture Grants

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[53] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[54]

JDIL: 0.32 percent *ad valorem*

2. New Brunswick License Management Fees

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[55] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[56]

[48] *See* Comments 58-59.
[49] *See* PDM at 66.
[50] *See* Comments 59-60.
[51] *See* Tolko Final Calculation Memorandum.
[52] *See* PDM at 66-67.
[53] *See* Comment 61.
[54] *See* PDM at 67-68.
[55] *See* Comment 61.
[56] *See* PDM at 68.

JDIL: 0.53 percent *ad valorem*

3. FAIP – Payroll Rebate Grant

The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[57]

JDIL: 0.01 percent *ad valorem*

4. New Brunswick Workforce Expansion Program – One Job Pledge

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[58] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[59]

JDIL: 0.01 percent *ad valorem*

5. New Brunswick Workforce Expansion Program – Youth Employment Fund

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[60] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[61]

JDIL: 0.01 percent *ad valorem*

Québec Grant Programs

1. PCIP

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[62] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[63]

Resolute: 0.05 percent *ad valorem*

Federal Tax Programs

1. Accelerated Capital Cost Allowance for Class 29 Assets

[57] *See* PDM at 69.
[58] *See* Comment 62.
[59] *See* PDM at 69-70.
[60] *See* Comment 62.
[61] *See* PDM at 70-71.
[62] *See* Comment 63.
[63] *See* PDM at 71.

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[64] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[65]

JDIL: 0.07 percent *ad valorem*
Canfor: 0.53 percent *ad valorem*
West Fraser: 0.35 percent *ad valorem*

2. Apprenticeship Job Creation Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[66] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[67]

West Fraser: 0.01 percent *ad valorem*

3. Atlantic Investment Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[68] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[69]

JDIL: 0.70 percent *ad valorem*

4. SR&ED Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[70] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[71]

Canfor: 0.04 percent *ad valorem*
JDIL: 0.04 percent *ad valorem*
West Fraser: 0.06 percent *ad valorem*

Alberta Tax Programs

1. Alberta Tax-Exempt Fuel Program for Marked Fuel

[64] *See* Comments 68-69.
[65] *See* PDM at 72.
[66] *See* Comment 70.
[67] *See* PDM at 73.
[68] *See* Comment 72.
[69] *See* PDM at 73-74.
[70] *See* Comments 64-65.
[71] *See* PDM at 74-75.

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[72] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[73]

Tolko: 0.01 percent *ad valorem*
West Fraser: 0.22 percent *ad valorem*

2. SR&ED-GOA

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[74] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[75]

Tolko: 0.02 percent *ad valorem*
West Fraser: 0.01 percent *ad valorem*

British Columbia Tax Programs

1. Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[76] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[77]

Canfor: 0.09 percent *ad valorem*
Tolko: 0.05 percent *ad valorem*
West Fraser: 0.04 percent *ad valorem*

2. SR&ED-GBC

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[78] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[79]

West Fraser: 0.02 percent *ad valorem*

3. Revitalization Property Tax Exemption – Quesnel

[72] *See* Comment 73.
[73] *See* PDM at 75.
[74] *See* Comments 64-65.
[75] *See* PDM at 75-76.
[76] *See* Comment 74.
[77] *See* PDM at 76-77.
[78] *See* Comments 64-65.
[79] *See* PDM at 77.

The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[80]

West Fraser: 0.02 percent *ad valorem*

Manitoba Tax Programs

1. SR&ED-GOM

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[81] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[82]

Tolko: 0.03 percent *ad valorem*

2. M&P

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[83] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[84]

Tolko: 0.05 percent *ad valorem*

New Brunswick Tax and Other Revenue Foregone Programs

1. New Brunswick Large Industrial Renewable Energy Purchase Program

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[85] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[86]

JDIL: 0.09 percent *ad valorem*

2. NB R&D Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[87] The Department has not modified its calculation of the subsidy rate for this

[80] *See* PDM at 77-78.
[81] *See* Comments 64-65.
[82] *See* PDM at 78.
[83] *See* Comment 80.
[84] *See* PDM at 78-79.
[85] *See* Comments 76-77.
[86] *See* PDM at 79-80.
[87] *See* Comments 64-65.

program from the *Preliminary Determination*.[88]

JDIL: 0.05 percent *ad valorem*

3. GNB Gasoline & Fuel Tax Exemptions and Refund Program

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[89] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[90]

JDIL: 0.06 percent *ad valorem*

Québec Tax Programs

1. Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[91] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[92]

Resolute: 0.22 percent *ad valorem*

2. SR&ED Tax Credit – Québec

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[93] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[94]

West Fraser: 0.03 percent *ad valorem*

Saskatchewan Tax Programs

1. M&P Tax Credit ITC

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[95] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[96]

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[88] *See* PDM at 80-81.
[89] *See* Comment 75.
[90] *See* PDM at 81-82.
[91] *See* Comment 78.
[92] *See* PDM at 82-83.
[93] *See* Comments 64-65.
[94] *See* PDM at 83.
[95] *See* Comment 80.
[96] *See* PDM at 83-84.

Tolko: 0.02 percent *ad valorem*

Purchase of Goods for MTAR

1. BC Hydro EPAs

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[97] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[98]

Tolko: 0.38 percent *ad valorem*
West Fraser: 0.21 percent *ad valorem*

2. GOQ Purchase of Electricity for MTAR under PAE 2011-01

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[99] The Department has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[100]

Resolute: 0.80 percent *ad valorem*

Loan Programs

1. ACOA Loans –Atlantic Innovation Fund

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[101] The Department has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[102]

JDIL: 0.01 percent *ad valorem*

B. Programs Determined To Be Tied to Non-Subject Merchandise

Interested parties submitted comments in their case briefs regarding these programs, which are addressed below.[103] The Department has made no changes in the analysis of the following programs from the *Preliminarily Determination*.[104]

[97] *See* Comments 48-51.
[98] *See* PDM at 84-85.
[99] *See* Comment 52, 53, 54, and 55.
[100] *See* PDM at 85-86.
[101] *See* Comment 82.
[102] *See* PDM at 87-88.
[103] *See* Comment 85.
[104] *See* PDM at 90-91.

1. Federal Pulp and Paper Green Transformation Program
2. NIER Program
3. FSPF

C. Programs Determined Not To Provide Countervailable Benefits During the POI

The respondents reported receiving benefits under various programs, some of which were alleged in the Petition and upon which the Department initiated an investigation, and others that were self-reported. Based on the record evidence, we determine that the benefits from certain programs were fully expensed prior to the POI or are less than 0.005 percent *ad valorem* when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above.[105] Consistent with the Department's practice,[106] we have not included those programs in our final subsidy rate calculations for the respondents. We also determine that it is unnecessary for the Department to make a final determination as to the countervailability of those programs.

For a list of the subsidy programs that do not provide a numerically significant benefit for each respondent, *see* Appendix II attached to this memorandum.

D. Programs Determined Not To Be Used During the POI

Each respondent reported non-use of programs on which the Department initiated an investigation. For a list of the subsidy programs not used by each respondent, *see* Appendix II attached to this memorandum.

E. Program Determined To Be Not Countervailable

The Department has made no changes in the analysis of the following program from the *Preliminarily Determination*.[107] We received no comments from interested parties on this program.

1. CEP

F. Programs Deferred Until a Subsequent Administrative Review

The respondents reported receiving assistance under various programs in their questionnaire responses. Section 775 of the Act provides, in relevant part, that if, during the course of a CVD proceeding, 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

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[105] For additional information concerning these calculations, *see* the *Preliminary Determination* and the final determination calculation memoranda.
[106] *See*, *e.g.*, *CFS from the PRC* IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" *see also Steel Wheels from the PRC* IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District;" *see also Aluminum Extrusions from the PRC First Review* IDM at "Programs Used By the Alnan Companies;" and *see also CRS from Russia* IDM at "Tax Deduction for Research and Development Expenses."
[107] *See* PDM at 90-91.

Department "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." However, under 19 CFR 351.311(c)(2), if we do not have adequate time to investigate the practice, subsidy, or subsidy program, we may defer the investigation until a subsequent administrative review. Given that we did not seek or receive information about this self-reported assistance due to time constraints in this investigation, we do not have sufficient evidence to make findings regarding these programs. Therefore, because of the limited available information on the record, we are deferring our examination of these programs until a future administrative review should this investigation result in a CVD order. *See* Comment 6 for further discussion.

For a list of the programs deferred until a subsequent administrative review, *see* Appendix II attached to this memorandum.

G. New Subsidy Allegations

On March 15, 2017, the petitioner submitted timely NSAs.[108] In the *Preliminary Determination*, the Department stated that it would consider whether to initiate an investigation with respect to these alleged subsidies after the *Preliminary Determination*.[109] While we acknowledge that the allegations were timely filed under 19 CFR 301(d)(4)(i)(A), we were unable to initiate an investigation of these programs given the extraordinarily complex nature of these allegations, the amount of time left in our investigation, and the constraints on our resources, which were already devoted to investigating several other complicated subsidy programs alleged by the petitioner and on which we initiated this investigation, in addition to several self-reported programs. *See* Comment 7 for further discussion.

Analysis of Comments

Comment 1: Whether Critical Circumstances Exist

In the *Preliminary Critical Circumstances Determination*, the Department preliminarily determined that critical circumstances exist for JDIL and "All Others." The petitioner argues that Canada maintains subsidies that are inconsistent with the SCM Agreement.[110] JDIL argues, because it did not use the EGP or any other export subsidy, critical circumstances do not exist for JDIL.[111] The GOC[112] and Central Canada[113] argue that the respondents did not report using any subsidies that are inconsistent with the SCM Agreement.

With respect to the Department's massive imports analysis, the petitioner agrees with the Department's preliminary methodology to determine whether there were massive imports over a

[108] *See* Petitioner NSA 1; s*ee also* GOC Etal Comments NSA 1, GOC Etal Comments NSA 2, and Resolute Comments NSA.
[109] *See* PDM at 8.
[110] *See* Petitioner CC Case Brief at 3-14; *see also* Petitioner CC Rebuttal Brief at 2-8.
[111] *See* JDIL CC Case Brief at 1-2; *see also* JDIL CC Rebuttal Brief at 1-4.
[112] *See* GOC Case Brief at 2-3, 7, and 11-14; *see also* GOC CC Rebuttal Brief at 4-15.
[113] *See* Central Canada Alliance Case Brief at 2-5.

relatively short period.[114] The GOC[115] and Central Canada[116] argue that it is the Department's practice to rely on the experience of the respondents for the massive import analysis for all others, rather than relying on GTA data. The GOC also argues that the GTA data are flawed and that the Department should apply a seasonality adjustment.[117]

Department's Position: In the *Preliminary Critical Circumstances Determination*, the Department found that, pursuant to section 703(e)(1) of the Act, there was a reasonable basis to believe or suspect that the alleged countervailable subsidy, the EGP, is inconsistent with the SCM Agreement of the WTO. The Department also found that there were massive imports of the subject merchandise over a relatively short period for JDIL and companies subject to the all others rate.

For a final determination, section 705(a)(2) of the Act states that:

> If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether (A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In the *Preliminary Determination*, as none of the respondents reported using the EGP, the Department preliminarily did not countervail the program. The Department subsequently verified that none of the respondents used the EGP or any other subsidy program contingent upon export sales,[118] and therefore, for the final determination, the Department has not made a finding that the EGP (or any other subsidy program at issue that was used by the respondents) is inconsistent with the SCM Agreement. Thus, absent a finding of a subsidy inconsistent with the SCM Agreement, the statutory requirement for an affirmative critical circumstances finding has not been met.[119]

With respect to the petitioner's argument that the June 1 aid package demonstrates that the GOC and provincial governments maintain prohibited export subsidies, and that is sufficient to satisfy the criterion of a "finding" as to whether the countervailable subsidy is inconsistent with the SCM Agreement, we disagree. While the Department solicited information about the June 1 aid package, based on information in the GOC Etal Supp QNR 4 Response, we find that assistance has yet to be provided.[120] While we question the timing of Canada's announcement of additional assistance subsequent to the *Preliminary Determination*, the Department has not initiated an investigation into these programs. Although we intend to examine these programs should the

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[114] *See* Petitioner CC Case Brief at 14-15; *see also* Petitioner CC Rebuttal Brief at 9-23.
[115] *See* GOC CC Case Brief at 15-22.
[116] *See* Central Canada Alliance Case Brief at 5-10; *see also* Central Canada Alliance Rebuttal Brief at 7-9.
[117] *See* GOC CC Case Brief at 9-11.
[118] *See* Canfor Verification Report, JDIL Verification Report, Resolute Verification Report, Tolko Verification Report, and West Fraser Verification Report.
[119] *See, e.g., Lumber IV Final Determination* IDM at "Critical Circumstances."
[120] *See* Comment 3 for further discussion regarding the June 1 aid package.

Department conduct a future administrative review, we have not made a finding in this final determination that the June 1 aid package includes any subsidy that is inconsistent with the SCM Agreement. *See* Comment 3 for further discussion.

Further, with respect to the petitioner's argument that we have determined that critical circumstances exist where an export subsidy has been *de minimis*,[121] in those investigations, the Department found that the programs were inconsistent with the SCM Agreement because the respondents used the programs. The issue here is not the level of benefit conferred by those programs (*e.g.*, whether the benefit conferred is *de minimis* or above *de minimis*), but the fact that there has been no benefit conferred at all, because we verified that none of the respondents used an export subsidy or any subsidy inconsistent with the SCM Agreement. As such, we have not made a determination that these programs are countervailable or that they are inconsistent with the SCM Agreement. Thus, we agree with JDIL that, consistent with our decisions in *CRS from Russia*, *LWS from the PRC*, and *OTR from the PRC*,[122] critical circumstances do not exist.

With respect to interested parties' arguments concerning the Department's analysis whether there have been massive imports of the subject merchandise over a relatively short period, we find those issues are moot, absent a finding that a subsidy is inconsistent with the SCM Agreement.

Comment 2: Whether the Department Should Consider Company-Specific Exclusion Requests

As part of the *Preliminary Determination*, the Department found that it lacked the authority to grant company exclusion requests in investigations conducted on a company-specific basis.[123] In reaching this determination, the Department considered the history of 19 CFR 351.204(e) and concluded that the omission of an exclusion process for investigations conducted on a company-specific basis was intentional.[124]

The GOC disagrees with the Department's interpretation and argues that there should be some real opportunity for companies to be examined, beyond consideration of a voluntary respondent status because it is rare for the Department to accept a voluntary respondent.[125] Moreover, the GOC argues that given the large number of companies, even if the companies had requested voluntary respondent status, this exercise would have been futile.[126] In addition, the GOC argues that no other viable options are available to companies not examined in this investigation given that the Department also amended its company revocation regulations in 2012.[127] Therefore, for the final determination, the Department should undertake a company exclusion process to consider company exclusion requests.

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[121] *See*, *e.g.*, *Geogrid Products from the PRC* IDM at Comment 12; *see also OCTG from Turkey* IDM at Comment 15.
[122] *See CRS from Russia* IDM at 5; *see also LWS from the PRC*, 73 FR 35639, 35641; *see also OTR from the PRC*, 73 FR at 40480, 40483.
[123] *See* Company Exclusion Memorandum.
[124] *Id*.
[125] *See* GOC Etal Common Issues Case Brief at 137-140.
[126] *Id*.
[127] *Id*.

The GOC further argues that should the Department decide to not proceed with a company exclusion process, having used the existence of the expedited review mechanism as a further reason for denying such company exclusion requests,[128] the Department ought to provide all interested parties an opportunity to undergo an expedited review and streamline that process, similar to what was done in the prior lumber proceedings, should this case proceed to order.[129]

The GBC separately argues that in considering the applicability of certain regulations that address certain aspects of company exclusions in CVD proceedings, the Department improperly read subsection (e)(4) divorced from the overall context of subsections (d) and (e) of 19 CFR 351.204.[130] Specifically, the GBC argues that because subsection (e)(4) only mentions aggregate cases, the Department interpreted that to mean that it cannot consider company exclusions in company-specific cases. However, when looked at in the context of subsections (d) (treatment of voluntary respondents) and (e) (excluding respondents with *de minimis* or zero subsidy rates), the GBC argues that the Department's interpretation emphasizes the distinction between voluntary respondents and a company exclusions process, but this distinction does not preclude the conduct of a company exclusion process in this investigation. Therefore, the GBC argues that the Department failed to provide Canadian companies, either as a voluntary respondent or through an exclusion process, the ability to demonstrate that they did not receive countervailable subsidies, and thus be excluded from an order, if issued.

The petitioner agrees with the Department's finding in the *Preliminary Determination* that it lacks authority to conduct exclusions in company-specific investigations. The petitioner argues that the GOC has not pointed to any authority that would allow the Department to grant company-specific exclusions in this investigation.[131] Further, the petitioner argues that even if the Department were to accept GOC's invitation to ignore its own regulations, there is no reason to question the rationale underlying the agency's different approaches to CVD investigations conducted on an aggregate and individual company basis.[132] In addition, the petitioner argues that no companies, other than JDIL, submitted requests for voluntary respondent status and therefore, the GOC erroneously concludes that such requests would not have been entertained by the Department. Finally, the petitioner argues that, if an order is issued, companies may request expedited reviews and possibly be excluded from an order.[133]

Department's Position: As we noted in the Company Exclusion Memorandum, the Department's regulations expressly require that we consider exclusion requests in CVD investigations conducted on an aggregate basis, but are silent with respect to a requirement to conduct a similar analysis in company-specific investigations.[134] Moreover, after considering the legislative history and the *Preamble*[135] language, we concluded that the Department

[128] *See* Company Exclusion Memorandum at 2-3; *see also* GOC Etal Common Issues Case Brief at 139.
[129] *See* GOC Etal Common Issues Case Brief at 139-140.
[130] See GBC Case Brief at 102-103.
[131] *See* Petitioner Rebuttal Brief at 189-191.
[132] *Id.*
[133] *Id.* at 192.
[134] *See* Company Exclusion Memorandum at 2.
[135] *See Preamble*, 62 FR at 27296, 27311.

contemplated and rejected an exclusion process in company-specific investigations based on the availability of a separate statutory mechanism though which companies could pursue individual examination and exclusion.[136] Although the GOC takes issue with the Department's decision in the *Preliminary Determination*, the GOC does not point to any regulatory or statutory authority that would allow the Department to conduct exclusions in a company-specific investigation.

Furthermore, although the GBC argues that the Department has failed to interpret 19 CFR 351.204(e)(4) in context, we disagree. On this point, the GBC cites 19 CFR 351.204(d) for the proposition that the Department has the discretion to examine voluntary respondents, and that such respondents will be excluded from any resulting order if they are found to have CVD rates of zero or *de minimis*.[137] But the voluntary respondents referenced under 19 CFR 351.204(d)(1) are those examined "in accordance with section 782(a) of the Act." The only voluntary respondent that is examined under section 782(a) of the Act is JDIL. We disagree that this provision accords the Department the discretion to extend that provision to include other companies that are not selected as voluntary respondents under section 782(a) of the Act. Therefore, the Department continues to find that it does not have the authority to conduct a company exclusion process in the context of this investigation for respondents that have not been individually-investigated.

Finally, with respect to the GOC's arguments regarding expedited reviews, we note that our regulations expressly provide for expedited reviews after publication of a CVD order. Within thirty days of the publication of any order resulting from this investigation, a company not individually examined in the investigation may request that the Department conduct an expedited review in order to receive its own subsidy rate.[138] If a company subject to an expedited review receives an individual net countervailable subsidy rate of *de minimis* or zero, that company will be excluded from any CVD order.[139] With respect to the GOC's request that the Department develop streamlined procedures for conducting expedited reviews, should this investigation result in an order, the Department will carefully consider how to address any requests for expedited reviews at that time.

Comment 3: Whether the Department Has the Authority to Countervail Future Assistance

On June 1, 2017, the GOC announced C$867 million in funding for its softwood lumber producers.[140] The GOC argues that the Department does not have the authority to countervail any of the programs in the June 1 aid package because it was announced post-POI and, as stated in the GOC Etal Supp QNR 4 Response, no assistance has been provided by the agencies responsible for the programs.[141]

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[136] *Id*.
[137] *See* GBC Case Brief at 103.
[138] *See* 19 CFR 351.214(k)(1).
[139] *See* 19 CFR 351.214(k)(3)(iv).
[140] *See* New Aid Package Memorandum.
[141] *See* GOC Case Brief at 21-25.

Department's Position: The Department solicited information from the GOC regarding the June 1 aid package on June 20, 2017,[142] to which the GOC responded on July 7, 2017.[143] In the questionnaire response, the GOC stated that, as of the date of submission of the response, the program "has {not yet} provided any support or even been implemented."[144] Thus, because the GOC certified that no assistance has been provided under the announced programs,[145] we have not included any of these programs in the final determination. With no evidence on the record that assistance has been provided, we need not reach the issue of whether the Department has the authority to countervail programs that were not in effect during the POI.

Comment 4: Whether the Department Should Countervail and Apply AFA to Certain Untimely Reported Programs by JDIL and Resolute

The petitioner argues that both Resolute and JDIL reported the use of certain subsidy programs after the deadline for submission of such information. Thus, the petitioner argues that the Department should countervail these programs and apply AFA because the respondents withheld information requested by the Department and did not act to the best of their abilities to comply with the Department's requests for information. Specifically, the petitioner argues that the Department should countervail Resolute's sale of wood pellets to Ontario Power Generation and JDIL's receipt of assistance through the IFTA program and the SAFIS program, applying facts available with adverse inferences.[146]

Resolute argues that it was forthright in providing information to the Department, that it did not hide its sales of wood pellets, and that it acted to the best of its ability in responding to the Department's requests for information. Resolute argues that the Department was aware of Resolute's wood pellet sales and could have examined the issue further at verification but chose not to do so. Further, because the Department found in the *AD Preliminary Determination* that wood pellets are not a by-product of softwood lumber production, any benefit derived from selling wood pellets could not benefit the upstream softwood lumber producer.[147]

The GOO argues that the Department has no basis upon which to find that the commercial supply of wood pellets to Ontario Power Generation constitutes a countervailable subsidy, and there is no basis for applying AFA as requested by the petitioner.[148]

JDIL argues that neither the IFTA nor the SAFIS program involves government "assistance". Thus, JDIL did not withhold requested information and the use of AFA is not warranted.[149]

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[142] *See* GOC Etal Supp QNR 4 Response.
[143] *Id*.
[144] *Id.* at 1.
[145] *Id.* at 1, 5, 9, 13, and 17.
[146] *See* Petitioner Case Brief at 35-46.
[147] *See* Resolute Rebuttal Brief at 2-5.
[148] *See* GOO Rebuttal Brief at 3-5.
[149] *See* JDIL Rebuttal Brief at 8-11.

The GNB argues that the Department should reject the petitioner's request to apply AFA, noting that the funds received by JDIL under IFTA and SAFIS are not "assistance." Further, the GNB argues that JDIL cooperated to the best of its ability in this investigation.[150]

The GOC argues that Resolute did not withhold information and contends that it is difficult for respondents and governments to respond to the Department's open-ended "other assistance" question. Having rejected the information from the record, the GOC argues that it would be improper for the Department to use that information in making an AFA determination, and there is no factual foundation upon which the Department can base a finding of failure to report a "program."[151]

Department's Position: As an initial matter, we find that it was appropriate to reject JDIL's and Resolute's reporting of information after the deadline for submission of such information. The Department's regulations at 19 CFR 351.301 outline the deadlines for submission of factual information in the Department's proceedings. The submissions of both JDIL and Resolute were untimely, in that they contained new factual information that was not specifically requested by the Department at that time, and the information the respondents attempted to submit to the record should have been submitted in their respective initial questionnaire responses in response to the "other assistance" question.[152]

However, we disagree with the petitioner that AFA is warranted for either JDIL and Resolute in this instance. Under section 776(a) of the Act, the Department shall use facts available in reaching a determination when necessary information is not available on the record, or when an interested party or any other person withholds information that has been requested by the Department, fails to provide such information by the applicable deadline or in the form and manner requested, significantly impedes a proceeding under this title, or provides unverifiable information. Further, under subsection (b), the Department "may" use an adverse inference in selecting among facts otherwise available if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.[153]

Given the unique circumstances of this proceeding, to the extent that information is not on the record regarding Resolute's sale of wood pellets to the GOO, or JDIL's receipt of funds under IFTA and SAFIS, we do not find that the missing information became "necessary" in this proceeding. All respondents in this proceeding reported a multitude of potential governmental assistance in response to the Department's "other assistance" question. Under 19 CFR 351.311(b), if the Department discovers a program that appears to provide a countervailable subsidy with respect to the subject merchandise, the Department will examine the program if sufficient time remains before the scheduled date for the final determination. In the *Preliminary Determination*, the Department listed approximately 30 programs for which it stated that we required additional information before reaching a preliminary determination regarding the

[150] *See* GNB Rebuttal Brief at 1-2.
[151] *See* GOC Etal Common Issues Rebuttal Brief at 11-18.
[152] *See* Resolute NFI Rejection Letter and JDIL NFI Rejection Letter.
[153] *See* section 776(b)(1)(A) of the Act.

countervailability of the reported programs.[154] All of these programs were self-reported by the respondents in response to the "other assistance" question.[155] Further, as discussed in Comment 6, the Department has deferred consideration of these timely self-reported programs listed in the *Preliminary Determination* that we determined required additional information. Because there are several dozen programs discovered during the course of this investigation that the Department has been unable to examine, the Department would also not have sufficient time to consider these additional three programs, possibly collect further information, and analyze it to determine whether the programs were countervailable and thus should be included in the subsidy calculation for JDIL and Resolute. Therefore, we find that it would not be appropriate, in this case, to apply AFA to JDIL and Resolute for the three additional programs belatedly reported as "other assistance."

The instant case is distinguishable from *SC Paper Final*, in that, though untimely, the information that JDIL and Resolute attempted to submit was prior to verification. When information is discovered at verification, it precludes the Department from fully investigating and verifying the information. The purpose of verification is "to verify the accuracy of information previously submitted to the record by the respondent," not to collect new information that had been previously requested but not reported.[156] Here, the Department could have solicited any additional information regarding these programs from JDIL and Resolute prior to verification, but chose not to do so, in light of the same resource constraints that prevented the Department from soliciting additional information regarding the other timely self-reported programs prior to the start of verifications.

Further, we disagree with the GOC that the "other assistance" question is vague or overly burdensome. As we state in Comment 5, consistent with the CIT's holding in *Changzhou Trina Solar Energy*,[157] we find that the Department's "other assistance" question enables the Department to effectuate its obligation to investigate subsidies that it discovers that appear to be countervailable in the course of a proceeding, and is consistent with its broad discretion to seek information it deems relevant to its determination. However, as noted above, we have declined to apply AFA to JDIL and Resolute for the late submission of information in response to the "other assistance" question, due to the Department's inability to examine several other programs timely reported in response to the "other assistance" question.

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[154] *See* PDM at 88-89.

[155] *See, e.g.*, Canfor Primary QNR Response, Part 1, Resolute Primary QNR, Part 1, JDIL Primary QNR Response, Tolko Primary QNR Response, and West Fraser Primary QNR Response, Part 1.

[156] *See*, *e.g., Silica Bricks and Shapes from the PRC* IDM at Comment 7; *see also Marsan Gida Sanayi Ve Ticaret A.S.*, 931 F. Supp. 2d at 1280 (agreeing that "{t}he purpose of verification is not to collect new information").

[157] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346 ("Commerce's inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law.").

Comment 5: Whether the Department Properly Requested Respondent Interested Parties to Report "Other Assistance"

In its standard initial questionnaire sent to the GOC and all respondents in this investigation, the Department requested information from the government and respondents related to programs upon which an investigation had been initiated. The Department further requested that the GOC identify and describe "any other forms of assistance" provided directly or indirectly by the government to producers or exporters of softwood lumber, including the respondents, and that each respondent identify and describe "any other forms of assistance" that it received from the GOC during the POI.[158]

The GOC, GBC, Canfor, and Resolute argue that the Department's question requesting that respondent interested parties report "other assistance" received by respondents from governments is inconsistent with the United States' domestic law and international obligations.[159] The GOC and Resolute argue that the question improperly shifts to respondents what should be the petitioner's burden to identify and allege countervailable subsidies.[160] The GOC and Resolute contend that the question is overly broad because the Department has never defined the meaning or scope of the word "assistance," causing respondent interested parties to report all possible revenue from a government, even if the "assistance" is allegedly irrelevant to the subject merchandise under investigation, for fear that the Department could apply adverse facts available and countervail any unreported assistance.[161] The GOC argues that the legislative history of section 775 of the Act and the *1988 CVD Preamble* indicate that the same threshold countervailability requirements must be met before the Department can pursue the examination of any subsidies under that provision or 19 CFR 351.311.[162]

Further, Resolute argues that the Department has arbitrarily abused its investigative authority to ask questions by presuming that reported assistance is countervailable, relying on *SC Paper from Canada*.[163] Resolute particularly claims that the Department improperly deemed its reported assistance under PCIP to be countervailable.[164]

The GBC additionally argues that the Department should continue to find that several programs reported under the "other assistance" question did not provide countervailable benefits.[165] The GOC argues that there is no basis for the Department to apply facts available or AFA to any non-initiated programs that may fall under "other assistance."[166] The GBC, Canfor, and Tolko argue that if the Department issues a final determination with respect to any program reported as "other

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[158] *See* Primary QNR, Section II at 23, 24, 33, 43, and 53 and Section III at 153, 155, 157, and 160.
[159] *See* GOC Etal Common Issues Case Brief at 86-97; *see also* GBC Case Brief at 98-100; *see also* Canfor Case Brief at 66; *see also* Resolute Case Brief at 14-17.
[160] *See* GOC Etal Common Issues Case Brief at 87-89; *see also* Resolute Case Brief at 15.
[161] *See* GOC Etal Common Issues Case Brief at 90-91; *see also* Resolute Case Brief at 16.
[162] *See* GOC Etal Common Issues Case Brief at 92-93.
[163] *See* Resolute Case Brief at 15-16.
[164] *Id.* at 16-17.
[165] *See* GBC Case Brief at 98.
[166] *See* GOC Etal Common Issues Case Brief at 94-97.

assistance" that the Department did not address in the *Preliminary Determination*, it should allow these parties to comment on those programs.[167]

The petitioner rebuts stating that the Department's other assistance question is permissible as part of its broad independent investigative authority, and that the Department should apply AFA to Resolute and JDIL for failing to fully respond to the "other assistance" question in their initial questionnaire responses.[168]

The GOQ argues on rebuttal that, at verification, the Department searched for other subsidies received by the respondents, and found no evidence of other subsidies.[169]

Department's Position: We disagree that the Department's request that respondent interested parties report "other assistance" received by respondents from governments is inconsistent with domestic law or the United States' international obligations. Investigations into potentially countervailable subsidies to a class or kind of merchandise are initiated in one of two ways. First, an investigation can be self-initiated by the Department.[170] Second, a domestic interested party may file a petition for the imposition of countervailing duties on behalf of an industry.[171] Under the second mechanism, those parties are obligated to support their subsidy allegations with information reasonably available to them, and those allegations must identify the elements of a countervailable subsidy (*i.e.*, specificity, benefit, and financial contribution).[172]

However, once an investigation has been initiated through one of the above mechanisms, then, under section 775 of the Act, the Department may also investigate potential subsidies it discovers in the course of the proceeding. Specifically, in the course of an investigation, the Department may "discover{} a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in the countervailing duty petition."[173] In such a case, the Department "*shall* include the practice, subsidy, or subsidy program in the proceeding."[174] Thus, section 775 of the Act imposes an affirmative obligation on the Department to "consolidate in one investigation … all subsidies known by petitioning parties to the investigation or by the {Department} relating to {subject} merchandise" to ensure "proper aggregation of subsidization practices."[175] The Department's regulations carve out a limited exception to its obligation to investigate what "appear{}" to be countervailable subsidies: when the Department discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a

[167] *See* GBC Case Brief at 99; *see also* Canfor Case Brief at 65-66; *see also* Tolko Case Brief at 65.
[168] *See* Petitioner Rebuttal Brief at 180-187.
[169] *See* GOQ Rebuttal Brief at 7.
[170] *See* section 702(a) of the Act.
[171] *See* section 702(b) of the Act.
[172] *See* section 702(b)(1) of the Act.
[173] *See* section 775 of the Act.
[174] *Id.* (emphasis added).
[175] *See* S. Rep. No. 96-249, at 98 (1979); *see also Allegheny I*, 112 F. Supp. 2d at 1150 n.12 ("Congress … clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.").

subsequent review, if any.[176] Moreover, the Department has broad discretion to determine which information it deems relevant to its determination, and to request that information.[177]

Thus, consistent with the CIT's holding in *Changzhou Trina Solar Energy*,[178] we find that the Department's "other assistance" question enables the Department to effectuate its obligation to investigate subsidies that it discovers that appear to be countervailable in the course of a proceeding, and is consistent with its broad discretion to seek information it deems relevant to its determination.

The GOC relies on the legislative history from the 1979 legislation that first enacted section 775 of the Act to support its contention that the Department was expected to apply the same threshold standards that apply where a subsidy is alleged by a petitioner under section 702 of the Act whenever the Department itself "discovers" a potential subsidy under section 775 of the Act.[179] However, such an interpretation is not supported by the statute. The language quoted by the GOC is referring to the second option presented under section 775 of the Act—the requirement that the Department will refer any discovered potential subsidies not connected to the merchandise under investigation to the public library maintained by the Department.[180] That is, the House Ways and Means Committee expected that any potential subsidies not relating to the subject merchandise under investigation would be investigated in a separate investigation under the normal standards of an investigation initiated under section 702(a) of the Act. We find that the Committee's expectation does not preclude the Department from investigating a program or subsidies that appear to be countervailable with respect to merchandise which is the subject of the proceeding, and that we are not precluded from asking questions that enable the Department to effectuate this obligation.[181]

Similarly, although the GOC relies on the *Preamble* to argue that the Department has "acknowledged that its usual initiation standard would apply under section 775" of the Act,[182] we find that this argument is misplaced. The Department stated, in the *Preamble*, that its regulations "adequately describe the requirements for the initiation and conduct of a *countervailing duty* investigation," and thus there was no further need to describe "how the Department would investigate a subsidy practice discovered *during an antidumping investigation*."[183] As this is a

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[176] *See* 19 CFR 351.311(b).
[177] *See Changzhou Trina Solar Energy Co*., 195 F. Supp 3d at 1341 (holding that the Department has "independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise," and this "broad investigative discretion" permits the Department to require respondents to report additional forms of governmental assistance). *See also, e.g.*, *Ansaldo Componeti, S.p.A.*, 628 F. Supp. at 205; *see also Essar Steel Ltd.,* 721 F. Supp. 2d at 1298-1299, *revoked in part on other grounds*; *see also Acciai Speciali Terni S.p.A.,* 26 CIT at 167; *see also PAM, S.p.A.*, 495 F. Supp. 2d at 1369.
[178] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346 ("Commerce's inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law.").
[179] *See* GOC Etal Common Issues Case Brief at 92.
[180] *See* H. Rep. No. 96-317, at 75 (1979).
[181] *See* S. Rep. No. 96-249, at 98 (1979); *see also Allegheny I*, 112 F. Supp. 2d at 1150 n.12.
[182] *See* GOC Etal Common Issues Case Brief at 93 (citing *1988 CVD Preamble*, 53 FR at 52344).
[183] *See 1988 CVD Preamble*, 53 FR at 52344 (emphasis added).

countervailing duty investigation, the Department's statement in the *Preamble* regarding investigations of subsidy practices discovered during antidumping duty investigations is irrelevant. Here, the Department has followed the requirements for the initiation and conduct of a countervailing duty investigation, and that the "other assistance" question is not precluded by those requirements.

Respondent interested parties also cite to *Allegheny II* to support the existence of a threshold countervailability finding requirement before including non-initiated programs in an investigation.[184] However, *Allegheny II* is distinguishable, as it concerned the Department's decision not to investigate a late-filed subsidy allegation. In that disparate context, the CIT examined what it meant for a practice to "appear" to be countervailable within the meaning of section 775 of the Act, such that the Department had an obligation to investigate the discovered program. The Department explained that when an allegation was insufficient, it was not required to go on "fishing expeditions" to determine whether an alleged subsidy or practice was countervailable. However, the facts of this investigation differ. Here, the Department requested information regarding potentially countervailable subsidies, in order to determine whether any such assistance appeared to be countervailable (*i.e.*, the elements necessary for the imposition of countervailing duties are present) and attributable to subject merchandise. The request was within its independent investigative authority and not precluded by *Allegheny II*.[185]

Although Resolute and the GOC argue that the question is too broad, and could conceivably encompass programs such as "general infrastructure …, general reduction in income taxes, or social services such as health care," without regard to countervailability, we disagree.[186] We have not faulted any party for failing to identify obvious general infrastructure spending, and have not "penalize{d} respondents" for failing to disclose unreported other assistance in this proceeding.[187] Even if the question implicates some generally-available programs, however, the Department is not precluded from inquiring about other assistance in order to determine whether a program or subsidy is countervailable and attributable to the subject merchandise.[188]

Neither does the "other assistance" question unlawfully shift the burden of production from the petitioners to respondents. As explained above, the result is consistent with section 775 of the Act and 19 CFR 351.311(b), which require that the Department investigate potentially countervailable subsidies when sufficient time remains in the proceeding to do so.[189] Here, at the outset of the investigation, sufficient time remained in the investigation for the Department to

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[184] *See Allegheny II*, 25 Ct. Int'l Trade 816, 821; *see also* GOC Case Brief at 93.
[185] *See Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1343 ("{B}ecause the issue here is not whether Commerce was required to examine these additional programs pursuant to a petitioner's request that the agency invoke {section 775 of the Act}, *cf. Allegheny Ludlum*, 25 CIT at 824 …, but rather whether Commerce reasonably exercised its own independent investigative authority, *Allegheny Ludlum* is not controlling.").
[186] *See* GOC Etal Common Issues Case Brief at 91.
[187] *Id.*; *see also* Comment 4.
[188] *See Ansaldo Componeti S.p.A.*, 628 F. Supp. at 205; *see also Essar Steel Ltd.*, 721 F. Supp. 2d at 1298-1299; *see also Acciai Speciali Terni S.p.A.*, 26 CIT at 167; *see also PAM, S.p.A.*, 495 F. Supp. 2d at 1369.
[189] *Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1345 ("{T}he petitioner's burden is irrelevant when Commerce chooses to exercise its independent investigative authority under {section 775 of the Act} … {and thus} Commerce did not unlawfully shift any burden from the petitioner" through its request that respondents report any other forms of governmental assistance).

inquire about other forms of assistance received by the respondents during the POI, and so the Department requested that the respondent interested parties report such information for the Department to examine.

Respondent interested parties cite to *SolarWorld* for the proposition that the Department's "other assistance" question unlawfully shifts the burden of production from the petitioner to respondents.[190] We disagree. In *SolarWorld*, the CIT held that the Department reasonably declined to initiate an investigation into subsidy programs alleged in the petition that lacked a sufficient evidentiary basis.[191] The Court rejected SolarWorld's assertions that the Department should have supplemented the allegations on its own accord, holding that "{u}nder Section {702}(b)(1), it is not for Commerce to seek out evidence supporting the interested party's petition."[192] Thus, the CIT's holding in *SolarWorld* relates to the Department's discretion under section 702(b)(1) of the Act not to initiate where evidence is insufficient; it says nothing about the boundaries of the Department's authority under section 775 of the Act.

Although parties argue that the Department's "other assistance" question is incongruent with the United States' international obligations, the parties have not identified a WTO Panel Report or WTO Appellate Body Report reaching this conclusion. In any event, the Act is fully consistent with the international obligations of the United States. Moreover, the Department is governed by U.S. law, and, as we have explained, our "other assistance" question is fully consistent with section 775 of the Act. The respondents' reading of the SCM Agreement, in this context, has no bearing upon these proceedings. The Department's "other assistance" question is governed by, and consistent with, U.S. law.

We address the countervailability of the specific programs raised by Resolute and the GBC in separate comments. *See* PCIP (Comment 63), Colored Fuel Tax Rate (Comment 74), SR&ED (Comments 64 and 65). Similarly, we address our determination not to apply AFA to potential "other assistance" that was untimely reported by JDIL and Resolute in separate comments. *See* Comment 4.

Finally, because this final determination addresses only programs for which we made a preliminary determination, we do not address the parties' requests for an opportunity to comment on those unaddressed programs.

Comment 6: Whether the Department Should Defer Examination of Certain Programs

The Canadian Parties argue that, having failed to request further information for the "Programs Preliminarily Determined to Require Additional Information," the Department is precluded from countervailing such programs.[193] They submit that, if the Department had insufficient information to make a determination at the preliminary stage, and did not make any requests for information, then it has insufficient information at the final stage to countervail these programs. They argue that to do otherwise would be equivalent to a facts available determination for which

[190] *See Solar World Ams Inc.,* 125 F. Supp. 3d at 1318; *see also* GOC Case Brief at 89.
[191] *See Solar World Ams Inc.*, 125 F. Supp. 3d at 1330.
[192] *Id.* (referring to section 702 of the Act).
[193] *See* GOC Etal Common Issues Case Brief at 140-147.

there is no statutory basis. Further, they assert that a determination to countervail any of the programs would deny the respondents' due process rights and violate Department practice. In particular, the GOA argues that, should the Department decide to address any of the deferred programs in the final determination, then consistent with basic principles of due process, the GOA requests adequate notice and an opportunity to be heard regarding such programs prior to the final.[194] However, should the Department violate due process, the GOA submits that it preserves all arguments related to the programs.

Therefore, the Canadian Parties argue the Department must defer consideration of these programs until any subsequent review. If the Department nevertheless decides to include the programs in the final, then the GOC and GOQ argue that the Department should find that the federal and Québec programs did not confer countervailable benefits.[195] Resolute argues that the Department should disregard the programs that it decided not to pursue.[196]

In rebuttal, the petitioner asserts that Canadian Parties' arguments are without merit because they fail to recognize the statute, which states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition."[197]

Department's Position: In the *Preliminary Determination*, we did not make preliminary findings with respect to the countervailability of two federal and 28 provincial programs that were reported during the course of the investigation.[198] We listed those programs as "Programs Preliminarily Determined to Require Additional Information."

Section 775 of the Act and 19 CFR 351.311(b) direct the Department to examine apparent subsidy practices discovered during the course of a proceeding and not alleged in the petition if the Department concludes that sufficient time remains before the scheduled date for the final determination. Here, parties reported 30 distinct subsidy programs, several of which are complex programs, such as electricity assistance incentives. Given time constraints and the constraints on our resources, which were already devoted to investigating the numerous subsidy programs on which we initiated, we were unable to issue supplemental questionnaires requesting additional information on the 30 programs to not only the federal and provincial governments, but also to the five respondent companies and their responding cross-owned affiliates either before or after the *Preliminary Determination*. Additionally, after the *Preliminary Determination*, the Department conducted numerous verifications with the involved provincial governments and five company respondents. Parties subsequently submitted many case and rebuttal briefs raising numerous complex issues, which further strained the Department's available resources. Based on the foregoing, we concluded that we lacked sufficient time and resources to conduct an examination of the 30 programs. We, therefore, are deferring an examination of those subsidy programs until a subsequent administrative review, should this case

[194] *See* GOA Case Brief at 77-79.
[195] *See* GOC Case Brief at 18-21; *see also* GOQ Case Brief at 64-71.
[196] *See* Resolute Case Brief at 55-56.
[197] *See* Petitioner Rebuttal Brief at 187-188; *see also* section 775 of the Act; and 19 CFR 351.311(b).
[198] *See* PDM at 88-89. In the PDM, we listed 27 provincial programs in the section "Programs Preliminarily Determined To Require Additional Information." We inadvertently excluded from the list the GBC's Tenure Takeback program. Therefore, we did not make preliminary findings with regard to 28 provincial programs.

go to order, pursuant to 19 CFR 351.311(c)(2). As such, we consider the Canadian Parties' comments regarding whether the Department can lawfully include this assistance in the final determination to be moot. We likewise need not address parties' arguments regarding whether certain deferred programs are, or are not, countervailable.

Comment 7: Whether the Department Should Make a Finding On the NSAs

The petitioner states that it timely submitted evidence and an allegation on March 15, 2017,[199] that three additional subsidy programs meet the statutory definition of a countervailable subsidy: (1) the provision of a loan by the GOQ and GOO to Resolute as part of the company's bankruptcy proceedings (Resolute Bankruptcy Loans); (2) preferential treatment for maximum liability amounts guaranteed by EDC for U.S. export sales (Account Performance Security Guarantees); and (3) tax incentives for private forest land property by the GNB (GNB Land Tax Incentives).[200] The petitioner asserts that the Department is not limited to subsidy programs identified in the petition. Furthermore, the statute requires the Department to include in its investigation a program which appears to be a countervailable subsidy with respect to the subject merchandise if such a program is discovered in the course of the proceeding.[201] The petitioner submits that, because it submitted these NSAs by the deadline set forth in 19 CFR 351.301(c)(2)(iv)(A), the Department cannot find that it had insufficient time to investigate these newly-alleged programs, and thus, the Department should not defer consideration of these programs to a subsequent administrative review, but find that they constitute countervailable subsidies which conferred measurable benefits during the POI.

The GOO, GOQ, and Resolute assert that the company was not absolved of its provincial pension obligations *via* the bankruptcy proceedings.[202] They submit that the petitioner's description of the restructuring as bankruptcy loans is a mischaracterization of a standard procedure conducted in accordance with Canadian and U.S. law. With regard to the Account Performance Security Guarantees, Resolute claims that it bought insurance from EDC at a market price and no benefits were conferred. Concerning the GNB Land Tax Incentives, JDIL states that the GNB taxes privately owned timberlands at the same rate, regardless of whether the properties are in productive use or not.[203] JDIL, thus, argues that the petitioner failed to provide reasonably available evidentiary support for specificity, and the Department should find the allegation deficient. The GNB states that, because the Department neither initiated nor conducted an investigation of the GNB Land Tax Incentives, it cannot lawfully make a determination on the countervailability of this program in the final determination.[204]

Jointly, the Canadian Parties state that the Department initiated no investigation with respect to any of the three alleged subsidies, collected no information regarding the allegations, and conducted no verification of information that could be the basis for assessing countervailing

[199] *See* Petitioner NSA 1.
[200] *See* Petitioner Case Brief at 60-68.
[201] *Id*. at 61-63.
[202] *See* GOO Rebuttal Brief at 5-9; *see also* GOQ Rebuttal Brief at 9-12; *see also* Resolute Rebuttal Brief at 6-10.
[203] *See* JDIL Rebuttal Brief at 7-8.
[204] *See* GNB Rebuttal Brief at 2-4.

duties.[205] The GOQ adds that, because the petitioner failed to meet any of the initiation thresholds, there is no basis on which the Department lawfully can include the NSAs in the final determination.[206] A final determination that these programs are countervailable would be equivalent to a facts available determination, for which there is no basis. They add that a determination to countervail any of the programs in the final – with or without a formal initiation – would deny the respondents' due process rights and violate agency practice as the Department has not issued a preliminary determination with respect to any of the programs.

Department's Position: In the *Preliminary Determination*, we stated that we would consider whether to initiate an investigation with respect to the petitioner's timely filed NSAs after the *Preliminary Determination*.[207] Section 775 of the Act provides, in relevant part, that if, during the course of a CVD proceeding, the Department discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a CVD petition, then the Department 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. However, the inclusion of such a practice should not delay the conclusion of any current investigation any more than absolutely necessary.[208]

The courts have recognized that, while the Department has a general duty to investigate subsidy allegations that arise during the course of an investigation, that duty is tempered by the acknowledgment that investigating subsidies takes time, and that the Department may not always have sufficient time or resources before the final determination to investigate a newly alleged subsidy. Thus, "{b}ased upon the plain meaning of th{e} statute and regulation, it is clear that Commerce has an affirmative duty to investigate subsidies discovered during the course of an investigation, even if (for practical reasons) the investigation of the newly discovered subsidies must wait for an administrative review."[209]

Further, the Department has previously deferred the investigation of extraordinarily complex NSAs when faced with limitations on time and other resources in the proceeding.[210] Here, the petitioner alleged three complex subsidy programs involving loans provided in bankruptcy/restructuring proceedings, government guarantees for account receivables, and exemption or remission of direct taxes. Although we stated that we would consider whether to initiate an investigation into these newly-alleged subsidies after the *Preliminary Determination*, we found that we were unable to develop a sufficiently complete investigative record of the complex programs alleged (*i.e.*, analyze the information for initiation, issue questionnaires, review questionnaire responses, conduct verification, etc.), given the limited amount of time left

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[205] *See* GOC Etal Common Issues Rebuttal Brief at 18-23.
[206] *See* GOQ Rebuttal Brief at 3-8.
[207] *See* PDM at 8.
[208] *See* S. Rep. No. 96-249, at 98 (1979).
[209] *See Allegheny I*, 112 F. Supp. 2d at 1150.
[210] *See, e.g., OCTG from the PRC* IDM at Comment 28; *see also Shrimp from the PRC* IDM at Comment 11. In those investigations, the Department determined that, because there was insufficient time before the final determinations, it could not investigate certain complex and timely-filed new subsidy allegations, given its limited time and resources, and deferred such examination until the first review.

in our investigation and the constraints on our resources, which were already devoted to investigating the numerous and complex subsidy programs alleged by the petitioner and on which we initiated, in addition to the many self-reported programs by the respondents. Additionally, during this same time the Department was required to conduct numerous verifications with the involved provincial governments and five company respondents involved in this investigation.[211] Parties subsequently submitted many case and rebuttal briefs raising numerous complex issues, which further strained the Department's available resources.

Although 19 CFR 351.301(c)(2)(iv)(A) states that a countervailable subsidy allegation made by the petitioner is due no later than 40 days before the preliminary determination, it does not provide that the Department shall investigate all timely filed allegations. As the CIT recognized in *TMK IPSCO*, "{t}he plain meaning of this regulatory provision imposes a burden on the interested party to timely raise new subsidy allegations, but it does not require {the Department} to investigate all timely raised allegations."[212] Rather, the Department has discretion to determine whether sufficient time remains in a proceeding to investigate newly-alleged subsidies.[213] For reasons described above, though the NSAs were timely filed under 19 CFR 351.301(c)(2)(iv)(A), we did not have sufficient time to fully examine these alleged programs. We, therefore, are deferring our examination of these NSAs until a subsequent administrative review, should this case to go to order, pursuant to 19 CFR 351.311(c)(2).

Comment 8: Whether the Department Correctly Determined if Certain Programs are Specific

The GOC argues that where subsidies are widely available, the subsidy is not specific, and that the Department ignored this principle when it preliminarily found that a number of programs were *de jure* or *de facto* specific under sections 771(5A)(D)(i) and (5A)(D)(iii)(I)-(III) of the Act.[214] The GOC argues that the fact that a subsidy is not universally available does not make it specific, because the statute does not require a subsidy to be available to all enterprises or industries in order to be non-specific.[215] Rather, subsidies that are widely available (even if not universally available) are non-specific.[216] In particular, the GOC takes issue with the Department's preliminary determinations that the ACCA Program for Class 29 Assets, and the New Brunswick Workforce Expansion Program – One Job Pledge are specific.[217]

Department's Position: In reaching this final determination, the Department applied section 771(5A) of the Act in determining whether investigated programs are specific. We address the Department's determinations that the ACCA Program for Class 29 Assets and the New Brunswick Workforce Expansion Program – One Job Pledge are specific within the meaning of section 771(5A)(D) of the Act in conjunction with parties' particular arguments regarding the

[211] *See* section 782(i)(1) of the Act.
[212] *See TMK IPSCO*, 179 F. Supp. 3d 1328, 1336 (discussing subsection 351.301(d)(4)(i)(A), the precursor to subsection 351.301(c)(2)(iv)(A)).
[213] *Id.*
[214] *See* GOC Etal Common Issues Case Brief at 97-98.
[215] *Id.* at 98-99.
[216] *Id.*
[217] *Id.* at 100.

specificity of these programs. *See* ACCA Program for Class 29 Assets (Comment 68); New Brunswick Workforce Expansion Program (Comment 62).

Comment 9: Whether the Department Erroneously Applied its Attribution Regulations

The GOC notes that the Department has specific rules pertaining to the proper attribution of subsidies to particular products, such as 19 CFR 351.525(b)(5).[218] The GOC argues that the Department ignored these rules and "found several provincial programs to be countervailable subsidies in contravention of its tying regulation and the statutory requirement that assistance must benefit subject merchandise before it is treated as a countervailable subsidy."[219] In particular, the GOC takes issue with the Department's preliminary determination concerning "electricity programs where the electricity was produced by pulp and paper mills and tax credit programs where credits provided under the program were tied to projects or investments at facilities that do not produce lumber or inputs into softwood lumber."[220]

Department's Position: In reaching this final determination, the Department appropriately applied 19 CFR 351.525(b)(5) in examining whether subsidies were tied to particular products or particular markets. The Department has addressed the GOC's concerns related to this issue in Comment 60 concerning the BC Hydro Power Smart Incentives program, Comment 57 concerning the Alberta Bioenergy Producer Credit Program, Comment 53 concerning whether Resolute's electricity sales were tied to non-subject merchandise, and Comment 65 concerning SR&ED Tax Credits.

Comment 10: Whether the Department Should Rely on Expert Reports

The Canadian Parties assert that the Department is required to examine the whole record, including evidence that detracts from its conclusion when making a determination.[221] Therefore, the Department must consider the expert reports on their merits rather than dismiss them by declaring the source of the reports to be subjective because they were undertaken to provide information in this investigation. They add that this is particularly the case in the absence of any contrary information or evidence maligning the credibility of the research conducted.

Department's Position: We address the Department's assessment of the expert reports on the record in response to the comments in which those expert reports are applicable. *See* Comments 16, 19, 20, 21, 25, 31, 32, 33, 34, 35, 41, 44, and 45.

Comment 11: Whether the Provision of Stumpage Rights Is a Financial Contribution

The Canadian Parties state that stumpage is neither a good nor a service, but, rather, a right to harvest standing timber on Crown land subject to payment of stumpage charges. They argue that because stumpage rights do not constitute the provision of a good or service, or any of the other

[218] *See* GOC Etal Common Issues Case Brief at 101.
[219] *Id.* at 102.
[220] *Id.*
[221] *See* GOC Etal Common Issues Case Brief at 7-16 and 32-33.

enumerated financial contributions in the statute, stumpage rights cannot be treated as a subsidy, as all elements of a subsidy in section 771(5)(B) of the Act are not met.[222]

Department's Position: We find the Canadian Parties' argument that provincial governments are not providing standing timber (a good), but, rather, are merely granting a right to harvest standing timber, to be unpersuasive. The Department thoroughly addressed this issue in the prior CVD lumber proceedings, including, most recently, in *Lumber IV*. As preliminarily discussed,[223] in *Lumber IV*, the Department found that the ordinary meaning of "goods" is broad, encompassing all "property or possessions" and "saleable commodities."[224] The Department found that "nothing in the definition of the term 'goods' indicates that things that occur naturally on land, such as standing timber, do not constitute 'goods.'"[225] The Department further found that, to the contrary, the term includes ". . . growing crops and other identified things to be severed from real property."[226] The Department also found that the primary purpose of the tenures and supply guarantees granted under the provincial stumpage systems was to provide lumber producers with standing timber. Thus, the Department determined in *Lumber IV* that, regardless of whether the provinces were supplying standing timber or making it available through a right of access,[227] the provinces were providing standing timber.[228] We concluded that our finding was supported by the fact that the provinces collect stumpage fees based on the volume of standing timber harvested under tenures and supply guarantees. Lumber producers are charged a set price per cubic meter of timber (C$/$m^3$). Thus, the transaction between a provincial government and a lumber producer who harvests the timber is a sale of standing timber.

We find that neither the argument from the Canadian Parties nor information on the record of this investigation justifies a different conclusion. Therefore, consistent with *Lumber IV*, as well as the Department's findings in other CVD proceedings,[229] we determine that the provincial stumpage programs constitute a financial contribution in the form of a good, and that the provinces are providing that good, *i.e.*, standing timber, to lumber producers. As such, we continue to find that the provision of standing timber constitutes a financial contribution provided to lumber producers within the meaning of section 771(5)(D)(iii) of the Act.

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[222] *Id.* at 85-86.
[223] *See* PDM at 24-25.
[224] *See Preliminary Results of 1st AR*, 69 FR at 33204, 33213, unchanged in *Final Results of 1st AR* IDM at 8-9.
[225] *Id.*
[226] *Id*.
[227] In *Lumber IV Final Determination*, the Department found that "property" includes "the right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel) . . . {and} {a}ny external thing over which the rights of possession, use, and enjoyment are exercised. . .. In its widest sense, property includes all a person's legal rights of whatever description." Therefore, even assuming *arguendo* that the provinces are providing stumpage in the form of a right to harvest standing timber, section 771(5)(B)(iii) of the Act applies. *See Lumber IV Final Determination* IDM at Provincial Stumpage Programs Determined To Confer Subsidies – Financial Contribution.
[228] *See Preliminary Results of 1st AR*, 69 FR at 33204, 33213, unchanged in *Final Results of 1st AR* IDM at 8-9.
[229] *See CRS from Russia* IDM at Provision of Mining Rights for LTAR, where the Department determined that the Government of the Russian Federation's sale of mining rights constitutes a financial contribution in the form of a provision of a good within the meaning of section 771(5)(D)(iii) of the Act. *See also HRS from India 2006 AR* IDM at 19-20; *see also Tetra from the PRC* IDM at 25.

Comment 12: Whether Evidence Establishes No Market Distortion and Tier-One Benchmarks Should Be Applied

The Canadian Parties argue that the provinces submitted valid tier-one benchmarks in their jurisdictions which should be used to determine whether stumpage confers a benefit to the lumber producers.[230] They claim that expert reports also on the record, which are not refuted by the petitioner, indicate a lack of market distortion and, thus, there is no reason to go outside each province for a benchmark. They further argue that, as the Department recognized in *SC Paper from Canada – Expedited Review*, government involvement in a market, on its own, is not sufficient to establish that the market is distorted.[231] However, instead of following this practice, the Canadian Parties assert that the Department preliminarily relied on government "majority" or "substantial portion" for rejecting tier-one benchmarks in each of the provinces.[232] They argue that a finding of distortion cannot rest on government predominance in the market.

The petitioner rebuts stating that the Department's policy is to reject potential tier-one benchmarks where there is reason to conclude that the government's involvement in the market distorts the price.[233] The petitioner states that Crown timber makes up the majority of the softwood timber harvest in the provinces at issue. The petitioner adds that, while the Department does not presume that any specific percentage of government market share leads to a conclusion that private prices may be distorted, the government's market share is relevant evidence of the extent of government influence over the market.

Department's Position*:* We address the Department's findings on provincial market distortion and the viability of tier-one benchmarks in those jurisdictions in response to the specific arguments made by the provinces themselves. *See* Comments 16, 18, 28, 31, and 35.

Comment 13: Whether the Department Must Compare Average Benchmark Prices to Average Transaction Prices

In the *Preliminary Determination*, the Department calculated respondents' benefit from the provision of stumpage for LTAR by, generally, calculating species-specific monthly average unit benchmark prices, which we compared to the respondents' purchases of Crown-origin standing timber of that species during that month.[234] For purchases of stumpage in British Columbia and Québec, we aggregated the benchmark price data on a species-specific annual average basis, rather than a monthly basis, and compared that benchmark to the respondents' POI purchases of Crown-origin standing timber of that species.[235] For purchases of Crown-origin stumpage in Alberta, we compared each respondent's Crown stumpage purchases by annual average prices by

[230] *See* GOC Case Brief at 17-34.
[231] *See SC Paper from Canada – Expedited Review* IDM at 49, where the Department stated that it "does not apply a *per se* rule that a government's majority market share equates to government distortion. Rather, the Department will consider all relevant factors or measures that may distort a market."
[232] *See* PDM at 27-42.
[233] *See* Petitioner Rebuttal Brief at 8-12.
[234] *See* PDM at 54-56.
[235] *Id.*

species to the annual average Nova Scotia benchmark by species.[236] For purchases of Crown-origin stumpage in Ontario, we compared Resolute's individual purchases of Crown-origin SPF to the monthly price of SPF sawlogs and studwood in the Nova Scotia benchmark.[237] For purchases of stumpage in New Brunswick, we compared reported net payments for individual New Brunswick Crown purchases to the monthly benchmarks rates calculated for each grade and species based on the company's Nova Scotia private purchases.[238]

The GOC argues that the Department's regulations and the Act direct the Department to determine whether the respondent companies received "a benefit" from the government's provision of "goods or services."[239] The GOC asserts that, in order to calculate a single benefit for the provision of "goods," the Department must consider the overall, *i.e.*, average, government price in its LTAR calculations. The Department's regulations require that "the government price" be compared to a "market-determined price" or "a world price."[240] The GOC asserts that, while there is nothing in the regulations that specifically requires that the market-determined benchmark "price" or "world price" be based on an average, the Department has typically used average prices as benchmarks in its LTAR comparisons, including in this case.[241] Thus, the GOC argues, the Department should use a single, weighted average "all species" benchmark to compare with a single, weighted average "all species" government price, or, if the Department determines to continue using a species-specific benchmark, it should include "in the final benefit calculation any 'negative' benefits determined for any individual species."[242] The GOC also suggests that the Department could use "the lowest market-determined or world transaction-specific price as the benchmark, instead of a benchmark based on the average of many transactions."[243]

JDIL argues that the use of a "transaction-to-average" price comparison is distortive and inconsistent, and unsupported by the record. For the final determination, JDIL asserts that the Department should compare weighted-average POI prices and include all Crown transactions in the calculation of the Crown weighted-average prices, including those with negative quantities.[244]

The petitioner rebuts the GOC, asserting that the Department should not depart from a species-specific benchmark because the GOC has not provided a basis for the Department to depart from its previous findings either as a factual or legal matter.[245] Furthermore, the GOC's proposal to

[236] *See*, *e.g.*, West Fraser Preliminary Calculation Memorandum at 4.
[237] *See* Resolute Preliminary Calculation Memorandum; *see also* PDM at 56.
[238] *See* JDIL Preliminary Calculation Memorandum at 3.
[239] *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511.
[240] *See* GOC Etal Common Issues Case Brief at 80 (citing 19 CFR 351.511(a)(2)(i), (ii)).
[241] *Id.* at I-80.
[242] *Id.* at I-81; *see also* GBC Case Brief at I-81.
[243] *See* GOC Etal Common Issues Case Brief at 81.
[244] *See* JDIL Case Brief at 22-24.
[245] *See* Petitioner Rebuttal Brief at 80.

the use of the lowest market-determined or world transaction-specific price as the benchmark has been previously rejected by the CIT.[246]

Department's Position: The GOC has not provided a basis for the Department to depart from the methodology used in the *Preliminary Determination* to calculate the respondents' benefit from the provision of stumpage for LTAR as either a factual or legal matter.

As the GOC recognizes, the Department's preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible.[247] In making our determination regarding what comparison methodology is most appropriate, the Department considered the specific stumpage data collected and reported by the respective provincial governments and the level of detail of such data within the context of the provincial stumpage regimes. Where a comparison of individual transactions to monthly average benchmark prices was not possible, the Department developed methodologies that best adhered to the Department's preference.[248]

The GOC has provided no basis for deviating from the Department's methodological choices here. The GOC argues that to determine the overall benefit conferred under section 771(5)(E) of the Act, the Department must calculate a "singular 'benefit' . . . based on the provision of the plural 'goods' or 'services,' as opposed to 'a good' or 'a service.'" Specifically, the GOC argues that the Department must determine "the overall benefit derived from all government sales of the good."[249] The Department correctly calculated the "overall" benefit, because a benefit is either conferred or not conferred; there is no such thing as a "negative" benefit under the Act.[250]

The GOC has acknowledged that "… there is nothing in the regulations that specifically requires that the market-determined 'price' or 'world price' be based on an average…"[251] Furthermore, the GOC has not identified any specific distortions resulting from the use of transaction-specific prices in the *Preliminary Determination*. Therefore, we find that there is insufficient evidence to support a change in calculation methodology to rely on average prices for the final determination.

Furthermore, with respect to the GOC's argument that the Department could use the lowest market-determined transaction-specific prices as the benchmark, the CIT has stated,

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[246] *Id*. at 80-81 (citing *RZBC Group* (emphasis added) *see also Chevron v. Nat'l Res. Def. Council* ("{I}f the statute is silent or ambiguous with respect to {a} specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")).

[247] *See* GOC Etal Common Issues Case Brief at 82; *see also SC Paper from Canada – Expedited Review* IDM at Comment 25; *see also OCTG from the PRC Review* IDM at Comment 7; *see also Sinks from the PRC* IDM at Comment 21.

[248] For example, for the BC respondents, by relying on a timbermark-based approach and further disaggregating by species in the BC stumpage calculations, the Department conducted its calculations on the basis that is as close to a transaction-specific analysis as possible given the available record evidence.

[249] *See* GOC Etal Common Issues Case Brief at 79.

[250] *See*, *e.g.*, *CVD Preamble*, 63 FR at 65361 ("{I}f there is a financial contribution and a firm pays less for an input than it would otherwise pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned"); *see also* Comment 15 of this IDM, below, where we discuss this issue in greater detail.

[251] *See* GOC Etal Common Issues Case Brief at 80.

> {T}he law requires Commerce to measure benefit, or the adequacy of remuneration, "in relation to prevailing market conditions." In other words, remuneration for a subsidized input is "adequate" if it conforms to prevailing market norms.
>
> Without guidance on the matter, it was reasonable for Commerce to equate "prevailing market conditions" with average market conditions. {Black's Law Dictionary} defines the verb "to prevail" as "to be commonly accepted or predominant." And when you take an average, all you are doing is finding the predominant or typical case within a sample. So when Commerce averages country-level prices under the tier-two method, it is doing just what the statute commands: It is finding the prevailing world price for the subsidized input and using that to measure the adequacy of remuneration. The court sees nothing unreasonable in this approach. …
>
> By definition, the lowest input values are always less than prevailing or average prices. So even if penny-pinching producers buy their inputs from the cheapest sellers, that does not mean Commerce must use the lowest input values to make its benchmarks.[252]

We find the Court's reasoning persuasive here, including with respect to tier-one and tier-three benchmarks.

In arguing for the use of average prices, the GOC also asserts that the use of average prices is necessary to account for the fact that some provinces price stumpage by the "stand as a whole," which is one of the "conditions of … sale" that the Department must consider in its analysis.[253] *See* Comment 23 regarding the Department's position on the issue of whether to consider the "stand as a whole".

With respect to the GOC's and JDIL's argument that the Department should include so-called "negative" benefits in its LTAR calculations, we address this in Comment 15. As we explain there, a credit for transactions that did not provide a subsidy benefit is not an adjustment permitted under section 771(6) of the Act and is inconsistent with the Department's practice.[254]

Comment 14: Whether the Department Must Conduct a Pass-Through Analysis

Citing prior Federal Circuit and WTO decisions, the GOC argues that the Department must conduct a pass-through analysis where the harvester of softwood timber sells logs to an unrelated softwood lumber producer. The GOC asserts that the Department should omit from its benefit

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[252] *See RZBC Group*, 100 F. Supp. 3d at 1307.
[253] *See* GOC Etal Common Issues Case Brief at 80 (citing section 771(5)(E) of the Act).
[254] *See Lumber NSR* IDM at Comment 6; *see also Drill Pipe from the PRC* IDM at Comment 3; *see also OCTG from the PRC* IDM at Comment 14.

calculation any transactions between unrelated producers of the input product and producers of the subject merchandise.[255]

The petitioner argues that the GOC's arguments are without merit as the Federal Circuit has held that WTO decisions are not binding on the United States.[256] Further, the petitioner states that *Delverde* and *Allegheny Fed. Circuit*, as cited by the GOC, addressed the issue of "pass through" in the context of a change in ownership, which is not at issue here.[257] Finally, the petitioner asserts that the Act is clear: "the determination of whether a subsidy exists shall be made . . . without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists . . . ."[258]

Department's Position: The GOC argues that the Department must conduct a pass-through analysis and omit from its benefit calculation for the stumpage for LTAR programs any log transactions between the respondent firms and unaffiliated log harvesters. The Department determines that a pass-through analysis is not relevant to whether Crown-origin standing timber was provided for LTAR. Therefore, we disagree that the Department is required to conduct such an analysis in this investigation.

A pass-through analysis is only required if the benefit consists of Crown-origin logs that the respondent firms acquired from third parties via arm's length transactions. However, that fact pattern is not present in this investigation. In the Primary QNR, the Department requested that the respondent firms report the volume and value of species-specific sawlogs that they acquired, in the form of stumpage, from Crown lands.[259] In British Columbia, there are various ways in which the GBC sells Crown-origin standing timber. For example, respondents not only reported transactions in which they themselves harvested Crown-origin standing timber and paid stumpage dues to the GBC, but also transactions in which they paid a price to a separate tenure holder for the right to harvest Crown-origin standing timber located inside that holder's tenure area. In the *Preliminary Determination*, we included both types of transactions in our benefit calculations and have continued to do so in the final determination. We find that in both types of stumpage purchase transactions, there is a direct financial contribution from the GBC to the respondents insofar as the GBC provides the good (standing timber) directly to the respondent firms. Thus, for the provision of stumpage for LTAR programs, the benefit in the Department's company-specific subsidy calculations consists solely of Crown-origin standing timber and does not consist of logs. There is no need to consider in the context of the provision of stumpage for LTAR program whether a benefit was conferred upon the respondent firms' purchases of logs.

The GOC cites *Delverde*, *Allegheny Fed. Circuit* and a WTO Appellate Body decision in which the WTO Appellate Body has "requir{ed} a pass-through analysis in circumstances in which a

[255] *See* GOC Etal Common Issues Case Brief at 83-85.
[256] *See* Petitioner Rebuttal Brief at 81-82.
[257] *Id.* at 81-82.
[258] *See* section 771(5)(C) of the Act (emphasis added).
[259] *See* GBC Primary QNR Response, Part 2 at 7 (Excel Tables 1.1 through 6.2).

subsidy is received by a producer of an input, and the investigated product is different."[260] The Department disagrees that these citations are relevant to the instant investigation.

First, the Federal Circuit has held that "WTO decisions are 'not binding on the United States, much less this court.'"[261] The Department's determination here is governed by U.S. law. U.S. law is consistent with the United States' international obligations, and the Department has acted in accordance with U.S. law. Second, we agree with the petitioner that *Delverde* and *Allegheny Fed. Circuit* addressed the issue of "pass through" in the context of a change in ownership, which is an issue not present in this investigation.[262] Specifically, in *Delverde*, the Federal Circuit addressed Delverde's purchase of certain corporate assets from a private company that had previously received several nonrecurring countervailable subsidies from the Italian government.[263] Delverde asserted that, despite evidence demonstrating that Delverde paid fair market value for those assets in an arm's length transaction, the Department applied the spin-off methodology[264] and levied countervailing duties against Delverde, based on a *pro rata* portion of the nonrecurring subsidies that were granted to the former owner.[265] Similarly, in *Allegheny Fed. Circuit*, the Federal Circuit addressed the privatization of a company through the sale of ownership shares.[266] Because the issue of whether subsidies pass through from a company subject to a CVD order to a successor-in-interest pursuant to a change in ownership is not implicated here, the Department finds that the facts in *Delverde* and *Allegheny Fed. Circuit* are inapposite in this investigation.

Finally, to the extent that the Canadian Parties' comments concern the respondent firms' purchases of logs, we have addressed those comments in the context of the LER program. *See* Comment 46, where we discuss how such log purchases provide a financial contribution and confer a benefit under the statute.

Comment 15: Whether the Net Benefit Calculation for Stumpage for LTAR is Correct

In the *Preliminary Determination*, the Department found that the stumpage rates charged for Crown-origin standing timber by the provincial governments in Alberta, BC, New Brunswick, Ontario, and Québec constitute the provision of a good for LTAR.[267] The GOC, GBC, Tolko and JDIL disagree with the Department's benefit calculation methodology.[268] Specifically, the

[260] *See* GOC's Case Brief at 83-85 (citing *Delverde, Allegheny Fed. Circuit*).
[261] *See Corus Staal BV* (citing *Timken Co.*).
[262] *See Delverde*, 202 F.3d at 1363 (stating that "Delverde and Delverde USA, Inc. sued in the Court of International Trade, arguing that the Commerce's methodology, viz, its assumption that a pro rata portion of the *former owner's nonrecurring subsidies 'passed through' to Delverde as a consequence of the sale*, was erroneous and inconsistent with the Tariff Act as amended by the URAA.") (emphasis added); *see also Allegheny Fed. Circuit*, 367 F.3d at 1343-47 (examining pass-through in context of Usinor's privatization, involving the transfer of ownership through sales of stock).
[263] *See Delverde*, 202 F.3d at 1362.
[264] *See* the General Issues Appendix to *Steel from Austria*; *see also Inland Steel Bar Co.*
[265] *See Delverde*, 202 F.3d at 1362.
[266] *See Allegheny Fed. Circuit*, 367 F.3d at 1343-47.
[267] *See* PDM at 19.
[268] *See* GOC Etal Common Issues Case Brief at 81; *see also* GBC Case Brief at 77; *see also* Tolko Case Brief at 31; *see also* JDIL Case Brief at 24-26.

parties argue that the Department used a species-specific benchmark but did not account for any "negative benefits" in the ultimate benefit calculation, and that the Department should do so in the final determination if it does not develop a single weighted-average all species benchmark to compare with a single weighted-average all species government price. The petitioner asserts that the Department should not depart from the methodology used in the *Preliminary Determination*.[269]

Department's Position: In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by "negative benefits" from other transactions. The adjustment the GBC, Tolko and JDIL are seeking is essentially a credit for transactions that did not provide a benefit – this is an impermissible offset, contrary to the Act, and inconsistent with the Department's practice.[270]

Although Tolko and the GBC rely on the NAFTA June 7, 2004 Panel decision in *Lumber IV* [271] to support their contention that the Department must allow for "negative benefits" as an offset, that decision is not binding precedent on the Department.[272] Thus, the parties' reliance on the panel decision for the assertion that the Department must account for "negative benefits" is misplaced.

As we stated in *Lumber IV*, the Act defines the "net countervailable subsidy" as the gross amount of the subsidy less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy, (2) accounting for losses due to deferred receipt of the subsidy, and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy.[273] Both Congress and the courts have confirmed that these are the only offsets the Department is permitted to make under the statute.[274] Offsetting the benefit calculated with a "negative" benefit is not among the enumerated permissible offsets.

Furthermore, the *Preamble* clarifies that this result would be inconsistent with the purpose of a benefit inquiry:

> {I}f there is a financial contribution and a firm pays less for an input than it would otherwise pay in the absence of that financial contribution (or receives

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[269] *See* Petitioner Rebuttal Brief at 79-81.
[270] *See Final Results of 2nd AR* IDM at Comment 43; *see also e.g., Lumber NSR* IDM at Comment 6; *see also Drill Pipe from the PRC* IDM at Comment 3; *see also OCTG from China* IDM at Comment 14; *see also SC Paper from Canada - Expedited Review* IDM at Comment 26.
[271] *See NAFTA June 7, 2004 Panel Decision*.
[272] *See Algoma Steel Corp.* (finding that individual judges on the Court of International Trade are not bound by the decisions of another); *see also* NAFTA Art. 1904.3 (providing that panels apply "the general legal principles that a court of the importing party otherwise would apply to a review of a determination of the competent investigating authority").
[273] *See* section 771(6) of the Act.; *see also e.g. Final Results of 2nd AR* IDM at Comment 43.
[274] *See* S. Rep. No. 96-249, at 86 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 472 ("[t]he list is narrowly drawn and is all inclusive."); *see also Kajaria Iron Castings* ("we agree that 19 U.S.C. § 1677(6) provides the exclusive list of permissible offsets …."); *see also Geneva Steel* (explaining that section 771(6) contains "an exclusive list of offsets that may be deducted from the amount of a gross subsidy").

> revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit is concerned.[275]

Therefore, if the Department determines that a province has sold timber for LTAR, a benefit exists and the inquiry ends. We will not "reduce" the amount of that benefit by offsetting for purported "negative" benefits. Thus, we have made no modifications to the final determination calculations regarding alleged "negative" benefits. Moreover, as discussed in Comment 20, we have not compared average benchmark prices to average transaction prices.

Comment 16: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

In the *Preliminary Determination*, the Department found that, due to government predominance in the GOA's market for standing timber, private stumpage prices in Alberta could not be considered independent of the Crown stumpage prices.[276] Further, the Department found that the fact that a small number of tenure-holding companies dominated the Crown-origin and private-origin standing timber harvests during the POI, coupled with the fact that a supply "overhang" exists in the province, means that the prices dominant tenure-holders would be willing to pay for private-origin standing timber would be limited by the costs of obtaining standing timber from their own Crown tenures. On this basis, the Department found that private stumpage prices were effectively determined by Crown-stumpage prices, and that the TDA benchmark prices proposed by the parties were unusable as a benchmark.[277]

Canfor, the GOA, Tolko, and West Fraser challenge the Department's preliminary decision to disregard as a valid tier-one benchmark the "implied value of standing timber" derived by subtracting the average cost of harvesting, hauling and in-kind stumpage costs from an average of actual observed log prices in Alberta for fiscal year 2015, based on TDA survey prices.[278] These parties argue that TDA survey prices are collected for reasons not associated with this investigation, and are for logs that are directly comparable to the Alberta Crown timber under investigation.[279] The GOA, Canfor, and West Fraser argue that TDA prices reflect private arms-length transactions for logs between numerous vendors and purchasers and are representative of prevailing market conditions in Alberta, and that the Department and a NAFTA panel had previously recognized TDA survey prices.[280] The GOA and West Fraser argue that the Department should have examined Alberta's private *log* market, which, in their view, produces prices that are useable as a tier-three benchmark for Crown stumpage, rather than mistakenly focusing on the impact of Crown stumpage rates on the private *stumpage* market.[281]

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[275] *See CVD Preamble*, 63 FR at 65361.
[276] *See* PDM at 28-30.
[277] *Id*.
[278] *See* GOA Case Brief at 8-10 (citing the Brattle Report at 4, and their suggested calculation is described in GOA Rebuttal NFL Submission 1, Part 1 at Exhibit AB-S-113 at 23-24), and 20-21; Canfor Case Brief at 45-46 (adopting GOA case brief); West Fraser Case Brief at 8-15; Tolko Case Brief at 33-34 (adopting GOA case brief).
[279] *Id*.
[280] *See* GOA Case Brief at 10-11 (citing *Lumber IV Remand* at 14; and the *NAFTA June 7, 2004, Panel Decision* at 24); *see also* West Fraser Case Brief at 8-9, and 16-17; *see also* Canfor Case Brief at 44-45.
[281] *See* GOA Case Brief at 13-14; *see also* West Fraser Case Brief at 10-11.

The GOA and West Fraser argue that neither Crown policies nor market conditions distort the log market in Alberta such that TDA log prices cannot be used as a benchmark because (1) Alberta has a highly competitive market for logs (based on the Herfindahl-Hirschman (HHI) method of determining market concentration);[282] (2) the "supply overhang" for standing timber in Alberta indicates that Crown stumpage dues are excessive and the timber is uneconomical to harvest, which are legally irrelevant because unused allocated Crown standing timber cannot "distort" private party log prices;[283] and (3) TDA transaction data are market-determined log prices that do not reflect and are not depressed by any distortion that may exist in the stumpage market.[284] With respect to the first point, the GOA and West Fraser also argue that the distribution or concentration of buyers in a market is a "prevailing market condition" which cannot be used to support a finding that the market for stumpage is distorted.[285] With respect to the second point, West Fraser argues that in calendar year 2015 it harvested almost all of its AAC, and explained its reasons for not harvesting a certain amount of its AAC.[286]

Finally, the GOA contends that the appropriate calculation for determining whether stumpage was provided for LTAR begins with log prices provided in the TDA Log Transaction Overview.[287] In the GOA's view, the Department should adjust those prices to remove costs including harvesting and hauling, in-kind stumpage-related expenses, and imputed profit.[288] The GOA concludes that this calculated value should be compared to total Alberta timber dues, including holding and protection charges, FRIAA dues, and other fees and charges mandated by the Province and paid by the companies.[289]

The petitioner supports the Department's *Preliminary Determination* that the prices resulting from log sales between unrelated parties in Alberta do not provide a useable benchmark.[290] The petitioner argues that the TDA data cannot serve as a benchmark because such transactions are not independent of the provision of Crown timber to Alberta sawmills.[291] Specifically, the petitioner states that 60 percent of the TDA transaction volume cannot be considered independent from the provision of Crown timber to Alberta sawmills because those transactions are for logs harvested from Crown land for which the buyer paid stumpage fees to the GOA.[292] The petitioner also states that until that stumpage has been paid, in accordance with section 32 of the Alberta Forests Act, the Crown maintains a lien against the timber that has priority over all other encumbrances; therefore the majority of logs in the TDA transaction data are Crown logs

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[282] *See* GOA Case Brief at 15-16; *see also* West Fraser Case Brief at 13.
[283] *See* GOA Case Brief at 17-19 citing GOC Etal Primary QNR Response, GOC vol. VI, Exhibit GOC-STUMP-5, *Economic Analysis of Remuneration for Canadian Crown Timber: Are In-Jurisdiction Benchmarks Distorted by Crown Stumpage?* (Kalt Report – In-Jurisdiction Benchmarks); *see also* West Fraser Case Brief at 14-15.
[284] *See* GOA Case Brief at 20-21; *see also* West Fraser Case Brief at 11-13.
[285] *See* GOA Case Brief at 17; *see also* West Fraser Case Brief at 14.
[286] *See* West Fraser Case Brief at 15.
[287] The suggested calculations are detailed in GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 7-8. Collected data segregates stumpage and non-stumpage costs.
[288] *See* GOA Case Brief at 22-23.
[289] *Id.* at 23.
[290] *See* Petitioner Rebuttal Brief at 12-13.
[291] *See* Petitioner Rebuttal Brief at 12-13.
[292] *Id.*

which have not yet been fully provided to the sawmills because the stumpage payments are outstanding at the time of the log sale.[293] The petitioner also states that Crown logs, like those in question, are subject to the export prohibition of Section 31 of the Alberta Forests Act.[294]

In response to the GOA's argument that the level of concentration in the Alberta lumber-producing industry is far below the level that would draw antitrust scrutiny, the petitioner contends that the Department did not base its distortion finding on a conclusion that there is a monopsony of Crown and private timber purchasers; rather, the Department relied on the dominant role of the Crown as supplier to virtually all purchasers of the logs that the GOA contends provide usable tier-one pricing data.[295] Second, the petitioner argues that whether unused allocation is uneconomical to harvest does not undermine the Department's conclusion that private log sellers must compete on some level with volumes available to the sawmills at government-determined prices, and that this fact in turn affects demand and price.[296] Finally, the petitioner argues that in relying on the Brattle Report, which purports to demonstrate that log prices in Alberta cannot under any circumstances be distorted by prices for Crown timber, the GOA's argument is inconsistent with the findings of the Stoner and Mercurio Report.[297]

Department's Position: Under 19 CFR 351.511(a)(2), the Department measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference: (i) market-determined prices from actual transactions of the good within the country under investigation (*e.g.*, actual sales, actual imports, or in certain instances, actual sales from competitively run government auctions) (tier one); (ii) world market prices that would be available to purchasers in the country under investigation (tier two); or (iii) an assessment of whether the government price is consistent with market principles (tier three).

Therefore, our first preference for determining the adequacy of remuneration is to compare the government price to a market-determined price "*for the good or service* resulting from actual transactions in the country in question."[298] Because the good at issue in this investigation is stumpage, a market-determined stumpage price is the preferred benchmark under our regulatory hierarchy. The TDA survey prices that the GOA, Canfor, West Fraser, and Tolko propose using as a benchmark are, by their own recognition, primarily for a different product, *i.e.*, harvested logs, that is downstream from standing timber. As such, the TDA survey prices are not a tier-one benchmark "for the good or service" we are investigating. Rather, even assuming they were consistent with market principles (which we do not find), such prices would only be appropriate as a benchmark under tier three of our regulatory hierarchy (19 CFR 351.511(a)(2)(iii)).

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[293] *See* Petitioner Rebuttal Brief at 13.
[294] *Id*.
[295] *Id.* at 14.
[296] *Id.*
[297] *Id.* at 14-15, citing GOC Etal Primary QNR Response, GOA vol. IV, Exhibit AB-S-24, *Assessment of an Internal Benchmark for Alberta Crown Timber* (Brattle Report), and Petition Exhibit 105, *Economic Analysis of Price Distrotions in a Dominant-Firm/Fringe Market*, (Stoner and Mercurio Report).
[298] *See* 19 CFR 351.511(a)(2)(i) (emphasis added).

In the *Preliminary Determination*, we determined that available prices stemming from purchases of private stumpage in Nova Scotia, *i.e.*, the NS Survey prices, satisfied the regulatory requirements for a tier-one benchmark to measure the adequacy of remuneration for Crown stumpage in Alberta.[299] As discussed in Comments 39-43, we continue to find that NS Survey prices are the appropriate tier-one benchmark for Crown stumpage in the province. Consequently, given the hierarchical approach for benchmark selection under 19 CFR 351.511(a)(2), it is not necessary for the Department to examine the suitability of or rely upon non-tier-one benchmark data, such as the TDA survey prices in Alberta, which would fall under the third tier of the LTAR benchmark hierarchy set forth in 19 CFR 351.511(a)(2).

Nonetheless, as set forth below, we disagree with the parties' contentions that the TDA log prices reflect market prices that are consistent with market principles pursuant to 19 CFR 351.511(a)(2)(iii) that would be useable as a tier-three benchmark.

We explained in the *Preliminary Determination* that we would continue to evaluate TDA data during this investigation.[300] Upon further evaluation, we find that the TDA data represent a survey of private log transactions, and include a very small volume of private stumpage transactions, and many TDA salvage transactions.[301] TDA salvage transactions occur when Alberta energy and utility companies receive concessions on Crown land that is under timber management by tenure holders, and these concessions result in the removal of land from timber management. The non-timber concession holders negotiate with the timber tenure holders to reimburse the latter for their sunk costs of timber management on the land base removed from timber management. In addition, the non-timber concession holders usually ask the tenure holder to "salvage" timber on the concession land.[302] The Timber Management Regulations require FMA holders and Timber Quota holders to salvage timber under threat of having the volume charged against its AAC for refusal to do so.[303] TDA survey data are collected by the Alberta Joint Energy/Utility and Forest Industry Management Committee, which has members from all interested industries, to inform the negotiation of the value of the standing timber, in order to facilitate the price negotiations for salvage, sunk land-use costs, and reforestation.[304] Negotiations for compensation for standing timber "damage" (*i.e.*, the timber removed from tenure production by the granting of the non-timber concession on tenure land) are private and do not include the government except in its capacity as an *ex officio* member of the Joint Management Committee.[305]

If we were evaluating TDA survey data under tier three of our benchmark hierarchy, we would examine whether these data represent prices that are consistent with market principles. Our

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[299] *See Preliminary Determination* IDM at 46.
[300] *See Preliminary Determination*, and the accompanying decision memorandum at 30.
[301] *See* GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 3. (96.9 percent of transactions in FY2015 occurred at the mill gate, 2.8 percent involved decked timber, and the remaining 0.3 percent were for standing timber).
[302] *Id*. at 7.
[303] *See* GOA Primary QNR Response, Exhibit AB-S-15, at section 153(1).
[304] *See* GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 4, 7-8.
[305] *See* GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 1-2. (the GOA is an *ex officio* member of the Joint Management Committee).

consideration of the appropriateness of TDA survey data as a tier-three benchmark indicates the following: first, the salvage timber is cut without regard to the tenure holder's approved cutting plan, and therefore the prices are not a fair representation of the price of mature standing timber;[306] second, TDA transaction data contain "salvage" transactions of logs that were not offered for sale on the open market -- the tenure holder is required to take part in salvage transactions at the direction of the non-timber concession holder;[307] third, 60 percent of the transactions by volume are sales of Crown-origin logs, for which Crown stumpage was paid – and thus these transactions are unreliable insofar as they would yield a circular comparison of Crown stumpage prices with a benchmark that also included Crown stumpage[308]; and fourth, timber in Alberta is subject to an export prohibition under Section 31 of the *Alberta Forests Act*,[309] which prevents log sellers from seeking the highest prices in all markets and, thus, artificially creates downward pressure on log prices throughout the province.

For the foregoing reasons, in this final determination, we find that the TDA transaction prices are not useable as either a tier-one or a tier-three benchmark to measure the benefit conferred by the GOA's provision of stumpage for LTAR. Because we are not relying on these data as a benchmark, we need not address the GOA's suggestions regarding how the Department could adjust this benchmark to account for respondents' costs.[310]

The GOA and West Fraser argue that the three points of our stumpage distortion analysis, as presented in the *Preliminary Determination*, are irrelevant to evaluating the log prices reflected in the TDA survey data. We have not made a determination concerning distortion in the Alberta log market. The GOA and West Fraser's arguments concerning distortion presupposed that we would consider TDA survey data as a tier one benchmark, however we have not done so. Therefore, these arguments are misplaced. As a result, we need not evaluate whether log prices are also distorted as a result of the dominance of the government in the market for stumpage.

Moreover, the GOA, Canfor, Tolko, and West Fraser have not provided any basis to alter our preliminary determination that private prices for stumpage in Alberta are distorted. TDA survey data do contain a very small volume of private stumpage transactions (0.3 percent of the total volume),[311] which aside from being relatively inconsequential as compared to the total volume of sales and unusable as a tier-one benchmark, are not "market-determined," for the reasons stated

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[306] *See* GOA Verification Report at 11-12. *See also* GOA Verification Report at 13.
[307] *See* GOA Verification Report at Exhibit AB-VE-6, Attachment 3.
[308] The TDA data set contains 60 percent transactions by volume for which Crown stumpage was paid, and 40 percent private stumpage transactions. *See* GOC Etal Primary QNR Response, Errata 1, Revised Exhibit AB-S-41, at 4 (The total of "Volume Reported with Additional Stumpage," 1,112,500 m^3 divided by 1,872,800 m^3 in column "April 27, 2016 Letter (FY2015)). Further, these transactions are encumbered by a Crown lien which has priority over all other encumbrances, until Crown stumpage is paid; thus, title to harvested logs does not pass to the buyer until Alberta Timber Dues are paid in full. *See* GOA Primary QNR Response at Exhibit AB-S- 14, Section 32. This encumbrance creates risks for both the tenure holder and the buyer which would not exist in an open market transaction.
[309] *See* Petitioner Rebuttal Brief at 13.
[310] The Department discusses the parties' arguments regarding adjustments to the Nova Scotia benchmark in Comment 42.
[311] *See* GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 3. (0.3 percent of transactions in the database were for standing timber.)

in the *Preliminary Determination*.[312] This determination was based on three findings that we continue to rely upon in the final determination. First, in the *Preliminary Determination*, for Alberta in FY 2015-2016, we calculated that Crown-origin timber accounted for 98.48 percent of the harvest volume, while the harvest volume of non-Crown-origin timber accounted for the remaining 1.52 percent.[313] We continue to find those figures accurate for purposes of this final determination, and reflective of near complete Crown dominance of the market for standing timber in Alberta. Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. Consequently, the analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

Second, as in the *Preliminary Determination*, we continue to find that a small number of tenure-holding companies dominate both the Crown-origin and private-origin standing timber harvests in Alberta, which further ensures that the prices of private-origin standing timber track the prices of Crown-origin timber prices.[314] In particular, we find that the ten largest companies accounted for over 80 percent of the Crown timber allocation and over 81 percent of the Crown timber harvest.[315] Hence, for these companies, private-origin standing timber is a minor, residual source of supply, and sellers of the very small amount of private-origin standing timber in the province would not be in a position to exert market power in their dealings with these companies.

With respect to this second finding, the GOA and West Fraser argue that using concentration ratios to assess market concentration does not accurately measure competitiveness in the market. Instead, the GOA and West Fraser advocate use of a different metric of market concentration, the HHI, to show that market power is not "concentrated" in the stumpage market in Alberta. However, the GOA and West Fraser support these arguments with a hyperlink to a website, the content of which is not on the record.[316] Because the GOA bases its argument on unsupported statements and its own characterization of non-record evidence, we are not able to meaningfully engage in an analysis of this metric or in an analysis of whether the GOA's calculated outcomes are accurate. Further, we question the relevance of this metric to our analysis. The Department is not seeking to identify market conditions that would be anti-competitive in violation of U.S. or

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[312] *See Preliminary Determination* and accompanying PDM at 30. ("…data from the GOA indicate that the harvest of standing timber from private lands is miniscule compared to the volume of standing timber harvested from Crown lands. Further, the relatively small volumes of standing timber harvested from private lands is mostly consumed by tenure-holding sawmills such that non-Crown origin standing timber would "benchmark" off the prices the GOA sets for standing timber in the Crown forest.")

[313] *See Preliminary Determination* and accompanying PDM at 28 (citing Market Memorandum, at Alberta Attachment, Table 3).

[314] We have made certain changes to the market concentration metrics that we calculated in the *Preliminary Determination*; these changes do not impact our analysis of this issue. *See* Alberta Final Market Memorandum, Tables 1.2.1.1, and 1.2.1.2.

[315] *See* Alberta Final Market Memorandum, Tables 1.2.1.1. We also found that five firms had a 71 percent concentration in the private stumpage market. *See Preliminary Determination* and accompanying PDM at 29.

[316] *See, e.g.*, *Pasta from Italy 2012 AR* and the accompanying IDM at 5-6. ("In the Post-Preliminary Analysis, we noted that a hyperlink to a website, as the GOI submitted in the GOI 5SQR, is not an acceptable response to our questions because a mere citation to a hyperlink does not constitute the provision of information on the record of a proceeding, because information accessible via a hyperlink is subject to change.")

Canadian antitrust laws. Our analysis examines the features of the sector at issue to consider whether it functions freely and generates market-determined prices. In the instant case, where 143 companies purchased Alberta Crown stumpage, the fact that the top ten companies are allocated 80 percent of the available volume and harvest 81 percent of the Crown harvest, indicates market power concentrations that are meaningful to our analysis when combined with other record evidence.[317]

The GOA also argues that the Department's reliance in the *Preliminary Determination* on the fact that a small number of firms dominate both the Crown-origin stumpage market and the private stumpage market, is misplaced, because these two market concentration ratios each reveal nothing about the competitive nature of the Crown and private markets for stumpage in Alberta.[318] We disagree. These indicators demonstrate that a small number of firms consume most of the total stumpage in the market, and that these market concentrations hinder the potential for sellers of private-origin standing timber to freely negotiate prices. This is especially true where, as we continue to find, dominant purchasers are able to obtain additional supply from their own tenures.

The GOA also argues that the existing level of concentration or competitiveness in the Alberta market is a "prevailing market condition," such that the Department cannot rely on this measure to find distortion in market. We disagree with the GOA's interpretation of section 771(5)(E) of the Act. An analysis of whether a proposed benchmark is market-determined must precede any analysis of how to account for prevailing market conditions in a benchmark comparison. Any other interpretation would lead to the absurd result that the Department could never rely on anything other than a tier-one benchmark, regardless of the level of distortion, because such benchmarks would always reflect "prevailing market conditions" in the country of provision. This result would effectively nullify 19 CFR 351.511(a)(2)(ii)-(iii), and is not supported by the language of section 771(5)(E) of the Act. Section 771(5)(E) of the Act identifies relevant "prevailing market conditions" as including "price, quality, availability, marketability, transportation, and other conditions of purchase or sale." Factors such as "marketability" and "transportation," though constituting "prevailing market conditions," are typically not relevant to evaluating whether a particular benchmark is, or is not, market determined.

Third, as in the *Preliminary Determination*, we continue to find that a supply overhang exists in Alberta such that allocations of Crown stumpage volume are not fully consumed.[319] This supply "overhang" in Alberta indicates that the willingness of tenure-holding sawmills to pay for private-origin standing timber will be limited by their costs for obtaining standing timber from their own tenures. When combined with the fact that the same companies are active in both the Crown stumpage and private stumpage markets, this is further evidence that prices for standing timber from non-Crown sources would mirror the administratively-set prices charged by the GOA on Crown lands.

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[317] *See* Alberta Final Market Memorandum, Tables 1.2.1.1, and 1.2.1.2.
[318] *See* GOA Case Brief at 16-17.
[319] The revised calculation indicates that harvested volume, divided by allocated volume equals 90 percent, leaving 10 percent unharvested. *See* Alberta Final Market Memorandum, Table 1.2.2.

With respect to this third finding, the GOA and West Fraser challenge whether the existence of "overhang" in Alberta actually supports the Department's distortion analysis. In particular, the GOA cites to an affidavit from Dan Wilkinson, Director of Markets for the Alberta Forest Products Association, to argue that the supply overhang results from a variety of causes, such as the level of harvesting and transportation costs relative to the downstream price for lumber; decisions of mixed-wood lot holders, who run pulp and oriented strand board mills, to not harvest because it is impractical or uneconomic; First Nations and wildlife habitat considerations; and a fall in demand for oriented strand board and dimensional lumber in the market since the 2007 recession.[320] However, Mr. Wilkinson's statements were generated specifically for purposes of this investigation and are not supported by any evidence or empirical data on the record of this investigation.[321] Furthermore, Mr. Wilkinson does not quantify the extent to which the unused AAC is a result of these factors, and instead only uses general terms such as "mostly" and "partly."[322] Lastly, this affidavit does not account for the fact that on the margin, the tenure holder has access to additional supply from Crown lands that it can harvest rather than going to the private market, not only because there is unused volume allocation during the POI, but also because mills are awarded periodic allotments that span five years. Therefore, the available supply to a particular tenure holder may be even greater in a given year because, in any year of the five-year cut control period, the tenure holder can harvest beyond one-fifth of its five-year allocation, as long as they do not exceed the allocation for the five-year period.[323]

Further, although West Fraser makes the same point that unused AAC is uneconomical to harvest, the evidence upon which West Fraser relies for this proposition is specific to West Fraser's experience and does not speak to the stumpage market, as a whole.

Finally, the GOA also relies on the Brattle Report to argue that the existence of supply overhang is consistent with Crown stumpage rates being too high, rather than too low.[324] In particular, citing the Brattle Report, the GOA asserts that stumpage fees act like a tax, which reduces output by reducing the number of trees that are economical to harvest, and creates a larger overhang than would otherwise exist.[325] As an initial matter, this report was commissioned by the GOA for the purposes of this investigation[326] and as such, carries only limited weight given its potential for bias, with data and conclusions that may be tailored to generate a desired result. Further, whether Crown stumpage prices are too "high" or "low" is not what the Department is attempting to measure in its distortion analysis. Rather, our concern, reflected above, is that private prices are "effectively determined" by Crown stumpage prices, which renders any price

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[320] *See* GOA Case Brief at 18 (citing Kalt Report – In-Jurisdiction Benchmarks at 5-9, and Attachment 2.)
[321] *See* Kalt Report – In-Jurisdiction Benchmarks at Attachment 2.
[322] *Id.*
[323] *See* Tolko Verification Report at 8. *See also, e.g.*, GOC Etal Primary QNR Response; *see also* GOA Primary QNR Response at AB-S-36 (ANC Timber, Ltd.'s FMA - definitions of annual allowable cut, and periodic allowable cut, section 1, item (b), and (n), respectively).
[324] *See* GOA Case Brief at 19, citing Brattle Report at 30-32.
[325] *Id*.
[326] *See* Brattle Report at 3-6. ("We have been asked by the Government of Alberta (or 'the Province') to conduct an economic analysis regarding certain aspects of the allegations that it provides the right to harvest provincially-owned standing softwood timber to lumber producers in Alberta at prices below what would be charged by private owners of timberlands and that these timber sales at allegedly 'less than adequate remuneration' constitute a countervailable subsidy.")

comparison circular. Thus, the Brattle Report's conclusions do not inform the Department's analysis of this question.

Comment 17: Whether the Department Should Use a U.S. Log Benchmark to Compare Respondents' Alberta Stumpage Purchases

In the *Preliminary Determination*, the Department found that the GOA provided stumpage for LTAR to the respondents with operations in Alberta, by comparing the respondents' stumpage purchases to Nova Scotia's stumpage prices.[327] The respondents argue that the petitioner has previously suggested the Department should use a U.S. log price as the benchmark to compare the respondents' Alberta stumpage purchases. They argue that the Department cannot use a cross-jurisdiction benchmark for determining whether Alberta stumpage is sold for LTAR because the differences in prevailing market conditions significantly affect comparability. They further argue that if the Department uses a cross-border benchmark, the Department must make adjustments to account for these differences in prevailing market conditions.[328] The petitioner did not comment on this issue.

Department's Position: In this final determination, the Department continues to use stumpage prices from Nova Scotia as a tier-one benchmark to compare the respondents' purchases of stumpage from Alberta. *See* Comment 39, 40, 41, 42 and 43 for a discussion on benchmark prices from Nova Scotia. The Department is not comparing respondents' purchases of stumpage from Alberta to U.S. log prices and, therefore, parties' arguments with respect to this point are moot.

Comment 18: Whether Crown Auctions in British Columbia Generate Valid Market Prices

As detailed in the *Preliminary Determination*, all Crown-origin standing timber harvested in British Columbia is subject to stumpage fees, which are set based on either the results of government-run auctions (BCTS auctions) or through the MPS.[329] The GBC stated that about 20 percent of Crown harvest is sold through these BCTS auctions.[330] The prices paid for the right to harvest from these auctions provide the basis for the MPS system, which determines the stumpage rates for the remaining Crown timber stands not sold through auction.[331] Although the GBC argued that the BCTS auctions produced valid market prices, in the *Preliminary Determination*, we found that these prices were not market-determined and, thus, were not appropriate to use as a tier-one benchmark. After considering other potential benchmarks, we ultimately used a tier-three benchmark (delivered log prices from Washington state) in the *Preliminary Determination*.

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[327] *See* PDM at 44-46, 52, and 56-57.
[328] *See* GOA Case Brief at 65-67; *see also* GOC Etal Common Issues Case Brief at 71-72.
[329] *Id.* at 21.
[330] *See* GBC Primary QNR Response, Part 1 at BC I-138. However, harvest information verified by the Department indicates that the auction harvest accounted for only 15.4 percent of the total unrestricted softwood BCTS harvest in the province. *See* GBC Verification Exhibits at VE-6 at 117 (1,827,087 m^3 (coast) + 7,421,341 m^3 (interior) / 60,177,713 m^3 (total)).
[331] *Id.* at BC I-139.

The GBC, Canfor, Tolko and West Fraser (the Canadian Parties) disagree with the Department's *Preliminary Determination* and argue that the Department need not conduct a benchmark analysis at all, but if it does, the Department should use BCTS auction prices as a first-tier benchmark in any calculation of stumpage benefits to respondents in British Columbia. Specifically, they argue that these BCTS auctions generate valid market prices delivered from competitive, unrestricted auctions, which in turn set the stumpage prices for the rest of the province.[332] The Canadian Parties assert that the Department's findings otherwise were erroneous and unsupported by the record.[333] The petitioner contends, in rebuttal, that the Department was correct in not using BCTS auction prices for tier-one benchmarks in the *Preliminary Determination*, and should continue not to use these prices in the final determination.[334]

Department's Position: We disagree with the Canadian Parties' arguments that BCTS auction prices should serve as a tier-one benchmark. However, before addressing the arguments in detail, it is important to review the regulatory language with respect to 19 CFR 351.511 – the provision of a good or service for less than adequate remuneration. Under the regulation, we prefer to measure the adequacy of remuneration using in-country prices as a benchmark, referred to a tier-one benchmark. This tier-one benchmark could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively-run government auctions. However, where it is reasonable to conclude that prices in that market are significantly distorted as a result of the government's involvement in that market, the Department will not use the prices within that market.[335] Therefore, when information on the record indicates that the government is involved in the market, before determining whether it is appropriate to use prices from within that market, the Department must determine whether that market is distorted due to the presence of the government.[336] Once it is determined that the market is distorted by the presence of the government, prices between private parties, import prices, or government auction prices are no longer viable benchmark prices. As we found in the *Preliminary Determination*, information on this record indicates that the British Columbia stumpage market is distorted because the majority of the market is controlled by the government. Further, log export restraints (which we address separately at Comments 44, 45, 46 and 47) restrict the exportation of logs from the province, which influences the overall supply of logs available to domestic users, and, in turn, suppresses log prices in British Columbia. Therefore, prices within British Columbia, including prices from the BCTS auctions, cannot serve as a benchmark under 19 CFR 351.511(a)(2)(i), and we continue to find that deriving a benchmark pursuant to 19 CFR 351.511(a)(2)(iii) is the appropriate methodology for measuring the extent to which the GBC has provided stumpage for LTAR. Nevertheless, below we address the Canadian Parties' arguments regarding the BCTS auction prices.

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[332] *See* GBC Case Brief at 10-30; *see also* Canfor Case Brief at 18-20 *see also* West Fraser Case Brief at 31-36; *see also* Tolko Case Brief at 9-11.
[333] *See* GBC Case Brief at 15-28; *see also* Canfor Case Brief at 18-20; *see also* West Fraser Case Brief at 31-36; and *see also* Tolko Case Brief at 9-11.
[334] *See* Petitioner Rebuttal Brief at 15-21.
[335] *See*, *e.g.*, *CVD Preamble*, 63 FR at 65377.
[336] The *CVD Preamble*, 63 FR at 65377, refers to situations where the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In the *Preliminary Determination*, we found that the prices for standing timber generated by the BCTS auctions were not market-determined, and thus, were not appropriate to use as a tier-one benchmark. Specifically, we found that: (1) a small number of companies dominated the allocation and harvest of standing timber from BC Crown lands; (2) the volume of standing timber allocated by the GBC exceeds the volume harvested (indicating that there is a supply overhang and that stumpage prices in the BCTS auctions are effectively limited by the prices that large tenure holders pay for Crown stumpage on their own tenures); and (3) export restraints created a downward pressure on the price of logs sold in BC, and thus, by extension, the prices in BCTS auctions. On this basis, we preliminarily determined that the prices of Crown-origin standing timber from the BCTS auctions were not market-determined prices from competitively run government auctions.[337]

Notwithstanding the Canadian Parties' arguments, we continue to find that the prices generated from the BCTS auctions (and, in turn, the MPS stumpage rates that are calculated using these auction prices for the remainder of the province) do not produce valid market-determined prices. However, based on interested parties' comments, we have made certain changes to our findings in the *Preliminary Determination* as set forth below.

As noted above, we found in the *Preliminary Determination* that a small number of companies dominated the allocation and harvest of standing timber, and that there was a significant supply "overhang" in the province (*i.e.*, the volume of Crown standing timber harvested was significantly less than the volume of Crown standing timber allocated by the GBC for harvest during the POI). We further found that this supply "overhang" would effectively limit the demand and dampen the prices for BCTS auction volumes. These findings formed part of the Department's reasoning for rejecting use of the BCTS auction prices as a tier-one benchmark in the *Preliminary Determination*.

At the time of the *Preliminary Determination*, record information indicated that the holders of Forest License and Tree Farm License (the two license types that account for the majority of timber allocated and harvested in British Columbia) harvested only 72.7 percent and 75.1 percent, respectively, of their allocations.[338] However, in reviewing the record information, as well as the comments submitted by interested parties, we have reconsidered that finding and agree that the record evidence does not support a determination that a meaningful supply "overhang" exists in British Columbia. Specifically, the record indicates that most of the AAC that remained unharvested were MPB-killed dead pine timber, on which the potential return from processing into lumber or other wood products would not justify the costs of harvesting.[339] Consequently, we do not find that this particular supply of surplus, but inferior, Crown tenure

[337] *See* PDM at 35-39.
[338] *See* GBC Primary QNR Response, Part 1 at Exhibit BC-S-5; *see also* Market Memorandum, British Columbia Attachment, Table 4.1.
[339] *See*, *e.g.,* GBC Verification Exhibits at Exhibit 3, page 27; *see also* Canfor Primary QNR Response, Part 1 at STUMP-B-18; *see also* West Fraser Primary QNR Response, Part 1 at WF-BCST-12.

AAC timber, would necessarily have the dampening effect on BCTS auction stumpage prices that we surmised in the *Preliminary Determination*.[340]

However, we continue to find that a small number of large lumber companies dominate the BCTS auction market, thereby inhibiting competition.[341] Parties have not provided any evidence that would change our preliminary finding in this regard. We note that the GBC has recognized this large-company dominance to be a problem. Specifically, the GBC introduced the so-called three-sale limit—restricting the number of active TSLs[342] that a company may hold simultaneously to three—ostensibly to encourage competition by imposing a cap on the extent of participation by any one company and thus preventing the large companies from dominating all the auctions.[343] However, by so doing, the GBC imposes an artificial barrier to participation in the BCTS auctions; while no companies are *per se* excluded from the auction system as a whole, the three-sale quota means that, to the extent some companies have already reached the quota, any given auction will find fewer bidders that could otherwise participate. In this manner, the BCTS auctions are not the type of "competitively run government auctions" envisioned under 19 CFR 351.511(a)(2)(i). For this reason alone, the auctions could not provide a tier-one benchmark under our regulations even if we were to find a non-distorted market overall such that the first tier in our methodology would apply.

In any case, record information indicates that dominant firms have managed to get around the three-sale rule by making "straw purchases" through proxy bidders, thus maintaining effective dominance in these auctions. Specifically, record information indicates that the three-sale limit has failed to significantly diversify the entities harvesting from TSLs won on the auction in the manner intended. Instead, larger companies, including the mandatory respondents, continue to effectively manage and harvest more than three TSLs at a time by means of these "straw purchases" or by working with contract harvesters. For example, Tolko has reported stumpage costs associated with "third-party won BCTS auction purchases."[344] Similarly, West Fraser has reported costs for "stumpage on Crown timber harvested from BCTS licenses purchased at BCTS auctions by West Fraser's employees (which West Fraser treats the same way it treats BCTS licenses it purchases directly, since for these licenses West Fraser assumes all of the financial and operational liability associated with the timber sale)."[345] In other words, these large companies are managing to access additional TSL timber through third-party proxies or straw purchasers, such as employees, effectively nullifying the three-sale limit.

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[340] However, as a general matter, we do not concede that, as parties have argued, a supply "overhang" could not be evidence of distortion. The change in our finding here is driven strictly by the nature of the surplus volume, *i.e.*, uneconomical MPB-damaged timber not comparable to the BCTS auction stock.

[341] Specifically, five companies account for 64.8 percent of cruise-based auction volume and 43.6 percent of the scale-based auction volume. *See* Market Memorandum, British Columbia Attachment, Scale Based Auction Table 1.2 and Cruise Based Auction Table at 1.1.

[342] TSLs represent the authority to harvest granted to winning BCTS auction bidders. *See*, *e.g.,* GBC Primary QNR Response, Part 1 at BC I-110.

[343] *See* GBC Supp QNR 4 Response at 19 ("The rationale for the three-sale limit is to encourage competition for auctions by preventing the emergence of dominant firms. In designing the auction based system, British Columbia sought to encourage a diverse market logger community as bidders for the sales, to promote robust competition in the auctions."); *see also* GBC Verification Report at 11-12.

[344] *See* Tolko Supp QNR 2 Response, Part 1 at 25.

[345] *See* West Fraser Primary QNR Response, Part 1 at 158.

Moreover, while the three-sale rule has, in practice, failed to deliver the intended policy result of broadening participation in the TSL harvest, it has, at the same time, introduced an additional source of market distortion, in the form of cutting rights fees necessitated by "straw purchases" or proxy bidding. When reporting their harvest-related costs, all three mandatory respondents with operations in British Columbia have reported that in obtaining the right to harvest a TSL won by a third party at auction, they pay a cutting rights fee to the third party.[346] In other words, companies who pay these cutting rights fees to harvest a TSL from a third party are incurring an additional cost that they would not otherwise incur if bidding for the TSL directly — a cost that is likely factored into the auction in the form of lower bids, as the bidder would expect the companies to discount their purchase price accordingly. As we noted in the *Preliminary Determination*, based on a study from the BCLTC, non-harvesting third-party bidders at auction "base their auction bids on what the tenure-holding companies are willing to pay for auction-origin logs."[347] In such circumstances, the price paid by the BCTS auction winner does not reflect the full value of the timber.

In addition to the distortive effects of the three-sale rule, the log export restrictions in place in British Columbia also inhibit log exports from the province. This prevents log sellers from seeking the highest prices in all markets, and thus creates additional downward pressure on the log prices in the province.[348] The demand and value of logs in the BC market is linked with demand and value of stumpage in BC, as the supply and value of the logs available in the market are derived from the stumpage market in the province. Thus, distortion in the log market also impacts the stumpage market. For these reasons, we continue to find that the prices of Crown-origin standing timber auctioned under BCTS are not market-determined prices resulting from competitively-run government auctions within the meaning of 19 CFR 351.511(a)(2)(i), and therefore are not suitable for use as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).

Comment 19: Whether the Department Should Use Conversion Factors from the BC Dual Scale Study

In the *Preliminary Determination*, the Department used a single log volume conversion factor of 5.93 m^3/MBF from a 2002 USFS study to convert U.S benchmark prices in U.S. dollars per MBF and BC stumpage prices in C$ per cubic meter (m^3) to the same terms.[349] Various parties challenge the use of this conversion factor for the following reasons: (1) the 2002 conversion factor is based on outdated U.S. PNW log data from the 1984 U.S study, with a mix of species that does not match BC interior species, (2) it does not include the most prevalent species in the BC interior, where the BC-based respondents are located, (3) the 1984 scaling methodology is distinctly different from what is used today in BC to measure the volume in m^3, (4) the 1984 study only updated data for logs from green trees of a single diameter and did not include any utility grade trees, and (5) the 1984 study does not capture conversion factors for green and

[346] *Id.*; *see also* Tolko Supp QNR 2 Response, Part 1 at 25; *see also* Canfor Supp QNR 4 Response at 18.
[347] *See* PDM at 36.
[348] *See* Comments 44, 45, 46 and 47 for a further discussion of the BC Log Export Restraints.
[349] *See* PDM at 53.

beetle-killed logs for the two species (lodgepole pine and spruce) most affected by the MPB infestation. Those parties advocate using the BC Dual Scale Study.[350]

The petitioner argues that the Department should continue to use the 2002 conversion factor that it has used in past lumber investigations. In highlighting its concerns with the BC Dual Scale Study, the petitioner asserts that the logs measured for the study were not representative of the logs in BC sawmills, that companies could have influenced the results by selecting the loads that were scaled, and that there was no guarantee that the logs scaled were in fact processed by sawmills. The petitioner also raised an issue with the calculations for logs graded as "utility" under the Scribner methodology in the U.S. PNW, arguing that such logs were scaled as having no volume, but were included in the study data, which distorted the resulting conversion factors.[351]

Department's Position: In instances where parties have presented a self-commissioned study conducted specifically in anticipation of an investigation for the Department's consideration, the Department must carefully examine the study to ensure that it is based on sound methodologies that guard against any study bias. That is, the Department must evaluate whether any study or report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result. Therefore, the essential issue here is whether the BC Dual Scale Study produced conversion factors that were based upon a valid sampling methodology.

The BC Dual Scale Study conducted by Mr. Jendro and Mr. Hart was commissioned by the BC MFLNRO.[352] While we do not question the qualifications of Mr. Jendro and Mr. Hart, or the scaling professionals used by Jendro & Hart LLC, we have serious concerns about the methodology used to identify the selected scaling sites. Given the volume of lumber products being produced by the BC respondents, it is unclear why only 13 scaling sites were selected by Mr. Jendro and Mr. Hart for purposes of the BC Dual Scale Study. Further, although these sites were purportedly selected based upon the historic knowledge of the trees that are harvested and scaled at these 13 sites,[353] there is no evidence that either the GBC or Mr. Jendro and Mr. Hart selected these sites using any statistically valid sampling methodology. While the data in the BC Dual Scale Study may be "valid" in the sense that they are based upon the actual measurement of trees in BC, our concern arises when this data is subsequently characterized to be representative of all interior BC trees. We find that this concern may be alleviated if the BC Dual Scale Study was conducted using a statistically valid sampling methodology, which could then better represent the large area of BC interior trees or possibly all trees in BC. The BC Dual Scale Study does not explain how and whether different types of sampling were considered, or even selected: random, stratified, or composite, etc. The structure of a sampling methodology is a key decision point of any sound sampling methodology because how a sample is conducted can minimize bias, maximize the representativeness of the sample result, and inform the statistical relevance to

[350] *See* GBC Case Brief at 57-71 and 77-78; *see also* Canfor Case Brief at 28-29 and 39-42; *see also* Tolko Case Brief at 11-14; *see also* GOC Case Brief at 78-79.
[351] *See* Petitioner Rebuttal Case Brief at 36-40.
[352] *See* GBC Primary QNR Response, Part II at Exhibit BCS-183, Appendix A, at 3.
[353] *Id*. at 9.

the population. Instead, the researchers of the BC Dual Scale Study note that in order to have study results relatable to the BC Interior harvest, "the study team distributed study samples among the forest types represented by the BC interior harvest."[354] Therefore, because there is no evidence that the study used statistically valid sampling methodologies in selecting these 13 sites, the Department cannot determine that the information in the study provides a representative sample.

The absence of such evidence is particularly concerning, because the GBC acknowledges that the BC Dual Scale Study was commissioned by the BC MFLNRO in anticipation of this investigation. The Federal Circuit, in evaluating whether a party's claim had been sufficiently corroborated with evidence in a patent case, opined that "contemporaneous documentary evidence provides greater corroborative value" in determining whether a party's litigation "story is credible."[355] This is because evidence preceding the litigation eliminates "the risk of litigation-inspired fabrication or exaggeration" that may come from later-developed evidence, intended to corroborate the party's story.[356] We find that the Federal Circuit's concerns are equally applicable to evidence created for the purpose of an adjudicatory administrative proceeding, such as this one.[357] Although we consider all evidence on the record of a proceeding, in determining the weight to be accorded to a particular piece of evidence, we consider whether the evidence in question was prepared in the ordinary course of business, or for the express purpose of submission in the ongoing administrative proceeding. Because the BC Dual Scale study was prepared for the express purpose of submission in this investigation, we find that it is at "risk of litigation-inspired fabrication or exaggeration," which diminishes its weight.

By contrast, the USFS study upon which we relied in the *Preliminary Determination* was produced by a U.S. governmental entity that is not a party to this investigation. Therefore, we presume it to be unbiased, and respondents have presented no argument or evidence to undermine that conclusion here. Further, we have found this source to be reliable in a prior lumber proceeding, as well as in the recently-completed S*C Paper from Canada – Expedited Review*.[358]

In addition to the above concerns, we note that the BC Dual Scale Study is only based on trees in BC, not in Washington state, while the USFS study is based on trees in Washington state. The benchmark used for this analysis is the price of a log in the state of Washington. The GBC has stated on the record that "the relationship of volumes using BC Metric and Scribner scaling rules is complex and varies substantially depending on log diameter, shape and defect."[359] On this record, we have a Washington state-priced benchmark that is in board feet and we need to convert that price to cubic meters. The Washington state price in cubic meters would be based upon the cubic meters of the tree in Washington state, not BC. Therefore, we do not agree with

[354] *Id*. at 8.
[355] *See Transweb*.
[356] *See Sandt Tech.*
[357] The Department has previously expressed concern that commissioned reports prepared for purposes of a proceeding may be unreliable. *See CFS from Indonesia* IDM at Comment 12.
[358] *See Final Results of 2nd AR* IDM at 14; *see also SC Paper from Canada – Expedited Review – Preliminary Results* (*unchanged in the final results*).
[359] *See* GBC Primary QNR Response, Part II at Exhibit BCS-183, Appendix A, at 110.

the proposal that it would be more accurate to convert the Washington state benchmark prices using a conversion factor derived from trees in BC, especially given that we have a conversion factor on the record that is based on trees in Washington state.

Therefore, given our concerns with the lack of a valid sampling methodology used to produce the data in the BC Dual Scale Study and the applicability of a conversion factor based on BC trees used on a price for Washington trees, we have not relied on the information in the BC Dual Scale Study and continue to use the conversion factor of 5.93 m^3/MBF for the final determination. And because we have no basis for concluding that the BC Dual Scale Study generated unbiased conversion factors, we have not addressed the parties' specific arguments regarding the relative merits of the BC Dual Scale Study as compared with the USFS study.

Comment 20: Whether the Department Should Rely on Log Prices from Forest2Market Instead of WDNR Prices as a Benchmark to Compare Respondents' BC Stumpage Purchases

In the *Preliminary Determination*, the Department found that the GBC provided stumpage for LTAR to the respondents with BC operations during the POI, by comparing respondents' purchases to a U.S. benchmark comprised of log prices in the PNW published by the WDNR.[360]

The petitioner argues the Department should rely on log prices from Forest2Market, a private company that collects and publishes log pricing data based on actual transactions in the same region, instead of WDNR log prices which are simple average of quoted prices.[361] The GBC and BCLTC counter that, to the extent the Department continues to rely on a cross-border benchmark, it should refrain from relying on the Forest2Market data because they are unsubstantiated, non-transparent summary data, and there is no evidence that the data are representative of U.S. PNW log price transactions during the POI, or that they include log prices for salvage or beetle-killed wood. Furthermore, the data do not include cull or utility logs.[362]

Department's Position: In the *Preliminary Determination*, the Department found that the source data underlying the prices reported by Forest2Market are not currently on the record.[363] The petitioner argues that these prices are nonetheless preferable because they reflect a large number of actual transactions, compiled from actual invoices provided by log sellers and buyers. The petitioner contends that the WDNR data, by contrast, reflect price quotes, and not actual transactions, contrary to the Department's general preference to use actual transaction prices as benchmarks, rather than offer prices or estimated prices, if actual transaction prices are available.[364]

We disagree that the log prices reported by Forest2Market, as presented in a study prepared by Mason, Bruce & Girard for purposes of this investigation, are preferable to the WDNR data

[360] *See* PDM at 52-55.
[361] *See* Petitioner Case Brief at 18-22.
[362] *See* GBC Rebuttal Brief at 4-9.
[363] *See* PDM at 50.
[364] *See* Petitioner Case Brief at 18-22.

relied upon in the *Preliminary Determination*. The study conducted by Mason, Bruce & Girard, Inc. was based on information from several "customized" reports prepared by Forest2Market that summarized U.S. logs sold during the calendar year 2015.[365] The Mason, Bruce, & Girard, Inc. study then took the summary U.S. log price information from Forest2Market and performed further calculations to derive U.S. log prices for BC coastal and inland species and grades.[366] The Department continues to find that, since the data and search parameters underlying the prices reported by Forest2Market (for a study conducted specifically for this investigation) are not on the record of this investigation and are otherwise unverifiable, we cannot find those reported U.S. log prices to be complete, representative, or reliable. In contrast, the U.S. PNW log prices published by WDNR are collected on a monthly-basis, in the ordinary course of business by a government agency, and are in that sense reliable. Moreover, the prices reflected in the data are market-based and representative of species purchased by the BC respondents during the POI.

The petitioner does not appear to dispute that the Mason, Bruce & Girard study is based on unverifiable data, but apparently believes that this flaw is outweighed by the fact that the WDNR data include price quotes. We disagree. While the Department may generally prefer actual transaction prices, where available, we do not consider the Forest2Market log prices to be a reliable alternative for reasons set forth above.

Comment 21: Whether U.S. PNW Log Prices Should Not Be Used as a Benchmark Because They Do Not Reflect Prevailing Market Conditions in British Columbia

In the *Preliminary Determination*, the Department found that the GBC provided stumpage for LTAR to the respondents with BC operations during the POI, and measured adequacy of remuneration by comparing the respondents' purchase prices to a U.S. benchmark comprised of log prices in the PNW published by the WDNR.[367] The GBC, Canfor, Tolko, and the GOC argue that the Department's finding that PNW log prices provide an appropriate starting point for deriving the market value of standing timber in British Columbia is contradicted by record evidence and does not account for local variability in the physical characteristics of logs, prevalence of mountain pine beetle infestation, local market conditions, and contractual terms of sale.[368] Unless the Department is able to explain and control for all of the many factors that cause the variation in log prices between the PNW and British Columbia, then the U.S. PNW log prices are not a proper basis for a tier-three benchmark. The petitioner counters that the respondents do not challenge the fundamental premise of the Department's methodology: that the value of logs is primarily driven by the value of the products that can be made from those logs. The petitioner also argues that respondents have not proposed a better alternative measure of the value of BC stumpage, other than the flawed BCTS auction values.[369]

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[365] *See* Petitioner NFI Submission 1 at Exhibit 1.
[366] *Id.* at Figures 9 and 10 of Exhibit 1.
[367] *See* PDM at 52-55.
[368] *See* GBC Case Brief at 30-41; *see also* Canfor Case Brief at 35; *see also* Tolko Case Brief at 11; *see also* GOC Etal Common Issues Case Brief at 71-72.
[369] *See* Petitioner Rebuttal Case Brief at 31-36.

Department's Position: As fully discussed in Comment 18, we continue to find that BCTS auctions cannot serve as a market-determined tier-one benchmark price. We also continue to find that private stumpage prices in Nova Scotia and log prices in British Columbia are not appropriate benchmarks for British Columbia.[370] We also continue to find that U.S. stumpage prices are not an appropriate tier-two benchmark.[371] Therefore, following our established hierarchy under 19 CFR 351.511(a)(2)(iii), and consistent with *Lumber IV*, we again find it appropriate to use U.S. log prices as tier-three benchmarks when determining the adequacy of remuneration of the GBC's administered stumpage program (*i.e.*, a benchmark that is consistent with market principles under 19 CFR 351.511(a)(2)(iii)).[372]

In *Lumber IV*, we found that using U.S. log prices to derive a benchmark for stumpage is consistent with a market principles analysis, because: (1) standing values are largely derived from the demand for logs produced from a given tree; (2) the timber species in the U.S. PNW and British Columbia are very similar and, therefore, comparable if properly adjusted for market conditions in British Columbia; and (3) U.S. log prices are market-determined.[373] We continue to find, with no contradiction in the record evidence, that the timber species harvested by the respondent firms in British Columbia continue to match the species in the U.S. PNW.[374] Furthermore, the forestry conditions in the area that encompasses the U.S. PNW and British Columbia have not changed since *Lumber IV* such that log prices in the U.S. PNW and British Columbia are no longer comparable.[375] As we explained in the *Preliminary Determination*, timber species and growing conditions are both key factors in determining the market value of standing timber, and thus whether timber from the U.S. PNW and British Columbia are comparable.[376]

As discussed above, the legal requirements governing the Department's selection of benchmarks do not require perfection.[377] A benchmark, by nature, is not an exact match to the subsidy being evaluated. However, pursuant to section 771(5)(D)(iv) of the Act, the Department shall determine the adequacy of remuneration in relation to prevailing market conditions, *i.e.*, price, quality, availability, marketability, transportation, and other conditions of purchase or sale. To calculate "derived market stumpage prices" to compare with Crown stumpage, we deducted certain costs reported by BC-based respondents from the U.S. PNW log price benchmarks. The costs we adjusted for were, *inter alia*, costs associated with the tenure contract and accessing timber for harvesting, and cost of acquiring timber. Because these cost adjustments were made with respect to market conditions in British Columbia, the derived market stumpage prices were representative of the prevailing market conditions in the province. *See* Comment 24 for further discussion of adjustment made to the U.S. PNW log price benchmarks.

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[370] *See* PDM at 46-48.
[371] *Id.* at 48.
[372] *Id.* at 49-50, and *Final Results of 2nd AR* IDM at 12-13.
[373] *See* PDM at 49; *see also Final Results of 1st AR* IDM at 16; *see also Final Results of 2nd AR* IDM at 12-13.
[374] *See* PDM at 49.
[375] *Id.*
[376] *Id*.
[377] *See HRS from India 2007 AR* IDM at 52.

We continue to disagree with the GBC, Canfor, and Tolko that the differences in the prevailing market conditions between the U.S. PNW and British Columbia are so significant as to make a cross-border comparison impossible, even with adjustments. As an initial matter, the parties rely almost exclusively upon the Jendro & Hart report for their arguments with respect to this issue. The Jendro & Hart report was specifically commissioned for purposes of this investigation, and we note elsewhere in this memorandum, such reports carry only limited weight given the potential for bias and conclusions that were tailored to generate a desired result.[378]

Moreover, the GBC, Canfor, and Tolko have not submitted any record evidence to demonstrate, nor do they argue that, the timber species grown in the U.S. PNW and in British Columbia are not comparable. Instead, their arguments focus on differences in the relative distribution of certain species in the U.S. PNW as compared with British Columbia. They also rely upon unsupported statements in the Jendro & Hart report to argue that growing conditions, *i.e.*, soil, topography, and climate, vary between the U.S. PNW and British Columbia.[379] To the extent that these purported differences find support in the record, we disagree that we are required to achieve a precise match in our benchmark analysis.[380] We also disagree that such differences render a comparison impossible. To the contrary, in *Lumber IV*, we found, with no contradiction in the record evidence that the forests of the U.S. PNW and British Columbia are contiguous, extend across the geopolitical border, and that the same species and growing conditions prevail in the U.S. PNW and British Columbia. Further, in deriving market-determined stumpage prices from U.S. log prices, we have selected prices for comparable species and made adjustments as warranted, *e.g.*, for transportation, to the U.S. PNW log price benchmarks to account for the commercial environment of the B.C. timber market.

The GBC, Canfor, and Tolko also argue that differences in conditions affecting the log quality, such as the prevalence of the mountain pine beetle infestation, complicate a cross-border comparison. However, the GBC, Canfor, and Tolko have not provided evidence that blue-stained timber prices are not already included in the U.S. PNW log price benchmarks, nor have parties provided other reliable blue-stained timber prices. Similarly, the record does not contain a reliable means by which the Department could account for any differences in grading systems between the U.S. PNW and British Columbia. Therefore, we find that we have duly adjusted for B.C. market conditions to the extent the record reasonably allows. *See* Comment 25 for further details.

Finally, we are not persuaded by the GBC's arguments that cross-border comparisons are complicated by, for example, differences in regulations, tax, contractual conditions, terms of sale, supply variability and other conditions. As an initial matter, if these arguments were true, all potential transactions that are not strictly "in-country", or "in-province" for that matter, would be impermissible as benchmarks. This result is contrary to U.S. law and the Department's regulations, which provide for the use of benchmarks that are from outside the jurisdiction that is granting the subsidy.[381] Furthermore, it would be both impracticable and superfluous to require

[378] *See, e.g.*, discussion under Comment 16, with regard to the Brattle Report, and under Comment 19, with regard to the BC Dual Scale Study.
[379] *See Jendro & Hart report* at 21 and 24.
[380] *See HRS from India 2007 AR* IDM at 52.
[381] *See* 19 CFR 351.511(a)(2).

adjustments be made to reflect the impact certain differences in market conditions that do not have any manifest or demonstrated effect on the comparability of goods. Nothing in the countervailing duty statute or regulations requires such refinement in the construction of subsidy benchmarks. Moreover, the mere fact that there may be differences in a myriad of regulations, taxes, contractual conditions, terms of sale, supply variability and other conditions in the respective jurisdictions says nothing about the relative impact of those conditions on prices for goods sold. Because many of these conditions largely exist on both sides of the U.S.-Canadian border, and the GBC has not demonstrated how these differences render insupportable any timber comparison, we do not agree that adjustments for these factors are either necessary or required.

For all of the reasons described above, we continue to find that U.S. PNW log prices are the most appropriate benchmarks on the record to assess the adequacy of remuneration for Crown stumpage in BC.

Comment 22: Whether the Department Should Use a Timbermark-Specific Annual Average Stumpage Price

In the *Preliminary Determination*, the Department calculated a countervailable subsidy for the GBC's provision of stumpage for LTAR.[382] Canfor argues that the Department introduced distortions into its calculation when it calculated average stumpage prices by timbermark and species.[383] Canfor argues that the Department should use an annual roll-up by species, to determine an annual average species-specific stumpage price paid; the Department should not calculate timbermark- and species-specific average stumpage prices as in the *Preliminary Determination*.[384] No other parties provided arguments on this issue. Specifically, Canfor states that the GBC performs various retroactive adjustments to the stumpage price,[385] and that these adjustments are reflected in the GBC's HBS and in Canfor's invoices and include monthly, annual, and other periodic adjustments such as monthly scale-based adjustments, annual reconciliations for all timbermarks, and stumpage rate reappraisals.[386] Although Canfor agrees with the annual roll-up by timbermark and species that the Department employed in the *Preliminary Determination*,[387] Canfor argues that the Department should not have disaggregated this roll-up by timbermark. According to Canfor, doing so introduced distortions because there are still many species/timbermark combinations with negative or zero quantities or values, which Canfor believes is attributable to the fact that many timbermarks only had deliveries during months of the POI, only had adjustments taking place during the POI, or had limited deliveries with large adjustments that led to negative quantities or values during the POI.[388] According to Canfor, using an annual roll-up that is not disaggregated by timbermark would mitigate these distortions.

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[382] *See* PDM at 54-55.
[383] *See* Canfor Case Brief at 31.
[384] *Id.* at 33.
[385] *Id.* at 30-31.
[386] *See* Canfor Primary QNR Response, Part 1 at 81-84.
[387] *See* PDM at 54.
[388] *See* Canfor Case Brief at 31-32.

Department's Position: We disagree with Canfor that the Department should calculate an annual average stumpage price based on the aggregation of all timbermarks and species. In utilizing a timbermark-based approach and further disaggregating by species, the Department is conducting the calculation on the basis that is as close to a transaction-specific analysis as possible; a transaction-specific analysis is the Department's long-standing preference.[389] For this final determination, we are continuing to use U.S. PNW log prices as the reference price for the derived stumpage benchmark; these pricing data are reported on a species-specific basis. Thus, it is appropriate to examine stumpage prices paid on a species-specific basis to make the comparison with the benchmark as accurate as possible for determining whether and to what extent BC stumpage is provided at LTAR.[390]

Canfor noted that the billing adjustments and the Department's failure to account for them in the manner Canfor proposes lead to distortions in the Department's benefit calculation. However, Canfor failed to recognize that in its calculations in the *Preliminary Determination*, the Department already accounted for any potential distortions by removing line items "where both the species-specific volume and value were blank or zero."[391] Further, Canfor has not demonstrated how the aggregate methodology that it advocates will address these purported distortions.[392] For example, Canfor states, without any support, that "these reappraisals and adjustments affect significant quantities of stumpage and a significant number of timbermarks" and that "the problem with analyzing the stumpage benefit on a timbermark-specific basis is that it fails to fully account for these adjustments and appraisals that are taking place during the POI."[393] Consequently, we determine that the use of annual average stumpage prices by timbermark and species remains a reliable methodology to examine the GBC's provision of stumpage for LTAR.

Comment 23: Whether the Department Should Consider BC Stumpage Prices on a "Stand as a Whole" Basis

In the *Preliminary Determination*, for stumpage purchases in British Columbia, the Department used species-specific benchmarks and compared them to respondents' purchases of Crown-origin standing timber aggregated by timbermark and species. The GBC and West Fraser argue that this methodology failed to account for a prevailing market condition in British Columbia. In particular, the GBC and West Fraser argue that timber stands in British Columbia are priced on a "stand as a whole" basis. As such, all species on a stand are charged the same stumpage rate. The GBC and West Fraser cite to invoices provided by respondents with operations in British Columbia as record evidence establishing this practice of pricing on a stand as a whole basis.[394]

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[389] *See SC Paper from Canada – Expedited Review* IDM at Comment 25; *see also OCTG from PRC Review* IDM at Comment 7; *see also Sinks from the PRC* IDM at Comment 21.
[390] With respect to Canfor's arguments regarding the GBC's use of "stand-as-a-whole" pricing, *see* Comment 23.
[391] *See* Canfor Preliminary Calculation Memorandum at 6.
[392] *See* Canfor Case Brief at 31-33.
[393] *Id.* at 32-33.
[394] *See* GBC Case Brief at 37; *see also* West Fraser Case Brief at V-74.

The GBC and West Fraser assert that stand as a whole pricing is a condition of sale, and thus a prevailing market condition, pursuant to section 771(5)(E) of the Act, and the Department must take this into account when measuring adequate remuneration.

To properly account for prevailing market conditions, the GBC and West Fraser propose that the Department either: (1) compare a single weighted-average "all species" benchmark against a single weighted-average "all species" stumpage rate or (2) compare individual species-specific benchmarks against individual species-specific stumpage rates, but cumulate positive and negative benefit amounts. The GBC cites to the *NAFTA Panel Redetermination* as support that failure to account for "negative" benefits was found inconsistent with the Act and the Department, upon remand, constructed a single weighted-average benchmark for the entire Crown harvest that reflected the relative species mix or market conditions in British Columbia, which is similar to the facts of this investigation.[395]

The petitioner rebuts that neither the GBC nor the petitioner has provided a basis for the Department to depart from its well-established practice of declining to account for purported "negative benefits."[396]

Department's Position: The Department continues to apply its preliminary methodology in relation to aggregating the standing timber by timbermark and species in British Columbia for purposes of making a comparison with the Washington state benchmark.

Because section 771(5)(E)(iv) of the Act does not provide guidance on how the Department is to measure the adequacy of remuneration in the case of government-provided goods, the Department has developed a tiered framework under 19 CFR 351.511(a)(2) for analyzing this question. The Department continues to find that that the record does not permit us to measure the adequacy of remuneration for the provision of BC stumpage under a tier-one or tier-two analysis. Thus, the Department is using a tier-three analysis in this final determination. Pursuant to 19 CFR 351.511(a)(2)(iii), the Department will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.

As discussed in Comment 24, to determine whether stumpage prices in British Columbia are consistent with "market principles," the Department has constructed a tier-three derived benchmark stumpage price based on log prices adjusted for the respondents' costs.[397] Under this methodology, we find that standing timber values are largely derived from the demand for logs produced from a given tree and "{t}he species of a tree largely determines the downstream

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[395] *See* GBC Case Brief at V-76.

[396] *See* Petitioner Rebuttal Brief at 79-80.

[397] *See Lumber IV AR1* IDM at 17 ("We identified numerous factors affecting market conditions that needed to be adjusted for, inter alia, costs associated with the tenure contract, costs associated with accessing timber for harvesting, and costs of acquiring timber. In summary, the harvesting costs reported by harvesters of Crown and private timber in B.C. were deducted from market-determined log prices from the U.S. Pacific Northwest to calculate a 'derived market stumpage price' to compare with Crown stumpage."); *see also Lumber IV AR2* IDM at 16 ("{W}e subtracted from the U.S. log prices all B.C. harvesting costs, including costs associated with Crown tenure for calendar year 2003, and profit."); *see also CFS from Indonesia*, *CPP from Indonesia,* and *CUP from Indonesia*.

products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the type of lumber produced from these logs."[398] Therefore, the Department has in essence constructed a market-based stumpage price in BC using market-determined U.S. log prices, recognizing that the species of a tree is an integral part of the value of that tree.

Although the GBC and West Fraser argue the Department must consider pricing on a "stand as a whole" basis as a prevailing market condition, we disagree. Under our tier-three benchmark methodology we find that a main condition for determining stumpage is the demand of the logs from that tree. As such, the Department would not accurately assess the adequacy of remuneration for stumpage from a weighted-average combined species benchmark, considering how its value is evaluated according to market principles. Moreover, not calculating a weighted-average combined species benchmark is consistent with our practice. In utilizing a timbermark-based approach and further disaggregating by species, the Department is conducting the calculation on the basis that is as close to a transaction-specific analysis as possible; a transaction-specific analysis is the Department's long-standing preference.[399] And by not offsetting its comparisons for negative benefits, the Department is acting consistently with the fact that a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by "negative benefits" from other transactions.[400] Because a benefit is either conferred or not conferred, the manner in which the GBC prices its stumpage is irrelevant to our analysis. If a government chooses to set a price for a whole stand, rather than differentiating by species within a particular stand, that does not change the amount of the benefit conferred for purposes of our analysis.

With respect to the GBC and West Fraser's reliance on the NAFTA June 7, 2004 Panel decision in *Lumber IV* to support their contention that the Department must account for "stand as a whole" pricing as a prevailing market condition in British Columbia, that decision is not binding on the Department in this investigation.[401]

Comment 24: Whether the Department Should Grant Cost Adjustments in British Columbia

The GBC, Tolko, and Canfor argue that while the Department properly adjusted the tier-three benchmark for access, harvesting and hauling costs in the *Preliminary Determination*, the Department's reliance on *SC Paper from Canada – Expedited Review* as a basis for not adjusting for other costs, including silviculture and license management costs, is misguided.[402] The GBC and Tolko argue that the analysis in *SC Paper from Canada – Expedited Review* concerned the

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[398] *See Final Results of 1st AR* IDM at 16; *see also Final Results of 2nd AR* IDM at 12-13.
[399] *See SC Paper from Canada – Expedited Review* IDM at Comment 25; *see also OCTG from the PRC Review* IDM at Comment 7; *see also Sinks from the PRC* IDM at Comment 21.
[400] For further discussion of this issue, *see* Comment 22.
[401] *See Algoma Steel Corp.* (finding that individual judges on the Court of International Trade are not bound by the decisions of another); *see also* NAFTA Art. 1904.3 (providing that panels apply "the general legal principles that a court of the importing party otherwise would apply to a review of a determination of the competent investigating authority").
[402] *See* GBC Case Brief at 53-56; *see also* Tolko Case Brief at 21; *see also* Canfor Case Brief at 14-15;

evaluation of grant programs and involved the comparison of a tier-one stumpage benchmark to stumpage purchases, while, conversely, in this investigation, the LTAR analysis of BC stumpage uses a tier-three benchmark constructed based on the market principle of derived demand.[403] The GBC also contends that the Department did not provide any evidentiary basis for its assertion that some costs are related to long-term tenure rights, and Canfor argues that these costs are not related to long-term tenure rights, but, rather, are obligations.[404] The petitioner rebuts that the respondents are making the same arguments about long-term tenure rights that the Department found to be unpersuasive in *SC Paper from Canada – Expedited Review*.[405] According to the petitioner, in the *Preliminary Determination*, the Department properly made an adjustment to the stumpage price for costs that were directly necessary to access the standing timber for harvest and hauling to the sawmill to allow for an apples-to-apples comparison with cross-border harvested log prices.[406]

The GBC and West Fraser also argue that the Department's analysis in the *Preliminary Determination* was inconsistent with the log price methodology applied in *Lumber IV*. The GBC and West Fraser argue that under the Department's market-based derived demand methodology, the Department must take into account all relevant costs that BC tenure holders incur to access and harvest Crown timber when deriving the market-determined price that tenure holders would be willing to pay for the right to harvest standing timber on Crown lands in British Columbia.[407] The GBC, Canfor, and Tolko contend that in its *Preliminary Determination*, the Department did not adjust for some costs the tenure holders must incur as a condition of accessing Crown timber, including silviculture and forest management costs that are legally required.[408] The GBC, Canfor and Tolko argue that the Department properly accounted for these costs, including silviculture and forest management costs, when it applied its derived demand methodology in *Lumber IV*.[409]

The GBC, Canfor and West Fraser further contend that, in the *Preliminary Determination*, the Department did not adequately explain its departure from its practice in *Lumber IV*.[410] The GBC, Canfor and Tolko argue that the Department's explanation regarding the aggregate calculation in *Lumber IV* versus this company-specific investigation is irrelevant because the types of costs that were treated as adjustments in *Lumber IV* were not contingent upon or related to the aggregate basis of that investigation.[411] Canfor asserts that the Department's second reason for denying adjustments for certain costs in the *Preliminary Determination*, on the basis that those costs are associated with companies' long-term tenure rights, is equally misplaced because these costs represent tenure obligations and not rights. Canfor asserts that the only right paid for by tenure holders is the right to establish, grow, harvest and remove timber from Crown

[403] *See* GBC Case Brief at 53-56; *see also* Tolko Case Brief at 21.
[404] *See* GBC Case Brief at 55-56; *see also* Canfor Case Brief at 12-14.
[405] *See* Petitioner Rebuttal Brief at 62.
[406] *Id.* at 69-70.
[407] *See* GBC Case Brief at 46-47; *see also* West Fraser Case Brief at 47.
[408] *See* GBC Case Brief at 43-52; *see also* Canfor Case Brief at 21-25; *see also* Tolko Case Brief at 20-27.
[409] *See* GBC Case Brief at 49-52; *see also* Canfor Case Brief at 7-17, *see also* Tolko Case Brief at 22.
[410] *See* GBC Case Brief at 53-54; *see also* Canfor Case Brief at 10; *see also* West Fraser Case Brief at 45-46.
[411] *Id.; see also* Tolko Case Brief at 18-19; *see also* West Fraser Case Brief at 46.

land.[412] The petitioner rebuts the respondents' arguments by stating that the Department properly explained its rationale for moving away from *Lumber IV* and that 19 CFR 351.511(a)(2)(iii) requires that a tier-three benchmark analysis be done on a case-by-case basis.[413]

Further, the GBC and West Fraser assert that the operation of the MPS equation demonstrates that the costs of fulfilling tenure obligations are effectively part of the price that Crown tenure holders pay to the GBC for stumpage.[414] The Crown stumpage rates are based on Crown auction prices that include obligated costs, including silviculture and forest management costs, because these activities are performed by the Crown, but for non-auction purchases, the Crown stumpage rate is adjusted to remove these costs because these activities are performed by the tenure holder. The GBC and West Fraser contend that it is internally inconsistent for the Department to take certain costs into account (such as road-building costs) while not taking into account other costs that the tenure holder must incur in order to access and harvest standing timber.[415] Further, while Canfor and Tolko assert that the Department properly adjusted for certain harvesting costs in the *Preliminary Determination*, they argue that the Department should have accounted for other harvesting costs in its *Preliminary Determination*, including waste stumpage payments, cutting rights fees, and scaling costs, because these costs are part of accessing, harvesting and hauling timber in British Columbia.[416]

The respondents contend that accounting for all relevant costs is necessary to ensure that the derived demand methodology relates to prevailing market conditions in British Columbia, as required by the statute.[417] The respondents assert that the objective of the methodology is to derive a market-determined benchmark for stumpage in British Columbia against which to evaluate the adequacy of remuneration, and the methodology must take into account prevailing market conditions in British Columbia, a fact that the Department recognized in its analysis of the program in *Lumber IV*.[418]

The petitioner rebuts that while the respondents argue that the Department must adjust the stumpage price for all reported costs during the POI, this would not result in a market-derived stumpage price, but a price based on the wholesale acceptance of their fixed and variable operational costs, regardless of whether such costs are directly related to stumpage prices during the POI or already reflected in the benchmark price.[419] The petitioner argues that silviculture costs reported by the respondents are for future expenses not associated with the harvesting of timber during the POI and are estimates of future liability and cannot be reasonably included as directly related to market-based stumpage prices during the POI.[420] Additionally, the petitioner asserts that the Department should not adjust for indirect forest management and planning fees

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[412] *See* Canfor Case Brief at 11-12.
[413] *See* Petitioner Rebuttal at 60-61 and 68.
[414] *See* GBC Case Brief at 51-53; *see also* West Fraser Case Brief at 48.
[415] *Id.*
[416] *See* Canfor Case Brief at 21-23; *see also* Tolko Case Brief at 24.
[417] *See* GBC Case Brief at 47; *see also* Tolko Case Brief at 22; *see also* Canfor Case Brief at 9.
[418] *Id.*
[419] *See* Petitioner Rebuttal Brief at 68-72.
[420] *Id.* at 72-73.

because these costs are not directly related to the harvest of timber, but are incurred with general business administration and regulatory affairs.[421]

West Fraser, Canfor, and Tolko assert that the Department must also take into account their tenure/stumpage acquisition costs by adjusting for the depletion and amortization of their tenure purchases and cutting rights fees paid for purchases of stumpage on the tenures of third-parties.[422] The respondents argue that because they did not obtain most of their tenures from the GBC, but rather by purchasing tenures or cutting rights from third parties, the cost of obtaining these rights must be included in the Department's analysis. Tolko and West Fraser argue that the CIT found in *RZBC Group* that when a contribution originates with the Government but passes through an intermediary before going to the ultimate user, "the middleman may skim some of the benefit by reselling the subsidized inputs at a markup…if that marked-up cost that the final user pays is less than the market cost, the user still gets a benefit."[423] The respondents contend that the Department must examine whether the stumpage price inclusive of the cutting rights fees (*i.e.*, the markup) paid by the respondents is less than the benchmark.

The petitioner, in its affirmative case brief, contends that the Department should reverse its *Preliminary Determination* allowing adjustments for G&A costs as part of the access, harvest and hauling costs reported by the respondents. The petitioner contends that these G&A costs include wages/salaries and benefits, administration, overhead and amortization, that relate to the general functioning of the company and are not directly related to the harvest and hauling of timber.[424] The petitioner also argues that the Department should permit an adjustment for costs only if the respondent can demonstrate that an expense was directly related to the market-based stumpage price during the POI and whether the adjustment is reflected in one comparison point but not the other.[425] The GBC rebuts that the G&A costs reported by the respondents relate directly to the harvest and hauling of timber and were verified by the Department as being directly related.[426]

Department's Position: As discussed in Comments 18, 20, and 21, the Department will continue to use delivered log prices from Washington state as the starting point for a tier-three benchmark in our calculation of the benefit conferred by the GBC's provision of stumpage for LTAR for the final determination. In the *Preliminary Determination*, the Department did not adjust for certain costs because the costs were preliminarily determined to be tied to the province's provision of long-term access to supply to tenure holders and licensees.[427] However, for the final determination, the Department has determined that it is appropriate in British Columbia to adjust the benchmark delivered log price not just for the respondents' access, harvest and hauling costs, but also for certain additional costs associated with the respondents' Crown tenure obligations, to arrive at a derived stumpage price.

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[421] *Id.* at 75-76.
[422] *See* West Fraser Case Brief at 47; *see also* Canfor Case Brief at 25; *see also* Tolko Case Brief at 27-28.
[423] *See* West Fraser Case Brief at 47; *see also* Tolko Case Brief at 29 (citing to *RZBC Group*).
[424] *See* Petitioner Case Brief at 27-28; *see also* Petitioner Rebuttal Brief at 73-74.
[425] *See* Petitioner Rebuttal Brief at 69.
[426] *See* GBC Rebuttal at 14-19.
[427] *See* PDM at 51.

We disagree with the petitioner that the Department's analysis in *SC Paper from Canada – Expedited Review* is controlling here. With respect to silviculture and forest management costs, we find upon further evaluation of this issue that the record does not support the Department's *Preliminary Determination* that these costs in British Columbia are tied to the province's provision of long-term access to supply to tenure holders and licensees.[428] In this investigation, the record demonstrates that tenure holders in British Columbia must pay an annual rent charge to the province for harvesting rights on Crown land because these rights "are encumbering another title (the GBC's) that sits below. The concept of annual rent captures the value of this encumbrance."[429] As noted in the *SC Paper from Canada – Expedited Review*, an annual rent charge to the respondent for access to Crown land did not exist in New Brunswick.[430] Additionally, the record demonstrates that unlike the stumpage regime in New Brunswick, in British Columbia, both silviculture and forest management expenses are directly tied to the Crown stumpage price as they are components of the stumpage price generated by the MPS.[431] Furthermore, unlike the analysis in *SC Paper from Canada – Expedited Review*, which involved the comparison of a tier-one *stumpage* price benchmark to a Crown *stumpage* price, the LTAR calculation in British Columbia in this investigation is a tier-three comparison for which we are constructing a stumpage rate using delivered log prices in Washington state as a reference price and making appropriate adjustments to develop a benchmark to determine whether the government price is consistent with market principles. As we explain below, the analytical inquiries are different under a tier-one and tier-three benchmark analysis. Therefore, we agree with the respondents that the cost adjustment framework from *SC Paper from Canada – Expedited Review* that we relied upon in the *Preliminary Determination* is not applicable to British Columbia for this investigation.

As the Department stated in the *Preliminary Determination*, we found that delivered log prices from Washington state are an appropriate benchmark under 19 CFR 351.511(a)(2)(iii) because they are market-determined prices[432] and, as discussed elsewhere in this memo,[433] we continue to find they are an appropriate benchmark. The Department's regulations do not specify how the Department is to conduct its analysis of whether a price is consistent with market principles and, as the Department explained in *CFS from Indonesia*, "by its nature, the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis."[434]

The Department has experience with constructing a tier-three derived benchmark stumpage price based on log prices adjusted for the respondents' costs.[435] The Department explained this analysis in the *Lumber IV First NAFTA Remand*:

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[428] *Id.* at 51.
[429] *See* GBC Verification Report at 13.
[430] *See SC Paper from Canada - Expedited Review* IDM at 115.
[431] *See* GBC Primary QNR Response, Part 1 at 145-146.
[432] *See* PDM at 49-50.
[433] *See* Comment 21 of this IDM.
[434] *See CFS from Indonesia* IDM at Comment 11.
[435] *See Lumber IV AR1* IDM at 17 ("We identified numerous factors affecting market conditions that needed to be adjusted for, inter alia, costs associated with the tenure contract, costs associated with accessing timber for harvesting, and costs of acquiring timber. In summary, the harvesting costs reported by harvesters of Crown and

> It is generally accepted that the market value of timber is derivative of the value of the downstream products… Lumber manufacturers start with finished lumber prices and subtract their own, non-wood, production costs to determine the maximum amount they would be willing to pay for logs. The independent log seller, in turn, starts with the price of the log it could receive, and subtracts harvesting and transport costs, to arrive at the maximum it would be willing to pay for stumpage. The landowner, in turn, will charge the maximum stumpage price the independent logger would pay.[436]

Using this analysis in *Lumber IV*, the Department found it appropriate to adjust the U.S. log prices for the respondents' direct and indirect costs associated with the tenure contract, with accessing timber for harvesting, and with acquiring timber.[437] Based on the facts and arguments on this record, for the final determination, the Department sees no reason to apply a different calculation methodology to determine whether BC stumpage prices are consistent with market principles. Therefore, in addition to the road, harvest, and hauling costs that the Department adjusted for in the *Preliminary Determination*, we have also adjusted for the respondents' reported silviculture and forest management costs. As explained above, these activities, and therefore the associated direct and indirect costs, are a condition of the tenure holder's or licensee's access to Crown timber and are directly tied to the BC Crown stumpage price.

Consistent with *Lumber IV*,[438] in addition to silviculture and forest management costs, the Department finds that it is also appropriate to adjust for other obligated costs that are required by the Crown in order for the respondents to access and harvest the Crown timber supply. These costs include annual forest rent,[439] waste stumpage charges,[440] and scaling costs.[441]

The Department does not agree with the petitioner that cost adjustments should not be granted for indirect costs or for G&A costs reported by the respondents with operations in British Columbia. The respondents must incur these costs in order to access and harvest Crown timber. The Department examined these costs at verification and found that the reported costs were tied to either the respondents' tenure obligations or to expenses relating to accessing, harvesting, or hauling timber to the mills.[442] Thus, adjusting for indirect costs and G&A expenses is consistent with the adjustments granted in *Lumber IV* and the methodology used to determine whether the government price is consistent with market principles under tier three of our benchmark hierarchy.[443]

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private timber in B.C. were deducted from market-determined log prices from the U.S. Pacific Northwest to calculate a 'derived market stumpage price' to compare with Crown stumpage."); *see also Lumber IV AR2* IDM at 16 ("{W}e subtracted from the U.S. log prices all B.C. harvesting costs, including costs associated with Crown tenure for calendar year 2003, and profit."); *see also CFS from Indonesia*, *CPP from Indonesia,* and *CUP from Indonesia*.

[436] *See Lumber IV First NAFTA Remand* at 11-12.

[437] *See Lumber IV AR1* IDM at 17.

[438] *Id.*; *see also Lumber IV AR2* IDM at 16.

[439] *See* GBC Primary QNR Response, Part 1 at 132-133.

[440] *Id.* at 134.

[441] *Id.* at 159.

[442] *See*, *e.g.,* Canfor Verification Report at 19 and Exhibit VE-11.

[443] *See Lumber IV AR2* IDM at 109.

For the final determination, the Department is also granting an adjustment for cutting rights fees paid by the respondents to harvest Crown timber on the tenure held by another licensee. The Department concurs with the respondents that it is reasonable to account for a mark-up in its benefit calculations when the benefit is provided through an intermediary. In instances where the respondents purchase Crown stumpage rights from a third-party tenure holder or licensee, and the respondent is itself harvesting the standing Crown timber (or through a contractor), the respondent pays the tenure holder or licensee a fee in order to harvest the Crown timber. By charging a cutting rights fee, the tenure holder or licensee is capturing some of the benefit of the subsidized input. Therefore, the Department must adjust for the amount that the respondents must pay to the third-party tenure holder or licensee to best capture the amount of the benefit that is actually conferred upon the respondents.

Lastly, citing *RZBC Group*, Tolko argues that costs associated with tenure rights that the respondents have purchased from third-parties (*i.e.*, tenures not granted to the respondents directly by the GBC, but purchased from third parties) should be included in the adjustments to the benchmark. Each of the respondents with operations in British Columbia has reported an expense relating to the associated cost of depletion and amortization of the tenures the respondents have purchased from third parties. Because this is a cost that the respondents had to incur in order to obtain this tenure, the respondents argue that the benefit the respondents received from stumpage purchases on these tenures should be offset by the portion of the benefit that was captured by the original tenure holder that sold the tenure rights to the respondent.

However, the Department disagrees with the respondents that the Department should make an adjustment for the associated costs of depletion and amortization of these tenures. For this specific cost adjustment, the respondents' reliance on the *RZBC Group* is misplaced. The CIT's decision in *RZBC Group* addresses a fact pattern where a private middleman purchased an input from a state-owned enterprise and then resold the input to the subject merchandise producers at the marked-up price.[444] In that context, the Court held that, "the middleman may skim some of the benefit by reselling the subsidized inputs at markup. . . if that marked up-cost that the final user pays is less than the market cost, the user still gets a benefit."[445] The same facts are not present here. Nothing on the record shows that the associated costs of depletion and amortization of tenures are related to a third-party tenure/license seller's "marked up-cost" when it sold the tenure/license to the respondents. To the contrary, Canfor, Tolko, and West Fraser explained that the associated costs of depletion and amortization of tenures are determined by the companies in their own financial reporting and not by the third-party tenure/license seller.[446]

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[444] *Id.*

[445] *Id.*

[446] *See* Tolko Supp QNR 1 Response at 2; *see also* Tolko Primary QNR Response at 184-85; *see also* Tolko Supp QNR 2 Response, Part 1 at 35-36. According to Tolko, "it typically has acquired its tenures and licenses through the acquisition of other companies in arm's-length purchase transactions. Since 1997, Tolko has accounted for these purchases by allocating a portion of the purchase price to the acquired timber tenures. It treats the timber tenures/licenses as an asset on its books, which, for renewable tenures, it then amortizes over an 80-year period. The amount reported in Row 8 as "Depletion and Depreciation/ Amortization of Timber Tenures Purchased from Third-Parties," reflects the timber tenure/license amortization expense Tolko recognized in fiscal year 2015 allocable to logs delivered to sawmills". *See* Canfor Primary QNR Response at Exhibit 17 at Annual Report 2015 at 52. According to Canfor, "{t}imber licenses are carried at cost less accumulated amortization. Renewable licenses are

Further, the record shows that the respondents record the timber tenure as assets on their financials once they purchase the tenure from third parties.[447] The associated cost of depletion and amortization of tenures reflect expenses related to amortization of an intangible asset, *i.e.* the value of long-term tenure, once the respondents have acquired the tenure rights from the third parties. As stated in Comment 27, we are not adjusting the PNW benchmark price for an amount reflecting the value for the long-term tenure. Thus, for these reasons, it would be distortive to adjust for the associated costs of depletion and amortization of those tenures.

Comment 25: Whether the Department Should Account for Differences in Grading Systems in British Columbia and the United States

In the *Preliminary Determination* for the provision of stumpage for LTAR in British Columbia, the Department compared the respondents' stumpage purchases to log price data published by the WDNR.[448] The GBC, Canfor, and West Fraser argue that the lowest grades in the BC grading system include logs that are entirely outside of U.S. sawlog grades.[449] The GBC, Canfor, and West Fraser advocate that the Department should account for the differences in grading systems by applying ratios calculated in the BC Dual Scale Study to the respondents' purchases to ascertain sawlog and utility grades, then apply three different U.S. benchmark prices, *i.e.*, sawlog, utility, and blue stain.[450]

The petitioner counters that the proposed adjustments for MPB damaged timber are unsupported by evidence. Specifically, the petitioner argues that price offers on the record from individual mills for blue stain logs are generally from mills that specialize in appearance grade products, while mills that produce lumber that is not sensitive to appearance pay significantly more for these logs and therefore are not reflective of the value of logs harvested from MPB damaged timber in British Columbia. The petitioner also argues that the value differential between MPB-killed and green logs is much smaller than the adjustment advocated by the BC respondents.[451]

Department's Position: As discussed above in Comment 19, the Department cannot confirm that the conversion factors generated by the BC Dual Scale Study were derived using a statistically valid sampling methodology. Because the ratios that the BC respondents propose using to differentiate sawlog and utility grades are derived from the underlying data generated by the BC Dual Scale Study, we are similarly unable to confirm their reliability. Therefore, we have not made the adjustment proposed by the BC respondents.

Further, with respect to the BC respondents' request that the Department incorporate blue stain log prices into its cross-border benchmark, we do not find that the available record evidence

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amortized using the straight-line method over 50 years, while non-renewable licenses are amortized over the period of the license." *See also* Canfor Verification Report, Exhibit 3 at 22-23. *See also* West Fraser Verification Report, VE-6 at 4051-4058.

[447] *Id.*

[448] *See* PDM at 52-53.

[449] *See* GBC Case Brief at 71-74; *see also* Canfor Case Brief at 29; *see also* West Fraser Case Brief at 42-44.

[450] *Id.*

[451] *See* Petitioner Rebuttal Brief at 40-43.

permits us to do so reliably in this investigation. In particular, the Department finds the prices for blue stained logs in the Jendro & Hart report were obtained for the purpose of this investigation and not reported in the ordinary course of business.[452] As we stated above in discussing the conversion factors generated by the BC Dual Scale Study, in instances where parties have presented a self-commissioned report conducted specifically in anticipation of an investigation for the Department's consideration, the Department must carefully examine the study to ensure that it is based on sound methodologies that guard against any bias. That is, the Department must evaluate whether any report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result. With respect to the blue stain log prices reported by Jendro & Hart, the report indicates only that 13 companies with 20 sawmills in Washington, Idaho, and Montana, including all "major" sawmills in the area, were surveyed;[453] however the study does not explain how the companies participating in the survey were selected for inclusion in the report or how they were requested to present prices. For example, we do not have the underlying request that was submitted to these companies on the record, so we cannot evaluate whether the request was tailored to generate a specific result, nor does the record reflect whether only certain of the reported prices were included in the report. Therefore, the Department finds these prices are not reliable and we have not incorporated them into the benchmark prices. Additionally, parties have not provided evidence that the U.S. PNW log prices published by the WDNR do not already include blue stained log prices. As such, including these prices risks overstating blue stained log prices in our benchmark.

Consequently, the Department has continued to use only the WDNR sawlog benchmark prices in the final determination, as adjusted for costs incurred by the BC-based respondents to calculate the derived market stumpage prices. For an analysis of these cost adjustments, see Comment 24.

Comment 26: Whether the Department Should Adjust for a Non-Contract Profit Rate

In the *Preliminary Determination*, the Department made an adjustment to reflect the profit realized by non-contract logging companies.[454] The petitioner argues that the Department should not include an adjustment to the benchmark in British Columbia to account for profit because none of the respondents with operations in British Columbia conducted in-house harvesting.[455]

Department's Position: Based upon responses to supplemental questionnaires issued after the *Preliminary Determination*, the Department finds that, for each of the three BC respondents, the BC Crown stumpage purchases during the POI were harvested exclusively by contractors.[456] Accordingly, we determine that the reported costs of BC Crown purchases for the three respondents already reflect a profit component. Therefore, we are not making a cost adjustment in British Columbia for a non-contract profit rate for the final determination.

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[452] *See* GBC Primary QNR Response, Part 1 at Exhibit BC-S-183.
[453] *Id*. at 47.
[454] *See* PDM at 55.
[455] *See* Petitioner Case Brief at 29.
[456] *See* Canfor Supp QNR 4 Response at 47; *see also* West Fraser Supp QNR 3 Response at 16; *see also* Tolko Supp QNR 2 Response, Part 1 at 49.

Comment 27: Whether the Department Should Adjust the U.S. Benchmark Price to Account for Tenure Security

In the *Preliminary Determination*, the Department found that the GBC provided stumpage for LTAR to the respondents with BC operations during the POI, using log prices from the WDNR as a tier-three benchmark.[457] The petitioner argues the Department should adjust the U.S. benchmark price, which is based on monthly, short-term contracts, to account for the economic security respondents from British Columbia are assured through their long-term tenure agreements.[458] The GBC argues that the petitioner has provided a simplistic characterization of long-term tenure, and ignores the fact that BC tenure holders face considerable uncertainties related to long-term tenures, and the acquisition costs are not a benefit but a cost to the companies. Furthermore, the GBC argues that the petitioner's proposed method of quantifying the alleged value of any tenure security is unrelated to the alleged tenure security value, and instead simply reflects the amortized, historical costs of these companies' original acquisition of their tenures.[459]

Department's Position: In the *Lumber IV* investigation and 2nd administrative review, the petitioner made similar arguments with regard to the additional value bestowed on Crown tenure holders through the stable, steady, and secure supply of wood fiber.[460] However in the investigation and 2nd administrative review, the Department did not make a determination as to whether a countervailable benefit was provided by tenure security on the grounds that information on the record did not contain the data necessary to make an accurate quantification of any alleged benefit.[461] We further determined that without the necessary data on the record with which to quantify any benefits allegedly conferred by tenure security, there was no need to analyze whether a countervailable benefit could be conferred through tenure security.[462] Upon review of the information on the record of this investigation, we have reached the same conclusion.

Specifically, while we recognize, in theory, that tenure security is inherently a subset of the overall value of the tenure, we find that the petitioner's proposed method of quantifying the alleged benefits is inaccurate and cannot serve as a basis for analyzing whether tenure security provides a benefit.[463] In particular, the petitioner describes the alleged benefits from long-term Crown tenure agreements as the protection from risks from new competitors for inputs, increasing timber prices through market competition, or depriving a mill of its wood supply.[464] To measure this benefit, the petitioner proposes calculating a per cubic meter ratio using each respondent's timber amortization, which is the amortized cost of purchasing the timber harvesting rights, *e.g.*, the cost of the Forest License or the Tree Farm License, and applying the

[457] *See* PDM at 20-21, 35-39, and 46-53.
[458] *See* Petitioner Case Brief at 22-27; *see also* Petitioner Rebuttal Case Brief at 74-75.
[459] *See* GBC Rebuttal Case Brief at 9-13.
[460] *See Lumber IV Final Determination* IDM at Comment 2; *see also Final Results of 2nd AR* IDM at Comment 60.
[461] *Id.*
[462] *Id.*
[463] *See* Petitioner Case Brief at 25-27.
[464] *Id.* at 24.

ratio to the U.S. benchmark prices for comparison to the respondents' stumpage purchases.[465] However, the petitioner does not explain (nor can we discern) how these costs provide a reasonable measure of the intangible benefit allegedly conferred by the long-term harvesting rights held by the Crown tenure holders. Therefore, the Department has not made an adjustment to U.S. benchmark price to account for secure tenure rights as proposed by the petitioner.

Comment 28: Whether Private Stumpage Prices in New Brunswick Should be Used as Tier-One Benchmarks

In the *Preliminary Determination*, we found that private prices for standing timber in New Brunswick are not market-based, and, accordingly, we did not use these private prices as tier-one benchmarks in calculating the respondents' benefit from the provision of New Brunswick stumpage for LTAR. Rather, because we determined that private stumpage prices in Nova Scotia are market-based, we used JDIL's purchases of standing timber from private lands in Nova Scotia as a benchmark for evaluating whether Crown-origin standing timber in New Brunswick was provided for LTAR.

The GNB and JDIL argue that the private stumpage market in New Brunswick is not distorted, and, as such, these private prices should be used as tier-one benchmarks.[466] Specifically, they argue that New Brunswick has a large, dynamic market, with thousands of woodlot owners and independent wood producers, as well as 36 parties who are licensed or sub-licensed to harvest timber on Crown lands. Further, they argue that the existence of "overhang" (*i.e.*, Crown stumpage volume allocated to a licensee or sub-licensee that remains unharvested) indicates a healthy market in which licensees and sub-licensees can, and do, shift to purchasing more private stumpage when it is competitively priced. Additionally, they argue that the low CVD rate calculated for the New Brunswick stumpage for LTAR program in the *Preliminary Determination* and in *SC Paper from Canada* confirms the lack of significant market distortion in the province. Finally, JDIL argues that during 2015, the company paid higher prices for Crown softwood stumpage in New Brunswick than it paid for private softwood stumpage in New Brunswick.

In rebuttal, the petitioner disputes the GNB's and JDIL's characterization of the private stumpage market in New Brunswick and supports the Department's preliminary determination that private stumpage prices in New Brunswick are not usable as a tier-one benchmark.[467]

Department's Position*:* For the reasons discussed below, we continue to find that private stumpage prices in New Brunswick are distorted, and are not suitable for use as tier-one benchmarks.

In evaluating distortion of the New Brunswick stumpage market in the *Preliminary Determination*, we relied upon findings in the *SC Paper from Canada – Expedited Review*, for which the POR was calendar year 2014, and in which the Department determined that private

[465] *Id.* at 27.
[466] *See* JDIL Case Brief at 10-17; *see also* GNB Case Brief at 4-20.
[467] *See* Petitioner Rebuttal Brief at 21-23.

New Brunswick stumpage prices were not "market-determined" and therefore did not meet the criteria under 19 CFR 351.511(a)(2)(i) for use as tier-one benchmark prices.[468]

Specifically, in *SC Paper from Canada – Expedited Review*, the Department concluded that the evidence on the record established that the GNB held a majority share of the market for stumpage in New Brunswick, and that it restricted eligibility for Crown stumpage rights to companies that operate pulp and paper or lumber mills.[469] Moreover, the Department found that the evidence established that private woodlot owners supplied a much smaller share of the New Brunswick stumpage market than the government, and that the mills' status as the dominant consumers of stumpage creates an oligopsony effect, such that both private woodlot owners and the Crown are responsive to price-setting behavior by the dominant mills.[470] Further, the Department found that private woodlots were a supplemental source of supply for the tenure-holding mills in New Brunswick because an "overhang" existed with regard to the volume of Crown-origin standing timber allocated to tenure holders.[471] As such, the Department concluded that tenure-holding mills could harvest additional Crown timber if needed and, thus, given this additional supply of Crown-origin standing timber, private woodlot owners served mainly as a supplemental source of supply to the large mills and, consequently, could not expect to charge prices higher than Crown stumpage prices.[472]

In the *Preliminary Determination*, we found that the information on the record of this investigation was consistent with S*C Paper from Canada – Expedited Review*.[473] Specifically, the sources relied upon in *SC Paper from Canada – Expedited Review*[474] continued to demonstrate that the GNB is the dominant supplier, and the mills remain the dominant consumers, of stumpage in New Brunswick, such that the oligopsony effect persists in the province. Further, similar to *SC Paper from Canada – Expedited Review*, the GNB continued to account for a plurality of the softwood harvest volume during the 2015-2016 harvesting season. Specifically, Crown lands accounted for 49.9 percent of the softwood volume during this time period.[475] Additionally, we continued to find that consumption of Crown-origin standing timber by sawmills is concentrated among a small number of corporations, and that the corporations that dominate the consumption of Crown-origin standing timber also dominate the consumption of standing timber harvested from private lands.[476] Finally, consistent with *SC Paper from Canada – Expedited Review*, we found that tenure-holding corporations are not consuming the full

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[468] *See SC Paper from Canada – Expedited Review* IDM at Comment 23.
[469] *Id*.
[470] *Id*.
[471] *Id.*
[472] *Id*.
[473] *See* PDM.
[474] Specifically, the *Report of the Auditor General – 2008,* the *2012 PFTF Report*, and the *Report of the Auditor General – 2015*. *Id.*
[475] The private Forest accounted for 38.1 percent; First Nation accounted for 3.25 percent; and log imports (from the United States another Canadian Provinces) accounted for 8.7 percent. *Id.* Further, we found that the Crown-origin standing timber's share of the harvest volume increases to 54.7 percent when examining standing timber that originated in the province. *Id.*
[476] We preliminarily found that aggregating the sawmill data by corporation is most useful to our analysis, because sawmills act as members of corporate families rather than as stand-alone entities. *Id*. No parties have argued that aggregating sawmill data by corporation is not appropriate.

volume of Crown timber allocated to them for harvest during the POI. Specifically, we found that total "overhang" of Crown volume was approximately 47 percent of the softwood Crown harvest during the Fiscal Year 2015-2016.[477]

For purposes of this final determination, for the same reasons found in the *Preliminary Determination* and S*C Paper from Canada – Expedited Review*, we continue to find that private New Brunswick stumpage prices are not market-based, and therefore do not qualify as tier-one benchmark prices. Both the GNB and JDIL have submitted comments regarding the private stumpage market in New Brunswick. However, as discussed further below, neither the GNB nor JDIL have provided any new arguments that would cause us to reconsider this finding. Further, there is no new information on the record that would cause the Department to come to a different determination regarding distortion in the New Brunswick stumpage market. In fact, based on the updated information provided by the GNB at verification, the fiscal year data indicate that Crown lands accounted for a slight majority of the softwood timber harvest volume in the province, which is greater than the plurality of the total harvest volume that we found for the *Preliminary Determination*.[478]

In their briefs, both the GNB and JDIL argue that the private stumpage market in New Brunswick is not distorted and that New Brunswick private stumpage prices can be used as a tier-one benchmark. Specifically, they argue that the stumpage market in New Brunswick is "large and robust," there is no "oligopsony" that distorts the private market, and that unsold crown timber (*i.e.*, overhang) does not distort the market. As discussed below, we disagree with these arguments.

In arguing that the private New Brunswick market is large and robust, both the GNB and JDIL point to facts on the record that they claim support this argument.[479] However, neither the GNB nor JDIL have provided any information that addresses the concerns regarding the GNB's harvest production in the province, or the concentration of consumption of Crown and private timber among a small number of corporations. Additionally, both the GNB and JDIL argue that Crown-origin softwood timber accounts for only 47.7 percent of total supply in the province in 2015. The GNB contends that the difference between the 47.7 percent figure and the 49.9 percent figure relied by the Department in the *Preliminary Determination* was based on an analysis that focused on only saw material (and not all fiber inputs, inclusive of pulpwood, chips, *etc.*).[480]

As an initial matter, we find that the Department's methodology to calculate market share is appropriate for purposes of this investigation. Our objective in performing this market share

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[477] *Id.*

[478] *See* GNB Verification Report, Exhibit VE-1 at Table 3. Total Volume of Timber Sourced from Crown Land: 2,675,207 m^3 divided by total volume 5,266,858 m^3 (Total Volume of Timber Sourced from Crown Land: 2,675,207 m^3 + Total Volume of Timber Sourced from Private Woodlots Land: 2,675,207 m^3 + Total Volume of Timber Sourced from USA or Other Canadian Provinces: 457,914 m^3 + Total Volume of Timber Sourced from First Nations: 169,385 m^3) equals 50.79 percent.

[479] For instance, in its case brief, the GNB points to the increasing share that private lands accounted for during the POI, the declining Crown supply as a proportion of consumption in the POI, and the Crown stumpage sold through independent third parties. *See* GNB Case Brief at 7, 9, and 11.

[480] *Id*. at 9.

calculation was to determine the source (*i.e.*, Crown, private, import) of the logs that could be used in the production of subject merchandise. On that basis, we have calculated market share using the volume of logs from each source (*i.e.*, Crown, private, import) entering sawmills, because these logs are used in the production of softwood lumber. Including other inputs that would not be used in the production of softwood lumber, such as pulpwood or chips, would skew the results, and would not reflect the market conditions for the producers of subject merchandise. As such, our decision not to include such inputs in our analysis of the market share of various sources of softwood lumber is reasonable. Further, as noted above, based on corrections to the harvest data at verification, the record indicates that the Crown-origin timber accounts for the majority of the stumpage harvest volume in New Brunswick. However, regardless of whether the total Crown-origin volume is just above or just below 50 percent, the Department's finding regarding the private stumpage market in New Brunswick is not based solely on the GNB's market share. The *CVD Preamble* states that government involvement in the market "will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market."[481] However, the Department does not apply a *per se* rule that a government majority market share equates to government distortion of that market.[482] Rather, the Department will consider any evidence on the record of other relevant factors or measures that may distort a market.[483] As such, consistent with the *CVD Preamble* and our practice, while we have considered the share of GNB production as one factor in evaluating whether the New Brunswick market is distorted, we have also evaluated other record information in making this determination, as discussed below.

The GNB argues that the three reports relied upon by the Department in the *Preliminary Determination* and in *SC Paper from Canada – Expedited Review* to conclude that the New Brunswick stumpage market is distorted (*i.e.*, the *Report of the Auditor General – 2008*; the *Report of the Auditor General – 2015*; and the *2012 PFTF Report*) simply raise questions about the distortion of private stumpage prices in New Brunswick, but do not provide any firm conclusions. As an initial matter, we note that these reports were prepared by the GNB in the ordinary course of business. As such, the statements made in these reports were made by the GNB based on an evaluation of the facts discussed on those reports. For example, the Department relied upon the following statements from the *Report of the Auditor General – 2008*, to find that that the leverage of private mills as dominant consumers suppresses prices from private woodlots, and that those suppressed private prices lead to an artificially low "market-based" price for Crown stumpage:

> The fact that the mills directly or indirectly control so much of the source of the timber supply in New Brunswick means that the market is not truly an open market. In such a situation it is not possible to be confident that the prices paid in the market are in fact fair market value.
>
> …{T}he royalty system provides an incentive for processing facilities to keep prices paid to private land owners low…[484]

[481] *See CVD Preamble*, 63 FR at 65377.
[482] *See, e.g., CRS from Russia* IDM at 52-56; *see also Final Results of 1st AR* IDM at 94-96.
[483] *See, e.g., Aluminum Extrusions from the PRC First Review* IDM at 27.
[484] *See* PDM at 32; *see also* Petition at Exhibit 228.

These statements (in the "Analysis" section of the report), were provided following a presentation of key facts (in the "Understanding Royalty Timbers" section of the report) about the New Brunswick market. These key facts included details regarding the percentage of land holdings, the total harvest volume, the royalty fees paid, as well as a discussion of the process to set royalty rates. As such, the Department disagrees with the GNB's statement that these statements "merely raise questions" and do not provide firm conclusions. Instead, we find that these GNB-produced reports provide reliable analyses of facts pertaining to private stumpage prices in the province, and that these analyses were conducted by individuals who were familiar with the stumpage market in New Brunswick. Therefore, the Department is continuing to rely on information in these reports for purposes of evaluating whether the private stumpage market in New Brunswick provides prices that meet the criteria under 19 CFR 351.511(a)(2)(i) and therefore constitute a reliable benchmark.

Further, the GNB has not provided any information that contradicts the essential facts and conclusions made in these documents. Moreover, although the GNB has argued that the Department should not rely on statements from these reports, the GNB itself has relied upon facts and general statements from these reports in making arguments in its case brief.[485]

Finally, the GNB points to a report prepared by Professor Brian Kelly (*i.e.*, the Kelly Report), that "dispels the speculative concern that a small number of large New Brunswick mills, do, or can, artificially suppress prices."[486] However, as noted in the GNB's case brief, the Kelly Report was commissioned by the GNB for the purposes of this investigation. The Federal Circuit, in evaluating whether a party's claim had been sufficiently corroborated with evidence in a patent case, opined that "contemporaneous documentary evidence provides greater corroborative value" in determining whether a party's litigation "story is credible."[487] This is because evidence preceding the litigation eliminates "the risk of litigation-inspired fabrication or exaggeration" that may come from later-developed evidence, intended to corroborate the party's story.[488] We find that the Federal Circuit's concerns are equally applicable to evidence created for the purpose of an adjudicatory administrative proceeding such as this one. Although we consider all evidence on the record of a proceeding, in determining the weight to be accorded to a particular piece of evidence, we consider whether the evidence in question was prepared in the ordinary course of business, or for the express purpose of submission in the ongoing administrative proceeding. Because the Kelly Report was prepared for the express purpose of submission in this investigation, we find that it is at "risk of litigation-inspired fabrication or exaggeration," which diminishes its weight. Further, at verification, the GNB was unable to provide the Department with the guidelines or parameters that it provided to Mr. Kelly which would detail the goals or objectives of, and reveal the assumptions behind, the report.[489] Accordingly, we

[485] For example, the GNB sites to the *2012 PFTF Report*. *See* GNB Case Brief at 16.
[486] *See* GNB Case Brief at 14-15.
[487] *See Transweb*, 812 F.3d at 1295, 1301-02.
[488] *See Sandt Tech*, 264 F.3d at 1344, 1350-51.
[489] *See* GNB Verification Report at 10 ("The Department asked the GNB officials to provide any correspondence the GNB and/or its counsel had with Mr. Kelly regarding the objectives or guidelines regarding this study. The Department was told that all communication between Mr. Kelly, the GNB, and the GNB's counsel was subject to attorney-client privilege. As such, the GNB did not provide the requested correspondence for our review.")

have been unable to verify that, in directing Mr. Kelly to prepare this report, the GNB sought to avoid "litigation-inspired fabrication or exaggeration."[490] In contrast with the Kelly Report, the reports discussed in the preceding paragraphs—the *Report of the Auditor General – 2008*; the *Report of the Auditor General – 2015*; and the *2012 PFTF Report*—were prepared in the GNB's ordinary course of business prior to this investigation, and, thus, are not tainted by the "risk of litigation-inspired fabrication or exaggeration."[491] Thus, the Department continues to give greater weight to the *Report of the Auditor General – 2008*; the *Report of the Auditor General – 2015*; and the *2012 PFTF Report* than it does to the Kelly Report.

Further, we disagree with the respondents' argument that the existence of "overhang" indicates a healthy market. Instead, we find that the dominance of the mills (in particular, the JDIL mills), coupled with the overhang, indicates that the prices that the mills are willing to pay for private stumpage are limited by the availability of additional volume of Crown stumpage at prices set by the Crown. Specifically, as discussed above, the Department finds that the Crown tenure holders harvested significantly less than their allocated volume of Crown-origin standing timber during calendar year 2014: on average, tenure holders harvested only approximately 47 percent of their Crown-origin standing timber allocation during calendar year 2014. Therefore, the record evidence demonstrates that the mill owners can source timber from alternative sources (*i.e.*, Crown land allocations, and industrial freehold land) if the prices from those sources are more advantageous than the prices available from private woodlot owners in New Brunswick. The mills also have the incentive not to purchase timber from private woodlots unless the price is lower than the Crown prices, because these private purchase prices form the basis of the New Brunswick Crown stumpage prices. The mills' ability to source timber from outside of the private woodlots means that mills possess the leverage to keep prices on private woodlots low, and they have an interest in doing so beyond their mere ability to source from private woodlot owners for low prices. As such, we find that, because tenure-holding mills had ready access to, and could harvest, additional Crown-origin standing timber if private woodlot owners mainly served as a supplemental source to large mills and, thus, could not expect to charge more than Crown stumpage prices. Neither the GNB nor JDIL has provided or cited to any information on the record that would cause the Department to re-evaluate its finding in the *Preliminary Determination* that a small group of mills dominate the industry in the province, or that significant overhang exists within the province, leading to the circular price suppression of private and Crown stumpage prices.

Both the GNB and JDIL argue that significant trade of timber between New Brunswick and other markets demonstrates the openness of the timber market in New Brunswick. GNB specifically notes that 6.9 percent of softwood roundwood consumed in the province is imported, of which 4.4 percent came from Maine.[492] We agree that, typically, when faced with a high degree of imports, the Department finds that private prices in the market are not distorted by government involvement in that market. However, here, we find the opposite: that the ability of mills to import logs provides the mills with even more leverage over the New Brunswick private stumpage market. Specifically, we found that a significant volume of the imports was comprised

[490] *See Sandt Tech*, 264 F.3d at 1350-51.
[491] *Id.*
[492] *See* GNB Case Brief at 13;

of JDIL's imports from its own privately held land in Maine,[493] *i.e.*, these imports did not represent arm's-length transactions. Further, in S*C Paper from Canada – Expedited Review*, the Department found that JDIL is the largest landowner in Maine.[494] Given these investigation-specific facts, rather than demonstrating that imports are an indication of competition in the market, we find that these imports are another indication that the large mills can obtain timber from several sources other than private woodlot owners in New Brunswick (including, in JDIL's case, from its own private holdings in other jurisdictions) if private woodlot owners in New Brunswick do not price their timber at sufficiently low prices. As such, we disagree with the GNB's and JDIL's conclusion that trade between New Brunswick and other jurisdictions is indicative of an open timber market in New Brunswick, and instead conclude that, in this instance, these non-arm's-length imports are among the factors that suppress private timber prices in New Brunswick.

Both the GNB and JDIL alleged that Crown stumpage prices in New Brunswick exceed private stumpage prices. Specifically, the GNB compared timber prices for Crown stumpage, listed in Schedule A of the Timber Regulation 86-160,[495] to the results of the private stumpage survey for New Brunswick covering October 2014 to September 2015.[496] JDIL stated that the company, on average, paid higher prices for Crown stumpage than it did for private stumpage in New Brunswick.[497] We find both of these arguments to be premised on misleading facts, and, thus, unpersuasive.

We begin by addressing the GNB's comparisons between the Crown stumpage prices (in Schedule A of the regulations) and the private stumpage prices reported in the survey. Specifically, the GNB states that "Crown prices consistently exceed private stumpage prices," and point to a record exhibit indicating prices of SPF sawlogs and studwood from Crown land were higher than the prices charged for private stumpage of SPF sawlogs and studwood.[498] First, a review of these price data shows that the private stumpage prices for non-SPF species were frequently higher than the stumpage prices charged on Crown land.[499] As such, we find the GNB's implication that Crown prices always exceed private stumpage prices to be inaccurate. Second, the Department has significant concerns about the accuracy of the New Brunswick private stumpage price survey itself. Specifically, the survey states that it does not include the volume of timber harvested from primary forest produced by woodlot owners/operators or the volume of stumpage sold through lump-sum transactions.[500] The GNB estimates that these two types of transactions represent approximately 50 percent of the total (private) harvest in the province.[501] The omission of these two significant types of transactions from the New Brunswick private stumpage price survey leads us to conclude that the survey is incomplete, and

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[493] *See* GNB NFI Submission at Exhibit NB-STUMP-22 (FY 2015 Timber Utilization Report).
[494] *See SC Paper from Canada – Expedited Review* IDM at Comment 23.
[495] *See* GNB Primary QNR Response at Exhibit NB-STUMP-2.
[496] *Id.* at Exhibit NB-STUMP-11.
[497] *See* JDIL Minor Corrections Submission at Attachment 2.
[498] *See* GNB Case Brief at 10; *see also* GNB NFI Submission 1 at Exhibit NB-STUMP-25.
[499] For example, the AUV for Cedar sawlogs from Crown land was CAD 17 per cubic meter (*see* GNB Primary QNR Response at Exhibit NB-STUMP-2) while the AUV for Cedar sawlogs from private land was CAD 19.30 per cubic meter. *Id*. at Exhibit NB-STUMP-11, page 13.
[500] *Id*. at Exhibit NB-STUMP-11, page 9.
[501] *Id*.

the results of the survey are skewed by the survey's exclusion of these transactions and the significant stumpage volume associated with them. In light of these deficiencies in the New Brunswick private stumpage price survey, we conclude that the survey is not an accurate source against which to compare the Crown stumpage prices—and, thus, we find the GNB's arguments on the basis of this comparison to be unpersuasive.

Further, notwithstanding these concerns regarding the excluded transactions when calculating private stumpage prices, the Department finds that these private prices are not independent of the crown stumpage prices charged by the GNB and thus distorted. Specifically, as discussed above, the existence of the GNB as the dominant supplier of stumpage, and the mills as the dominant consumers of stumpage in New Brunswick results in an oligopsony in the province. As such, this results in private stumpage prices in New Brunswick that are responsive to the price-setting behavior by the Crown and the mills.

We next address JDIL's argument that the company, on average, paid more per cubic meter for Crown stumpage than it paid for private stumpage in New Brunswick during the POI. To support its argument, JDIL constructs weighted-average prices of stumpage on New Brunswick Crown land and its private purchases in New Brunswick, and compares these two prices.[502] According to JDIL, that the company paid more, on average, per cubic meter for Crown stumpage alone should dispel any notion that GNB involvement in the stumpage market significantly distorts private market prices. We disagree with JDIL's argument. First, the prices paid by one company for an input (in this instance, stumpage) are not a dispositive indication that there is no distortion in the entire province (or country) in the market for that input.

Second, the Department finds that JDIL's presentation of the facts is misleading. As mentioned above, JDIL constructed weighted-average prices of stumpage on New Brunswick Crown land and its private purchases in New Brunswick to demonstrate that it paid approximately C$6 more per cubic meter for Crown stumpage than it paid for private stumpage.[503] These weighted averages were calculated by dividing the total net value paid for stumpage by the total volume purchased (excluding third-party purchases). However, the figures calculated by JDIL include stumpage quantities and values for all inputs, including chips, pulpwood and other materials that are less expensive than inputs for softwood lumber, and that are not used in the production of subject merchandise. Further, the purchases of these cheaper inputs that are not used in the production of subject merchandise comprise a larger percentage of JDIL's private New Brunswick purchases than does stumpage for production of softwood lumber. Thus, the inclusion of these cheaper inputs for non-subject merchandise reduces the AUV for private stumpage prices that JDIL has calculated. Further, the record demonstrates that when comparing the Crown and private stumpage purchases for the inputs used in the production of softwood lumber, the company paid less for its Crown stumpage purchases than for its private purchases.[504]

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[502] *See* JDIL Case Brief at 12 (Public Version), referencing JDIL Minor Corrections Submission at Attachment 2.
[503] *See* JDIL Case Brief at 12 (Public Version).
[504] A full discussion of this analysis is not possible without reference to proprietary data; a full discussion of this data is included in JDIL's Final Calculation Memorandum. *See* JDIL Final Calculation Memorandum.

Finally, the GNB and JDIL argue that the CVD rate for New Brunswick stumpage, calculated in the *Preliminary Determination* and in *SC Paper from Canada*, confirms the lack of significant market distortion in the province.[505] As an initial matter, the rate calculated for this program in both the *Preliminary Determination* and in *SC Paper from Canada* is greater than measurable, and, thus, it cannot be deemed not significant. Further, we would not base our finding of market distortion for an entire province or country on the rate calculated for an individual company within that province or country. Accordingly, we find that the CVD rate for New Brunswick stumpage calculated for JDIL in the *Preliminary Determination*, and for Irving in *SC Paper from Canada*, is not an appropriate indicator of whether private prices for softwood stumpage in the province are distorted.

Comment 29: Whether the Department Should Use the New Brunswick Survey as a Benchmark for Stumpage for LTAR

In the *Preliminary Determination*, the Department used private stumpage prices from Nova Scotia as a tier-one benchmark for purposes of determining whether Crown stumpage in New Brunswick, Québec, Alberta, and Ontario was provided for LTAR.[506] The GNB argues that the Department should use prices from the New Brunswick private stumpage survey as a tier-one benchmark, instead of the Nova Scotia private stumpage prices.[507] It notes that the period for which the New Brunswick private stumpage survey reports pricing data overlaps nine months of the POI.[508] It further claims that the NB survey is reliable, and notes that an independent government agency, the New Brunswick Forest Products Commission, conducted the survey and PricewaterhouseCoopers audited the survey.[509] Finally, the GNB points out that the Department used New Brunswick private price data from an earlier iteration of this survey as the stumpage benchmark for New Brunswick in *Lumber IV*.[510]

The petitioner maintains that the Department should not rely on this survey for the benchmark,[511] because it is unlikely to be representative of overall timber pricing in New Brunswick. It claims that private market timber accounts for only about 20 percent of total softwood consumption in the province during the POI.[512] The petitioner further claims that the market for the sale of private stumpage is characterized as an oligopsony, a situation in which there are only a few large sawmill purchasers and, through their dominance in the market, those purchasers distort the pricing of private stumpage.[513]

Department's Position: We continue to determine that the prices from JDIL's purchases of private stumpage in Nova Scotia are the appropriate benchmark against which to measure the

[505] In the *Preliminary Determination,* we calculated a stumpage rate of 1.62 percent. *See*, *e.g.,* PDM at 54. In *SC Paper from Canada*, we calculated a stumpage rate of 0.23 percent. *See*, *e.g., SC Paper from Canada* IDM at 8.
[506] *See* PDM at 42.
[507] *See* GNB Case Brief at 20.
[508] *Id.*
[509] *Id.* at 20-21.
[510] *Id.* at 20.
[511] *See* Petitioner Rebuttal Brief at 21.
[512] *Id.*
[513] *Id.*

adequacy of remuneration of New Brunswick Crown-origin stumpage, rather than New Brunswick private stumpage prices. In accordance with 19 CFR 351.511(a)(2)(i), the Department normally seeks to measure the adequacy of remuneration for a good using, as a benchmark, "market-determined price{s}" from "actual transactions in the country in question." These prices may include "prices stemming from actual transactions between private parties."[514] However, when private prices are distorted by non-competitive factors, those prices are not market-determined, and thus are not an appropriate benchmark against which to measure the adequacy of remuneration.

We agree that, in *Lumber IV*, the Department used private stumpage data sourced from a prior iteration of the same New Brunswick private stumpage survey currently on our record.[515] However, *Lumber IV* was conducted more than a decade ago,[516] and thus private prices that, at that time, were market-determined may not have remained market-determined in 2015, if other economic forces arose in the intervening decade. To that end, to determine whether the New Brunswick private stumpage prices were distorted during the POI of this investigation, the Department obtained more recent information concerning New Brunswick's private stumpage prices from the *Report of the Auditor General – 2008* and the *Report of the Auditor General – 2015*.[517] As discussed in Comment 28, these reports describe non-market factors that have a distortive effect upon New Brunswick's private stumpage prices through the POI, such that private stumpage prices in the province are not market-determined.[518] The Department relied upon these reports when it found that New Brunswick's private stumpage prices were distorted in the *Preliminary Determination* and in *SC Paper from Canada – Expedited Review*, and, thus, that the private stumpage prices identified in the New Brunswick private stumpage survey were not a suitable tier-one benchmark under 19 CFR 351.511(a)(2)(i). Because, for the reasons stated in Comment 28, we continue to determine that the New Brunswick stumpage market is distorted, and we cannot use these New Brunswick private stumpage data as a tier-one benchmark. Thus, for this final determination, we continue to use the prices from JDIL's purchases of private stumpage in Nova Scotia as a market-determined tier-one benchmark to measure adequacy of remuneration for stumpage in New Brunswick.

Comment 30: Whether Stumpage for Ontario Crown Timber Was Subsidized During the Period of Investigation

The GOO argues that, pursuant to 19 CFR 351.511(a)(2)(i), the Department is required to compare the stumpage rates charged by the GOO with a market-determined price "resulting from actual transactions in the country in question."[519] The GOO argues that the Department's use of private stumpage prices in Nova Scotia as a benchmark in the *Preliminary Determination* is not legally permissible because those prices do not reflect the prevailing market conditions in Ontario, and the Department made no adjustments that would render the Nova Scotia benchmark

[514] *See* 19 CFR 351.511(a)(2)(i).
[515] *See Lumber IV Final Determination.*
[516] *Id.*
[517] *See* PDM at 32-33.
[518] *Id.*
[519] *See* GOO Case Brief at 5-6.

comparable to Ontario's market.[520] The GOO argues that the Department has acknowledged that there are significant differences between the various provincial stumpage markets in Canada, and it has consistently evaluated the subsidization of stumpage on a province-by-province basis.[521] The GOO has provided the Department with extensive evidence showing that the private timber market in Ontario is not distorted by Crown timber, and it has submitted prices of actual private market transactions in Ontario.[522] Accordingly, the Department must compare Ontario's Crown stumpage rates with private timber transactions in the province, which would reveal that Ontario Crown timber was not provided for LTAR.[523]

The GOO further argues that the Department failed to adhere to its statutory requirement under section 771(5)(E)(iv) of the Act, which provides that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided."[524] In the *Preliminary Determination*, the Department calculated the adequacy of remuneration for Ontario Crown stumpage on the basis of prices for timber harvested in Nova Scotia, a province more than 1,000 miles away from Ontario and which, the GOO argues, has a different type of forest, climate, tree species, and transportation infrastructure from what is found in Ontario.[525] The GOO notes that the NAFTA Panel which reviewed the *Lumber IV Final Determination* found that the Department must base its benchmark calculations on the "prevailing market conditions for the provision of stumpage in Ontario."[526]

The petitioner argues that the residual demand curve for timber in Ontario is distorted because Ontario sawmills always have the option of harvesting more Crown timber at the GOO's administered price or purchasing private timber at prices that are distorted by the Crown-administered price.[527]

Department's Position: As fully discussed in Comment 31, we continue to find that the stumpage market in Ontario is distorted. Therefore, there is no viable tier-one benchmark available within Ontario. Further, we continue to find that the Nova Scotia stumpage market is comparable to the other eastern Canadian provinces, including Ontario. *See* Comment 40. Furthermore, we continue to find that stumpage prices for private-origin standing timber in Nova Scotia constitute prices in Canada, the country providing stumpage, and, thus, the NS Survey prices are appropriate prices to serve as a tier-one benchmark. *See* Comment 39.

[520] *Id.* at 8-9; *see also* PDM at 30-31 and 56.
[521] *See* GOO Case Brief at 8.
[522] *Id.* at 6-7.
[523] *Id.* at 7.
[524] *Id.* at 10-13.
[525] *Id.* at 13.
[526] *Id.* at 12-13 (citing to *NAFTA June 7, 2004, Panel Decision* at 19).
[527] *See* Petitioner Rebuttal Brief at 26.

Comment 31: Whether Ontario's Private Market Is Distorted and Whether Ontario's Private Prices Are an Appropriate Benchmark

Whether the Relative Size of the Ontario Private Market Affects the Validity of Private Market Prices

In the *Preliminary Determination*, the Department found that, because the private market for standing timber in Ontario constituted only 3.5 percent of Ontario's timber market during the POI, private timber prices in the province largely track the Crown stumpage rates set by the GOO. The Department therefore concluded that Ontario private market prices are not market-determined and cannot be used as a tier-one benchmark.[528] The GOO argues that the Department improperly relied on the *CVD Preamble* when analyzing whether the GOO's share of the Ontario timber market distorted that market in the *Preliminary Determination*, because the *CVD Preamble* only suggests that when the government provides a majority or a substantial market share of a good, the government's presence *may* distort the market, but does not require such a finding. The GOO contends that, in *Lumber IV*, a NAFTA panel rejected the claim that "significant involvement by the government in the market, by itself, serves as a basis for rejecting the first regulatory tier, without sufficient analysis of whether and how such involvement has distorted actual transaction prices."[529] Precedent from both the WTO and the CIT supports the NAFTA panel's holding.[530]

The GOO argues that neither the Department nor the petitioner provided sufficient economic analysis to support the claim that prices in Ontario's private market are influenced by Crown stumpage prices, and thus the Department should rely on the Hendricks Report to find that the Ontario timber market is not distorted. The Hendricks Report found that "license holders are harvesting at rates below the planned harvests specified in their forest plans" and that "sawmills in Ontario are operating at below capacity," and therefore concluded that the Ontario Crown timber supply does not impact the value of private timber stands.[531] Furthermore, the GOO argues that the transactions in the MNP Ontario Survey demonstrate that private timber purchases were made when Crown timber was available for harvest and sawmills were not operating at full capacity, and that there was demand for private timber at prices above the prices for Crown timber, both of which support the conclusion that Crown timber prices did not affect private prices.[532]

Whether Ontario's Private Market Sales Are an Appropriate Benchmark

In the *Preliminary Determination*, the Department determined that private stumpage prices in Ontario were not market determined and, consequently, the Department used private timber prices from Nova Scotia as a benchmark to determine whether the GOO provided standing

[528] *See* PDM at 31.
[529] *See* GOO Case Brief at 23.
[530] *Id.* at 23-24, citing to *Borusan*; *WTO Appellate Body Decision - HRS from India* at para. 4.156; and *WTO Appellate Body Decision – Certain Products from the PRC*, at para. 4.51.
[531] *See* GOO Case Brief at 21-22.
[532] *Id.* at 22.

timber for LTAR.[533]

The GOO argues that private timber prices are market driven because the Crown places no limits on the harvest or sale of standing timber on private stands, and because mills and private suppliers owners operate in a competitive market with multiple potential buyers.[534] The GOO cites to the Hendricks Report, which examines whether the supply of Ontario Crown timber can affect the prices for private timber in the province.[535] The price of private softwood timber stands in Ontario is derived from the value of the end-products that can be manufactured from timber; therefore, the report examines whether the supply of Ontario Crown timber can affect the price of softwood lumber end-products. The report notes that softwood lumber prices in Toronto and Chicago are highly correlated and concludes Canada and the United States are in the same softwood lumber market.[536] Given that Ontario's share of the U.S. softwood lumber market is very small (approximately two to three percent over the past ten years), the report concludes that Ontario timber harvesters, as well as sellers of private timber and Crown timber in Ontario, are price takers (*i.e.*, sellers of private and Crown timber in Ontario are unable to influence the price of products by withholding their goods from the market, and harvesters of Ontario timber are unable to influence the price of timber by adjusting their harvest volumes).[537] Given that private timber is derived from the value of lumber end-products, and given that the supply of Ontario Crown timber is too small to influence prices in the North American softwood lumber market, the Hendricks Report concludes that Ontario's Crown timber supply cannot influence the price of private timber stands in Ontario. As a result, the Hendricks Report concludes that private stumpage prices in Ontario are a valid benchmark for Ontario Crown stumpage.

The GOO argues that the Department is required under its regulations and under the URAA to compare Ontario's Crown stumpage prices with private stumpage prices in Ontario, and the GOO proposes that the Department use private prices in the MNP Ontario Survey as a tier-one benchmark.[538] Both MNP LLP and the author of the Hendricks Report analyzed the private transaction data collected in the MNP Ontario Survey and concluded that participants in the private timber market in Ontario exhibit behavior consistent with that of price takers in a competitive market.[539]

While the GOO argues that private timber prices in Ontario are market driven because the market is composed of price takers, the petitioner notes that the Department rejected virtually the same argument in *Lumber IV*.[540] In the *Lumber IV Final Determination*, the Department observed that although a market may consist of participants who are price takers, it is important to evaluate whether those participants are taking the price from one dominant market participant.[541] The Department found in *Lumber IV* that the Crown was the overwhelmingly

[533] *See* PDM at 30-31 and 56.
[534] *See* GOO Case Brief at 15-16.
[535] *Id.* at 14-15 (citing to the Hendricks Report).
[536] *Id.* at 20.
[537] *Id.* at 22.
[538] *Id.* at 13-14 and 31 (citing to the MNP Ontario Survey).
[539] *Id.* at 18.
[540] *See* Petitioner Rebuttal Brief at 25.
[541] *Id.* at 25-26 (citing to *Lumber IV Final Determination* IDM at 98).

dominant market participant in Ontario and was effectively setting the price of stumpage in the province, both directly (in the market for Crown-origin timber, through an administered Crown stumpage rate), and indirectly (in the private market, where private stumpage rates were derived from the subsidized prices in the much larger Crown stumpage market).[542]

Whether the Level of Concentration of the Ontario Timber Market Affects the Validity of Private Market Prices

In the *Preliminary Determination*, the Department found that the concentration of the Crown harvest among a small number of companies gives these companies substantial market power over sellers of private timber.[543] The GOO argues that the Department's assertion is not supported by economic analysis or evidence on the record. The GOO points to the Hendricks Report, which argues that a competitive timber market exists when as few as two mills have similar costs and are located near sellers of timber.[544] According to the GOO, the record evidence indicates that each private timber owner in Ontario has several mills that could be potential buyers, and that private timber stands in northern Ontario are within 200 kilometers of three or more sawmills, while private timber stands in southern Ontario are within 200 kilometers of 20 or more sawmills.[545]

Whether the Department's "Findings" With Regard to "Allocated Volumes" are Confused and Mischaracterize the Ontario Timber Market

In the *Preliminary Determination*, the Department found that the majority of tenure holders in Ontario purchased a significant amount of standing timber above their allocated tenure volumes, including certain harvesters which exceeded their annual allocated tenure volume by as much as 28.4 percent during the POI.[546] The Department preliminarily concluded that the tenure holders' ability to consume beyond their allocated volume reduced the need for those tenure holders to procure timber from non-Crown sources, such as private timber sellers.[547]

The GOO argues that the Department's analysis based on "allocated volumes" in Ontario mischaracterizes the operation of Ontario's Crown stumpage system. The GOO states that it limits tenure holders' harvest based on area, not volume, on a ten-year basis, and that target volumes reported in a mill's annual AWS are non-binding estimates of timber available for harvest.[548] Therefore, the GOO argues, the Department's focus on the fact that tenure holders purchased up to 28.4 percent more than the volume in their AWS is irrelevant, because the annual "allocated volume" in the AWS is not intended to limit the amount of timber that a tenure-holder could harvest annually. Moreover, a tenure-holding sawmill can source (and, thus, will consume) timber from third companies in addition to its tenure allocation. Thus, the GOO alleges that the Department's preliminary analysis is comparing two unrelated data—the non-

[542] *Id.* at 25-26.
[543] *See* PDM at 31.
[544] *See* GOO Case Brief at 25 (citing to the Hendricks Report at paragraph 99).
[545] *Id.*at 25 (citing to the Hendricks Report at paragraph 17).
[546] *See* PDM at 31.
[547] *Id.* at 31.
[548] *See* GOO Case Brief at 28.

binding estimated volume of timber *available* for harvest under a tenure holder's AWS, and the volume of Crown timber *consumed* by tenure-holding sawmills (which may include timber sourced from third parties).[549]

Department's Position: The GOO submitted comments summarized above regarding the validity of private timber prices in Ontario as a benchmark for Ontario Crown stumpage rates and we address those comments here. The GOO also submitted the Hendricks Report, which concludes that the concentration of the Crown timber market and the relative size of the private timber market compared to the Crown market does not result in Crown timber prices influencing private timber prices, and the MNP Ontario Survey, which examines private timber prices in Ontario, and which the GOO argues can serve as a tier-one benchmark.[550] The Hendricks Report analyzed data on private timber transactions in the MNP Ontario Survey and, based on evidence that private stumpage prices are driven by prices for lumber end-products, market participants are well-informed, and private timber owners have multiple buyers, the Hendricks Report concluded that the MNP Ontario Survey data is "consistent with private timber prices being the outcome of a competitive process."[551] We find these arguments unpersuasive and, for the reasons detailed below, we continue to find that the Crown's administered stumpage rates and the Crown's overwhelming share of the market, as well as the flexible supply of Crown timber that is available to tenure holders, influences the prices for private standing timber such that private prices in Ontario cannot be used as a benchmark.

In choosing a benchmark to calculate the adequacy of remuneration for Crown-origin stumpage in Ontario, the Department first examined whether stumpage prices for timber from private land in Ontario are market-determined. According to information from the GOO, for FY 2015-2016, Crown-origin timber accounted for 96.5 percent of the harvest volume in Ontario, while the harvest volume of non-Crown-origin timber accounted for the remaining 3.5 percent.[552] The *CVD Preamble* provides that where a government constitutes a majority of the market, and "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."[553] Thus, to determine whether there are private transactions for standing timber in Ontario that are suitable as a benchmark, we must first determine whether it is reasonable to conclude that those private transactions are distorted by the government's involvement in the market.

According to the GOO, the stumpage charge for Crown-origin timber is composed of four components. The first is a minimum charge, which is administratively set by the GOO and is intended to provide a secure level of revenue for the GOO, regardless of market conditions.[554]

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[549] *Id.* at 28-29.
[550] *See* Hendricks Report and MNP Ontario Survey.
[551] *See* Hendricks Report at 39-42.
[552] *See* GOO Primary QNR Response at Exhibit ON-STATS-2. The GOO does not collect harvest volumes from federal and private sources separate in the ordinary course of business, and thus was only able to provide an aggregate harvest volume that combines harvests from these two sources; *see also*, Market Memorandum at Ontario Attachment, Table ON-STATS-2.
[553] *See CVD Preamble*, 63 FR at 65377
[554] *See* GOO Verification Report at 9.

We learned at verification that the minimum charge was administratively set at C$2.84/$m^3$ in FY 1997-1998, and has been inflated annually by Canada's IPI.[555] The second component, the RV charge, is calculated monthly and is assessed on the difference between the price of a basket of end-products (*e.g.*, various softwood lumber products) and a measure of the cost of producing and delivering those end-products.[556] Lumber prices throughout the POI were low enough such that the RV charge was not levied on Crown-origin timber during the POI.[557] The other two stumpage components, the forest renewal charge and the forestry futures charge, are levied every year to cover the cost of renewing harvested areas and protecting Crown timber land.[558] The forest renewal charge is set based on estimated forest renewal costs and the projected harvest volume for each species, while the forestry futures charge is uniform across all FMUs and tree species groups.[559]

Thus, of the three stumpage components that the GOO charged during the POI, only the forest renewal charge took into account market conditions (*e.g.*, estimated forest renewal costs). The minimum charge, which was administratively set 20 years ago, does not take into account market conditions other than inflation, and the forestry futures charge is uniform across all species groups and regions.[560]

We next examined the supply of standing timber in Ontario from the Crown and private sources. The GOO does not allocate harvest volumes to tenure holders; rather, it allocates harvest areas (the AHA) to a tenure holder over the ten-year term of an FMP.[561] The volume of standing timber that a tenure holder can harvest in a given year is flexible. Each year a tenure holder develops an AWS in which it sets a target for the area to be harvested, but that target is not binding; the only effective harvest limit is the AHA over a ten-year period.[562] This arrangement ensures that the Crown supply of timber is flexible on a yearly basis, such that in years when the demand for lumber products is high, tenure holders can consume more than their annual target of public timber at an administered price before turning to the private market for additional supply. In addition, the GOO does not regulate the transfer or sale of timber between sawmills or to third parties. The ability to trade Crown timber between mills makes the Crown timber market more flexible and allows tenure holders to harvest more extensively from Crown land before turning to the private market.[563] We find that the ability to harvest at levels greater than the short-term targets set in the AWSs and the option to transfer timber between mills expands the market for Crown timber, which has the effect of depressing demand—and, therefore, prices—in the private market.

The GOO cites to the Hendricks Report, which concludes that the Ontario timber market is characterized by price takers (and, thus, results in market-based prices for private timber).

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[555] *Id.* at 9-10.
[556] *Id.* at 12.
[557] *Id.* at 13.
[558] *Id.* at 10; *see also* GOO Primary QNR Response at 79-84.
[559] *See* GOO Primary QNR Response at 79-80.
[560] *See* GOO Verification Report at 10.
[561] *See* GOO Primary QNR Response at 89-90.
[562] *See* GOO Verification Report at 4.
[563] *Id.* at 14.

However, the Hendricks Report ignores the fact that there is one dominant price setter, the GOO, in the Ontario timber market. The Crown supplied 96.5 percent of the market during the POI, and, as noted above, set administered prices that do not fully consider market conditions. The Hendricks Report focuses on the connection between the Crown and the private timber markets, and concludes that conditions in the Crown market do not influence conditions in the private market. We examined data from the GOO's eFAR system, which indicates that the universe of firms consuming timber from private sources in Ontario is heavily concentrated and is dominated by tenure holders.[564] The GOO's data reveals that tenure holders consume a significant volume of private timber in Ontario.[565] The fact that a majority of private origin standing timber is sold to a small number of customers, who are dominant consumers of both private and Crown timber, demonstrates that the private market in Ontario is not as independent and free of influence from the Crown timber market as the Hendricks Report suggests.

Furthermore, while the Hendricks Report assumed that stumpage prices in southern Ontario would be higher than prices in northern Ontario because the distance between the timber and sawmills is greater in the north than in the south (thereby depressing northern prices), the MNP Ontario Survey, on which the Hendricks Report relies, found that SPF stumpage prices in 2015-2016 were in fact lower in the south than in the north.[566] As a result, the theory of a competitive market for private origin timber in Ontario in the Hendricks Report does not fit the data underlying the MNP Ontario Survey upon which that report purportedly relied.

Finally, the MNP Ontario Survey is based on a small number of survey respondents. The SPF private timber price for FY 2014-2015 provided in the MNP Ontario Survey is based on responses from eight SPF sawmills, and the FY 2015-2016 SPF price is based on responses from 15 SPF sawmills.[567] The MNP Ontario Survey acknowledged that the survey had a "relatively low number of survey responses" in comparison to previous surveys of the private timber market, which "suggests an overall reduction in the number of loggers purchasing private timber compared to the situation ten or more years ago."[568] The small number of respondents reporting private timber purchases calls into question the representativeness of those responses, and further suggests that there is diminished demand for private timber in Ontario.

Thus, the Department continues to determine that it is reasonable to conclude that private timber prices in Ontario are distorted as a result of the government's involvement in the market and, therefore, there are no market-based tier-one stumpage prices available within Ontario that can be used as a benchmark.

[564] *Id.* at Exhibit VE-9.1.
[565] *Id.* at Exhibit VE-9.1; *see also* Market Memorandum, Ontario.
[566] *See* Hendricks Report at 13 and 38; *see also* MNP Ontario Survey at 7.
[567] *See* MNP Ontario Survey at 6.
[568] *Id.* at 6.

Comment 32: Whether the Ontario Log Benchmark Relied on by the Department in *Lumber IV* Would Demonstrate that Ontario Crown Timber is Not Subsidized

The GOO argues that if the Department refuses to use Ontario private stumpage prices as a benchmark, the Department should instead rely on log prices in Ontario. The GOO notes that in the first remand proceeding from the NAFTA Panel in *Lumber IV*, the Department used a residual value methodology to calculate a log price benchmark using log price data in a KPMG study.[569] The GOO argues that if the Department were to apply the same methodology in this investigation, it would find that Ontario's internal log market is not distorted and that the GOO did not subsidize stumpage during the POI.[570]

The petitioner argues that the legal standard is not to dismiss private prices only when there is evidence that they are "affirmatively distorted," but rather it is to not use private prices as a benchmark where it is "reasonable to conclude" that prices are distorted by the government's involvement in the market.[571] The petitioner argues that the facts cited by the Department in the *Preliminary Determination* fully support that it is "reasonable to conclude" that private stumpage prices in Ontario are distorted by the GOO's administered stumpage prices. Further, the petitioner argues that log prices are distorted for the same reasons that private timber prices in Ontario are distorted.[572] In addition, the petitioner argues that private log prices would be a tier-three benchmark, which is not necessary for the Department to consider when there is a suitable in-country tier-one benchmark based on the Nova Scotia survey data that the Department relied on in the *Preliminary Determination*.[573]

Department's Position: As discussed in Comment 31, we continue to find that the stumpage market in Ontario is distorted and we continue to find that the private stumpage prices in the Nova Scotia survey data are the appropriate prices to use as a tier-one benchmark. Here, the good for which we are evaluating the adequacy of remuneration under 19 CFR 351.511 is stumpage; accordingly, tier-one benchmarks under subsection 351.511(a)(2)(i) of that regulation include market-determined stumpage prices in Canada. The log prices that the GOO proposes as a benchmark are prices for logs, rather than prices for stumpage—and, as such, log prices are not "market-determined price{s} for the good," stumpage. Thus, said log prices are not tier-one benchmarks. Having determined that stumpage prices in the NS Survey may serve as a tier-one benchmark, it is not necessary for the Department to examine the suitability of other data points, such as private logs prices in Ontario, that fall under the second and third tier of the LTAR benchmark hierarchy enumerated in 19 CFR 351.511(a)(2).

[569] *See* GOO Case Brief at 36.
[570] *Id.* at 36-37.
[571] *See* Petitioner Rebuttal Brief at 27 (citing to the *CVD Preamble*, 63 FR at 65377).
[572] *Id.* at 26 (citing to GOO Case Brief at 35-38).
[573] *Id.* at 26-27 (citing to the PDM at 43-46).

Comment 33: Whether Stumpage Charges Distort Ontario's Domestic Log Market and Whether a Log Price Benchmark Shows No Subsidy

The GOO has placed on the record of this investigation a survey conducted by KPMG of log prices in Ontario from private and Crown lands.[574] The GOO argues that these prices are based on arm's-length transactions and are not affected by any alleged subsidies of Ontario Crown stumpage. Further, the GOO argues that the petitioner has not provided any evidence suggesting that these Ontario log prices are distorted.[575]

If the Department uses a log price benchmark, the GOO argues that it should use the log prices in the KPMG Report. The GOO notes that the Department relied on a similar benchmark of Ontario log prices in the First Remand Determination of *Lumber IV*.[576]

The petitioner rebuts the GOO by arguing that log prices are distorted for the same reasons that private timber prices in Ontario are distorted.[577] *See* Comment 32. The petitioner further argues that private log prices would be a tier-three benchmark, which is not necessary for the Department to consider when there is a suitable in-country, tier-one benchmark based on the NS Survey data that the Department relied on in the *Preliminary Determination*.[578]

Department's Position: Pursuant to our regulation, we prefer to apply, as a tier-one benchmark, "a market-determined price for the good or service resulting from actual transactions in the country in question."[579] Accordingly, our regulation is clear that we prefer to use a benchmark price for the precise good that we are evaluating: here, the provision of stumpage. The log price that the GOO proposes as a benchmark is not a stumpage price, and, thus, is not "a market-determined price for the good or service" we are investigating. As such, it is not a tier-one benchmark. As discussed in Comment 39, we continue to find that the private stumpage prices in the NS Survey are appropriate prices to use as a tier-one benchmark to measure the provision of stumpage for LTAR in the province. Having determined that stumpage prices in the NS Survey may serve as a tier-one benchmark it is not necessary for the Department to examine the suitability of other proposed benchmarks, such as private logs prices in Ontario, that fall under the second and third tier of the LTAR benchmark hierarchy set forth in 19 CFR 351.511(a)(2).

Comment 34: Whether to Estimate Ontario's Crown Timber Prices with Québec's Transposition Equation

The GOO argues that, although Ontario does not conduct timber auctions, it is possible to assess what prices such auctions would yield by applying Québec's transposition equation to the same variables modeling Ontario timber characteristics.[580] The GOO states the derived timber value is

[574] *See* GOO Case Brief at 37 (citing to the GOO Primary QNR Response at Exhibit ON-STATS-3, "Report on 2015-16 Ontario Softwood Timber Costs and Resources" (*KPMG Report*) at Schedule 3).
[575] *Id.* at 37.
[576] *Id.* at 37-38.
[577] *See* Petitioner Rebuttal Brief at 26 (citing to GOO Case Brief at 35-38).
[578] *Id.* at 26-27 (citing to the PDM at 43-46).
[579] *See* 19 CFR 351.511(a)(2)(i).
[580] *See* GOO Case Brief at 56-57.

C$12.78/m^3 and claims the price is a valid benchmark, unlike the Nova Scotia prices. Accordingly, if the Department does not use the MNP Ontario Survey prices as a benchmark for the respondents' purchases of stumpage in Ontario, the Department should use the derived timber value of C$12.78/m^3 as a tier-one benchmark for purchases of stumpage in the province.

Department's Position: Pursuant to our regulation, we prefer to apply, as a tier-one benchmark, "a market-determined price for the good or service resulting from actual transactions in the country in question."[581] The regulation goes on to state that "{s}uch a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions."[582] Accordingly, our regulation is clear that we prefer to use as a benchmark the prices from actual transactions, including actual prices from competitively run government auctions. The derived timber value that the GOO proposes as a benchmark is just that—derived—and not the "result{} from actual transactions" in Ontario. As such, it is not a tier-one benchmark. As fully discussed in Comment 39, we continue to find that stumpage prices for private-origin standing timber in Nova Scotia are appropriate prices to serve as a tier-one benchmark. Because we have a useable tier-one benchmark, it is not necessary for the Department to examine the suitability of other potential benchmarks, such as derived timber prices in Ontario, that fall under the second and third tier of the LTAR benchmark hierarchy set forth in 19 CFR 351.511(a)(2).

Comment 35: Whether the Québec Stumpage Market Is Distorted

The GOQ argues that the Department's preliminary finding of market distortion rests on flawed premises that are not supported by the verified record.[583] The GOQ asserts that the Department (1) provided no analysis demonstrating that market prices established by Québec's public timber auctions are distorted, (2) cannot rely on government predominance in the supply of a good as *per se* establishing distortion of the market for that good, and (3) ignored the findings of the Marshall Report, which is the only study on the record that subjected the auction data to economic tests and which concluded that the auction prices are valid market prices free of government distortions. The GOQ adds that the Department's preliminary analysis did not demonstrate that there is any collusion among auction bidders and, in fact, the Department acknowledged that the auction procedures are designed to prevent collusive behavior. Therefore, the GOQ asserts, as concluded in the Marshall Report, the Department must find that Québec's auctions are undistorted and yield market-based prices, which are viable tier-one benchmarks for assessing TSG prices. The GOC submits that the Kalt Report, which it placed on the record, rebuts the assertion of market distortion and, thus, there is no reason to go outside Québec for a benchmark.[584]

In rebuttal, the petitioner, referencing the Stoner & Mercurio Report, notes that where a substantial amount of a market is supplied by a government entity at an administered price, and where firms have the opportunity to purchase additional supply at that administered price, prices

[581] *See* 19 CFR 351.511(a)(2)(i).
[582] *Id.*
[583] *See* GOQ Case Brief at 6-40; s*ee also* PDM at 39-42.
[584] *See* GOC Case Brief at 17-34.

in any non-administered sector will be depressed by the administered price and, therefore, cannot be used to measure whether the administered price confers a subsidy.[585] The petitioner adds that this analysis applies not only when the government supplies all of the timber, "but also when the non-competitive sector does not exhaust all supply."[586] In this case, the non-competitive price would not dictate the private price but can influence the observed market price, if the non-competitive sector is relatively large and firms can choose between them. The petitioner contends that the Department found this situation to exist in Québec where a large share (*i.e.*, 51 percent) of the timber is provided non-competitively under TSGs at government-determined prices and there is overlap in the lumber producers able to access Crown timber *via* TSGs and auctions.

Department's Position: We disagree with the GOQ's arguments that the timber market in the province is not distorted. However, before addressing in detail the arguments made by the GOQ, it is important to review the regulatory language with respect to 19 CFR 351.511 – the provision of a good or service for less than adequate remuneration. Under the regulation, we prefer to measure the adequacy of remuneration using in-country prices as a benchmark, referred to a tier-one benchmark. This tier-one benchmark could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. However, where it is reasonable to conclude that prices in that market are significantly distorted as a result of the government's involvement in that market, the Department will not use the prices within that market.[587] Therefore, when information on the record indicates that the government is involved in the market, before determining whether it is appropriate to use prices from within that market, the Department must determine whether that market is distorted due to the presence of the government.[588] Once it is determined that the market is distorted by the presence of the government, prices between private parties, import prices, or government auction prices are no longer viable benchmark prices. As discussed below, information on this record shows that the Québec stumpage market is distorted because the majority of the market is controlled by the government, which provides long-term timber supply rights at administratively set prices to only firms that process the logs within the province, and because other circumstances (including the provincial mandate that logs harvested in the province be processed in the province) serve to decrease firms' incentive to pay above that administratively-set price for private timber or to bid above that administratively-set price at auction. Therefore, prices within Québec cannot serve as a benchmark under 19 CFR 351.511(a)(2)(i).

As stated in the *Preliminary Determination*, we find that, with regard to Québec's auction system, the GOQ makes information on proposed sales and winning auction bids publicly available, allows sawmills and non-sawmills (in and out of Québec) to participate in the auctions, and has implemented auction procedures that are designed to prevent collusive behavior (*e.g.*, selecting winners based on the first bid rather than permitting bids to be conducted in rounds,

[585] *See* Petitioner Rebuttal Brief at 27-30.
[586] *Id.* at 29.
[587] *See*, *e.g.*, *CVD Preamble*, 63 FR at 65377.
[588] The *CVD Preamble* at 65377 refers to situations where the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

and not disclosing information on the identities and bids of unsuccessful bidders).[589] However, the totality of the evidence on the record leads us to conclude that the auction prices for Crown timber track the prices charged for Crown timber allocated to TSG-holding sawmills and, thus, the auction prices for Crown timber are not viable tier-one benchmarks.

In the *Preliminary Determination*, we outlined five observations which led us to conclude that the Québec stumpage system is distorted and the auction prices cannot serve as a benchmark: (1) overall consumption of non-auction Crown timber is large relative to other sources; (2) the GOQ, through the BMMB, is not meeting its consumption goal for timber sold *via* auction; (3) a significant volume of timber offered at auction did not sell during the POI; (4) a small number of TSG-holding corporations dominate the consumption of Crown timber (both directly allocated *via* TSGs and sold *via* auction); and (5) TSG-holding corporations can shift their allocations of Crown timber, thereby reducing their need to acquire timber in the auction or from non-Crown sources.[590] Some of those observations were clarified at verification. In particular, with regard to our second observation above, we verified that BMMB's mandate was to offer for auction 25 percent of the available attributed volume for each administrative region,[591] and not, as preliminarily stated, that sawmills must consume 25 percent of their total mill needs with Crown timber sourced from the auctions.[592] Notwithstanding the clarifications obtained at verification, the observations made at the *Preliminary Determination* remain significant and informative. When taken in totality, those observations continue to illustrate that the auction prices are not market-based and, thus, cannot serve as a tier-one benchmark. We address each observation below.

The GOQ is the largest provider of stumpage with 73.88 percent of the stumpage harvest for FY 2015-2016 sourced from Crown land.[593] Of that amount, 51.75 percent was sourced *via* administered TSGs and 22.13 percent from the auctions.[594] The remaining volumes were sourced from the private forest (15.07 percent) and log imports from the United States and other Canadian Provinces (11.05 percent).[595]

Given that, under a TSG, a sawmill can source up to 75 percent of its supply need at a government-set price,[596] there is strong motivation for a sawmill to treat its TSG-guaranteed volume as its primary source of supply and its auction volume as an additional or residual supply source. Evidence on the record shows that approximately 94 percent of TSG-holders purchased all of their allocated Crown timber in FY 2015-2016.[597] These data indicate that sawmills

[589] *See* PDM at 40.
[590] *Id.* at 39-42.
[591] *See* GOQ Verification Report at 18.
[592] *See* PDM at 41.
[593] *See* Québec Final Market Memorandum at Table 7.1. The Crown-origin standing timber's share of the harvest volume increases to 83.06 percent when examining standing timber that originated in the province. *Id*. at Table 7.2.
[594] *Id.* at Table 7.1.
[595] *Id*.
[596] *See* GOQ Verification Report at 9 and 12-13.
[597] *See* GOQ Primary QNR Response at Exhibit QC-STUMP-9 (Table 18). For a given year, the amount of timber purchased by a sawmill may not be equal to the amount harvested by the sawmill under a TSG because a TSG-holder can choose to not harvest all of its purchased timber. *See* GOQ Verification Report at 16.

consider their TSGs to be their primary source of wood and not a source for their residual needs, as claimed by the GOQ and stipulated under Article 91 of the SFDA.[598] Further, in contrast to the roughly 75 percent of a TSG-holding mill's supply need that it may purchase through TSGs, the same mills source comparatively little Crown-origin timber through BMMB-run auctions. Record evidence for processed wood during FY 2015-2016 indicates that, in aggregate, TSG-holding sawmills sourced just 20.6 percent of their Crown supply from the auction.[599]

The GOQ reported TSG-allocated Crown and standing timber consumption volumes on a sawmill-specific basis.[600] Data in the GOQ's response allowed us to aggregate the sawmill data based on the sawmills' corporate addresses.[601] We find that aggregating the sawmill data by corporation is most useful to our analysis, because sawmills act as members of corporate families rather than as stand-alone entities.[602] An analysis of the aggregated data indicates that the consumption of TSG-allocated Crown timber is concentrated among a small number of corporations.[603] We thus evaluated whether the auction system operates independently of the Crown timber allocation system by examining the extent to which the TSG-holding sawmills are *not* also active in the auction system. The data indicate that the same corporations dominate both the consumption of TSG-allocated Crown timber and the purchase of auctioned Crown timber.[604] Sorting the GOQ's reported log processing data in descending order by volume reveals that, for FY 2015-2016, the 10 largest TSG-holding corporations accounted for 74.87 percent of logs acquired *via* supply guarantees.[605]

The GOQ argues that, for the 10 largest sawmills collectively, TSG volumes satisfied less than 75 percent of their total mill need.[606] However, the GOQ's analysis of "total mill need," *aka*, operating permit, is an estimated or anticipated amount of timber that a sawmill may be able to process in a given year, and not an amount that reflects the actual activity of sawmills in a given year.[607] We verified that MFFP determines operating permit size by relying on information not only from the sawmill, but also takes into consideration production data of other mills in the area.[608] Operating permits are also static, with the MFFP revisiting permits every five years.[609] We additionally verified that TSG holders are not required to purchase all of their annual TSG allocation volumes, and are not required to harvest all the Crown-origin timber that they

[598] *See* GOQ Primary QNR Response at 44-45 and Exhibits QC-Stump 19 and 20, which contain the *SFDA* for FYs 2014-2015 and 2015-2016.
[599] *See* Québec Final Market Memorandum at Table 20.3.
[600] *See* GOQ Primary QNR Response at Exhibit QC-STUMP-9 (Table 18).
[601] *See* Québec Final Market Memorandum at Table 20.1.
[602] We determine our finding in this regard is warranted given that the GOQ tracks the corporate addresses of TSG holding sawmills. *Id*. at Table 20. Also, the auction data provided by the GOQ identify the winning bid by corporation, thereby leading us to conclude that firms participate in the auctions at the corporate level and not at the sawmill level. *Id*. at Table 12.
[603] *Id.* at Table 20.2.
[604] *Id.*
[605] *Id*.
[606] *See* GOQ Case Brief at 15.
[607] *Id*.; *see also* GOQ Primary QNR Response at Exhibits QC-Stump 2 and 9.
[608] *See* GOQ Verification Report at 6.
[609] *Id*.

purchase in a given year.[610] As such, we find that the most accurate manner to conduct our analysis is based on actual processing data, which reflect the market realities of the TSG-holding corporations. Further, as noted above, we find that our analysis must be done on a corporate, and not a sawmill, basis given that sawmills act as members of corporate families rather than as stand-alone entities.

Information on the record also show that the 10 largest TSG-holding corporations accounted for 62.43 percent of the softwood sawlog auction volume acquired during 2015.[611] The data thus indicate that the largest TSG-holding corporations are not only active in the auction system, but are the predominant buyers of auctioned Crown timber and, therefore, are influencing the auction prices.

We find that there is little incentive for the TSG-holding corporations to bid for Crown timber above the TSG administered price when those corporations do participate in an auction. As noted above, under a TSG, a sawmill can source up to 75 percent of its supply need at a government-set price. We also verified that the first 100,000 m^3 of a mill's residual need is exempt from the MFFP's 25 percent auction ratio.[612] As a result, certain mills are sourcing more than 75 percent of their supply needs *via* TSGs.[613] And, as discussed below, a sawmill can obtain additional wood at the government-set price *via* transfers from other sawmills and the sale of unharvested timber by the BMMB. This evidence indicates that, given the large supply of Crown timber in the stumpage market, Crown timber is the price maker. Similarly, we find that there is little reason for non-sawmills (*i.e.*, independent bidders) to bid for timber in the auctions above the TSG administered price. Because the timber purchased at the auctions must be milled in Québec,[614] we conclude that the non-sawmills must be selling the timber they purchase at the auctions to the TSG-holding sawmills. Within this market, the sale of timber by the non-sawmills is competing with the timber available to sawmills at the guaranteed government price *via* the TSGs. As such, the non-sawmills have little motivation to bid for timber at a price above which they can sell the wood to the sawmills. When setting their bid prices, the non-sawmills can reference the TSG prices, which are publicly available.[615] Likewise, the non-sawmills can research the published winning auction prices of TSG-holding corporations[616] to gauge the price point at which the sawmills will purchase wood. These circumstances indicate that the TSG-holding corporations wield considerable market power in the auction system and, consequently, the reference market (here, the auction) does not operate independently of the administered market.

Additionally, although the verified unsold volume of timber offered at auction was approximately 15 percent,[617] and not 32.3 percent, as we preliminarily stated,[618] we find that 15

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[610] *Id*. at 7.
[611] *See* Québec Final Market Memorandum at Table 20.2.
[612] *See* GOQ Verification Report at 9.
[613] *Id.*
[614] *Id*. at 18.
[615] *Id.* at 12-13.
[616] *Id.* at Exhibit QC-26, page 3; *see also* GOQ Primary QNR Response at 3.
[617] *See* GOQ Verification Report at 20-21 and Exhibit QC-30.
[618] *See* PDM at 41.

percent is a significant amount of unsold timber. The unsold timber is an additional sign that TSG-holding corporations and non-sawmills may not be making aggressive bids above TSG prices. Moreover, TSG-holding corporations can bypass the auctions and shift allocations of Crown timber amongst themselves. Pursuant to sections 92 and 93 of the *SFDA*, TSG-holders in Québec are permitted to shift allocated Crown timber volumes among affiliated sawmills and between corporations.[619]

Based on the record at the *Preliminary Determination*, we found that, during the POI, under sections 92 and 93 of the *SFDA*, sawmills transferred approximately 640,000 m^3 of TSG-allocated Crown timber, which amounted to 15.3 percent of the volume of softwood sawlogs sold *via* auctions.[620] Based on data clarifications obtained at verification, these transfer volumes were reduced. However, notwithstanding these verification revisions, the fact remains that section 92 of the *SFDA* permits TSG-holders to annually transfer up to 10 percent of the total volume harvested under their TSGs without government approval.[621] Given that just 22 percent of the stumpage harvested for FY 2015-2016 came from auctioned Crown timber, the ability of a TSG-holder to obtain an additional 10 percent of its TSG volume from another TSG-holder indicates that the auctions may not be a competitive source for wood. The ability of corporations to shift allocations among sawmills provides TSG-holding corporations flexibility in terms of their supply sources, and reduces their need to source timber from non-Crown sources.

Further, at the end of the year, any unharvested TSG volumes are returned to MFFP, which then decides whether to let the timber stand, sell it directly to a sawmill, or give the timber to the auctions.[622] We verified that, during FY 2015-2016, 19.5 percent of unharvested timber was sold by MFFP to sawmills *via* one-year contracts with a TSG administered price.[623] We further verified that the remaining timber was left standing.[624] The ability of sawmills to purchase unharvested volumes at the government-set price further diminishes their need to source supply from the auctions or other competitive sources.

More importantly with respect to the Québec auction, under 19 CFR 351.511(a)(2)(i), the Department will only use actual sales prices from competitively run government auctions as a tier-one benchmark. The Department verified that timber purchased at the auctions must be milled within Québec.[625] This is a substantial restriction that demonstrates that the Québec auction is not an open, competitively run auction. This restriction effectively excludes potential bidders that would mill the timber outside of Québec, and would exclude bidders that would want to sell the timber (either harvested, or the harvested logs) for milling outside of the province. Furthermore, limiting bidders suppresses auction bids, because bidders understand that there are fewer parties against which their bid will compete. Thus, instead of implementing an auction based solely on an open, market-based competitive process, the GOQ created an auction based upon a government-implemented policy to ensure that the timber is milled within the province. Therefore, even if the Québec stumpage market was not distorted, the Québec auction

[619] *See* GOQ Verification Report at 15-16.
[620] *See* PDM at 41.
[621] *See* GOQ Verification Report at 15.
[622] *Id.* at 11.
[623] *Id*.
[624] *Id*.
[625] *Id.* at 18.

prices would not meet the regulatory criteria as an appropriate benchmark as set forth under 19 CFR 351.511(a)(2)(i).

The GOQ, the GOC, and the petitioner have each placed purchased commissioned reports on the record with respect to the issue of government distortion. We first note that none of the interested parties have placed reports or studies that were conducted independently from the current lumber investigation or the previous lumber investigation, nor have they placed on the record reports or studies on the provincial stumpage markets that have been published in peer-reviewed journals. Although we consider all evidence on the record of a proceeding in reaching our determination, in determining the weight to be accorded to a particular piece of evidence, we consider whether the evidence in question was prepared in the ordinary course of business, or for the express purpose of submission in an adjudicatory administrative proceeding.[626] Because these reports were prepared for the express purpose of submission in this investigation or the previous lumber investigation, we find that the reports are at "risk of litigation-inspired fabrication or exaggeration,"[627] which diminishes their weight.

The reports put on the record by the respondents and the petitioner each reached separate conclusions. However, the determinations made in this investigation must be based upon the language and requirements of the statute and the CVD regulations. None of the cited studies that have been placed on the record cite to the statute or to the CVD regulations. The selection of a benchmark by the Department is based solely on the language set forth in both the statute and the CVD regulations. Under the CVD regulations, while we recognize that some 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 constitutes a majority or, in certain circumstances, a substantial portion of the market.[628] Neither the Kalt Report nor the Stoner & Mercurio Report provide any analysis of actual prices within the Québec stumpage market, nor do these reports provide any analysis of the actual government presence and involvement within the Québec market as required as part of any distortion analysis under 19 CFR 351.511(a)(2)(i).

The Marshall Report does not reference the language and requirements of the statute and the CVD regulations, but rather provides an analysis of auction prices in Québec. However, under 19 CFR 351.511(a)(2)(i), government auction prices can only be used as a benchmark if the auction is based solely on an open, competitively run process. As noted above, the GOQ auction does not meet the regulatory requirements of an open, competitively run auction because the GOQ requires that all timber sold at auction must be milled within Québec. Therefore, the Marshall Report is also not relevant with respect to whether the Québec auction can serve as a benchmark. Furthermore, the Marshall Report did not provide any analysis of Québec auction prices to stumpage prices from markets that have previously been found not to be distorted such as private prices from the Atlantic Provinces in Canada and stumpage prices in the United States to support a statement that the auction prices are not distorted by the government presence within the Québec market. Nor did the Marshall Report analyze all of the bid prices submitted in the auction, both losing and winning bids, with a comparison between TSG-holders and non-TSG-

[626] *See Sandt Tech.*, 264 F.3d at 1350-51; *see also Transweb*, 812 F.3d at 1301-02.
[627] *See Sandt Tech.*, 264 F.3d at 1350-51.
[628] *See CVD Preamble*, 63 FR at 65377.

holders. The Marshall Report at paragraph 69 and footnote 72 states that the auctions are open to bidders from all regions and does not exclude or otherwise discriminate against potential exporters. However, as discussed above, the Department verified that harvested timber from the auction must be processed in Québec;[629] this restriction necessarily limits bidders.

We disagree with the GOQ that the *Policy Bulletin* of 2003[630] introduced the Department's analytical framework for provincial timber auctions. The *Policy Bulletin* was a preliminary document, through which comments were solicited from the public pertaining to proposed policies for Canadian provinces to move to market-based systems of timber sales. Those proposed policies, however, were never adopted by the Department. The Department's analysis of a provincial stumpage system is not bound by proposed ideas that were never finalized, and which neither incorporated nor addressed the solicited comments. Rather, consistent with the Department's practice we have thoroughly evaluated the record evidence to reach a finding on the market conditions existing within a provincial stumpage system pursuant to the framework set forth in 19 CFR 351.511(a)(2)(i).

Although Québec's auction system displays several competitive features, the observations outlined above lead us to conclude that the prices paid for Crown timber allocated directly to TSG-holding corporations affects the prices paid in the auction system, such that the auction does not yield prices free of distortion. Consequently, we determine that Québec's auction prices are not market-based, and, therefore, are not suitable as a tier-one benchmark. We thus are treating the timber volumes sourced from the auctions as a countervailable source of Crown timber and have included that timber in our benefit calculation. Further, consistent with the *Preliminary Determination*, we continue to apply stumpage prices for private-origin standing timber in Nova Scotia as the tier-one benchmark to measure the adequacy of remuneration of timber sourced from the Crown.

Comment 36: Whether the Department Made a Clerical Error in Its Calculation of the Québec Stumpage Benefit That It Should Correct in Its Final Determination

Resolute asserts that a formula the Department used in the *Preliminary Determination* to calculate the alleged subsidization of Crown stumpage to Resolute's Senneterre mill contains an error. The calculations spreadsheet prepared by the Department contains a formula that sums the value of all species of softwood timber consumed by the Senneterre mill; however, the formula omits Column N, which contains the value of Spruce.[631] The Department should correct this error in the final determination by revising the formula to include the value for Spruce in Column N, which is consistent with the formula used in the calculation spreadsheets for Resolute's other Québec sawmills.[632]

Department's Position: The Department agrees that the formula identified by Resolute failed to account for spruce values and, thus, constitutes an error. For the final determination, we have revised the formula to include the value of Spruce in Column N.

[629] *See* GOQ Verification Report at 18.
[630] *See Policy Bulletin*.
[631] *See* Resolute Case Brief at 33.
[632] *Id.* at 34.

Comment 37: Whether Resolute Pays Competitive Prices for Its Purchases of Non-TSG or Non-Tenured Timber

Because there is a cap on how much timber can be sourced under TSGs in Québec, Resolute states that it sources additional supply through a combination of auctions, private forest, and purchase of logs, and alleges it pays a premium to do so.[633] Resolute argues that this shows that it has an incentive to win auctions (and, thus, to not depress its bids). Likewise, in Ontario, Resolute buys additional wood supply from private forest owners and Forest Resource License holders, again, it contends, at a premium price. Resolute also argues that there is no evidence that private forest prices are depressed and, in fact, asserts that the record indicates a competitive private forest market in Ontario and Québec.

Department's Position: For the reasons detailed in Comment 31, we continue to find that Ontario's administered stumpage rates and the Crown's overwhelming share of the market, as well as the flexible supply of Crown timber that is available to tenure holders, influence the prices for private standing timber such that private prices in Ontario cannot be used as a tier-one benchmark.

With regard to Québec, the GOQ did not provide pricing information for timber sales from the private forest for use as a possible benchmark in this investigation. We thus lack the necessary pricing data and cannot address whether private sales could serve as a possible benchmark for sales of Crown timber in Québec. Further, even if prices for private-origin standing timber in Québec were available, our finding that the stumpage market in Québec is distorted would disqualify such private prices from use as a tier-one benchmark.

We disagree with Resolute's claims that limited TSG allocated volumes force it to competitively bid for auction and private-origin timber and that the existence of these allegedly-competitive markets belies the Department's finding that Québec's stumpage market is distorted. As discussed in Comment 35, evidence on the record leads us to conclude that the Québec stumpage market is distorted because the auction prices for Crown timber track the prices charged for Crown timber allocated to TSG-holding sawmills. Importantly, in reaching our distortion finding, we are not determining that the prices of auctioned, or private-origin, timber are the same as the prices for TSG-sourced standing timber. Rather, in making the distortion finding, we conclude that the prices for standing timber in the auction and private forest track the prices charged for TSG-sourced timber. Although firms, such as Resolute, may ultimately purchase auction or private timber at prices that are higher than those charged for TSG-sourced timber, the evidence on the record indicates that the auctioned or private timber prices are not independent of the prices charged in the public forest.

Further, and contrary to Resolute's claims, representatives of Québec's private forest landowners themselves state that private stumpage prices are suppressed. Yvon Parker, President of the Gatineau Wood Producers' Office, a private forest landowners syndicate, stated in the March 2016 edition of *Forestry Outlook* that "It should be noted that certain industrialists {mills}

[633] *Id.* at 17-19.

benefit from more {public}wood than they actually need, which entails sudden stops in wood deliveries, as observed on multiple occasions. In such situations, it is the private forest that foots the bill by being offered barely viable prices and facing the threat of discontinuing orders if they refuse to oblige."[634] Thus, not only do mills have a disincentive to bid competitively at auctions in Québec—as demonstrated by Parker's statement that mills have "more {public} wood than they actually need"—but, also, private prices are depressed by the surplus of wood available. Both of these facts undercut Resolute's argument that it has an incentive to not depress its bids, and that it pays a "premium" to purchase through non-TSG or non-tenure sources. Consequently, on the basis of the record evidence, we find no merit to Resolute's arguments.

Comment 38: Whether the Department Should Account for the Premiums Resolute Pays Over Auction Prices in Québec

In the *Preliminary Determination*, the Department accounted only for the cash portion of Resolute's payment to the GOQ for stumpage harvested from Crown land in Québec; however, the Department failed to account for the premium above the auction price that Resolute must pay when another bidder wins an auction and sells logs to Resolute.[635] Auction winners may be loggers and contractors, not sawmills, who harvest and sell to sawmill owners such as Resolute.

Department's Position: We understand Resolute to be proposing an adjustment to its purchases of Crown-origin stumpage to account for the "premium" above the original auction price that Resolute paid to third parties for either the right to harvest, or logs harvested from, Crown land secured by those third parties via Crown auctions. However, we need not consider whether Resolute paid a "premium" under those circumstances, or whether, if it did pay a "premium," an adjustment would be appropriate, because in the stumpage transactions Resolute reported to the Department, the company did not identify which Crown timber purchases were made *via* third parties, nor has it quantified the alleged "premiums" paid above the auction price.[636] As such, we are unable to make the requested adjustment.

Comment 39: Whether NS Private Stumpage Prices Can Serve as a Tier-One Benchmark

The Canadian Parties argue that private-origin standing timber in Nova Scotia is not available in other Canadian provinces. Thus, the Department cannot use private-origin standing timber prices in Nova Scotia as a benchmark for other Canadian provinces.[637] For example, the GOA argues:

> "{t}he jurisdictional constraint… exists because the Department's "preference for Tier 1 is based on the expectation that such {benchmark} prices would generally reflect most closely the commercial environment of the purchaser under investigation, and "{b}ecause the Department must determine whether any price differential between the goods is… not

[634] *See* Petition at Exhibit 212.
[635] *See* Resolute Case Brief at 24-25.
[636] *See* Resolute Initial QNR Response at Exhibit RESB-16; *see also* Resolute Supp QNR 6 at Exhibits RESB-1S-3, RESB-1S-4, RESB-1S-5, and RESB-1S-6.
[637] *See* GOC Etal Common Issues Case Brief, at 34-37.

> the result of differences in prevailing market conditions between the jurisdictions, it is logical that the preferred benchmark be in the same market as that where the government provision of the goods occurred.[638]

The petitioner argues that the Department properly used private-origin standing timber prices in Nova Scotia as the benchmark for New Brunswick, Québec, Ontario, and Alberta stumpage because the Nova Scotian prices constitute tier-one benchmark prices that are available in the country of provision, Canada. The petitioner further argues that the statute does not require the Department to consider availability at the provincial level when determining whether LTAR benchmarks are available in the country of provision.[639]

Department's Position: Consistent with our findings in *Lumber IV*,[640] we find that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are inside the "country that is subject to the investigation" and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i). Section 771(5)(E)(iv) of the Act expressly provides that the Department must determine the adequacy of remuneration "in relation to prevailing market conditions for the good . . . being provided. . . in the country which is subject to the investigation or review." Under section 771(3) of the Act, the term "country" means a "foreign country, a political sub-division, dependent territory, or possession of a foreign country . . ." The Department has previously found the inclusion of "political subdivision" within the definition of the term "country" ensures that the Department may investigate subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute.[641] In other words, an examination of subsidies granted by the government of the exporting country includes subsidies granted by sub-federal governmental authorities. Furthermore, 19 CFR 351.511(a)(2)(i) provides that the Department "will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question," *i.e.*, a tier-one benchmark. Thus, under our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the "country" under investigation. The province of Nova Scotia is a "political subdivision" located within the "country" of Canada, and Canada is the "foreign country" that is subject to the instant CVD investigation. Thus, we find that under the statute and the Department's regulations we are not precluded from using prices for private-origin standing timber in Nova Scotia as a tier-one benchmark when analyzing whether the various provincial governments at issue sold Crown-origin standing timber for LTAR during the POI.

As indicated elsewhere in this memorandum, the Department has excluded from the scope of the AD and CVD investigations softwood lumber products certified by the ALB as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in the those three provinces.[642] However, we disagree with the notion that the exclusion of products certified as being first produced from logs harvested

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[638] *See* GOA Case Brief at 26-27, citing to *SC Paper from Canada Preliminary Determination* IDM at 39.
[639] *See* Petitioner Rebuttal Brief at 43-44.
[640] *See, e.g., Final Results of 2nd AR* IDM at Comment 20, citing section 771(5)(E)(iv) of the Act.
[641] *See Final Results of 1st AR* IDM at Comment 35.
[642] *See* Preliminary Exclusion Memo at 8; unchanged in the final determination.

from Nova Scotia renders private stumpage prices in Nova Scotia ineligible for use as tier-one benchmarks. Regardless of whether certain lumber products from Nova Scotia are excluded from the scope of the AD and CVD investigations, the fact remains that, as explained above, Canada is the "country" subject to the investigation and, therefore, stumpage prices for private-origin standing timber from "political subdivisions" within the country, such as those from Nova Scotia, represent actual transactions in the country under investigation within the meaning of tier one of the CVD Regulations.

The Canadian Parties note that in *SC Paper from Canada*, the Department determined that electricity prices in Alberta were not available to the Nova Scotia-based respondent and, as a result, private electricity prices in Alberta were not suitable for use as a tier-one benchmark when measuring whether GNS sold electricity for LTAR.[643] The Canadian Parties argue that the Department's findings in *SC Paper from Canada* should lead the Department to similarly conclude that stumpage prices for private-origin standing timber in Nova Scotia are not suitable for use as a tier-one benchmark because it is not available for use in provinces outside of Nova Scotia. We disagree that the Department's findings in *SC Paper from Canada* preclude the Department from using stumpage prices for private-origin standing timber in Nova Scotia as a tier-one benchmark when measuring whether the GNB, GOQ, GOO, and GOA sold Crown-origin standing timber for LTAR. The Department's decision that private electricity prices from Alberta did not constitute a viable tier-one benchmark was specific to the facts of that investigation and was based upon several factors. Specifically, in *SC Paper from Canada*, the Department found that: (1) the electricity data from Alberta were not, in fact, based on actual transactions under 19 CFR 351.511(a)(2)(i), (2) Nova Scotia's sole inter-provincial electricity transmission connection was with New Brunswick and, thus, it was not possible for private electricity produced in Alberta to be provided to producers in Nova Scotia and, therefore, it was not possible to adjust the electricity prices to constitute a "delivered" price as required under 19 CFR 351.511(a)(2)(iv), (3) transmission distances limited the comparability of the electricity produced in Alberta to the Nova Scotia electricity market, and (4) even if the private electricity produced in Alberta were available in Nova Scotia, Alberta's suitability as a benchmark for Nova Scotia would still be in question by virtue of the NSUARB's regulation of electricity tariffs in Nova Scotia.[644] In contrast, the facts of the instant investigation are distinct from *SC Paper from Canada*. The purchase and transport of standing timber within Canada is not dependent upon a single, limited, means—which contrasts with the facts considered in *SC Paper from Canada* involving dedicated power transmission corridors—and, thus, it is possible for standing timber to be sold across provincial borders. Indeed, evidence on the record indicates that the New Brunswick-based JDIL purchased standing timber in Nova Scotia,[645] and that one of Resolute's Québec-based sawmills purchased standing timber in Ontario.[646]

Having determined that stumpage prices for private-origin standing timber in Nova Scotia constitute prices from within the "country" of provision, the Department examined whether

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[643] *See SC Paper from Canada* IDM at 41-42, and 128-130.
[644] *See SC Paper from Canada* IDM at 41-42.
[645] *See, e.g.*, JDIL Final Calculation Memorandum, where JDIL's datasets indicate that its stumpage benchmark is comprised of private-origin standing timber purchases from Nova Scotia.
[646] *See* Resolute Primary QNR Response, Part 2 at Exhibit RESB-16.

such prices are comparable as discussed under 19 CFR 351.511(a)(2)(i). As discussed below, based on our examination as well as our verification of the underlying data, we continue to find that private-origin standing timber in Nova Scotia are comparable to the Crown-origin timber sold in the provinces at issue and that the prices in the NS Survey constitute a reliable data source to serve as a tier-one benchmark.

Comment 40: Whether the Nova Scotia Benchmark Is Comparable to the Provinces at Issue

In the *Preliminary Determination*, the Department used the prices of private-origin stumpage in the NS Survey as a tier-one benchmark for comparison to purchases of Crown stumpage in Alberta, Ontario, and Québec, stating that the survey of private stumpage prices, which was conducted for the GNS by Deloitte in the GNS's ordinary course of business, and the disaggregated unit prices on which the report was based, contain a sizable number of observations, reflect prices throughout the province, and reflect private stumpage prices for a variety of species and log types.[647] The Canadian Parties argue that this benchmark is not comparable to the provinces in which they operate because they do not have similar prevailing market conditions. Specifically, these parties argue that the prevailing market conditions affecting Nova Scotia stumpage are too different from the other provinces based on certain key factors,[648] and that the price information included in the NS Survey is insufficient to allow proper comparison.[649]

The petitioner contends that the benchmark is suitably comparable.[650] The GNS contends that the NS Survey captured a significant volume of the private-origin standing timber harvested during the POI.

Department's Position: As discussed in the *Preliminary Determination*, and in response to other comments in this final determination, the Department finds that there are no private market prices in the provinces whose stumpage programs are under investigation that could serve as tier-one benchmarks.[651] Thus the Department continues to find that the stumpage prices from private-origin standing timber in Nova Scotia are the most appropriate benchmark to measure whether the relevant provincial governments east of British Columbia provided stumpage for LTAR. As explained in *Lumber IV*, market prices from actual transactions within the country under investigation generally are expected to reflect most closely the prevailing market conditions in the industry under investigation.[652] Further, as discussed in Comment 39 above, we find that stumpage prices for private-origin standing timber in Nova Scotia reflect private prices that are within Canada and, thus, may be used as a tier-one benchmark when determining

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[647] *See* PDM at 43-44.
[648] *See* GOC Etal Common Issues Case Brief at 38-46 and GOC Case Brief at 31-37; *see* Canfor Case Brief at 47; *see* West Fraser Case Brief at 23; and *see* Resolute Case Brief at 35-36.
[649] *See* GOC Etal Common Issues Case Brief at 39; and *see* Canfor Case Brief at 47.
[650] *See* GOC Etal Common Issues Case Brief at 37-46, GOA Case Brief at 30-39, and GOO Case Brief at 46-52; *see* Canfor Case Brief at 46-48; *see* West Fraser Case Brief at 22-23; and *see* Resolute Case Brief at 34-37. *See also* Petitioner Case Brief at 45-52; *see also* GNS Case Brief at 11-13.
[651] *See* PDM at 27-42.
[652] *See Lumber IV Final Determination* IDM at the "Market-Base Benchmark" section.

whether the relevant provincial governments at issue (the GNB, GOQ, GOO, and GOA) sold Crown-origin standing timber for LTAR.

Under 19 CFR 351.511(a)(2)(i), in choosing such in-country prices, the Department will consider factors affecting comparability. However, the legal requirements governing the Department's selection of benchmarks do not require perfection.[653] In the *Preliminary Determination*, the Department reiterated its conclusion in *Lumber IV* that "species and growing conditions are both key factors in determining the market value of standing timber."[654] The Canadian parties argue that various species differ between the provinces to such an extent that the NS Survey is not suitably comparable as a tier-one benchmark.[655] For example, the GOA contends that the fact that Alberta forests do not include red spruce (which grows in Nova Scotia) and Nova Scotia forests do not include lodgepole pine (which grows in Alberta) demonstrates that the two provinces' forests are not comparable, and, thus, disqualifies the use of private-origin standing timber prices in the NS Survey as a tier-one benchmark for Alberta.[656] We disagree with these arguments, addressed in turn below, and continue to find that though there are minor variations in the relative concentration of individual species across provinces, the standing timber in Nova Scotia, New Brunswick, Quebec, Ontario, and Alberta is harvested from similar forests and covers the same core species group (SPF). Accordingly, we find that the transactions for private-origin standing timber in Nova Scotia are comparable to the other four provinces, and suitable as a benchmark.[657]

In support of their arguments, the Canadian Parties cite to the Miller Report that concludes that species present in Quebec, Ontario, or Alberta may "tend" to be of a lower quality than in Nova Scotia, or may not be as prevalent in the Nova Scotia forest as compared to other provinces to the east of British Columbia.[658] However, we find the report's hedged conclusions, to the extent they are accurate, are not supported by any record evidence that differences in quality or species prevalence precludes a comparison between the Nova Scotia benchmark and reported Crown stumpage in the other provinces. In fact, record evidence indicates the opposite. The species included in the eastern SPF species basket, which grows in Nova Scotia, were also the primary and most commercially significant species reported in the species groupings for New Brunswick, Québec, Ontario, Manitoba, Saskatchewan, and a portion of Alberta.[659] The respondent firms'

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[653] *See*, *e.g.*, *HRS from India 2007 AR* IDM at 52, "There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. *See* section 771(5)(E)(iv) and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis."
[654] *See* PDM at 44-46 and 49.
[655] *See* GOC Etal Common Issues Case Brief at 38-42, GOA Case Brief at 31-32, GOO Case Brief at 46-51; *see* Canfor Case Brief at 47; *see* West Fraser Case Brief at 22-23; and *see* Resolute Case Brief at 35.
[656] *See* GOA Case Brief at 33.
[657] *Id.* at 44.
[658] *See* GOC Etal Common Issues Case Brief at 40-41, citing *Characteristics of Nova Scotia's Wood Fiber Market* at 22, 29-31 (Miller Report), as contained in the GOC Etal Primary QNR Response at Exhibit GOC-STUMP-7.
[659] *See* PDM at 44; and *see* GOA Primary QNR Response at ABIV-34 (timber dues rates set uniformly for "coniferous timber"); GNB Primary QNR Response at NBII-6 (Crown timber prices for "SPF Sawlogs" and "SPF Studwood & Lathwood"); Ontario Crown Timber Charges for Forestry Companies, Petition Exhibit 181 (single price for "Spruce/Jack Pine/Scots Pine/Balsam Fir/Larch"); GOQ Primary QNR Response at QC-S-37 (describing equation to set stumpage for "SPFL").

actual transactions, as verified by the Department, support our finding that SPF species continue to be the dominant species that grow in all the provinces east of British Columbia.[660] Further, as recognized by the GOC, SPF lumber has "sufficiently common characteristics to be treated interchangeably in the lumber market."[661] The interchangeability of standing timber in the SPF species category is also reflected in the manner in which the provincial governments set their stumpage prices. For example, record evidence indicates that the GNB, GOQ, and GOO treat SPF timber as a single category for data collection and pricing purposes. In particular, in New Brunswick, Québec, Ontario, and Alberta, the provincial governments charge a single, "basket" price for Crown-origin standing timber that falls within the SPF species category.[662] In Québec, the GOQ even adds larch into the SPF basket it uses to price Crown-origin standing timber, while in Ontario, the GOO adds tamarack into its SPF basket.[663] Thus, although there are some specific SPF-based species that may differ from province to province, as the provinces do not distinguish between SPF species when setting Crown timber prices, we find these differences are not disqualifying.

The Canadian Parties also argue that the evidence on the record reveals differences in the size of standing timber purchased and harvested through stumpage transactions in the different provinces, which, they allege, demonstrates that Nova Scotia standing timber is not comparable to standing timber in Alberta, and, therefore inappropriate as a benchmark.[664] Specifically, they contend that information in the NS Survey concerning the DBH of the full forest inventory does not correlate to information on harvested timber, as it includes smaller trees that have not reached maturity and are not economically harvestable.[665] We disagree. The Department verified that, in the calculation of DBH for the NS Survey, the GNS measures only merchantable trees, *e.g.* trees that are large enough to be sold for stumpage, and therefore parties' contention that trees which are not economically harvestable have been included in the NS Survey is unfounded.[666] Furthermore, even if there is some small variation in the relative average diameter of trees harvested in Nova Scotia and Alberta, the Canadian Parties have not cited evidence that this differential renders the timber insufficiently comparable. As previously stated, the legal requirements governing the Department's selection of benchmarks do not require perfection.[667] Although parties have cited evidence that standing timber prices, on some level, respond to size, they have not demonstrated that they respond to such a degree as to render Alberta and Nova Scotia trees incomparable on that basis.[668]

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[660] *See* GNS Verification Report at 8-9, NS-VE-8A-F, NS-VE-8A-C and NS-VE-10. *See also*, *e.g.*, GOO IQR at 5 and 19; *and see*, *e.g.*, GOC Etal Common Issues Case Brief at 38-42 and 70.
[661] *See* GOC Etal Common Issues Case Brief at 39.
[662] *See* GNB Primary QNR Response at NBIII-9; *see* GOO Primary QNR Response at 4 and 19; *see* GOQ Primary QNR Response at 53.
[663] *See* GOO Primary QNR Response at 4 and 19; see GOQ Primary QNR Response at 53.
[664] *See* GOC Etal Common Issues Case Brief at 42-43, *see* GOA Case Brief at 32-39; *see* Canfor Case Brief at 47; and *see* West Fraser Case Brief at 22-23.
[665] *Id.*
[666] *See* GNS Verification Report at 4-5 and NS-VE-4 at 27-30 and 34.
[667] *See, e.g., HRS from India 2007 AR* IDM at 52.
[668] Further, we reiterate that legal requirements governing the Department's selection of benchmarks do not require perfection and that the application of a standard requiring perfect comparability would likely disqualify any potential LTAR benchmark from consideration. *See HRS from India 2007 AR* IDM at 52.

Additionally, the Canadian Parties contend that the NS Survey data do not include an accurate review of all sizes of timber that would be considered "sawable" timber in Québec, Ontario, and Alberta. Specifically, the Canadian Parties claim that because logs in their respective provinces are smaller, logs that are pulped in Nova Scotia would be processed as sawlogs in Québec, Ontario, and Alberta. Thus, the Canadian Parties argue that a Nova Scotia benchmark comprised only of sawlogs and studwood logs (*e.g.*, logs that are used by sawmills) is not comparable to logs harvested and used by sawmills in Québec, Ontario, and Alberta.[669]

We disagree with this argument. In this investigation, we have focused on standing timber that is harvested by sawmills for use in the production of lumber, and thus, we instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POI.[670] Accordingly, we used a benchmark that was similarly comprised of prices charged for standing saw timber in Nova Scotia.[671] In this way, we ensured a comparison that consisted solely of logs used by sawmills to make lumber. Thus, to include pulplogs into the Nova Scotia benchmark would create a mismatch between the respondents' reported sawable timber (exclusive of pulplogs) and a broader Nova Scotia benchmark including both sawable logs and pulplogs. Furthermore, the Nova Scotia benchmark consists of two types of saw timber: sawlogs and studwood.[672] As indicated in the GNS Verification Report, while both sawlogs and studwood are softwood sawable logs used in the production of softwood lumber products, studwood generally denotes smaller diameter logs suitable for sawing into 8-foot, 9-foot, or 10-foot studs.[673] Thus, we find that the Nova Scotia benchmark incorporates a range of log types that are used by sawmills (including log types on the small end of the sawlog spectrum) that results in a conservative and comparable benchmark.

Additionally, we find the Canadian Parties' claim that logs destined for pulp mills in Nova Scotia would have been processed as sawlogs in Québec, Ontario, and Alberta to be speculative. Other than conjecture, the Canadian Parties provide no evidence for their argument. Further, Canadian Parties' claims on this point are not borne out in the record, specifically the DBH data reported by the provincial governments. The GNS reported that the quadratic mean of DBH for all softwood species on private land is 17.29 cm and 15.9 cm for SPF species. The GOA reported that the DBH of SPF standing timber species in Alberta ranges from 18.2 cm for black spruce to 24.6 cm for white spruce. The GOQ reported that the DBH of SPFL standing timber species ranges from 15 cm to 22 cm.[674] The GOO reported that the DBH of SPF logs destined to sawmills and pulpmills in 2015 was 15.32 cm.[675] Notably, the DBH measurements reported by the provincial governments reflect the DBH of standing timber in general and therefore reflect

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[669] *See* GOC Etal Common Issues Case Brief at 47-51.
[670] *See* Primary QNR, Section III, at Table 1, which instructed the respondent firms to report all their sawmills' purchases of Crown-origin standing timber.
[671] *See* GNS Verification Report at 6 and NS-VE-3, which indicate that the NS Survey contained two log types: sawlogs and studwood, defined as logs "intended" to be sawn into lumber.
[672] *See* GNS Pre-Verification Correction Data - NS-VE-1, Attachment 5, dated June 28, 2017.
[673] *See* GNS Verification Report at 4.
[674] *See* GOQ Primary QNR Response at Vol. 1 at 24.
[675] *See* GOO Primary QNR Response at Exhibit ON-GEN-7-C at 3.

the diameters of logs that were used by sawmills and pulpmills.[676] As noted in the *Preliminary Determination*, the DBH of standing timber in Nova Scotia's private forests are in line with and comparable to the DBH of trees that grow in the Crown forests of the provinces east of British Columbia whose stumpage programs are under examination.[677] The fact that the DBH of standing timber across the provinces at issue falls within the same general range belies the Canadian Parties' claim that private-origin standing timber in Nova Scotia is disproportionately larger compared to trees in Quebec, Ontario, and Alberta thereby requiring the inclusion of pulp-grade logs into the Nova Scotia benchmark in order to ensure comparability.[678]

We also disagree with the Canadian Parties that there are fundamental differences between the Acadian forest (which encompasses Nova Scotia) and the boreal forest (which encompasses Québec, Ontario, and large areas of Alberta). As discussed in the *Preliminary Determination*,[679] we find that species and DBH are the two most critical elements when assessing whether prices for private-origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta. While Nova Scotia is not located in the same forest as Québec, Ontario, and Alberta, as discussed above, the two forests are comparable in terms of species and DBH in that both forest regions are dominated by SPF-based species and the DBH of the forests' standing timber are in line with one another. We also find that the Canadian Parties have not cited any evidence demonstrating that growing conditions in the Acadian and boreal forests are so different as to render trees from the two forests incomparable to one another.

The Canadian parties also argue that Nova Scotia is a geographically small province and that wood fiber is relatively close to the manufacturing facilities. They argue that the province's established infrastructure ensures access to wood fiber without the need for long hauls or expensive road construction or maintenance costs.[680] They further argue that the sawmills in Nova Scotia are close to their respective tree stands and benefit from a well-developed infrastructure that minimizes the costs associated with transporting harvested timber, which in turn, allows private land owners to charge higher stumpage prices. The Canadian Parties also argue that the short distances from tree stand to mill and the well-developed infrastructure that exists in Nova Scotia are not present in the other provinces under examination and that this fact calls into question whether private-origin standing timber prices in Nova Scotia are sufficiently comparable to be used as a tier-one benchmark.

In making their arguments on this point, the Canadian Parties rely on information and conclusions in the Asker Report. The Asker Report states that Nova Scotia has 0.49 kilometers

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[676] *See* GOQ Primary QNR Response at Vol. 1 at 22-24; *see also* GOO Primary QNR Response at Exhibit ON-GEN-7-C.
[677] *Id*.
[678] Further, as noted elsewhere in this memorandum, the legal requirements governing the Department's selection of benchmarks do not require perfection and that imposition of such a requirement would likely preclude the use of most, if not all, potential tier-one benchmarks. *See*, *e.g.*, *HRS from India 2007 AR* IDM at 52.
[679] *See* PDM at 45-46.
[680] *See* GOC Etal Common Issues Case Brief at 45, citing to *Economic Analysis of Factors Affecting Cross Jurisdictional Stumpage Price Comparisons* by John Asker, Ph.D. at 52-53 (Asker Report), as contained in the GOC Etal Primary QNR Response at Exhibit GOC-Stumpage 6.

of road per square kilometer of land, while Alberta has only 0.34 kilometers of road per square kilometer. And, based on this information, the Asker Study concludes that:

> . . . assuming the same cost for constructing a meter of road, and assuming this road density difference is similar in forest regions, the road density difference between Nova Scotia and Alberta could result in total construction differences of approximately C$1,000 per square kilometer . . .”[681]

As noted by the petitioner, the Canadian Parties’ assumptions are further based on an estimate of average road construction costs offered by “one Nova Scotia logger.”[682] As the quote from the Asker Study reveals and as the petitioner highlights, the Canadian Parties’ claims concerning the relative differences in tree stand to mill distance and infrastructure development between Nova Scotia and the provinces of Québec, Ontario, and Alberta are based on two assumptions and estimated data from a single logger in Nova Scotia. Thus, we find the conclusions in the Asker Report to be based on speculation and not substantial evidence. Additionally, in contrast to the conclusions of the Asker Study, information from the respondent parties indicates that some mills are located close to their respective standing timber sources, thereby resembling the conditions that Canadian Parties claim exist in Nova Scotia.[683] Thus, to the extent such differences in hauling distance and infrastructure development exist, we find that the Canadian Parties have not adequately substantiated and quantified the extent of the purported differences or that any differences are reflected in Nova Scotia stumpage prices.

The Canadian Parties also argue that the Nova Scotia market for softwood stumpage is influenced by the number and distribution of pulp mills in the province. Specifically, the Canadian Parties argue that the demand from pulp mills for wood fiber exerts upward pressure on stumpage prices by creating competition for stumpage rights and by providing an outlet for lower-quality timber harvested by sawmills and for sawmill residual products, which may result in sawmills paying more for standing timber.[684] They claim the upward pressure on stumpage prices in Nova Scotia is not present in Québec, Ontario, and Alberta, and should lead the Department to refrain from using private prices for standing timber as a tier-one benchmark. Once again, the Canadian Parties claim a difference exists between the market for private-origin standing timber in Nova Scotia and the other provinces at issue but, other than claiming that pulp mill distribution “influences” stumpage prices in Nova Scotia in a manner that is not present elsewhere in Canada, they fail to quantify the extent of the purported difference or even to demonstrate that such a difference exists. Thus, we find that Canadian Parties have not substantiated their claims concerning the “influence” of pulp mill distribution, nor have they demonstrated that any such difference renders the two sources incomparable on that basis.

We find that the remaining differences between the Nova Scotia timber market and the timber markets in Québec, Ontario, and Alberta, as alleged by the Canadian Parties, involving land ownership distribution, land management policies, and contractions in the lumber industry

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[681] *See* Asker Report at 52-53.
[682] *See* Petitioner Case Brief at 51, citing to Asker Report at 52-53.
[683] *See*, *e.g.*, the KPMG Report at Schedule 2.
[684] *See* GOC Etal Common Issues Case Brief at 45, citing to Asker Study at 53-54.

associated with the 2007-2009 recession in Nova Scotia, do not render the NS Survey prices unsuitable as a benchmark.[685] Regarding these supposed dissimilarities, the Canadian Parties do not provide enough information to determine the relative impact, if any, of land ownership distribution or land management policy differences as well as any lingering differences in the impact of the recession across the aggregated actual transactions. Moreover, we find that these and other arguments regarding comparability incorrectly presuppose that the Department must meet an impossible standard of finding a tier-one benchmark that accounts for every purported market condition. As noted elsewhere in this memorandum, the Department has previously rejected the notion that its tier-one LTAR benchmarks must be identical to the good sold by the foreign government because the application of such a standard would inevitably lead to the disqualification of most, if not all, potential LTAR benchmarks under consideration.[686]

Based on the foregoing, we continue to find that prices for private origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in New Brunswick, Québec, Ontario, and Alberta and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).

Comment 41: Whether Nova Scotia's Private Stumpage Survey Data Are Flawed

The Canadian Parties argue that flaws in the NS Survey itself should prevent the Department from relying on it as a tier-one benchmark. The Canadian Parties argue that the NS Survey: (1) omitted stumpage prices for pulp logs that accounted for a significant portion of the softwood timber harvested in the province, (2) contained biases in the transaction sizes and the regional make-up of the pricing data improperly skewed the prices upwards, (3) eschewed realistic conversion factors in favor of outdated conversion factors that overstated volume and price, and (4) contained systemic flaws that overstated prices.[687] The Canadian Parties further imply the NS Survey is unreliable because it contains prices for 9 months of the POI.[688] The GOO argues that the survey is an incomplete and distorted sample of prices because it lacks purchase data from small-sized purchasers and transactions involving industrial freehold land.[689] The GOQ argues that NS Survey data are skewed because they are based on a very small sample size stemming from low response rates to the survey. The GOQ further argues that the overall volume in the survey is very small compared to the volumes harvested in Quebec.[690] The GOA claims that the NS Survey is not reliable because many of the transactions do not represent actual prices paid to private landowners for stumpage.[691]

The petitioner argues that the NS Survey reflects valid and accurate benchmark data.[692] The GNS argues that the NS Survey is robust and was verified; the survey results are reliable and representative of private stumpage prices in Nova Scotia.[693]

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[685] *See* GOC Etal Common Issues Case Brief at 46.
[686] *See HRS from India 2007 AR* IDM at 52.
[687] *See* GOC Etal Common Issues Case Brief at 34-71.
[688] *Id*. at 63.
[689] *See* GOO Case Brief 54-56.
[690] *See* GOQ Case Brief at 42-43.
[691] *See* GOA Case Brief at 39-40.
[692] *See* Petitioner Rebuttal Brief, at 52-55.
[693] *See* GNS Rebuttal Brief, at 4-11.

Department's Position: We disagree with the Canadian Parties' arguments that the data in the NS Survey are flawed and not suitable for use as a tier-one benchmark. The Canadian Parties argue that pulplogs comprise a significant portion of the timber harvest in Nova Scotia and, thus, the failure to capture pulplog prices constitutes a major flaw in the NS Survey. We disagree. The portion of the log harvest accounted for by pulp-grade logs in Nova Scotia is not relevant to the Department's analysis. As discussed elsewhere in this memorandum, as part of its analysis of whether the provincial governments at issue sold Crown-origin standing timber for LTAR, the Department instructed the respondent firms to report the volume and value of standing saw timber that their respective sawmills purchased from the Crown during the POI.[694] As a result, the volume of Crown-origin standing timber reported to the Department by the respondents does not include logs destined for pulp mills. The prices contained in the NS Survey similarly reflect the prices paid for standing timber identified as sawlogs and studwood, which are the two log types that are processed by sawmills, and, as such, reflect the same log types that were included in the stumpage data reported to the Department by the respondent firms.[695] Thus, to include pulplogs into the Nova Scotia benchmark, as suggested by the Canadian parties, would create an imbalance in the benefit calculation.

Furthermore, we disagree with the Canadian Parties' claims that the log type definitions utilized by the NS Survey were unclear and render the survey results unreliable. The Canadian Parties take issue with the fact that the NS Survey relied on definitions that were based entirely on intended use and that it was not clear at what point the intended use was to be determined or by whom. The log type classifications contained in the NS Survey reflect definitions that harvesters in Nova Scotia use in the ordinary course of business.[696] Additionally, the use of log type definitions that are based on intended use is not limited to Nova Scotia. The GOQ, GOO, and GOA rely on similar use-based definitions when determining whether a log is classified as a sawlog or a pulplog.[697] Thus, the fact that provinces in which the provision of stumpage for LTAR is under examination utilize use-based definitions when categorizing log types supports our finding that usage-based definitions in the NS Survey are sound and reliable. Further, the Department verified that, based on these production definitions, the NS Survey covered only private stumpage transactions for softwood sawable products, which is the same merchandise for which we are seeking a benchmark.[698] Moreover, the source documents that we examined at verification for individual transactions included in the NS Survey identified no purchases of pulpwood logs.[699]

The Canadian Parties also argue that the fact that a non-sawmill facility was among the largest studwood purchasers in the NS Survey calls into question the reliability of the survey data. The

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[694] *See* Primary QNR, Section III, at Table 1, which instructed the respondent firms to report all their sawmills' purchases of Crown-origin standing timber.
[695] *See* GNS Verification Report, NS-VE-6 at 7, which indicates that the NS Survey only solicited information on log types that are processed by sawmills (e.g., sawlogs, studwood, and lathwood).
[696] *See* GNS Verification Report at 4, "the definitions reflect common product types, and they are the terms used in the normal course of business for lumber mills."
[697] *See, e.g.*, GOO Primary QNR Response at 4, "the Province of Ontario classifies its stumpage sales based on the destination. That is, in Ontario if the timber harvested is destined to a sawmill the timber is considered a sawlog…."
[698] *See* GNS Verification Report, NS-VE-6 at 7, which indicates that the NS Survey only solicited information on log types that are processed by sawmills (*e.g.*, sawlogs, studwood, and lathwood).
[699] *See* GNS Verification Report, at 3, and 8-9.

Canadian Parties argue this fact demonstrates that the survey data do not, as the GNS claims, reflect use-based definitions for log types and that the survey data do not contain prices for standing timber but instead reflect prices paid for only part of the harvested tree. We disagree with the Canadian Parties' arguments.

In discussing how sawmills use sawlogs and studwood logs in their production process and the types of mills that use softwood logs and studwood logs, the GNS stated the following:

> . . . based on the general characteristics of a tree, the harvester can determine the best use of the tree. {The GNS} added that trees can produce several different types of log types (*e.g.*, pulplog, studwood, sawlog). In such instances, the seller of the tree would sell the section of the tree to the appropriate mill for that quality of the wood (*e.g.*, the studwood length to a studmill, the sawmill length to a sawmill, etc.).[700]

At verification, the officials who conducted the NS Survey explained that "Companies will sell the portion of the harvest not suited to their mill as roadside sales to other mills," and that the NS Survey "surveyed initial studwood and sawmill grade purchases, as brought through the mill gate from the logging site."[701] Additionally, the NS Survey explicitly instructed the respondents to submit data on purchases of standing timber and not for harvested logs.[702] Further, at verification, the Department examined standing timber purchases made by the non-sawmill in question and "verified that this purchase was for subject studwood."[703] In particular, the source documents for the non-sawmill in question reflect a stumpage price for a product that is identified as studwood.[704] Thus, the source documents demonstrate that the non-sawmills paid a stumpage price for standing timber and not, as the Canadian Parties' claim, a price that reflects only a portion of a harvested log. Our review of source documents for other transactions contained in the NS Survey also reflect the purchase of standing timber, as opposed to the purchase of a portion of harvested log.[705]

We also disagree with the Canadian Parties' claims that the NS Survey contains biases in terms of transaction size and that the regional make-up of the pricing data improperly skewed the prices upwards. According to the Canadian Parties, the size of the transactions in the NS Survey indicate that the prices do not reflect payments for a given tree, but, rather, are lump-sum prices that reflect the cost of stumpage rights for an entire tree stand. They further argue that the volumes in the NS Survey only reflect volumes associated with harvested sawlog and studwood logs that are destined for sawmills. In other words, the Canadian Parties claim that the value data in the NS Survey are broader than the volume data from the survey, which in turn results in an overstated benchmark unit price. The Canadian Parties contend that their lump-sum price theory is bolstered by the fact that much of the survey data come from the Eastern region of Nova Scotia where the Port Hawkesbury Paper mill is located, a facility that they claim purchases timber in lump-sum transactions.

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[700] *See* GNS Verification Report at 4.
[701] *Id*.
[702] *See* GNS Verification Report, NS-VE-6 at 33.
[703] *See* GNS Verification Report at 8.
[704] *Id*. at NS-VE-7.
[705] *See* GNS Verification Report, at 3, and 8-9.

Other than noting that certain transactions in the NS Survey contain relatively low volumes, the Canadian Parties provide nothing more than conjecture to support their claim that the stumpage data reflect values for an entire tree stand while the volumes in the survey reflect only limited volumes of certain, specified log types. Further, record evidence contradicts the Canadian Parties' claims. For example, the NS Survey very clearly instructed survey respondents to report the "stumpage rates" they paid for "softwood sawlogs,"[706] and the source documents on which the NS Survey is based indicate stumpage prices paid for sawlogs and studwood.[707] Further, in making their arguments, the Canadian Parties fail to mention that Deloitte conducted on-site verifications to ensure that the survey respondents submitted accurate information that adhered to the survey instructions.[708]

We also find that Canadian Parties' comments concerning the regional make-up of the NS Survey data do not support their claim that the value data in the survey are overly broad. The Canadian Parties' comments on this point hinge on the following assumptions: (1) Port Hawkesbury Paper, in addition to buying standing timber in lump-sum transactions, accounted for a substantial number and volume of the transactions contained in the NS Survey, (2) despite the instructions in the survey to provide "stumpage rates" for "softwood sawlogs," Port Hawkesbury Paper responded to the survey with volume and value data that were not on the same basis, and (3) the purported flaws in the data submitted by Port Hawkesbury Paper are representative of the flawed data reported by the remaining survey respondents. First, it is not clear that Port Hawkesbury responded to the NS Survey. The NS Survey indicates that not all recipients of the survey chose to participate.[709] Further, other than the survey respondents whose source documents the Department examined at verification, the identities of the survey respondents are not on the record.[710] Thus, it is speculative to claim that Port Hawkesbury responded to the NS Survey. Moreover, in the absence of any source documentation, and based on the reasons discussed above, it is even more speculative to claim that the survey results from Eastern Nova Scotia contain volume and value data that are not on the same basis.

Further, how the GNS uses the private forest data collected in the NS Survey and the information reviewed by the Department at verification undercuts the Canadian Parties' claims that the NS Survey is unreliable. The GNS, in the ordinary course of business, relies on periodic surveys of private-origin standing timber as the basis for setting Crown-origin stumpage prices. The data in the NS Survey collected on behalf of the GNS was for a similar purpose.[711] Further, the record indicates that the GNS commissioned the NS Survey several months prior to the filing of the Petition, and that the survey was not conducted specifically for purposes of the instant CVD investigation.[712] Moreover, information from the GNS contradicts the Canadian Parties' allegation that the NS Survey contains value data that are overly broad. In its initial questionnaire, the GNS explained that Deloitte "specifically sought to validate several data

[706] *See* GNS Verification Report at NS-VE-6 at 27.
[707] *See* GNS Verification Report at NS-VE-8E at 2.
[708] *See* GNS Verification Report at NS-VE-6 at 45-47.
[709] *See* GNS Verification Report, NS-VE-6 at 10.
[710] *See* GNS Verification Report, NS-VE-1 at Attachment 5.
[711] *See* PDM at 43.
[712] *See* GNS Verification Report at 6.

elements, including . . . confirmation that the reported value included only the transaction price for the private stumpage, excluding the payment of private silviculture fees, and excluding any non-stumpage charges that may have been 'bundled' in the Registered Buyer's records."[713] And, at verification, the Department confirmed that the term "transaction," as used in the NS Survey, reflected the negotiated, contracted price between the buyer and seller.[714] On this basis, we find there is no evidence supporting the Canadian Parties' claims that the value and volume data in the NS Survey were collected on a different basis.

In addition, the survey data examined by the Department at verification contain volume and value information that permits the Department to calculate a benchmark stumpage price on a weighted-average basis. As the Court has previously noted, when calculating an LTAR benchmark weight-averaging assigns each price a weight proportional to the quantity shipped at that price, thereby ensuring that high values with corresponding low volumes do not skew the benchmark upward.[715] Thus, even if there are abnormally low volume, high value transactions present in the NS Survey, a possibility that we find the Canadian Parties have failed to demonstrate, weight averaging the data ensures that such observations will not skew the benchmark. Further, Deloitte, the firm that conducted the NS Survey on behalf of the GNS, performed statistical analyses on the survey data to ensure that the data points did not substantially deviate from the mean.[716]

We also disagree with the Canadian Parties that the conversion factors used in the NS Survey to convert the data into a common unit of measure improperly skewed the data. The Canadian Parties claim that the NS Survey relied on an outdated, unreliable conversion factor. On this point, the Canadian Parties fail to mention that the conversion factor utilized in the NS Survey is the same conversion factor used by the GNS in its ordinary course of business.[717] In fact, at verification, Deloitte stated that the use of the conversion factor by the GNS was the very reason it relied upon the factor for purposes of the NS Survey.[718] The fact that the GNS relies upon the conversion factor in question as part of its ordinary course of business leads us to conclude that the factor is reliable. Moreover, although the Canadian Parties express concern with the conversion factor's age, particularly in light of intervening changes to the Nova Scotia scaling manual, their concern is unfounded. The GNS confirmed between 2001 and 2009 that the conversion factor continues to be accurate for use in government business, with any "minor difference" being "statistically insignificant."[719]

The Canadian Parties also argue that data for a survey respondent's transaction, as contained in the NS Survey, are flawed due to mistaken assumptions that Deloitte employed when selecting the conversion factor. Cross referencing the NS Survey data with other proprietary stumpage

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[713] *See* GNS Primary QNR Response at Exhibit NS-5 at 4.
[714] *See* GNS Verification Report at 7. The verbatim definition of the term "transaction," as employed in the NS Survey, is business proprietary and cannot be provided in this memorandum.
[715] *See RZBC Group*, 100 F.Supp. 3d at 1309.
[716] *See, e.g.*, GNS Verification Report, VE-6 at 20.
[717] *See* GNS Verification Report at 9.
[718] *See* GNS Verification Report, NS-VE-1, Attachment 3 at 4, "Confirmation that the official conversion factors delineated by NSDNR, and summarized at Appendix A, were applied."
[719] *See* GNS Primary QNR Response at 14.

data on the record, they claim the error involving this survey respondent is pervasive and, thus, calls into question the reliability of the rest of the NS Survey data. We disagree. As noted by Deloitte officials, not all of the survey respondents reported their purchases of private-origin standing timber in the same unit of measure.[720] Thus, to ensure that the private stumpage survey data were aggregated on a uniform basis, Deloitte officials, where necessary, converted the standing-timber purchases reported on a tonnage basis into cubic meters using a conversion factor of 1.167, which corresponds to the conversion factor used by the GNS.[721] During examination of one of the pre-selected transactions, Deloitte officials explained that they had inadvertently applied the wrong conversion factor to a survey respondent's reported transaction. At verification, Deloitte officials "backed out" the incorrect conversion and recalculated the conversion using the standard 1.167 factor that was applied to the transactions contained in the NS Survey, thereby correcting the error.[722] We collected the calculations and source documents related to the correction.[723] Thus, we find that Deloitte officials properly substantiated and corrected the error involving the transaction at issue.

Due to confidentiality agreements, the GNS and Deloitte were unable to divulge the identities of the respondents to the NS Survey. Thus, other than the names of parties that were identified at verification during our examination of source documents for individual transactions listed in the NS Survey, the list of parties that responded to the NS Survey is not on the record. Therefore, we find that there is an insufficient basis to infer the identities of the parties that responded to the NS Survey and therefore we reject the Canadian Parties' claims that the same conversion error remains uncorrected for a substantial portion of other transactions reported in the NS Survey data. Further, we have information on the record regarding the survey respondent whose transaction was incorrectly converted; we find that other record evidence from this party, submitted outside of the NS Survey, counters the Canadian Parties' claim that the conversion error was pervasive in the NS Survey.[724]

When compiling the NS Survey, Deloitte officials incorporated a price adjustment involving one of the survey respondents into the survey data.[725] However, in preparing for verification, Deloitte officials, in order to improve the accuracy of the data, revised the treatment of the price adjustment for this survey respondent. During the minor corrections phase of verification, Deloitte officials explained this revision to the survey respondent's data and stated that the revision only involved a single survey respondent.[726] At verification, we examined individual transactions that involved this survey respondent. Our review of the documentation revealed no discrepancies.[727] The Canadian Parties claim this revision demonstrates the unreliability of the

[720] *See* GNS Verification Report at 9 and NS-VE-1, Attachment 3, page 4, footnote 4.
[721] *See* GNS Verification Report at 9.
[722] *Id.*
[723] *Id.*
[724] *See* Petitioner Rebuttal Brief at 57, which cites to business proprietary information that cannot be summarized on the public record.
[725] *See, e.g.*, GNS Verification Report, NS-VE-1, Attachment 3 at 4, footnote 3 where this this price adjustment is discussed. Discussion of the price adjustment involves business proprietary information and, therefore, we can only describe it in general terms in this memorandum.
[726] *See* GNS Verification Report at 3 and NS-VE-1.
[727] *Id*.

NS Survey. The GOA further argues that this price adjustment demonstrates that the NS Survey does not reflect actual prices paid to private landowners. We disagree with both these claims. As an initial matter, nearly every provincial government and respondent firm under examination in this investigation submitted revisions and minor corrections at verification.[728] Thus, the fact that the GNS provided minor revisions to its questionnaire responses at verification does not distinguish it from the other Canadian parties involved in this proceeding. Also, as noted above, the Deloitte officials have long been aware of the price adjustment at issue, discussed the price adjustment in the report that summarizes the NS Survey, and, during the minor corrections phase of verification, merely revised their treatment of the price adjustment because they found it yielded a more accurate stumpage price.[729] Further, the price adjustment does not constitute a revision of the underlying data in the NS Survey, but, rather, a change in how the price adjustment was applied with regard to purchases made by a single survey respondent.

Concerning the GOA's claim that the NS Survey does not reflect actual stumpage prices paid to private landowners, proprietary information in the GNS Verification Report makes it clear that the survey data, including the price adjustment involving the survey respondent at issue, reflected actual standing timber prices.[730] Thus, we reject the Canadian Parties' claim that this revision in the treatment of a price adjustment for a single survey respondent constitutes evidence that the entire NS Survey is unreliable.

We disagree with the GOQ's claims that the NS Survey is skewed due to a small sample size and low response rate. The NS Survey "included approximately 36% of private softwood sawable volume purchased in Nova Scotia" during the survey period,[731] which we find constitutes sufficiently robust sample size of Nova Scotia's private harvest. We also disagree that the NS Survey had a low response rate. Deloitte identified 26 registered buyers as potential survey respondents, of which only five either could not be contacted or chose not to participate.[732] Further, the NS Survey, in terms of the number of respondents and the absolute volume of SPF timber reported by the survey respondents, is on par with the private-origin standing timber harvest data contained in the MNP Ontario Survey that the GOO placed on the record of the investigation to support its claim that Ontario's private stumpage is not distorted.[733]

Additionally, the Canadian Parties imply that the NS Survey is unreliable because it "covered only the latter three quarters of the POI"[734] while the GOQ argues that the NS Survey is flawed because total volume in the survey is small compared to the volume of auction-origin timber harvested in Québec.[735] As noted elsewhere, the legal requirements governing the Department's selection of benchmarks do not require perfection.[736] Further, in the case of Québec and Alberta,

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[728] *See, e.g.*, GOQ Verification Report and Resolute Verification Report.
[729] *Id*. at 2-3.
[730] *See* GNS Verification Report at 8 and Exhibit NS-VE-8C.
[731] *See* GNS Verification Report at NS-VE-6 at 10.
[732] *Id.*
[733] *See* GOO Primary QNR Response at Exhibit ON-PRIV-1 at 2-3.
[734] *See* GOC Etal Common Issues Case Brie at 63.
[735] *See* GOQ Case Brief at 63 and
[736] *See*, *e.g.*, *HRS from India 2007 AR* IDM at 52, "There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. *See also* section

the Department is conducting its stumpage benefit calculation on an annual basis and, thus, calculated the Nova Scotia benchmark as a weighted annual average comprised of monthly data for the months April through December 2015, thereby mitigating the lack of monthly data for the months of January through March. Additionally, the lack of data for three of the 12 months of the POI is not limited to the NS Survey. The aggregate auction dataset submitted by the GOQ, which the GOO argues may serve as the basis for a tier-one benchmark for Crown-origin stumpage purchases in Ontario, lacks pricing data for SPF species for the months of March, April, and June and, for the appearance grade species, lacks pricing data for four out of the 12 months during the POI.[737] Similarly, the proprietary stumpage purchase dataset submitted by Resolute lacks private purchase and auction purchase data for certain months of the POI, yet these omissions have not prevented the GOQ and Resolute from arguing that the Department should rely on these data as the basis of its tier-one benchmark.[738]

We also disagree with the GOQ that the Department should dismiss the NS Survey because the total volume contained in the survey is small compared to the volumes sold in Québec. To accept this argument is to reject the use of the NS Survey data simply because the overall private-origin standing timber harvest in Nova Scotia is smaller than that of Québec. Such an argument ignores the fact that the Department has found the Nova Scotia market for private-origin timber to be non-distorted,[739] a finding that the Canadian Parties do not dispute. Further, the GOQ's argument on this point overlooks the fact that for certain months in its aggregate auction price dataset, the volume of auction-origin timber is on par with volumes sold in Nova Scotia.[740]

Additionally, we disagree with the GOO that the NS Survey is unreliable because it did not include standing timber from industrial freehold lands and because the survey lacks data from "small loggers and harvesters."[741] The GOO's concerns regarding the absence of industrial freehold volumes in the NS Survey are addressed and allayed by information provided by the GNS in its initial questionnaire response where it explained that (1) "softwood timber harvested on industrial freehold lands is not a significant portion of the softwood timber harvested in Nova Scotia," (2) "the purchase and harvesting of timber on industrial freehold lands has no meaningful impact on the purchase and harvesting of timber on small private woodlots," and (3) "generally speaking, owners of industrial freehold lands do not typically offer their standing timber for sale to unrelated third parties. If any industrial freehold wood is sold to third parties, these transactions typically involve the sale of harvested logs where the owner does not have a use for those logs in its own facility."[742] Thus, we find the GOO's concerns on this point to be misplaced.

771(5)(E)(iv) and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis."

[737] *See* GOQ Primary QNR Response at Exhibit Stump-6, Table 11.

[738] *See* Resolute Primary QNR Response at Exhibit RESB-16; *see also* Resolute Supp QNR 6 Response at Exhibits RESB-1S-3, RESB-1S-4, RESB-1S-5, and RESB-1S-6.

[739] *See* PDM at 42-43.

[740] *See* GOQ Primary QNR Response at Exhibit Stump-6, Table 11; *see also* GNS Verification Report, Exhibit NS-VE-1, Attachment 4.

[741] *See* GOO Case Brief at 54-56.

[742] *See* GNS Primary QNR Response at 19.

As for the GOO's claim that the NS Survey lacks purchase data from small-sized loggers and harvesters and, thus, is not representative of Nova Scotia's private timber market, as noted above, the NS Survey covered "approximately 36 percent of private softwood sawable volume purchased in Nova Scotia" during the survey period," a sample size that we find to be sufficiently robust and representative.[743] Further, the GNS's "policy" has been to benchmark the prices it charges for Crown-origin standing timber based on the prices paid by Registered Buyers (*e.g.*, buyers who acquire more than 5,000 m^3 of standing timber in a year).[744] Thus, the decision by Deloitte officials to limit respondents to the NS Survey to private-origin standing timber purchases made by Registered Buyers merely adopts the long-standing practice of the GNS.[745] Further, we find it is reasonable to assume that, as with most commodity products, the relatively high-volume purchases made by Registered Buyers would result in unit prices that are lower than the unit prices resulting from relatively-low volume purchases made by small loggers and harvesters. Thus, in this regard, the lack of such purchases by small loggers and harvesters makes the NS Survey more, not less, conservative.

For the above reasons, we continue to find that the data from the NS Survey are reliable. Accordingly, we find that the data in the NS Survey are an appropriate tier-one benchmark to measure the respondent firms' benefits from the provision of stumpage by the various eastern provinces for LTAR.

Comment 42: Whether the Department Should Make Adjustments to the Nova Scotia Benchmark

In the *Preliminary Determination*, the Department calculated a countervailable benefit to respondents from the provision of stumpage for LTAR in the provinces of Alberta, Ontario, and Québec using private stumpage survey data based on data from the NS Survey.[746] The Canadian Parties argue that if the Department continues to use the NS Survey as a benchmark for those three provinces, it should make certain adjustments to the benchmark.[747] Specifically, the Canadian Parties argue that the Department should not include the C$3.00 per cubic meter ($m^3$) silviculture fee charge in the benchmark, while the petitioner asserts that the Department should

[743] *See* GNS Verification Report, Exhibit NS-VE-6 at 10.
[744] *See, e.g*, GNS Verification Report at 5 for a discussion of how the GNS defines the term Registered Buyer; *see also* GNS Primary QNR Response at NS-5 at 1: "it is the policy of Nova Scotia Department of Natural Resources (NSDNR) that its Crown land stumpage rates (*i.e.*, the price to be paid for the right to harvest standing trees on Crown lands) be set so that the price of Crown timber reflects the price negotiated between private parties in a competitive marketplace. Accordingly, periodic surveys are conducted of Registered Buyers who routinely purchase stumpage from independent private land owners in order to assess pricing negotiated by private parties in a competitive marketplace."
[745] *See* GNS Primary QNR Response at NS-5 at 1.
[746] *See* PDM at 42-46.
[747] *See* Canfor Case Brief at 47-48 and 53-54; *see* West Fraser Case Brief at 24-25; *see* Tolko Case Brief at 34; *see* Petitioner Case Brief at 30-35; Petitioner Rebuttal Brief at 59-60; *see* GOC Etal Common Issues Case Brief at 55-58, 64-66, 69-71, and 73-79, GOA Case Brief at 40-44 and 63-64, GOO Case Brief at 3 and 53, and GOQ Case Brief at 45.

include the full C$3/$m^3$ fee in the benchmark.[748] Additionally, the Canadian Parties argue that the Department should apply more accurate conversion factors to convert the private stumpage NS Survey data from metric tons to cubic meters.[749]

The Canadian Parties also take issue with how the Department indexed the pricing data from the NS Survey. The Canadian Parties argue that the Department's indexing method was unlawful because the indexed prices were not actual transactions and were not even indexed to transactions involving the good in question, but were instead based on an all-commodities index.[750] They further argue that because the commodity index inflator that the Department relied upon was higher in the first quarter of the POI than during the remainder of the year, the Department's indexing method created a stumpage unit price for the first quarter that was higher than the rest of the POI. They claim the disparity stems from seasonal patterns in timber harvesting for which the Department's indexing method fails to account. The Canadian Parties also claim that the Department took seasonal patterns into account in *Lumber IV*[751] and that the Court has previously instructed the Department to rely on data on the record, rather than indexed data, when such data are available.[752]

Further, the Canadian Parties argue that the Department should revise its method for adjusting the benchmark to account for the share of sawlogs and studwood logs harvested in Nova Scotia during the POI. In particular, they argue the Department's reliance on the studwood/sawlog ratio from *Lumber IV* is flawed and should be adjusted based on information included in the NS Survey.[753]

The Canadian Parties also argue that the Department should adjust the benchmark to account for differences in distance from timber stand to mill between provinces,[754] and to account for pulpwood stumpage prices as well as for species variance among the provinces.[755]

The petitioner argues that the Nova Scotia benchmark appropriately uses only sawlogs and studwood, the GNS survey employs a reliable conversion factor, the alleged differences in transportation costs are immaterial to the benchmark, and the Department correctly excluded access, harvesting or hauling cost adjustments from the benchmark because such costs do not reflect log prices.[756]

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[748] *See* Canfor Case Brief at 53-54; *see* GOA Case Brief at 64, GOQ Case Brief at 45; and GBC Case Brief at 12; *see* JDIL Rebuttal Brief at 2-7. *See also* Petitioner Rebuttal Brief at 30-35.
[749] *See* Canfor Case Brief at 48; *see* West Fraser Case Brief at 24-25 and 29-30; *see* GOC Etal Common Issues Case Brief at 55-58 and 78-79 and GOA Case Brief at 42-43.
[750] *See* the GOC Etal Common Issues Case Brief 63-64.
[751] *See* GOC Etal Common Issues Case Brief at 64.
[752] *See Shenzhen*.
[753] *See* GOC Etal Common Issues Case Brief at 66 and GOO Case Brief at 3.
[754] *See* Canfor Case Brief at 53-54; *see* GOA Case Brief at 64, GOQ Case Brief at 45; *see* GOC Etal Common Issues Rebuttal Brief at 4-11, GOO Rebuttal Brief at 2-3 and GOQ Rebuttal Brief at 12; *see* JDIL Rebuttal Brief at 2-7.
[755] *See* Canfor Case Brief at 48; *see also* West Fraser Case Brief at 25; *see also* GOC Etal Common Issues Case Brief at 70-71; *see also* GOA Case Brief at 43-44 and 64; *see also* GOO Case Brief at 33; *see also* GOQ Case Brief at 44-45.
[756] *See* Petitioner Rebuttal Brief at 12-13.

Department's Position: We agree that the Department must determine the adequacy of remuneration for provincial Crown stumpage "in relation to the 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."[757] However, notwithstanding parties' arguments to the contrary, we continue to determine that the Nova Scotia benchmark reasonably reflects the "price, quality, availability, marketability, transportation, and other conditions of purchase or sale" for provinces east of British Columbia, and that adjustments to the Nova Scotia benchmark are not warranted to address comparability issues.[758] The overall comparability of this data is discussed in Comment 40 above; the Department will address specific adjustments requested by the parties here.

At the outset, we agree with the Canadian Parties that the C$3/m^3 silviculture fee should not be included in the Nova Scotia benchmark. In this investigation, we are seeking a stumpage-to-stumpage comparison. Because the record reflects that the silviculture fee is not part of the stumpage prices reflected in the benchmark, the Department continues to find that it is appropriate to not include the fee in our benchmark stumpage price. Our approach with regard to silviculture adjustments is also discussed in Comment 43.

We also agree that changes are warranted to the studwood to sawlog ratio in the final determination. In this investigation, we require a combined sawlog and studwood benchmark price. As noted above, Canadian Parties object to the Department's decision in the *Preliminary Determination* to apply a studwood to sawlog ratio from *Lumber IV* to the prices in the NS Survey. At the time of the *Preliminary Determination*, the Department lacked volume data that would permit it to calculate a combined sawlog/studwood unit price that reflected the share of sawable logs in Nova Scotia. Therefore, in the absence of the necessary volume data, we relied on the studwood to sawlog ratio utilized in *Lumber IV* to create a combined studwood and sawlog unit price.[759] At the GNS verification, officials from the Department noted that the Registry of Buyers report did not break out softwood product volumes by sawlogs and studwood.[760] Upon the request of the verifiers, GNS officials, using the Registry of Buyers report, derived the volume of studwood and sawlogs that were harvested in Nova Scotia during the POI.[761] Additionally, the revised NS Survey data examined at verification contains volume and value data for sawlogs and studwood logs.

Having obtained these additional data points, the Department finds it is no longer necessary to rely on the sawlog/studwood ratio from *Lumber IV*; however, the Department now must determine which of these two data sources obtained since the *Preliminary Determination* provides the most accurate means of calculating a combined a sawlog and studwood log benchmark. The Canadian Parties urge the Department to use the volume data for each log type from the NS Survey to calculate combined studwood/sawlog benchmark prices. As discussed above, we find that data from the NS Survey to be accurate and reliable. However, for purposes

[757] *See* section 771(5)(E)(iv) of the Act.
[758] *See* section 771(5)(E)(iv) of the Act.
[759] *See* Nova Scotia Benchmark Calculation Memorandum.
[760] *See* GNS Primary QNR at Exhibit NS-6.
[761] *See* GNS Verification Report at 3-4 and NS-VE-2 at 20-23.

of deriving a combined sawlog/studwood benchmark price, we find it is most accurate to calculate such a price based on a ratio of the overall harvest of sawable logs in Nova Scotia rather than on a surveyed harvest volume, which as discussed above, reflects only a portion of the overall harvest. Therefore, in the final determination, we have calculated a combined studwood/sawlog benchmark using a log ratio obtained from the GNS's Registry of Buyers report, which is reflective of the overall harvest.[762]

We disagree with the parties' remaining proposed adjustments. Initially, as explained in Comment 40, we find that the parties have failed to substantiate their claim that the exclusion of pulpwood prices and the variation in species among the provinces impacts the comparability of the Nova Scotia benchmark. Therefore, there is no basis to make an adjustment for these purported differences, nor have parties proposed a reliable means for the Department to make any such adjustments (even if one were warranted).

Further, for the reasons discussed in Comment 41, we find that the NS Survey relied upon a reasonable method when converting the survey data into a common unit of measure, the method reflected the conversion factor used by the GNS in its ordinary course of business, and the Department verified that Deloitte officials accurately applied its conversion factor method when compiling the results of the NS Survey. The Canadian Parties argue the Department should adjust the NS Survey data using a conversion factor that is partially based on data from Alberta. As explained above, the fact that the GNS relies upon the conversion factor in question as part of its ordinary course of business leads us to conclude that the factor is reliable and certainly more applicable to transactions that occurred in Nova Scotia than the Canadian' Parties' proposed conversion factor, which relies, in part, on data from Alberta.

Finally, we disagree with Canadian Parties' arguments concerning the indexing method the Department applied to the NS Survey data. Because the NS Survey contains data for the period of April 1, 2015, to December 31, 2015, for the *Preliminary Determination*, the Department derived prices for the months of January through March by applying the Monetary Fund's Producer Price Index for those months to the April prices contained in the NS Survey.[763] In other words, in the preliminary calculations, the Department based the indexed prices for the first three months of the POI on stumpage prices paid for private-origin standing timber in Nova Scotia during the month of April 2015, as contained in the NS Survey.[764] Thus, it is inaccurate to claim that the indexed prices are not based on actual prices. In *Lumber IV*, the Department indexed Nova Scotia prices to the POI.[765] Thus, the Department's decision in the *Preliminary Determination* to index the stumpage prices in the NS Survey was consistent with its prior practice. Additionally, we find that the Canadian Parties' citation to *Shenzhen* is not on point. In that case, the record contained contemporaneous pricing data, which rendered reliance on a non-contemporaneous data that was indexed to the relevant time period unnecessary.[766] Unlike *Shenzhen*, the record in this investigation, namely the NS Survey, does not contain pricing data

[762] *See* GNS Verification Report at 3-4 and NS-VE-2 at 20-23.
[763] *See* Benchmark Calculation Memorandum.
[764] *See* Final Stumpage Benchmark Calculation Memorandum.
[765] *See Lumber IV Final Determination* IDM at 6.
[766] *See Shenzhen*, 976 F. Supp. 2d at 1333 (finding that indexing was not needed because contemporaneous data were available on the record).

for the January to March time period at issue. Thus, we continue to find that the Department's indexing methodology is appropriate and reasonable.

We also disagree with the Canadian Parties' claims that the Department's indexing method is flawed merely because the indexed prices for January through March were higher than the base month of April. The prices for January through March 2015 were higher because the indices for those months are higher than the rest of the POI. Thus, to agree with the Canadian Parties' argument that the indexed prices are flawed requires accepting the erroneous premise that price indices may only increase (and not decrease) over time. Although the Canadian Parties contend that stumpage prices do not follow general trends in commodity prices, because the demand and price of timber is typically lower during the first quarter of a given year, their claims are based on their own characterization of a calculation memorandum that is not on the record and that involved a different record; thus, we have no basis upon which to evaluate their claim and we are discounting their argument on this point.

Accordingly, we are adjusting the Nova Scotia benchmark to reflect the studwood to sawlog ratio derived from the Registry of Buyers report (rather than the *Lumber IV* ratio used in the *Preliminary Determination*), but are otherwise not adjusting the Nova Scotia benchmark.

Comment 43: Whether the Department Should Make Adjustments to Stumpage Rates in Alberta, Ontario, Québec, and New Brunswick

In the *Preliminary Determination*, the Department excluded from its stumpage benefit analysis certain costs, including purportedly legally obligated costs, related to the respondents' tenure operations in Alberta, New Brunswick, Ontario, and Québec.[767] The Department preliminarily determined that the company-specific methodology used in this investigation, as opposed to the aggregate method used in *Lumber IV*, allowed the Department to examine each respondent's specific costs and assess the relationship between each company's tenure arrangements and the stumpage prices paid. In addition, the Department preliminarily determined that these costs are related to the respondents' long-term tenure rights and not to the stumpage prices paid to the Crown.

The Canadian parties disagree with the Department's rationale for not including adjustments to account for the respondents' long-term tenure obligations. The Canadian Parties argue that harvesters must fulfill their tenure obligations in order to retain the right to harvest Crown timber; thus there is no distinction between "tenure rights" and the right to harvest timber owned by the Crown.[768] The Canadian Parties also note that the Department granted upward adjustments for costs that tenure holders incurred in performing mandatory activities throughout each of the Department's decisions in *Lumber IV*, and they argue that the Department has not

[767] *See* PDM at 50-51.
[768] *See* GOA Case Brief at 40-63; *see also* GOO Case Brief at 31-35; *see also* Canfor Case Brief at 11-18; *see also* JDIL Case Brief at 20-22; *see also* Resolute Case Brief at 6-11; *see also* Tolko Case Brief at 18-19 and 21; *see also* West Fraser Case Brief at 27-30 and 46-47.

provided a reasonable explanation for why it has reversed course and not granted tenure adjustments in this investigation.[769]

The petitioner argues that the Department should not make adjustments for silviculture costs that are estimates of future liabilities, as they are not directly related to the market-based stumpage prices that the respondents paid (*e.g.*, Tolko, Canfor, and West Fraser all record a liability for estimated future silviculture costs).[770] The petitioner argues that adjustments for scaling, waste, and cruising expenses should not be granted because such costs are indirect and not necessary to access standing timber.[771] The petitioner also argues that the Department should not grant adjustments for other indirect forest management costs such as management and planning fees, inventory costs, holding and protection charges, and forest research and development costs as such costs are not directly related to the harvest of timber.[772]

In sum, the petitioner argues that the Canadian Parties' proposed adjustments would not result in a market-derived stumpage price but, instead, "a price based on the wholesale acceptance of their fixed and variable operational costs, regardless of whether such costs are directly related to stumpage prices during the POI or already reflected in the benchmark price."[773] The petitioner asserts that the Department should follow its established practice and allow for an adjustment only if the respondent can demonstrate that the expense was directly related to the market-based stumpage price during the POI.[774]

The petitioner argues that the Department should make one adjustment to the Nova Scotia benchmark when calculating the benefit for Resolute's stumpage purchases in Ontario and Québec. The GOO levies a forest renewal charge as part of its stumpage payments to cover the cost of silviculture[775] and the GOQ sets minimum stumpage prices to ensure that the GOQ receives sufficient revenue to fully cover silviculture costs.[776] Since Crown stumpage rates in Ontario and Québec incorporate the cost of silviculture, the petitioner argues that the Department should make an adjustment by adding the C$3.00/$m^3$ silviculture fee to the Nova Scotia benchmark when calculating the benefit that Resolute received when harvesting Crown-origin standing timber in Ontario and Québec.[777] Although JDIL claims that a harvester in Nova Scotia can perform silviculture work that satisfies the Nova Scotia relations for less than C$3.00/$m^3$, the petitioner asserts that JDIL's claim lacks sufficient documentation and does not adequately tie the costs cited to silviculture credits earned.[778]

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[769] *See* GOA Case Brief at 45 and 56-57; *see also* GOO Case Brief at 58-60; *see also* Canfor Case Brief at 10-12; *see also* JDIL Case Brief at 20-22; *see also* Tolko Case Brief at 33-38; *see also* West Fraser Case Brief at 22-30.
[770] *See* Petitioner Rebuttal Brief at 72-73.
[771] *Id.* at 74.
[772] *Id.* at 75-76.
[773] *Id.* at 69-70; *see also* Petitioner Case Brief at 27-28.
[774] *See* Petitioner Rebuttal Brief at 69.
[775] *See* Petitioner Case Brief at 31-32.
[776] *Id.* at 31-32.
[777] *Id.* at 32.
[778] *Id.* at 33.

Parties' specific comments are summarized below.

The GOC's comments:

Whether the Department Must Account for In-Kind Costs and Other Adjustments

The GOC argues that the fact that this investigation is being conducted on a company-specific bases and not an aggregate basis is an insufficient reason for the Department to depart from its past practice.[779] The Department must continue to recognize, as it did in *Lumber IV*, that tenure agreements are part of the conditions of sale for stumpage, that tenure holders incur costs that are not directly reflected in stumpage prices, and must make adjustments to account for these additional obligations and expenses.[780]

The GOA's comments:

Whether the Department Should Make an Adjustment for Holding and Protection Charges and FRIAA Dues

The GOA argues that the Department must account for holding and protection charges, which are required under Section 97.6 of the TMR, in its stumpage LTAR analysis.[781] In addition, the GOA argues that FRIAA dues, which all tenure holders are required to pay under Schedules 3 and 5 of the TMR when commodity prices used to index monthly timber rates exceed certain price thresholds, must be accounted for in the Department's stumpage benefit calculation.[782]

The petitioner argues that the Department should not make adjustments for these costs as they are not directly related to the harvest of timber.[783]

Whether the Department Improperly Rejected In-Kind Costs

The GOA argues that in-kind costs associated with tenure agreements are directly related to the volume of timber harvested.[784] The GOA argues that tenure holders are rational economic actors; therefore, they factor in all costs associated with harvesting timber on Crown lands in Alberta and only enter into agreements if they are able to recover those costs. If instead the Crown were responsible for silviculture, forest management, road construction, and other costs associated with harvesting timber to the point of harvest, the costs incurred by the Crown would be embedded in a higher crown stumpage price.[785]

The GOA argues that the Department's *Preliminary Determination* incorrectly excluded certain up-front payments, such as road construction, from the cost of harvesting Crown timber by

[779] *See* GOC Etal Common Issues Case Brief at 75.
[780] *Id.* at 75-76; *see also* West Fraser Case Brief at 29-30.
[781] *See* GOA Case Brief at 47-48.
[782] *Id.*
[783] *See* Petitioner Rebuttal Brief at 75-76.
[784] *See* GOA Case Brief at 53.
[785] *Id.* at 54.

arguing that the upfront costs are unrelated to any current stumpage price.[786] The Department attempts to ignore one-time or lump-sum payments made over the course of long-term tenures under the belief that these costs are unrelated to stumpage rates. The Department's benefit calculation is fundamentally inconsistent with the Department's regulations and prior practice regarding non-recurring subsidies, in which the Department allocates the benefit over the "average useful life" of the asset receiving the benefit.[787] The GOA argues that the Department should include the following in-kind costs to its stumpage benefit calculation: basic reforestation costs; road costs; forest management costs; scaling costs; fire, insect, and disease costs; and environmental protection costs.[788]

The GOO's comments:

Whether Ontario Crown Softwood Timber Destined to Sawmills Was Supplied for "Less Than Adequate Remuneration" During the POI

The GOO argues that stumpage prices reported by the GOO only reflect basic stumpage charges and do not reflect the full cost of the obligations incurred by harvesters of Ontario Crown timber; therefore, in order to make a proper comparison between Crown stumpage and a benchmark of private stumpage purchases, all obligations incurred by harvesters of Crown timber must be accounted for through adjustments. These adjustments include costs associated with road construction and maintenance, forest management planning, fire and insect protection, and consultations with First Nations.[789]

Canfor's comments:

Whether the Department Should Include All of Canfor's Reported Costs In Alberta As Part Of The Crown Stumpage Price Prior To Comparison To The Nova Scotia Benchmark

Canfor argues that excluding the in-kind costs that the company is legally required to pay contravenes the Department's regulations and its practice in *Lumber IV*.[790] As a tenure holder in Alberta, Canfor is required to incur the following costs to access Crown timber: (1) Crown dues, (2) FRIP dues, (3) holding and protection fees, (4) road costs, (5) scaling costs, (6) forest management planning costs, (7) forest inventory costs, (8) basic reforestation costs, (9) environmental protection and other ground rule costs, (10) and contributions to the Forest Management Enhancement Fund. Canfor argues that the Department must either include Canfor's actual company costs as part of the Alberta Crown stumpage price or deduct these costs from the benchmark price in order to conduct a proper LTAR analysis that accounts for all prevailing market conditions.

[786] *Id.* at 55.
[787] *Id.* at 55-56.
[788] *Id.* at 57-63.
[789] *See* GOO Case Brief at 32-33.
[790] *See* Canfor Case Brief at 49.

Whether the Department Should Include All Costs That Canfor Incurred in its Alberta Stumpage Calculations

Canfor argues that for the company's purchases of Crown stumpage in Alberta, the Department should rely on Canfor's actual costs and not the MNP aggregate survey data, and the Department should include adjustments to account for FRIP dues, holding and protection fees, road costs (excluding on-bloc roads), scaling costs, forest management planning costs, forest inventory costs, basic reforestation (silviculture) costs, and various environmental protection costs.[791]

Whether the Department's Reliance on SC Paper from Canada – Expedited Review is Misplaced

In the *SC Paper from Canada – Expedited Review*, the silviculture and LMF cost adjustments that were at issue were costs that the GNB paid to the licensee as reimbursement for the licensee carrying out these activities on the government's behalf. The petitioner alleged, and the Department investigated, these reimbursements as a separate program and found the reimbursements for silviculture and activities and LMFs to be countervailable grants.[792] In contrast, Canfor argues that in the current investigation, the company paid these costs and received no reimbursement, and that there is no evidence that Canfor received countervailable grants in connection with any reimbursement of costs incurred.[793]

Whether the Department's Laws and Regulations Require it to Take Into Account All Costs Incurred by the Tenure Holder as Part of the "Prevailing Market Conditions" in Alberta

Canfor argues that the laws require that the adequacy of remuneration be determined in relation to "prevailing market conditions" for the good or service being provided, including "other conditions of purchase or sale."[794] In *Lumber IV*, the Department included all costs incurred by the tenure holder as part of the administered Crown stumpage price in the case of Alberta, and the Department should continue to follow this methodology in the current investigation.[795]

JDIL's comments:

Whether the Department Should Apply an Upward Adjustment for Unreimbursed Land Management Expenses to JDIL's Purchases Under License #7

The facts of this investigation do not support the Department's decision to depart from the precedent established in *Lumber IV*, in which the Department made adjustments to Crown stumpage rates for unreimbursed land management expenses.[796] The price of softwood timber reported by the GNB only reflects the basic stumpage charge, and excludes other significant obligations incurred by harvesters of Crown timber. The Department should make an upward

[791] *Id.* at 11 and 13.
[792] *Id.* at 14.
[793] *Id.* at 14-15.
[794] *Id.* at 9.
[795] *Id.* at 9-10.
[796] *See* JDIL Case Brief at 21.

adjustment for unreimbursed land management expenses to JDIL's purchases under License #7 to account for the cost of silviculture and license management activities that JDIL was required to complete under that license.[797] The Department should make an additional upward adjustment for other unreimbursed expenses which JDIL incurred in areas under License #7 but did not incur with respect to purchases from private woodlots, including fire prevention, land stewardship, maintaining boundary lines, conducting survey, and constructing trails.[798]

Resolute's comments:

Whether the Department Should Make Adjustments to Stumpage Prices in Ontario for the Cost of Obligations That Are Not Applicable on Private Lands

Resolute argues that the real cost of Crown stumpage is the final delivered wood costs after accounting for all of the obligations that the Crown imposes for the right to harvest Crown timber.[799] At a minimum, the Department must make adjustments to the stumpage dues Resolute paid the GOO to account for the measurable in-kind costs of road construction and maintenance, forest management planning, forest fire protection, and First Nations relations.[800] The Department should also account for additional costs that Resolute is obligated to incur when harvesting Crown timber in Ontario but that cannot be separately quantified, such as the operations that Resolute must undertake to prepare forest management plans, work schedules and reports according to the CFSA.[801]

Whether the Department Must Make Adjustments for the Legally Required Costs and In-Kind Costs Resolute Incurred to Harvest Crown Timber in Québec

The Department must account for the legally required fees that Resolute is required to pay the GOQ to hold a TSG and harvest Crown timber, which include the annual royalty, annual fees for fire and insect suppression, and First Nations fees.[802] The Department must also account for the in-kind costs Resolute was required to incur under its TSGs for road construction and maintenance, scaling, and partial cuts to meet environmental obligations imposed by the GOQ.[803]

Whether the Department Must Account for the Cost of Temporary Forest Camps as Part of the Prevailing Market Conditions in Québec

Québec's public forests are usually located in remote and less accessible areas in the northern part of the province, as compared to the private forests, which are mostly located along the St. Lawrence River and are generally accessible through major public roads. As such, the remote location requires housing and supporting loggers with temporary forest camps. Although Resolute records these expenses with administrative expenses and cannot segregate them, the

[797] *Id.* at 17-18.
[798] *Id.* at 19.
[799] *See* Resolute Case Brief at 20-21.
[800] *Id.* at 20-22.
[801] *Id.* at 22-24.
[802] *Id.* at 26-28 and Attachment A.
[803] *Id.* at 28-29 and Attachment A.

Department's benefit analysis should account for the fact that the forest camps are part of the prevailing market conditions present in Québec's Crown forests but not in Nova Scotia's private forests.[804]

Tolko's comments:

Whether the Department Should Make Adjustments to Capture All Costs Tolko Incurred in Addition to Stumpage in Alberta

Tolko argues that the Department should include all payments made by Tolko, including timber dues, holding and protection charges, and payments resulting from in-kind obligations imposed by the GOA. Tolko argues that the Department did not adequately justify its decision to depart from its practice in *Lumber IV* and exclude these costs from Tolko's LTAR analysis in the *Preliminary Determination*. Tolko argues that the Department should include holding and protection charges and FRIAA dues, which are part of the total stumpage dues that the company is required to pay as a condition of its FMA and the FRIR.[805] Tolko also argues that the Department should include Tolko's reported POI timber license amortization expense and other legally imposed expenses for road construction and maintenance, planning, bridge removal and deactivation, forestry administration, silviculture/reforestation, weight scaling, conversion scaling, scale sampling, preparation of forest management plans, harvesting supervision, and other lesser cost activities.[806]

West Fraser's comments:

Whether the Department Should Deduct West Fraser's In-Kind Costs from the Nova Scotia Benchmark Price

West Fraser argues that it is legally obligated to pay in-kind costs to harvest Crown timber in Alberta, and that such costs are not incurred by purchasers of private timber in Nova Scotia. These in-kind costs include amortization of timber tenures; main/secondary road and bridge construction, maintenance, and deactivation costs and admin allocation to main/secondary roads; silviculture costs; sustainable forest management expenses, which are required by West Fraser's forest management plans; holding and protection; and conversion scaling.[807] Because these costs are incurred by purchasers of Crown timber in Alberta but are not incurred by purchasers of private standing timber in Nova Scotia, they are one of the "factors affecting comparability" that the Department must account under its regulations.[808]

West Fraser argues that the fact that an LTAR analysis is conducted on an aggregate basis or on a company-specific basis has no bearing on whether mandatory costs should be included in the benefit calculation. Moreover, the Department's regulations do not distinguish between country-

[804] *Id.* at 30-31.
[805] *See* Tolko Case Brief at 36-37.
[806] *Id.* at 38.
[807] *See* West Fraser Case Brief at 25-26.
[808] *Id.* at 27.

wide and company-specific LTAR analyses in requiring that "factors affecting comparability" be considered.[809] West Fraser also argues that there is no legal distinction between "long-term tenure rights" and "stumpage." Pursuant to 771(5)(E) of the Act, the Department must determine the amount of a benefit conferred "to the recipient" (*i.e.*, West Fraser). The in-kind payments that West Fraser pays the GOA as part of its tenure agreements are costs that West Fraser is obligated to pay in exchange for the right to harvest Crown timber.[810]

West Fraser argues that the Department should adhere to its governing statute and the methodology used in *Lumber IV* by using the TDA private-log-sale transaction data as the benchmark for its Alberta stumpage LTAR analysis. If the Department chooses to use the Nova Scotia benchmark, West Fraser argues that it must use the MNP-calculated weighted-average stumpage price that incorporates lower-quality pulpwood and energy wood, account for the difference between Alberta and Nova Scotia conversion factors, and adjust for Alberta's higher hauling costs, and incorporate West Fraser's in-kind costs.[811]

The petitioner's comments:

Whether the Department Should Grant the Canadian Parties' Request for Cost Adjustments

The Department has countervailed the provision of stumpage for LTAR in five previous proceedings: (1) *Certain Softwood Lumber from Canada*, (2) *Lined Paper from Indonesia*, (3) *Certain Coated Paper from Indonesia*, (4) *Coated Free Sheet Paper from Indonesia*, and (5) *SC Paper from Canada*.[812] In the investigation and every review of those proceedings, the Department used a cross-border tier-three benchmark based on log prices. The Department granted adjustments to the cross-border benchmark only if the cost was directly related to the stumpage price during the POI and was reflected in one comparison price but not the other (*e.g.*, harvesting costs for stumpage prices to allow for comparison with harvested log prices).[813] In *Coated Free Sheet Paper from Indonesia*, the Department explained that costs must be directly related to the stumpage price rather than the benchmark log price:

> The Department has found that the GOI provides companies standing timber. As such, the adequacy of remuneration is to be measured for standing timber, and therefore, the benchmark should be calculated on a similar basis… For our analysis, we are deriving a market-based stumpage price; we are not comparing log prices to log prices.[814]

Similarly, in *Uncoated Paper from Indonesia*, the Department used cross-border Malaysian prices for acacia logs based on an independent market study as a stumpage benchmark for Indonesian acacia timber. The Department granted an adjustment only for the costs of extraction, or harvesting, because they were directly related to the stumpage price and were

[809] *Id.* at 28.
[810] *Id.* at 29.
[811] *Id.* at 8-15 and 29-30.
[812] *See* Petitioner Rebuttal Brief at 63.
[813] *Id*.
[814] *Id.* at 63-64.

reflected in harvested log prices, but not in the stumpage price. The Department did not grant any adjustments for freight because the benchmark was acacia logs at the mill gate.[815]

The Department found in the *SC Paper from Canada – Expedited Review* and the *Preliminary Determination* that adjustments for activities related to "long-term tenure rights" were not directly related to the stumpage price during the POI. The petitioner argues that long-term tenure rights cannot be considered costs directly related to the harvesting and hauling of timber to the sawmill. For costs that were directly necessary to access the standing timber for harvest and hauling to the sawmill, the petitioner argues that the Department properly made an adjustment to the stumpage price to allow for an apples-to-apples comparison with cross-border harvested log prices.

Although the Canadian Parties rely on *Lumber IV* to support their argument that the Department must include tenure adjustments, the petitioner counters that the Department expressly chose not to use U.S. standing timber prices as a tier-two benchmark in *Lumber IV* because it would have required making complex adjustments to the available data.[816]

The petitioner further notes that the Department relied on costs from an aggregation of companies in *Lumber IV*, and was therefore unable to individually examine a company's records to determine which cost adjustments were warranted.[817] The petitioner argues that the Department obtained company-specific information for each respondent in this investigation and relied on such information for its determinations, such as not applying an adjustments to BC respondents for profit associated with extraction.[818]

The petitioner argues that the Department properly explained its analysis of company-specific data and evidence on the current record and provided a reasoned explanation for its determination that costs associated with long-term tenure activities should not be included as adjustments. The fact that the Canadian Parties disagree with the Department's explanation is not the same as the Canadian Parties' claim that the Department failed to provide a "reasoned explanation."[819]

Department's Position: Parties have submitted numerous comments regarding proposed adjustments to the stumpage prices paid by respondents in Alberta, Ontario, Québec, and New Brunswick, as well as proposed adjustments to the Nova Scotia benchmark. Below, we address all arguments summarized above. Since issuing the *Preliminary Determination*, the Department has verified the questionnaire responses submitted by the respondent companies and the provincial governments. Specifically, the Department has verified the information pertaining to the various agreements granting respondents the right to harvest Crown timber,[820] and the

[815] *Id.* at 64.
[816] *Id.* at 65-66.
[817] *Id.* at 67.
[818] *Id.* at 64-65.
[819] *Id.* at 68.
[820] We examined Canfor's FMAs, CTPs, and CTQs with the GOA; JDIL's FMAs with the GNB; Resolute's TSGs with the GOQ; Resolute's SFLs and FRLs with the GOO; Tolko's FMAs and CTQs with the GOA; and West Fraser's FMAs, CTQs, and CTPs with the GOA.

relationship between their harvest agreements and the stumpage prices the respondents paid for Crown standing timber. We have also verified the Nova Scotia private standing timber benchmark and the costs included in the private prices composing the Nova Scotia benchmark.

We first address the respondents' arguments that the Department did not provide a sufficient, reasoned analysis to justify its decision to depart from the methodology applied in *Lumber IV* regarding cost adjustments.[821] The Canadian Parties propose applying certain adjustments made in calculating the benefit of stumpage for LTAR in *Lumber IV*. However, the record evidence in this investigation stands on its own, and regardless of whether this investigation is conducted on an aggregate basis or company-specific basis, we rely on the record of this investigation to determine whether any adjustments to the stumpage prices respondents paid or to the Nova Scotia benchmark are warranted.

For the purposes of the final determination, when calculating the benefit to respondents from Crown-origin standing timber for LTAR, we compared the stumpage charges invoiced by the Crown at the time of harvest to the Nova Scotia benchmark. Under section 771(5)(E)(iv) of the Act, the Department is required to measure the adequacy of remuneration in relation to the "prevailing market conditions for the good or service being provided." Accordingly, in considering the respondents' arguments for adjustments to their Crown-origin stumpage prices, the Department examined the record with regard to the costs incorporated into the stumpage prices paid by harvesters of standing timber from private landholders in Nova Scotia and the costs respondents incurred to harvest Crown-origin standing timber. As discussed below, we find no evidence that the costs identified by the respondents are incorporated into the prices paid by harvesters of private timber in Nova Scotia, and, thus, we are not making the adjustments as argued by the respondents either to the benchmark or to the respondents' Crown-origin stumpage purchase prices.

The respondents argue that the Department should adjust their purchase prices of Crown-origin stumpage by adding the cost of certain post-harvest activities. We disagree. Accordingly, for the stumpage benefit analysis in this final determination, we did not add such costs to the respondents' Crown-origin stumpage purchase prices. The private prices in the Nova Scotia benchmark are stumpage prices, *i.e.*, prices charged to the purchaser for the right to harvest timber, which therefore do not reflect any post-harvest costs to the private landowner, since those costs are borne by the harvester, not the private landowner. Activities such as scaling and hauling logs to the mill are costs incurred after harvesting standing timber, and after the purchase/sale of stumpage. Because we determine that the Nova Scotia benchmark is a stumpage price that does not reflect post-harvest activities, a proper stumpage-to-stumpage comparison must logically exclude the cost of such activities from the calculation.

The respondents further argue that the Department should adjust their purchase prices of Crown-origin stumpage to add certain administrative costs. However, such costs are considered overhead expenses, which are not directly related to stumpage prices. Moreover, no record evidence reflects that these prices are included in the Nova Scotia benchmark price. Consequently, in order to achieve a comparison between the benchmark and respondents'

[821] *See* GOC Etal Common Issues Case Brief at 71-75; *see also* GOA Case Brief at 56-57; *see also* Canfor Case Brief at 17-18; *see also* Tolko Case Brief at 17-21; *see also* West Fraser Case Brief at 25-29.

purchases on the same cost basis, we have not added the cost of administrative costs/overhead expenses to respondents' Crown-origin stumpage purchase prices.

With regard to the respondents' proposal that the Department add certain in-kind costs (*e.g.*, for silviculture, road construction, forest management and planning, *etc*.) to their Crown-origin stumpage purchase prices, we find that no record evidence supports concluding that in-kind costs associated with harvesting Crown timber are included in the NS Survey private stumpage prices. Thus, to make the comparison between the benchmark and the respondents' purchase price on the same cost basis, we decline to add those in-kind costs to respondents' Crown-origin stumpage purchase prices. In particular, with regard to silviculture, record evidence demonstrates that the GNS charges registered buyers a C$3.00/m^3 to cover the cost of silviculture, or, in the alternative, registered buyers may elect to perform their own silviculture activities rather than pay the fee.[822] Regardless of how the registered buyer chooses to pay for silviculture, however, the cost is in addition to, and thus separate from, the registered buyer's purchase of stumpage. We find no record evidence to support that silviculture costs are included in the NS Survey stumpage purchase prices. Accordingly, to make the proper comparison between the benchmark and respondents' purchases on the same cost basis, we decline to add silviculture costs to the price of the respondents' purchases of Crown-origin stumpage in the other eastern provinces.

In a similar vein, the petitioner proposes adding the C$3.00/m^3 silviculture fee to the Nova Scotia benchmark when calculating the benefit Resolute received for Crown stumpage purchases in Ontario or Québec, alleging that silviculture costs are incorporated by those provincial governments into the provincial stumpage purchase prices. As discussed in Comment 42, we have not included the fee in our calculation of the Nova Scotia benchmark. We find no evidence to confirm that the so-called silviculture costs included in the stumpage rates charged by Ontario and Québec are actual silviculture expenditures as such or are market-based costs. While a fee for silviculture is included in the stumpage rates charged by the GOO in the form of the forest renewal charge, this fee is set based on forecasted, not actual, silviculture costs.[823] We verified the GOO's total receipts of funds for silviculture in FY 2015-16 and noted in the verification report that the total reimbursements exceeded revenue during that period.[824] Furthermore, under the GOQ's new public forest regime, harvesters are no longer responsible for silviculture activities and instead silviculture is conducted by Rexforêt, a wholly-owned subsidiary of Investment Québec.[825] While the GOQ takes into consideration the cost of silviculture when setting the minimum price for stumpage rates in all auctions and pricing zones, no parties have submitted information regarding how silviculture costs are estimated or how Rexforêt accounts for its silviculture revenue and expenditures.[826] Thus, we have insufficient evidence to determine whether the GOQ estimates silviculture costs based on market rates or whether the silviculture costs factored into the minimum price fully cover Rexforêt's silviculture expenditures. Accordingly, we decline to add the C$3.00/m^3 fee to the Nova Scotia benchmark,

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[823] *See* GOO Primary QNR Response at 79-80.
[824] *See* GOO Verification Report at 11 and VE-6.
[825] *See* GOQ Primary QNR Response at 116.
[826] *Id.* at 97 and 118.

because doing so could result in a comparison between the benchmark and the purchases on an unequal cost basis.

We also find no record evidence that the NS Survey benchmark incorporates the cost of long-term tenure obligations (*e.g.*, annual fees, FRIAA dues, holding and protection charges, *etc*., which the respondents argue we should adjust for in the benefit calculation). Indeed, some parties acknowledge that these costs are not included in the Nova Scotia benchmark.[827] As discussed above, we determine that the Nova Scotia benchmark is a "pure" stumpage price that reflects solely the costs buyers incurred for the right to harvest individual trees.[828] Moreover, parties have provided no evidence that the stumpage rates set by the provincial governments are adjusted to account for the revenue from any fees or charges required under long-term tenure agreements. Accordingly, for this final determination, to conduct a proper stumpage-to-stumpage comparison, we have not added the cost incurred under any long-term tenure obligations to the respondents' Crown-origin stumpage purchase prices, regardless of whether the long-term tenure obligation cost was obligated or legally-required.[829]

Certain Canadian parties argue that, as a legal matter, we cannot distinguish between "long-term tenure rights" and "stumpage."[830] To support this argument, the parties rely on *Lumber IV* and section 771(5)(E) of the Act, arguing that in measuring the benefit that each respondent received from its purchase of standing timber, the Department must include all costs incurred by the respondent (including legally obligated costs associated with long-term tenure rights) in exchange for its right to harvest Crown timber. We disagree that we cannot legally distinguish between "long-term tenure rights" and "stumpage." Costs associated with long-term tenure rights are billed on separate invoices or as separate line items by the provinces, rather than incorporated into the stumpage price,[831] and, as discussed above, there is no evidence on the record that these costs are taken into account by provincial governments when setting stumpage prices. Although the parties rely on section 771(5)(E) of the Act, that section does not require the Department to include all costs that a purchaser bears in relation to the purchase of a good when measuring the adequacy of remuneration for that purchase. As discussed above, our benchmark excludes these long-term tenure costs, and as such, including these costs would distort the calculation of benefit by adding costs on one side of the equation (respondents' purchase price) without similar costs being incorporated into the other side (the Nova Scotia benchmark).

In sum, we find that all of the adjustments requested by Canfor, JDIL, Tolko, Resolute, and West Fraser fall into the categories described above, and, thus, we are not including their proposed adjustments to the purchase prices of Crown-origin stumpage in Alberta, New Brunswick, Ontario, or Québec. Similarly, as discussed above and in Comment 42, we are not adjusting the Nova Scotia benchmark to include the C$3.00/$m^3$ silviculture fee for comparison to stumpage

[827] *See, e.g.*, West Fraser Case Brief at 29.
[828] *See* GNS Verification Report at 6-7.
[829] *See, e.g.*, Petition, Volume III at Exhibit 133, which contains a copy of the *GONS Private Stumpage Survey*.
[830] *See, e.g.*, Canfor Case Brief at 11-18, Tolko Case Brief at 19-21; West Fraser Case Brief at 28-29.
[831] *See, e.g.*, Resolute Primary QNR Response at Exhibits RESB-23 and RESB-24; West Fraser Primary QNR Response at Exhibit WF-ALB ST-7.

prices in any province. Thus, for Canfor's, Tolko's, and West Fraser's purchases of standing Crown timber in Alberta, we compared the timber dues[832] each respondent paid to the AMAF, without adjustments, to the Nova Scotia benchmark. For Resolute's purchases of standing Crown timber in Ontario, we compared Resolute's Crown-origin stumpage purchase price (comprising a minimum charge, a residual value charge, a forest renewal charge, and a forestry futures charge), as invoiced by the MNRF, without adjustments, to the Nova Scotia benchmark. For Resolute's purchases of standing Crown timber in Québec, we compared the stumpage Resolute paid to the MFFP, without adjustments, to the Nova Scotia benchmark. Finally, for JDIL's purchases of standing Crown timber in New Brunswick, we compared JDIL's net payment for stumpage paid to the NBDNR, without adjustments.

Comment 44: Whether the Log Export Restraint in British Columbia Restrains Log Exports

The GOC/GBC, Canfor, Tolko, and West Fraser argue that even if the log export permitting process could be considered a financial contribution, the record shows that this process does not restrain exports of logs.[833] Specifically, they argue that the approval process is fast-moving, virtually all requests to export logs during the POI were approved, substantial quantities of logs are exported, the in-lieu of manufacturing fee for log exports from the interior (where the mandatory respondents are located) is insignificant, a significant number of export authorizations are never used, and export premia are normal features of log markets in the absence of export restrictions. The petitioner rebuts that the record demonstrates that the log export permitting process does, in fact, restrain exports.[834]

Department's Position: The Department disagrees with the GOC/GBC, Canfor, Tolko, and West Fraser, and continues to find that the log export permitting process does restrain exports from British Columbia. As an initial matter, by law, unless provided a specific exemption to export, logs in British Columbia are by default not allowed to be exported from the province. As detailed in the *Preliminary Determination*, in order to receive an exemption to export, potential exports are subject to numerous obstacles, including surplus tests, in-lieu of manufacturing fees, and a potentially lengthy process.[835] We continue to find that these obstacles, when considered in their totality, restrain log exports from the province. Further, we find record information indicates that a "blocking" system operates in the province, discussed further below, which creates an environment in which log sellers are forced into informal agreements that lower export volumes and domestic prices.[836] As such, record evidence shows these impediments lower the prices of logs sold in the province,[837] and in-turn, limits the ability of log harvesters to enter into long-term agreements with foreign purchasers.

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[832] The GOA refers to stumpage as "timber dues." *See* GOA Primary QNR Response at 19.
[833] *See* GBC Case Brief Log Exports at 9-19; *see also* Canfor Case Brief at 36-37; *see also* Tolko Case Brief at 31; *see also* West Fraser Case Brief at 52.
[834] *See* Petitioner Rebuttal Brief at 98-101.
[835] *See* PDM at 58-63.
[836] *See* Petitioner Comments – Primary QNR Responses at Exhibits 11, 12, 13, and 32.
[837] *Id.* at Exhibit 11 at page 11 ("The net effect of LERs is to push down B.C. domestic prices."); *see also* Petition at Exhibit 244 ("Although log exports are allowed, the export process is in many cases complex and potentially unduly

Under the "blocking" system, processors in the province will block a harvester's export application in order to force the harvester to provide logs to the processor at low prices. To export their logs from the province, most exporters in British Columbia are required to first offer their logs to processors in the province.[838] As such, most potential exports are subject to this blocking process. As explained in the Canada Institute at the Wilson Center's report "From Log Export Restrictions to a Market-Based Future: Towards an Enduring Canada-U.S. Softwood Agreement",[839] the processors in the province will make a bid on the logs offered for sale, effectively blocking the harvester from exporting their logs,[840] for the sole purpose of negotiating concessions from the exporter. Once an informal agreement is reached, in which the processor receives logs at discounted prices, the processor will agree not to block the log exports.[841] In other words, the domestic processor agrees to lift the block on certain exports of logs in return for favorable terms on the sales of other logs. Further, the report indicates that this practice is wide spread throughout the province.[842] As a result of this blocking process, harvest operators are frequently forced to sell a portion of their logs to processors in British Columbia at or below the cost of production in order to be able to export their remaining logs.[843]

The existence of this "blocking process" is corroborated by record evidence that a log exporter in British Columbia has been subject to this process.[844] Specifically, these documents detail how the company has been forced to negotiate agreements with domestic processors in which they

costly for log owners and producers. Due to these restrictions, logs sell for substantially less on the domestic market than when exported".)

[838] Specifically, for logs under provincial jurisdiction, most logs exported from BC are done under the surplus test (*see* GBC Primary QNR Response, Part 1 at LEP-20-21) which are generally approved through Ministerial Orders or through OICs. The record indicates that the majority of these surplus test exports under provincial jurisdiction are done through Ministerial Orders. In order to export through a Ministerial Order, a company that submits an application to export must first offer its logs to processors in the province, via a bi-weekly advertising list. Finally, logs under federal jurisdiction are under subject to the export test which also require the potential exporter to first offer the logs to processors in British Columbia. *See* GBC Primary QNR Response, Part 1 at LEP-10.

[839] *See* Petitioner Comments – Primary QNR Responses at Exhibit 11.

[840] *Id.* at 8 ("British Columbia's timber processors have the ability to stop exports by objecting to the granting of export licenses for B.C. logs. Under the regime, a processor merely has to make an offer on an export application in order to bring the process to a halt; hence the application is blocked.").

[841] *Id.* ("They negotiate informal supply arrangements at discounted prices with key B.C. log processors in exchange for their agreement not to block exports.").

[842] *Id*. at 9 ("Almost every timber harvester has negotiated side agreements to keep its exports from being blocked").

[843] *Id*. at 8 ("some harvest operations are forced to sell logs at or below their cost of production to the domestic processors. In other words, the net effect of B.C. policy is to force timber harvesters to make next to nothing (or worse) on the domestic side of their business in order to safeguard their profitable export operations.").

[844] *Id*. at Exhibits 12, 13, and 32.

sell logs below market rates to prevent their requests for exports from being blocked[845] and that the GBC is aware of this process.[846]

In its case brief, the GOC/GBC argue that their log export processes do not actually restrain exports because: (1) virtually all requests to export logs are approved; (2) substantial quantities of logs are exported from the province; (3) the export approval process is fast moving; (4) the in-Lieu-of-Fee-of-Manufacturing fees are not meaningful obstacles to log export activities; (5) a significant number of export authorizations are never utilized; (6) the Export and Import Permits Act (EIPA) is irrelevant to the log export process; and (7) export premia are normal features of log markets.[847] However, we find these arguments to be unpersuasive.

First, as noted above, the GOC/GBC have argued that virtually all log export requests are approved, substantial quantities of logs are exported from British Columbia, and that a significant number of export authorizations are never utilized. As an initial matter, while we do not disagree with their characterization of these facts, we find that none of these facts demonstrate that exports are not restrained. Specifically, the claim that some volume of logs were exported, or that not all authorizations were utilized does not demonstrate that the process does not restrain exports. There is no way to know how many more logs would be exported in the absence of this process. Further, as discussed above, the "blocking" system in place indicates that due to these informal arrangements the fact that most export requests are approved is not a reliable indication of how the market is impacted by the existence of the log export restraints.[848]

Second, the GOC/GBC argue that the in-Lieu-of-Manufacturing fees that BC log exporters are required to pay do not pose a meaningful obstacle to log export activities. Specifically, the GOC/GBC assert that these fees apply to log exports under provincial jurisdiction only, and not to exports under federal jurisdiction. Further, the GOC/GBC argue that all log exports from the

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[845] *Id*. at Exhibit 12 ("The practice of 'log blocking' refers to the process used by a domestic purchaser to gain concessions from the potential log exporter in exchange for a withdrawal of its bids for logs. A blocker is not required to purchase the logs which were the subject of its bid. The concessions range from lower prices to different private log sorts, and result in a loss to the potential log exporter…. Merrill & Ring regularly receives such blocking letters and must negotiate agreements whereby the domestic processor agrees to lift blocks on certain private logs in return for the sale of other private log sorts."); *see also id*. at Exhibit 32 ("Merrill's applications are only granted because Merrill has been forced to pre-arrange or negotiate agreements with domestic processors in order to prevent its export product from being blocked. Therefore, by the time the GOC receives a log export application, Merrill has already suffered a loss because it has been forced to sell additional logs at below market prices to a domestic processor in order to prevent the domestic processor from blocking their application.").

[846] *Id*. at Exhibit 12 ("FTEAC's administration of the Federal Surplus Test knowingly permits such 'log blocking.'"); *see also id*. at Exhibit 13 ("The ability to target log producers is crucial in enabling log processors to engage in the illicit practice of "blockmailing" …. Despite the fact that TEAC/FTEAC is aware of the practice of targeting, it has never adopted any procedures or protocols to address this problem.").

[847] *See* GBC Case Brief Log Exports at 9-19. In their respective briefs, the mandatory respondents located in British Columbia endorsed the GBC's arguments regarding the log exporting process. *See* Canfor Case Brief at 36; *see also* Tolko Case Brief at 31; *see also* West Fraser Case Brief at 52.

[848] *See* Petitioner Comments – Primary QNR Responses at Exhibit 11 at 9 ("In 2002, Canada told the World Trade Organization that it granted 97% of applications to export from Crown land in British Columbia. This is hardly surprising. Almost every timber harvester has negotiated side agreements to keep its exports from being blocked. If not, this number would have been substantially lower…. Because blocking agreements between harvesters and processors are informal, one may never know precisely, but it is certainly much less than 97%.").

BC interior are subject to a C$1/m^3 fee. Because the mandatory respondents operate only in the BC interior, the GOC/GBC argue that the Department cannot find that the in-Lieu-of-Fee-of-Manufacturing fees impede log exports to a meaningful degree in this investigation. We disagree with respondents' assertions regarding the in-Lieu-of-Fee-of-Manufacturing fees. First, approximately 58 percent of the logs exported from the province during the POI were under provincial jurisdiction, and thus subject to the in-Lieu-of-Fee-of-Manufacturing fees.[849] As such, we find that the majority of exported logs are subject to these fees. Further, we find that these fees can be significant, and can substantially increase the final price a potential customer would have to pay for the logs.[850]

We also disagree with the significance that the GOC/GBC attribute to the fact that the fees for the interior of the province, where the mandatory respondents are located, are less than the fees from the coastal region of British Columbia. Although the fees for logs harvested from the interior are lower in comparison to the BC coast, we find the fact that any fee is required at all to be significant. These fees increase the cost of exporting, as compared to producing domestically, and represent another impediment (along with the "blocking" system, approval process, *etc.*) to export logs from British Columbia.

Third, in response to the Department's preliminary finding that the process for obtaining export permits was lengthy[851], the GBC argues that the Department's rationale is flawed. Specifically, the GBC argues that the record shows the entire process is frequently concluded in as little as two and a half weeks. However, the fact that an application for an export permit must be filed at all introduces an additional burden on log sellers seeking to export, and the fact that the permit is not automatically approved renders exporting uncertain. This restriction, along with others identified above, hinders the free export of logs and discourages log sellers from considering all market options and seeking the highest price for their logs.

Fourth, the GBC states that the Department's reliance on EIPA in the *Preliminary Determination* was misplaced. In the *Preliminary Determination*, the Department found that all logs exported from Canada require an export permit under the EIPA, as all logs are included in the export control list and that that export violations are punishable under section 19 of the EIPA.[852] Therefore, through the combination of the surplus test and the legal penalties for exporting without a permit, we found the GOC entrusted and directed private log suppliers to provide logs to mill operators. Citing Article 3(1)(a) of the EIPA,[853] which discusses ensuring

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[849] *See* GBC Primary QNR Response, Part 1 at LEP-8.
[850] Specifically, these fees can be as much as 15 percent, and in some instances, subject to an additional multiplication factor between 1.1 and 1.3 of the fee. *See, e.g.,* GBC Primary QNR Response at LEP-34-35.
[851] *See* PDM at 54 ("In *SC Paper from Canada-Expedited Review*, the Department found that the process to apply for and receive an export permit under a Ministerial Order can take between seven and thirteen weeks. There is no indication on the record of this investigation that the timing of the approval process for Ministerial Orders has changed between the POR of the *SC Paper from Canada-Expedited Review* (2014) and this POI.").
[852] *Id.* at 60-61.
[853] *See* GBC Primary QNR Response at Exhibit LEP-5 ("to ensure that arms, ammunition, implements or munitions of war, naval, army or air stores or any articles deemed capable of being converted thereinto or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination where their use might be detrimental to the security of Canada").

militarily sensitive items are not exported, the GBC infers that the penalty provisions of EIPA were intended to apply to militarily sensitive items and not to logs. Further, the GOC/GBC state that there is no evidence that penalties have ever been applied to exporters of logs. While the GOC/GBC are correct that there is no information on the record that the penalty provisions under the EIPA have ever been applied to exporters of logs, this does not change the fact that these penalty provisions apply to exports of logs in the same manner as exports of other goods in the export control list. Further, in citing to Article 3(1)(a) of the EIPA, the GOC/GBC have implied that the EIPA only pertains to military sensitive matters. However, in addition to section (a), Article 3(1) lists five other types of goods that it deems necessary to control, including Article 3(1)(b) which is to promote further manufacturing in Canada of a natural resource.[854] Finally, the GOC/GBC have not provided any record information that indicates that violators of log exports are subject to different penalties under the EIPA than violators of other goods. As such, we continue to find that the EIPA, and the corresponding penalties for violators under the EIPA, are relevant to our analysis.

Finally, the GOC/GBC argue that export premia are a normal feature of log markets and that such price difference does not reveal anything about the impact of the log export process. To support this assertion, the GOC/GBC cite to the Kalt Report.[855] As an initial matter, this report was commissioned by the GOC/GBC for the purposes of this investigation,[856] and as such, there is a concern that the data and conclusions were tailored to generate a desired result. This concern is particularly relevant for this issue. In order to demonstrate that an export premia exist in log markets in general, the report notes differences in domestic and export log prices in only three self-selected markets (New Zealand, Chile, and the US PNW).[857] Further, in its case brief, the GOC/GBC note these prices demonstrate a "consistent existence of an export premium."[858] The Department finds that the absence of any evidence regarding how this sample was selected, and its focus on only three self-selected markets, prevents us from evaluating the validity of the Kalt Report's conclusions. Additionally, a review of the underlying data presented in the Kalt Report contradicts the GOC/GBC's assertion of a consistent export premium. Specifically, each market includes instances where the domestic price is higher than the export price.[859] Given that these self-selected markets show instances where the domestic price is higher than the export price, the Department finds that the record does not support the assertion that export premia are a normal feature of log markets.

Moreover, assuming *arguendo*, that export premia exist in log markets, this does not overcome the record evidence that indicates that the export process suppresses prices throughout British

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[854] *Id*. ("to ensure that any action taken to promote the further processing in Canada of a natural resource that is produced in Canada is not rendered ineffective by reason of the unrestricted exportation of that natural resource").
[855] *See* GBC Primary QNR Response at Exhibit LEP-1.
[856] *Id.* ("I have been asked by the Government of British Columbia ('GBC') and the Government of Canada ('GOC') to address and assess the economics relating to certain claims and assertions made by the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (the 'Petitioner'. These claims relate to … and the operation of the log export permitting process in BC.").
[857] *Id.* at 51-55.
[858] *See* GBC Case Brief Log Exports at 18-19.
[859] *See* GBC Primary QNR Response at Exhibit LEP-1 at figures 22 (New Zealand), 23 (Chile) and 24 (US PNW).

Columbia.[860] Further, the existence of an export premia does not explain why domestic prices in British Columbia are consistently lower than the same type of log in the United States.[861]

Comment 45: Whether Log Export Restraints Impact the British Columbia Interior

In the *Preliminary Determination*, we addressed parties' arguments that log export restraints would not impact sawmills located in the interior of British Columbia, because such sawmills would source their logs in markets from which it would not be economically feasible for logs to be exported. We found that the log export restraints in British Columbia applied throughout the province, and to the extent their impact was only felt directly on coastal areas, this effect would "ripple" through to the interior of British Columbia.[862]

The GOC/GBC, Canfor, West Fraser and Tolko argue that the Department's preliminary findings were contradicted by the record. In particular, they argue that even if the log export process impeded log exports from British Columbia, the process would not impact the interior of the province where the mandatory respondents are located because (1) log prices do not ripple from the coast to the interior; (2) it is uneconomic to export logs from much of the interior; and (3) the record contradicts the finding that dead pine logs can be exported from the BC interior.[863] The petitioner argues that the Department correctly found that the log export process impacts prices throughout all of British Columbia, including the interior.[864]

Department's Position: In the *Preliminary Determination*, we found that the log export restraints provided a financial contribution to companies operating in the interior of British Columbia, on the basis that: (1) the laws and regulations pertaining to the exportation of logs from British Columbia (whether under federal or provincial jurisdiction) are applied throughout the entire province, and thus impact all of British Columbia; (2) even if the log process only directly impacted logs from coastal regions, the restrictions on exports of those logs would influence the overall supply of logs available to domestic users, which would have a ripple effect on the volume and prices of logs throughout the entire province, including the interior of British Columbia; (3) logs from the interior can be exported economically; (4) logs from the interior are in fact exported to the United States; and (5) while technically located within the provincial interior, many of the mandatory respondents' mills are located near the BC border or near where logs are exported.

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[860] *See*, *e.g.,* Petition at Exhibit 252 (an editorial by Brian Frank, the former CEO of TimberWest, the largest landowning company in British Columbia, in which he states that the domestic log prices are artificially depressed); *see also See* Petitioner Comments – Primary QNR Responses at Exhibit 11 at page 12 ("The net effect of LERs is to push down B.C. domestic prices").

[861] *Id.* ("British Columbia domestic prices are consistently below U.S. and world market prices……. over the past five years the average pricing differential between the U.S. and the B.C. product was 27%. In other words, B.C. logs sold at an average discount of 27% relative to their U.S. counterpart over the past five years."); *see also* Petition at 128-130 and Exhibit 108.

[862] *See* PDM at 58.

[863] *See* GBC Case Brief Log Exports at 19-25; *see also* Canfor Case Brief at 37; *see also* Tolko Case Brief at 31; *see also* West Fraser Case Brief at 52-53.

[864] *See* Petitioner Rebuttal Brief at 92-97.

For the same reasons discussed in the *Preliminary Determination*, we continue to find that the log export restraints impact the entirety of the province, including the BC interior. As an initial matter, no parties dispute that the laws and regulations pertaining to the exportation of logs from British Columbia apply throughout the entire province. And as discussed in further detail below, we continue to find that the record evidence supports our preliminary determination that the log export process has a ripple effect from the BC coast to the BC interior. Further, we continue to find that many of the mandatory respondents' mills are located near the BC border or near where logs are exported.[865] Additionally, we find that logs from the interior are exported to the United States[866] and that logs (including low-value logs) from the interior can be exported economically.

With regard to the GOC/GBC's argument that log prices do not ripple from the coast to the interior, and that any price impacts of the log export restraints would be felt only on the coast, the GOC/GBC make three assertions. First, they argue that logs do not follow the "law of one price." Second, they state that the species of logs from the BC coast are different than the logs form the BC interior. Finally, they assert that BC coast and interior are distinct regions of the province, with limited transportation options connecting the two regions.

With respect to this first issue, the GOC/GBC argue that record evidence establishes that logs do not follow the "law of one price" (*i.e.*, logs of the same species and grade will have the same price at all locations).[867] Specifically, the GOC/GBC cite the Kalt Report and Leamer Report as for the proposition that log markets are inherently localized such that log prices would not equalize across different markets.[868] Therefore, the GOC/GBC contend that the Department's "ripple effect" theory is unsubstantiated. We disagree. As an initial matter, the Kalt and Leamer Reports were commissioned by the GBC for the purposes of this investigation and as such, carry only limited weight given their potential for bias and data and conclusions that were tailored to generate a desired result. Further, the record of this investigation includes numerous other independent reports, not commissioned for the purposes of this investigation, that indicate that log markets covering large areas (intersected by international borders) can be integrated.[869] In other words, these independent reports directly contradict the conclusion drawn by the GOC/GBC's experts in self-commissioned studies regarding the extent to which log markets are

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[865] *See, e.g.,* GOC Etal Primary QNR Response at LEP-6 (indicating that Canfor has a sawmill close to the US/Canadian border and West Fraser has a sawmill close to areas with high export permit volume).
[866] *Id*. at Exhibits LEP-30 (Sample Ministerial Order Exemption: Southern Interior) and LEP-31 (Sample Ministerial Order Exemption: Tidewater Interior).
[867] *See*, *e.g.,* GBC Primary QNR Response Part 1 at Exhibit BC-S-184 (Leamer Report) at page 5.
[868] *Id*. ("Timber, of course, is a strictly local product, and most milling is local as well in the sense that most logs processed by mills come from nearby stands of timber. The local nature of this activity, high transportation costs, and other factors have precluded the building of the arbitrage infrastructure that could keep the prices of logs the same everywhere."); *see also* GOC Primary QNR Response Part 1 at Exhibit LEP-1 (Kalt Report) at page 79 ("{w}hile mills will compete with other mills within their timbershed for timber and logs, and with more distant mills at the margins of their timbersheds, such competition will not result in an equalization of log prices, even abstracting away from differences in log quality.").
[869] *See* Petitioner Comments – Primary QNR Responses at Exhibit 3 ("Spatial Integration in the Nordic Timber Market: Long-run Equilibria and Short-run Dynamics"), Exhibit 4 ("Roundwood Market Integration in Finland: A Multivariate Cointegration Analysis"), Exhibit 5 ("Timber Price Dynamics Following a Natural Catastrophe") and Exhibit 8 ("Transmission of price changes in sawnwood and sawlog markets of the new and old EU member countries").

localized. Specifically, the results of these reports identify areas where there is significant integration in a timber market over large areas covering multiple jurisdictions[870] and instances where logs are following the "law of one price."[871] As additional support for the proposition that log markets are not inherently local, we note that data submitted by the GOQ and GNB indicate that logs harvested in Québec and New Brunswick are traded between other provinces and even with the United States.[872] The GNB itself has made statements that indicate that the log market in New Brunswick is integrated with the surrounding region.[873] As such, we find that there is conflicting evidence about the nature of log markets. In weighing this conflicting evidence, we find that it is reasonable to accord greater weight to the numerous, independent reports and other information on the record of this investigation that contradict the findings of the Kalt and Leamer Reports that were commissioned specifically for purposes of this investigation.

The GOC/GBC next argue that any "ripple effect" would be confined to coastal species, which differ from the predominant interior species. While the Department does not dispute that the logs in the BC coast and interior are not identical in their species composition, the record shows that the logs harvested in the two regions are interchangeable, and thus a government action (such as an export restraint) that directly impacted one type of log species would impact the market for other log species in the province. The record shows that both the coast and interior had significant volumes of balsam, cedar, fir and hemlock.[874] Thus, even if the log export restraints only directly impacted coastal balsam, cedar, fir and hemlock, the restrictions on exporting these logs would influence the overall volume (and in-turn the price) of such logs throughout the province. Further, as recognized by the GOC/GBC, lodgepole pine is the dominant species in the interior.[875] Record information provided by the GBC shows that lodgepole pine falls within the SPF group of products,[876] and that the hemlock and fir species (which had significant harvest volumes on the coast during the POI)[877] are substitutable for

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[870] *Id*. at Exhibit 3 ("This study presents an econometric analysis of the spatial integration or the Nordic timber market as reflected in timber prices….{w}hen the results were interpreted…. the Nordic markets were found to be strongly integrated…. Finland, and to some extent Sweden, were found to act as "price-leaders" in the long run and Denmark and Norway were very sensitive to changes in timber prices in competing countries."); *see also id.* at Exhibit 8 ("In conclusion, overall developments in both sawnwood and sawlog prices in the four countries showed convergence in the study period, which indicates that deepening integration is taking place in European forest sector.").

[871] *Id*. at Exhibit 4 ("For pine sawlogs, the likelihood ratio test for strict price proportionality in cointegration vectors was not rejected, which indicates that in the long- run even the strong law of one price holds between the regions.").

[872] *See*, *e.g.*, GOQ Primary QNR Response at Exhibit QC-STUMP-4 (Table 7); *see also* GNB Primary QNR Response at GNB STUMP-1 (Table 3), showing a significant amount of volume of logs sourced from the USA or other Canadian provinces; *see also id* at pages NBII-12 and 15, showing significant exports of private and Crown harvested logs from New Brunswick.

[873] *Id*. ("the market in New Brunswick is viewed within the context of a broader Maritime market and not in isolation.").

[874] *See*, *e.g.*, GBC Primary QNR Response Part 1 at Exhibit BC-S-2. There were 1,516,498 m^3 of balsam, 3,170,139 m^3 of cedar, 4,871,426 m^3 of hemlock harvested from the coast during the POI. During the POI, there were 24,488,870 m^3 of balsam, 3,170,139 m^3 of cedar, 4,871,426 m^3 of hemlock harvested from the coast.

[875] *See* GBC Case Brief Log Exports at 21.

[876] *See* GBC Primary QNR Response Part 1 at BC I-58 ("Lodgepole is the principal pine species in the SPF group of products.").

[877] *See*, *e.g.*, GBC Primary QNR Response Part 1 at Exhibit BC-S-2.

SPF.[878] Further, the record indicates that all three types of species are used to produce similar products, including lumber.[879] As such, a restraint on either coastal hemlock or coastal fir would impact not only the supply of interior hemlock and fir supply, but also the availability of other interchangeable log species, including lodgepole pine. As such, we disagree with the GOC/GBC's contention that that the differences in log species between the coast and interior mean that a restriction on coastal logs would be irrelevant to the interior.

Finally, in arguing that the record does not support the Department's finding of a "ripple effect," the GOC/GBC state that there are limited transportation corridors between the coast and interior of British Columbia. Further they assert that interior mills have no overland transportation linkages to the coast. In light of our finding that log markets are integrated, the existence or absence of transportation corridors between the BC interior and the BC coast does not impact our finding that log prices are suppressed throughout the province. Moreover, we find that record information contradicts the GOC/GBC's position. First, we note that Map 1 provided in the GOC's original questionnaire response for the log export restraints, shows that the tidewater interior is connected directly with the coast with no apparent mountain range separating the two areas.[880] Further, the GBC has indicated that logs from the tidewater interior can easily be transported to ports located in the coastal region.[881] The GOC/GBC have not argued that the log market in the tidewater portion of the interior is a separate market unique from the rest of the interior. Further, Map 2 of the GOC's original questionnaire response for the log export restraints shows that there are at least seven highways that cross between the BC coast and BC interior, and that mandatory respondents have mills along these highways.[882] Based on the foregoing, we continue to find support for the proposition that log prices in coastal BC have a ripple effect on the entire province, including throughout the interior.

We likewise continue to find that the log export restraints directly impact the interior region of BC—regardless of any ripple effect from the coast to the interior—because logs can be and are exported from the interior of British Columbia. In this regard, we disagree with the GOC/GBC that the record establishes that it is not economically feasible to export logs from much of the interior. First, for this argument, the GOC/GBC rely upon the Kalt Report and Bustard Report, which were commissioned specifically for purposes of this investigation.[883] As such, these reports carry limited weight given their potential for bias and conclusions that were tailored to generate a desired result. Furthermore, this finding is contradicted by other record evidence that logs from different parts of the interior are exported.[884] These exports account for a significant

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[878] *Id*. at Exhibit BC-S-183 at page 4 ("Spruce-Pine-fir (SPF) lumber from BC is substitutable by other species …... {i}nland and Coastal Hem Fir are the closest in properties and likely to be the initial products of choice.").
[879] For example, western hemlock, Douglas-fir and lodgepole can both be used for lumber for general construction. *Id*. at BC I-58 to 63.
[880] *See* GOC Etal Primary QNR Response at LEP-4.
[881] *Id.*
[882] *Id.* at LEP-6.
[883] *See* GOC Primary QNR Response Part 1 at Exhibits LEP-1 (Kalt Report) and LEP-2 (Bustard Report).
[884] Specifically, the record demonstrates that there are significant exports of logs from the tidewater interior and southern interior. Further, record information shows that there were some requests to export BC logs to Alberta during the POI. *See* GOA Primary QNR Response Part 1 at Exhibit AB-S-3, Table 3. While this data does not detail the source or destination of these logs, given the GBC's argument that the transportation costs limit how far

amount of the total exports from the entire province.[885] As such given that there are substantial exports from various sections of the interior, it is feasible to export logs from the interior. While these exports may predominantly originate from a different area of the interior, record evidence reflects that the vast majority of mills in the interior overlap with one another and with potential export markets,[886] and the impact on the border regions of the interior would have a similar "ripple effect" on the BC interior.

Finally, the GOC/GBC argue that record evidence demonstrates that it is not economic to export MPB-damaged logs from the BC interior. This argument is in response to the Department's finding in the *Preliminary Determination* that logs can be economically exported from the interior,[887] in which the Department relied on information from the "Mountain Pine Beetle Alternative Business and Market Options" report.[888] That report indicated that MPB infected logs could be economically exported from British Columbia.[889] In its case brief, the GOC/GBC argue that the Department ignored contradictory evidence in reaching this finding.

As an initial matter, as the preceding analysis demonstrates, our finding that log export restraints impact the entire province does not depend on whether MPB damaged logs can be exported economically. Nonetheless, we continue to find that our preliminary finding that MPB killed logs can be exported from the BC Interior was supported by a reasonable reading of the record. First, the record information upon which the GOC/GBC rely is a "rebuttal" report commissioned for the purposes of this investigation[890] and as such, the results of this report carry only limited weight given its potential for bias and conclusions that were tailored to generate a desired result. By contrast, the report that the Department relied upon to support its finding was commissioned (not for the purposes of this investigation) for Forestry Innovation Investment Ltd[891] a GBC agency, and we consider its data and conclusions to be more reliable on that basis.[892] This report

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the logs can be transported, it is reasonable to presume that the logs were coming from the eastern portion of the BC Interior.

[885] *See, e.g.,* GOC Primary QNR Response Part 1 at page LEP-5, which shows that exports from the Tidewater Interior account for approximately eight percent of total exports from the entire province and exports from the Southern Interior account for approximately two percent of total exports from the entire province.

[886] *See* Petitioner Comments – Primary QNR Responses at Exhibit 19. In this exhibit, the petitioner provided a map, in which a 100-mile radius is drawn around the sawmills in the BC interior, which demonstrates that the BC interior sawmills all overlap with each other. We note that this figure is consistent with the findings of the GOC/GBC's own expert, as the Bustard Report states that "{i}n most Interior areas it is economically feasible to truck export logs for up to about a 7-hour return cycle from harvest sites. This represents approximately a 228 km (142 mile) each way."). *See* GOC Primary QNR Response Part 1 at Exhibit LEP-2 at 10. As such, we find that the 100-mile radius used by petitioner is a conservative estimate to the degree in which BC interior sawmills all overlap with each other.

[887] *See* PDM at 58.

[888] *See* Petitioner Comments – Primary QNR Responses at Exhibit 21 ("Mountain Pine Beetle Alternative Business and Market Options: Phase II Final Report").

[889] *Id.* ("The above table illustrates that only two markets outside of BC, the U.S. Pacific Northwest and China, have a realistic market potential for MPB grey attacked timber.").

[890] *See* GOC Etal Comments Rebuttal to Petitioner Primary QNR Response Comments at Exhibit GOC/GBC-2.

[891] *See* Petitioner Comments – Primary QNR Responses at Exhibit 21 at cover page.

[892] *See, e.g.,* GBC Primary QNR Response Part 1 at page BC I-28 ("In 2003, the Government of British Columbia established Forestry Innovation Investment ('FII') to work with industry and the federal government to help maintain, create, and diversify markets for all B.C. forestry products.").

investigated alternative options for timber affected by the MPB epidemic,[893] which impacted the interior of the province. Further, the information used in this report was gathered from extensive interviews with companies and organizations involved in utilizing MPB damaged logs,[894] including the three mandatory respondents with BC operations in this investigation.[895] This report indicates that the processors interviewed for the report were opposed to allowing exports of MPB damaged logs, thus, indicating that these logs can be exported.[896] Finally, the Department's finding was not that damaged logs were actually exported, but that these logs may be exported. Thus, the Department's finding that it is was feasible for MPB-infected logs to be exported was reasonable.

Therefore, for these reasons, we continue to find that the log export restraints impact the entire province, including the BC interior. As such, we continue to find that the log export restraints constituted a countervailable subsidy in this investigation.

Comment 46: Whether the Log Export Restraints in British Columbia is a Financial Contribution

In the *Preliminary Determination*, we found that the GBC log export process provides a financial contribution by means of entrustment or direction of private entities, pursuant to section 771(5)(B)(iii) of the Act, because official governmental action compels suppliers of British Columbia logs to supply to consumers in the province, including mill operators, and that it constituted a provision of a good or service, in this instance the provision of logs, in accordance with section 771(5)(D)(iii) of the Act.[897]

The GBC, Canfor, West Fraser and Tolko argue that the log export process is merely an administrative process through which exporters obtain authorization to export.[898] Specifically, they argue that export permitting process is not a financial contribution, as it is not a direct government provision of goods, nor does not it fall within entrustment and direction. The petitioner argues that the Department correctly found that the log export process in British Columbia is a financial contribution.[899]

Department's Position: Logs harvested in British Columbia fall under either federal or provincial jurisdiction. Exports of logs under provincial jurisdiction are regulated under the

[893] *See e.g.*, Petitioner Comments – Primary QNR Responses at Exhibit 21 at 1.
[894] *Id*. at 7.
[895] *Id*. at 43-44.
[896] *Id*. at 39 ("From all indications, exports of grade #3 logs would likely be strongly opposed by industry. Industry is uncertain over the future availability of #3 grade and expects that this log grade will make up an increasing portion of their timber supply. Industry representatives indicated that any constraint to accessing log grade #3 would have negative impacts on the existing dimension lumber industry (which is the cornerstone of their business)").
[897] *See* PDM at 60.
[898] *See* GBC Case Brief Log Exports at 3-9; *see also* Canfor Case Brief at 36; *see also* Tolko Case Brief at 31; *see also* West Fraser Case Brief at 50-51.
[899] *See* Petitioner Rebuttal Brief at 87-92.

Forest Act.[900] Exports of logs under federal jurisdiction are regulated under Federal Notice to Exporters No. 102.[901] The *Forest Act* stipulates that timber harvested in British Columbia, from land under provincial jurisdiction must be: (a) used in British Columbia; (b) or manufactured within the province into a wood product.[902] However, the *Forest Act* allows for limited exemptions to the general prohibition on the export of logs. Generally, there are three exemptions:

(1) logs that are "surplus to requirements of timber processing facilities in British Columbia" (surplus criterion);
(2) timber that "cannot be processed economically in the vicinity of the land on which it is cut or produced, and cannot be transported economically to a processing facility located elsewhere in British Columbia" (economic criterion); and
(3) where an exemption "would prevent the waste of or improve the utilization of timber cut from Crown land" (utilization criterion).[903]

During the POI, all but two of the approved applications for export were made under the surplus test. Under this surplus test, the GBC requires all log suppliers to first offer logs to BC mill operators before they can be exported. Exemptions under the surplus test are generally approved through Ministerial Orders or through an individual OIC or a blanket OIC.[904] Under a Ministerial Order, a company submits an application, and the logs covered by the application are listed in a bi-weekly advertising list,[905] notifying British Columbia mill operators of the availability of the logs. If no bid is received for that listing, then the listing is considered surplus, and a Ministerial Order is granted.[906] If an application receives an offer, the offer will then be evaluated by the TEAC to determine whether it represents a fair market value.[907] TEAC members include government officials and log market experts, some of whom are active buyers and sellers of logs.[908] For the coastal region, the TEAC relies on pricing data from the VLM to evaluate whether an offer represents fair market value. The TEAC makes a recommendation to the GBC regarding whether the price offered is fair. If the offer is determined not to be fair, *i.e.*, below "market prices" as considered by the Committee, then the listing is determined to be surplus to the needs of BC manufacturers, and a Ministerial Order is granted, and the logs will be permitted for export. If an offer is deemed to be fair, the application for an export exemption is rejected. The seller in this instance may choose not to sell the logs to the bidder, but it may not resubmit an application to export the same logs.

In certain scenarios, exporters of logs can also apply for an exemption through either an individual OIC or a blanket OIC. Individual OICs allow applicants to receive exemptions for timber that is still standing, and they are also used for applicants with large export volumes

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[900] *See* GBC Primary QNR Response, Part 1 at Exhibit LEP-8.
[901] *Id.* at Exhibit LEP-4.
[902] *Id.* at Exhibit LEP-8, Part 10.
[903] *Id.* at LEP-16.
[904] *Id.* at LEP-16-18.
[905] *Id.* at LEP-17.
[906] *Id*.
[907] *Id*.
[908] *Id*. at LEP-46.

(15,000 cubic meters).[909] The GBC did not issue any individual OICs during the POI. Under a blanket OIC, the GBC permits a certain volume of logs from a given area to be exported without the application of the surplus test for each individual volume of logs exported. A blanket OIC applies to a specific region. During the POI, there were five blanket OICs in effect, covering specific areas in the Coastal region.

Further, exports of logs under provincial jurisdiction in British Columbia are subject to fees "in-lieu of manufacturing."[910] These fees range between C$1 per cubic meter to approximately 15 percent of the value of the specific log. The fees vary based on the location, species, and grade of the log. Further, in certain coastal areas, the "fee in lieu" is subject to an additional multiplication factor between 1.1 and 1.3 of the fee.[911]

Exports of logs under federal jurisdiction are subject to an almost identical process to the Ministerial Order surplus test described above for logs under provincial jurisdiction. Logs harvested under the provincial and federal jurisdiction in British Columbia, and all exports of logs throughout Canada, require an export permit under the EIPA because logs of all species are included on the Export Control List.[912] Companies submit an application to the Export Controls Division of the DFATD, which then has the GBC list these logs on the same bi-weekly advertising list discussed above.[913] If an offer is received, the offer is reviewed by the FTEAC. The FTEAC makes a recommendation to DFATD regarding whether the logs are surplus and should be granted an export permit. Violations of EIPA are punishable by the penalties described in section 19 of the EIPA.[914]

As noted above, in the *Preliminary Determination*, we found that log export process was a financial contribution by means of entrustment or direction of private entities, pursuant to section 771(5)(B)(iii) of the Act, and that it constituted a provision of a good or service, in accordance with section 771(5)(D)(iii) of the Act.[915]

In the *Preliminary Determination*, we found a long history of the government managing the forest in British Columbia, as well as restricting log exports. Specifically, the GBC has had the right to manage the forest in the province since 1867, and the GBC has managed the majority of the land in the province for more than 100 years.[916] Further, we found that export restrictions have been in place for logs under provincial jurisdiction since 1891, and for logs under federal jurisdiction since 1940.[917] As such, we preliminarily found that the provision of logs, which satisfies the definition of a financial contribution under section 771(5)(D)(iii) of the Act, would

[909] *Id.* at LEP-17.
[910] *Id.* at LEP-34-35
[911] *Id.*
[912] *Id.* at LEP-8.
[913] *Id.* at LEP-11-12.
[914] *Id*. at Exhibit LEP-5.
[915] *See* PDM at 60.
[916] *Id*. at 61.
[917] *Id.*

normally be vested in the government, and that the provision does not differ substantively from the normal practices of the government.[918]

Further, we determined that GBC's requirements for export, combined with both the lengthy process for obtaining an exception, and the fees charged by the GBC upon export, result in a policy where the GBC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act, and to provide a financial contribution of logs, in accordance with section 771(5)(D)(iii) of the Act.[919] With respect to the GOC, we preliminarily determined that the GOC has entrusted and directed private log suppliers to provide logs to mill operators insofar as the surplus test and the legal penalties for exporting logs without an export permit compel such suppliers to divert to mill operators logs that could otherwise be exported. Therefore, we found that the GOC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of 771(5)(B)(iii) of the Act, and to provide a financial contribution of the provision of logs, in accordance with section 771(5)(D)(iii) of the Act. [920]

As an initial matter, there are no new facts that were placed on the record following the *Preliminary Determination* regarding the manner in which the log export process operates. Further, as discussed below, we disagree with the arguments made by GOC/GBC, Canfor, West Fraser and Tolko that the log export process does not provides a financial contribution.

First, citing to *CFS from Indonesia*, the GOC/GBC argue that the Department has distinguished between bans and partial restraints. Specifically, they argue that in *CFS from Indonesia,* the Department determined that the export policy in place in Indonesia was a complete ban and, therefore, was countervailable. According to the GOC/GBC, the export permitting process cannot be characterized as a ban, and thus the "impact" of *CFS from Indonesia*, cannot be carried over to the facts in this investigation.

As an initial matter, we agree that there is not a "ban" on exports of logs from British Columbia, in the same manner that the Department found that logs from Indonesia could not be exported. However, we do not agree with the respondents' characterization of *CFS from Indonesia*. While the Department did compare the export restraints in Indonesia to other types of export restraints (export quotas, export duties, and certification requirements) in *CFS from Indonesia*, in concluding that the complete ban in Indonesia is countervailable, the Department did not state that only an export ban is countervailable or that export restraints are not countervailable.

Moreover, in *CFS from Indonesia*, the Government of Indonesia's (GOI's) stated purpose for the log export ban was "to reduce environmental degradation and to manage the forest in a sustainable manner."[921] The Department, therefore, evaluated the record information, including three independent studies provided by the GOI, to determine whether there was a financial

[918] *Id.*
[919] *Id.*
[920] *Id*.
[921] *See CFS from Indonesia* IDM at 27.

contribution.[922] The GOI's submitted studies did not corroborate the GOI's assertion, however, and the Department found the log export ban program to provide a financial contribution because the record evidence demonstrated that the supply of logs at suppressed prices benefitted the pulp and paper industry.[923]

In this investigation, the program under investigation is a process that prohibits the export of logs without an export permit, and an export permitting process that authorizes the export of logs, in accordance with specified criteria. Thus, as in *CFS from Indonesia*, our analysis focused on this process, and the information submitted by the GOC and GBC. Based on our analysis of this information, we find that the program provides a financial contribution. As such, despite the claim that the export permitting processes "does not direct the harvest or owner to provide logs to any purchaser in particular",[924] we have determined based on the available record evidence that the program is designed to benefit, and in operation it does benefit, downstream consumers similar to the analysis in *CFS in Indonesia*.

Further, parties argue that the exporting process does not fall within any of the four statutory categories of financial contribution defined under the Act. Under section 771(5)(B)(iii) of the Act, a subsidy is bestowed when an authority entrusts or directs a private entity to make a financial contribution, if providing the financial contribution would normally be vested in the government and the practice does not differ in substance from the practices normally followed by governments. Under section 771(5)(D) of the Act, the term "financial contribution" means (i) the direct transfer of funds; (ii) foregoing or not collecting revenue that is otherwise due; (iii) providing goods or services; or (iv) purchasing goods. Therefore, if an authority entrusts or directs a private entity to either (i) provide a direct transfer of funds such as a loan; (ii) forego revenue; (iii) provide a good or a service; or (iv) to purchase a good, then under section 771(5)(B)(iii) of the Act, a financial contribution has been made.

The *SAA* provides explicit guidance regarding circumstances in which the Department will find that a private party has been entrusted or directed and therefore provided made a financial contribution within the meaning of section 771(5)(B)(iii) of the Act. The *SAA* states:

> In the past, the Department. . . has countervailed a variety of programs where the government has provided a benefit through private parties. (*See, e.g., Certain Softwood Lumber Products from Canada, Leather from Argentina, Lamb from New Zealand, Oil Country Tubular Goods from Korea, Carbon Steel Wire Rod from Spain, and Certain Steel Products from Korea*). The specific manner in which the government acted through the private party to provide the benefit varied widely in the above cases. Commerce has found a countervailable subsidy to exist *where the government took or imposed (through statutory, regulatory or administrative action) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation.*

[922] *Id*. at 29-32.
[923] *Id*.
[924] *See* GBC Case Brief Log Exports at 9.

> In cases where the government acts through a private party, such as in *Certain Softwood Lumber Products from Canada* and *Leather from Argentina* (which involved export restraints that led directly to a discernible lowering of input costs), the Administration intends that the law continue to be administered on a case-by-case basis consistent with the preceding paragraph.[925]

Thus, there may be a number of ways in which an authority can act through a private party to provide a financial contribution. The *SAA* also establishes that the circumstances by which the government acts through a private party can vary widely, and that Commerce must examine these circumstances, and the relevant evidence, on a case-by-case basis. The *SAA* also states that the "entrusts or directs" standard must be interpreted broadly.[926]

Timber harvesters and processors in British Columbia are limited, by the provincial or federal restrictions on the export of logs to which they are subject, in to whom they can sell their logs. These limitations result in the third-party timber harvesters and processors providing logs to BC processors of logs at the entrustment or direction of the GBC and the GOC. We continue to find that this provision of logs falls within the definition of a financial contribution under section 771(5)(D)(iii) of the Act because the provision of logs is the provision of a good or service, other than general infrastructure.

Information on the record shows that these third-party timber harvesters are private companies. Because the timber harvesters are private companies, in order for their provision of logs to potentially give rise to a countervailable subsidy, the Department must consider two factors under section 771(5)(D)(iii) of the Act: whether an authority entrusted or directed the timber harvesters to make a financial contribution to our respondent companies, and whether the provision of this financial contribution (provision of logs) would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments.

To analyze whether the timber harvesters have been entrusted or directed to provide a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, we considered the laws and regulations that govern the provision of logs within British Columbia. As detailed above, the lengthy and burdensome export prohibition exemption process discourages log suppliers from considering the opportunities that may exist in the export market by significantly encumbering their ability to export, especially where there may be uncertainty about whether their logs will be found to be surplus to the requirements of mills in BC. Moreover, this process restricts the ability of log suppliers to enter into long-term supply contracts with foreign purchasers.

The legal obligations described above do not exist in some other markets. In de-regulated or totally open markets, sellers can choose to sell their products whenever and to whomever it makes economic sense to do so. Timber harvesters can choose to sell logs wherever it makes economic sense to do so and they can approach buyers while the timber is still standing. However, as noted above, timber harvesters in British Columbia must ensure that demand for logs in British Columbia is met before seeking a purchaser overseas and, therefore, they are

[925] *See* SAA at 926 (emphasis added).
[926] *Id*.

forced to receive a lower price for their timber in British Columbia than they would if they were able to export free of the GBC and GOC export restrictions.

Therefore, the legal requirements that logs remain in British Columbia combined with the process for obtaining an exception from those requirements to export, result in a policy where the GOC and GBC have entrusted or directed timber harvesters to provide logs to producers in British Columbia. Specifically, with respect to the GBC, we continue to find that the legal requirements, combined with both the lengthy process for obtaining an exception, and the fees charged by the GBC upon export, result in a policy where the GBC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act. With respect to the GOC, we continue to find that the GOC has also entrusted and directed private log suppliers to provide logs to mill operators, within the meaning of 771(5)(B)(iii) of the Act, insofar as the surplus test and the legal penalties for exporting logs without an export permit compel such suppliers to divert to mill operators some volume of logs that could otherwise be exported.

Finally, as discussed above, in the *Preliminary Determination*, we found that there is a long history of government management of the forest in British Columbia. Further, we found that export restrictions have long been in place for logs under provincial jurisdiction and federal jurisdiction. There is no new record information that would cause to reconsider this finding. Therefore, we continue to find there is a 150-year history of the government managing the forest in British Columbia, and a 125-plus year history of the government restricting log exports. Thus, the history of the timber market and the ownership of timber land by the Crown in British Columbia that the provision of logs, which satisfies the definition of financial contribution under section 771(5)(D)(iii) of the Act, would normally be vested in the government, and that the provision does not differ substantively from the normal practices of the government.

In their case briefs, the GOC/GBC and West Fraser challenge aspects of the Department's entrustment or direction finding. In particular, they argue that the Department's finding that the GOC and GBC have entrusted or directed timber harvesters to provide logs to producers in British Columbia is inconsistent with the Department's prior practice in *DRAMS from Korea* and with certain WTO reports. The GOC/GBC and West Fraser also assert that the Department has failed to establish that the financial contribution "would normally be vested in the government" pursuant to section 771(5)(B)(iii) of the Act, because the alleged financial contribution is the provision of logs and not standing timber or the restraint of exports. However, we find these arguments unpersuasive.

First, we disagree that WTO panel decisions are relevant in this investigation. The Department's determination here is governed by U.S. law. U.S. law is consistent with the United States' international obligations, and, for reasons discussed above, the Department has acted in accordance with U.S. law.

Second, *DRAMS from Korea* does not stand for the proposition that the Department has found that entrustment or direction can *only* occur where the government has "affirmatively" given responsibility to a private entity to carry out what might otherwise be a governmental subsidy function. In that case, the Department did not define the boundaries of what could be considered

entrustment or direction; moreover, the SAA explicitly provides that any analysis of entrustment or direction must proceed on a "case-by-case basis."[927] Furthermore, as stated in the SAA, the entrustment or direction can be done by a government statutory, regulatory or administrative action as in the case of the investigated log ban at issue in this investigation. Indeed, the SAA explicitly cites to the countervailability of very log export restraint program in *Certain Softwood Lumber Products from Canada* that is subject to investigation in this instant case.

Third, we have explained how the provision of logs would normally be vested in the government, given the extensive history of government management of forests in British Columbia and of government restrictions on exports of logs from the province. Although West Fraser argues that the government's control over the right to harvest Crown standing timber fails to establish that the provision of logs has been normally vested in the government, logs are harvested from standing timber in forests. And in British Columbia, over 94 percent of the forest is owned by the GBC.[928] Therefore, we continue to find that the financial contribution would normally be vested in the government.

Comment 47: Whether the Constructed Benchmark for Log Export Restraints in the *Preliminary Determination* was Correct

To calculate a benefit for log export restraints in British Columbia in the *Preliminary Determination*, the Department constructed tier-two, or world market price, benchmarks to match the logs purchased by mandatory respondents in British Columbia.[929] These benchmarks were based on monthly delivered prices of logs in Washington, because we found that the tree species in the U.S. PNW are comparable to those in British Columbia, and that logs from Washington would be available to purchasers in British Columbia. Additionally, we included international freight charges in these monthly benchmark prices to ensure that both the BC purchases and the benchmark prices are on a "delivered" basis, as required by 19 CFR 351.511(a)(2)(iv).[930]

The GOC/GBC, Canfor, West Fraser and Tolko argue that the benchmark used by the Department in the *Preliminary Determination* is incorrect.[931] Specifically, they state that Department's use of a second-tier benchmark (world market prices), using Washington state delivered log prices is unreasonable and inflates the alleged benefit. Further, they argue that the log transportation cost adjustment based on lumber transport is not consistent with the economic reality of the lumber industry. The petitioner argues that the Department properly included international freight charges in the *Preliminary Determination* and should continue to do so for this final determination.[932]

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[927] *See* SAA at 926.
[928] *See* PDM at 20.
[929] *See* PDM at 62-63.
[930] *Id*.
[931] *See* GBC Case Brief Log Exports at 26-29; *see also* Canfor Case Brief at 37-38; *see also* Tolko Case Brief at 31-32; *see also* West Fraser Case Brief at 53-55.
[932] *See* Petitioner Rebuttal Brief at 101-109.

Department's Position: The Department continues to find that the application of a tier-two benchmark methodology in calculating a benefit for this program is consistent with its regulations. Specifically, 19 CFR 351.511(a)(2) sets 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.

Thus, our preference in selecting a potential benchmark, *i.e.*, using a tier-one benchmark, would be to use actual purchase prices within Canada because such prices would generally reflect most closely the commercial environment of the purchaser under investigation.[933] However, as discussed above in Comment 18, we continue to find that the stumpage market in BC is distorted. The demand and value of logs in the BC market is linked with demand and value of stumpage in BC, as supply and value of the logs available in the market are derived from the stumpage market in the province. For these reasons, we continue to find that prices of BC-sourced logs as well as the prices of imported logs cannot be used as tier-one benchmarks to measure the adequacy of remuneration.

The Department's next preference, under 19 CFR 351.511(a)(2)(ii), is a tier-two world market price. Respondents have argued that world market prices are not "available" to producers in the BC interior because log markets are localized and it is not economic to export logs from the PNW to the BC interior. As an initial matter, 19 CFR 351.511(a)(2)(ii) requires only that the world market price be available to "purchasers in the country in question," and does not require a specific demonstration that the mandatory respondents in particular would have made these world market purchases.[934] Moreover, for reasons discussed in detail in Comments 44 and 45, we find that logs from the BC interior can be and are exported. Because logs can be and are exported from the BC interior, they can also be imported to the BC interior; as such, we find that world market prices are "available" to sawmills throughout BC, including the interior. Thus, the reliance on a tier-two benchmark is appropriate.

Because the Department determines that it is appropriate to use a tier-two benchmark, we must adjust the benchmark as required by law.[935] Specifically, pursuant to 19 CFR 351.511(a)(2)(iv), world market prices must be adjusted to include delivery charges and import duties, to arrive at a

[933] *See CVD Preamble*, 63 FR at 65377.
[934] *See, e.g.*, *Beijing Tianhai* at 1374 ("When constructing a tier-two benchmark, the reference to 'a firm' does not mean the respondent. Rather, it refers to a hypothetical firm located in the PRC purchasing steel tube during the POI. This is why the Department is directed, when calculating tier-two benchmarks, to determine 'price{s that} would be available to purchasers in the country in question.'" (internal citations omitted)).
[935] *See Essar Steel Ltd.* at 1268, 1274 ("Essar further argues that Commerce and the trial court erred by adding freight and import costs to the world market price. Both the statute and the regulation, however, require that these costs be added to the benchmark prices. . .. Commerce's decision to add these charges to the benchmark prices is consistent with the relevant statute and regulation and is supported by substantial evidence." (internal citations omitted)).

delivered price "to reflect the price that a firm actually paid or would pay if it imported the product." Moreover, pursuant to section 771(5)(E) of the Act, the adequacy of remuneration shall be determined in relation to prevailing market conditions, including transportation. Thus, the Department's standard practice is to include in benchmarks international freight charges to reflect the delivered price of an imported good, as was done for log prices in *SC Paper from Canada – Expedited Review*[936] and *Coated Paper from Indonesia*.[937]

Therefore, the Department properly relied on the international freight costs for shipping lumber from BC to customers in US PNW in making an adjustment for delivery charges pursuant to 19 CFR 351.511(a)(2)(iv), because these are the only transportation costs available on the record. The respondents' arguments that they would not actually pay these international freight charges are not relevant. Whether or not the respondent companies actually imported the input in question and paid international freight is not relevant for purposes of determining an appropriate benchmark, because the proper focus under 19 CFR 351.511(a)(2)(iv) is on the price a firm (not necessarily the respondent) would pay.[938] Furthermore, although the GOC/GBC argue that the transportation costs are too high, the GOC/GBC do not propose alternative cost data; as stated above, we have relied on the only information available on the record in making our adjustment.

Although GOC/GBC cite *Borusan* for the principle that the Department must consider the economic reality of the BC interior in making adjustments under 19 CFR 351.511(a)(2)(iv), we disagree that the CIT's holding is relevant here. As set forth above, the Department's regulations and the statute *require* that the Department make an adjustment for delivery charges. Because the Department relied on the only available information on the record, the question here is not whether a different source would more reasonably reflect the respondents' actual experience.[939] In arguing against the freight costs used by the Department in the *Preliminary Determination*, with no alternative available on the record, the GOC/GBC essentially proposes the wholescale rejection of any adjustment for delivery charges; this proposal conflicts with our statutory and regulatory obligations and we have not adopted it here.

Finally, the GOC/GBC argue that should the Department continue to apply a cross-border benchmark, it should compare the US log prices on a delivered basis in the United States with the respondents' all-in delivered log costs. However, this methodology would conflict with 19 CFR 351.511(a)(2)(iv), which stipulates that world market prices must be adjusted "to reflect the price that a firm actually paid or would pay if it imported the product."

Comment 48: Whether Electricity Is a Service and Therefore Whether the Purchase of Electricity by BC Hydro Is a Financial Contribution

Tolko argues that electricity is a service because it is not tangible, and Congress intended that government purchases of services could not give rise to a financial contribution. Therefore, Tolko argues that the purchase of electricity is not a financial contribution under section

[936] *See SC Paper from Canada – Expedited Review* IDM at Comment 17.
[937] *See Coated Paper from Indonesia* IDM at Comment 12.
[938] *See Beijing Tianhai* at 1374.
[939] *See Borusan* at 1340-41.

771(5)(E)(iv) of the Act, and is thus, not countervailable.[940] The petitioner states that the Department has previously determined that electricity is a good; therefore, the purchase of electricity does constitute a financial contribution under the Act.[941]

Department's Position: As an initial matter, Tolko supports this argument with a hyperlink to a website that is not on our record.[942] Because this is not record evidence, we have not relied upon it. Regardless, the Department in prior cases has determined that electricity is a good. For example, in *Hot-Rolled Steel from Thailand*, the Department found that electricity is not a service but is a good that is bought and sold in the marketplace.[943] In *Reinforcing Bar from Turkey*, the Department also stated that electricity is a good.[944] Therefore, the Department in prior CVD cases has determined that electricity is a good, and Tolko has provided no basis for deviating from that prior finding. Accordingly, we continue to find that the purchase of electricity by the government-owned BC Hydro constitutes a financial contribution under section 771(5)(E)(iv) of the Act.

Tolko also argues that the "turndown" payments it receives should be considered a service rather than as a good; however, we note that, in addition to finding electricity a good in the cases cited above, the respondent has provided no legal justification for this argument. As noted by Tolko, these payments are used to compensate Tolko for its investment in fixed generation assets that relate to its sales of electricity to BC Hydro; therefore, these payments would qualify as a financial contribution under 771(5)(D) of the Act. We have also previously found these types of programs to provide a financial contribution in both *CRS from Korea* and *HRS in Korea*.[945]

Comment 49: Whether BC Hydro's Purchase of Electricity Is Tied to Electricity

Tolko argues that the Department erred in attributing a benefit to softwood lumber under the Purchase of Electricity MTAR program because any benefit from BC Hydro's purchase of electricity is tied to Tolko's sales of electricity. Tolko further argues that even if electricity were regarded as an input product, the exception under 19 CFR 351.525(b)(5)(2) would not apply because none of the purportedly subsidized electricity purchased by BC Hydro can be used to produce softwood lumber.[946] The GBC makes the same arguments.[947] The petitioner argues that subsidies that benefit the production of electricity should be attributed over the recipients' overall sales pursuant to 19 CFR 351.525(b)(5)(2) because electricity is an input to both subject

[940] *See* Tolko Case Brief at 51-52.
[941] *See* Petitioner Rebuttal Brief at 161-163.
[942] *See, e.g.*, *Pasta from Italy 2012 AR* and the accompanying IDM at 5-6. ("In the Post-Preliminary Analysis, we noted that a hyperlink to a website, as the GOI submitted in the GOI 5SQR, is not an acceptable response to our questions because a mere citation to a hyperlink does not constitute the provision of information on the record of a proceeding, because information accessible via a hyperlink is subject to change.")
[943] *See Hot-Rolled Steel from Thailand* IDM at Comment 10.
[944] *See Reinforcing Bar from Turkey* IDM at 25.
[945] *See CRS from Korea* IDM at 22-24; and *HRS from Korea* IDM at 21-23.
[946] *See* Tolko Case Brief at 53-54.
[947] *See* GBC Case Brief at 92-93.

and non-subject merchandise, regardless of whether the company actually uses the subsidized input in its production.[948]

Department's Position: The respondents' argument that benefits from an electricity subsidy program are tied to electricity reflect a misunderstanding of the CVD law. If as Tolko argues, a subsidy provided to the sale of electricity is tied to electricity, then electricity subsidies would escape the remedies provided under the CVD law. Under the premise of the respondents' argument, the Department would be unable to countervail such programs as electricity subsidies, water subsidies, and land subsidies because the benefits from these programs would only benefit electricity, water, or land. This argument is at odds with 30 years of case precedent with respect to electricity alone. See, for example, *Fresh Cut Flowers From Mexico*;[949] *Cold-Rolled Carbon Steel Flat-Rolled Products From Korea*;[950] *Certain Textile Mill Products and Apparel from Singapore*;[951] *Carbon Steel Wire Rod from Saudi Arabia*;[952] *Steel Wire Nails From New Zealand*;[953] *Ball Bearing From Thailand*;[954] *Magnesium From Canada*;[955] *Extruded Rubber Thread From Malaysia*;[956] *Certain Steel Products From Korea*;[957] *Oil Country Tubular Goods From Argentina*;[958] *Steel Wire Rod From Trinidad and Tobago*;[959] *Steel Wire Rod from Venezuela*;[960] *Cut-to-Length Carbon-Quality Steel Plate from Indonesia*;[961] *Low Enriched Uranium From France*;[962] *Hot-Rolled Carbon Steel Flat Products From Thailand*:[963] *Kitchen Racks from the People's Republic of China*;[964] *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman*;[965] *Shrimp from Ecuador*;[966] *Melamine From Trinidad and*

[948] *See* Petitioner Rebuttal Brief at 134-135.
[949] *See Fresh Cut Flowers from Mexico*, 49 FR 15007, 15009.
[950] *See Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 FR 47284, 47292.
[951] *See Certain Textile Mill Products and Apparel from Singapore*, 50 FR 9840, 9842.
[952] *See Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206, 4211.
[953] *See Steel Wire Nails from New Zealand*, 52 FR 37196, 37198.
[954] *See Ball Bearing from Thailand*, 54 FR 19130, 19133.
[955] *See Magnesium from Canada*, 57 FR 30946, 30949.
[956] *See Extruded Rubber Thread from Malaysia*, 57 FR 38472, 38474.
[957] *See Certain Steel Products from Korea*, 58 FR 37338, 37350.
[958] *See Oil Country Tubular Goods from Argentina*, 62 FR 32307, 32309.
[959] *See Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003, 55006.
[960] *See Steel Wire Rod from Venezuela*, 62 FR 55014, 55021.
[961] *See Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR 73155, 73162.
[962] *See Low Enriched Uranium from France* IDM at "Purchase at Price that Constitute 'More Than Adequate Remuneration'" which refers to the electricity company EDF, wholly-owned subsidiary of the Government of France.
[963] *See Hot-Rolled Carbon Steel Flat Products from Thailand* IDM at "Provision of Electricity for Less than Adequate Remuneration."
[964] *See Kitchen Racks from the People's Republic of China* IDM at "Government Provision of Electricity for Less than Adequate Remuneration."
[965] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman* IDM at "Provision of Electricity for LTAR."
[966] *See Shrimp from Ecuador* IDM at Comment 3.

Tobago;[967] *Welded Line Pipe From the Republic of Korea*;[968] *Chlorinated Isocyanurates from the People's Republic of China*;[969] and *Cut-To-Length Plate From the Republic of Korea*.[970]

Moreover, section 701(a) of the Act requires the Department to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of the subject merchandise.[971] Electricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer. Under the CVD regulations, if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, the Department will attribute the subsidy to sales of all products produced by the company.[972] Because electricity is required to operate the production facilities of Tolko, the benefit from the investigated program is attributed to all products produced by Tolko under 19 CFR 351.525(a).

As noted in Comment 51, the Department lacked experience with respect to the purchase of goods at the time the CVD regulations were promulgated.[973] Therefore, when the Department developed our general rules of attribution that are set forth under 19 CFR 351.525, we were unable to consider purchase of good subsidies within these general attribution rules; however, it is clear from the case precedent that is cited above, cases that were decided both before and after we enacted our current CVD regulations, that benefits from electricity subsidies are attributed to all products. Furthermore, the attribution of MTAR benefits over sales of all products is consistent with case precedent. In *SC Paper from Canada*, the Department allocated the benefit from the purchase of land for MTAR over the respondent company's total sales.[974] In *CRS from Korea*, the benefit conferred from the purchase of electricity for MTAR was attributed over the respondent's total sales.[975] Finally, in *HRS from Korea*, the Department also attributed the benefit conferred from the purchase of electricity for MTAR over the respondent's total sales.[976]

Section 771(5)(D)(iv) of the Act states that the government purchase of a good is a financial contribution and section 771(5)(E)(iv) provides that the purchase of a good provides a benefit if that good is purchased for more than adequate remuneration. Therefore, the statute explicitly provides that a government purchase of a good can constitute the provision of a countervailable subsidy to an investigated company. If the attribution rules were interpreted based upon the understanding of Tolko, then the Department would effectively negate the language of the statute with respect to the provision of a good. Based upon the arguments of Tolko, not only would electricity subsidies be tied to electricity, but the purchase of a good by the government would

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[967] *See Melamine from Trinidad and Tobago* IDM at "Provision of Electricity for LTAR."
[968] *See Welded Line Pipe from the Republic of Korea* IDM at "Korea Electric Power Corporation (KEPCO's) Provision of Electricity for LTAR."
[969] *See Chlorinated Isocyanurates from the People's Republic of China* IDM at "Electricity for LTAR."
[970] *See Cut-To-Length Plate from the Republic of Korea* IDM at "Provision of Electricity for LTAR."
[971] Although not relevant here, section 701(a) of the Act also requires that the ITC reach an affirmative material injury determination, as a prerequisite to the imposition of countervailing duties.
[972] *See CVD Preamble*, 63 FR at 65400.
[973] *See CVD Preamble*, 63 FR at 65379.
[974] *See SC Paper from Canada Preliminary Determination* IDM at 42. In the final determination, the benefit from this program was less than 0.005 percent and not included in the overall subsidy rate. *See SC Paper from Canada* IDM at 57.
[975] *See CRS from Korea* IDM at 37. The final determination was based upon AFA.
[976] *See HRS from Korea* IDM at 36. The final determination was based upon AFA.

also be tied to the domestic market for that good. Were that the case, the purchase of a good would never be countervailable, contrary to the express language of section 771(5)(E)(iv) of the Act.

Finally, under this investigated program, Tolko sells an input as defined within 19 CFR 351.503(b) and receives more revenues than it otherwise would have earned. The revenue earned by Tolko on its electricity sales benefits the overall operations of the company and, therefore, we have attributed the benefit over all products produced by the company.

Comment 50: Whether BC Hydro's EPA Program is Specific

The GBC argues that the EPA program is not specific because there is a broad and varied level of participation which includes many power providers other than companies that are sawmills. They state that, of the 105 active EPAs in place, less than 20 percent were biomass projects.[977]

Department's Position: In the *Preliminary Determination*, we found that the fact that BC Hydro had only 105 active EPAs with independent power producers meant that subsidy recipients were limited in number and that the program was, therefore, *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The GBC argues that these users were spread among a variety of projects, and less than 20 percent of these EPAs were for biomass projects. But the diversity or variety of users, or the relative percentage of users engaged in biomass projects as compared with other projects, is irrelevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act. The fact that there are many power providers other than just sawmills does not negate the fact that there are only 105 actual recipients with EPAs under this program. As explicitly stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.[978] The EPA program which is limited to only 105 power providers in BC is not widely used throughout the provincial economy; therefore, the program is specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 51: Which Benchmark Should the Department Use for the Purchase of Electricity for MTAR by BC Hydro

In the *Preliminary Determination*, the Department evaluated whether BC Hydro purchased electricity from Tolko and West Fraser for MTAR by comparing the purchase prices to certain benchmarks. For West Fraser, we compared the monthly weighted-average unit sales price of electricity from West Fraser to BC Hydro to the monthly base unit price that West Fraser paid to BC Hydro for electricity. The record did not contain similar data for Tolko at the time of the *Preliminary Determination*. Therefore, for Tolko, we compared the per-unit sales price that BC Hydro paid for electricity from Tolko to a weighted-average unit price that FortisBC (a private investor-owned utility) paid to Tolko.[979]

[977] *See* GBC Case Brief at 91.
[978] *See* SAA at 929.
[979] *See* PDM at 84-85.

West Fraser and the GBC argue as a threshold matter that EPAs with independent power producers result from a competitive bidding process and, in that sense, they are necessarily market-based. Under these circumstances, the prices are adequate as a matter of law and no benchmark analysis is warranted.[980]

Tolko argues that we cannot use rates at which BC Hydro and FortisBC sell electricity as benchmarks because these rates are not set by market forces, but rather reflect the utilities' embedded costs for generating and acquiring power plus a rate of return approved by the British Columbia Utilities Commission (BCUC). Similarly, Tolko argues that FortisBC's purchases of electricity from Tolko were not market-determined because Fortis was in an excess supply position and was, thus, not a willing buyer. Furthermore, Tolko argues that these rates reflect spot prices for different energy products that are not comparable to long-term, green energy purchased by BC Hydro, and that, in the case of the Armstrong plant, were not even available to Tolko Armstrong. Tolko argues that the benchmark should be the bids from BC Hydro's Bioenergy Power Call Phase I, or the Department should, consistent with a tier-three benchmark find the purchase prices to be consistent with market principles.[981]

West Fraser makes similar arguments with respect to a benchmark. In particular, West Fraser argues that BC Hydro's electricity purchases were market-determined, as a matter of law. West Fraser further contends that if the Department must make a comparison to a benchmark, then the benchmark should be the average successful bid price from BC Hydro's BioEnergy Phase I Call, or BC Hydro's long-run marginal cost. West Fraser contends that the alternative benchmarks are not "market-determined," and/or reflect different products and different market conditions.[982]

The GBC argues that FortisBC prices are inappropriate for use as a benchmark because they reflect purchases of opportunistic, spot-market power. By contrast, the GBC argues that the purchase prices of electricity by BC Hydro under the EPAs are consistent with market principles under a tier-three benchmark; in addition, the bids from BC Hydro's Bioenergy Power Call Phase I would be appropriate tier-one benchmarks.[983] The GBC also argues, in rebuttal to the petitioner, that there is no evidence that the electricity market in British Columbia is distorted and that use of a domestic tier-one benchmark is warranted. However, the GBC maintains that BC Hydro tariff rates are inappropriate benchmarks because they reflect the costs of all resources in BC Hydro's resource stack and do not reflect long-term firm, green energy purchases.[984]

The petitioner argues that we cannot use the electricity rate charged by BC Hydro as a benchmark because these prices are government prices; instead we should use the prices charged by FortisBC.[985] The petitioner also argues, in rebuttal to Tolko, that the Department should continue to use Fortis benchmark prices, because the Department has a clear preference for actual transactions involving private parties when selecting a benchmark. The petitioner also

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[980] *See* West Fraser Rebuttal Brief at 13-14; GBC Rebuttal Brief at 20.
[981] *See* Tolko Case Brief at 43-48 and 54-64.
[982] *See* West Fraser Rebuttal Brief at 13-25.
[983] *See* GBC Case Brief at 93-98.
[984] *See* GBC Rebuttal Brief at 21-22.
[985] *See* Petitioner Case Brief at 52-60.

states that the competitive calls to power advocated by Tolko are not useable tier-one benchmarks and are not contemporaneous with the POI.[986]

Department's Position: As an initial matter, we disagree that prices paid under EPPs with BC Hydro are necessarily "adequate" because they result from a competitive bidding process. As the GBC recognizes, for government policy reasons, BC Hydro is required to purchase electricity from only sources within the province, and increasingly from renewable sources of power.[987] The GBC characterizes purchases from independent power producers, including the EPAs under investigation, as being part of this policy framework.[988] Because this policy framework limits the sources from which BC Hydro can source electricity, the prices that result from the EPA process cannot be considered market-based.

Furthermore, the fundamental premise underlying the GBC's and West Fraser's arguments is erroneous. The adequacy of remuneration does not exist in a vacuum; to determine whether remuneration is "adequate," a comparison source is needed. We, thus, continue to find that it is necessary to select a benchmark to calculate the benefit under this program.

In this regard, interested parties have submitted numerous comments with respect to the appropriate benchmark that the Department should use in the final determination to measure whether the purchase of electricity by BC Hydro under its EPAs with Tolko and West Fraser is for MTAR. For the most part, these comments are framed within a proposed benchmark analysis that is set forth under 19 CFR 351.511, which governs the regulation for the provision of good or services. But before addressing the benchmarks proposed by the interested parties, we first clarify the interpretive framework that we are applying in conducting a benefit analysis of the purchase of a good.

Section 351.512 of the Department's regulations pertains to the purchase of goods. This section of our regulations is designated as "[Reserved]." We stated in the *CVD Preamble* that this designation was driven by our lack of experience with procurement subsidies, and that as a result, we "are not issuing regulations concerning the government purchase of goods."[989] In the *CVD Preamble*, we also stated that we expect that any analysis of the adequacy of remuneration will follow the same basic principle set forth under 19 CFR 351.511 for the provision of a good or service, with a focus on what a market-determined price for the good in question would be.[990]

In this discussion in the *CVD Preamble*, the Department referred only to "procurement subsidies"; in other words, there is nothing in the *CVD Preamble* to suggest that the Department specifically contemplated the scenario presented here, where the government is both procuring *and* providing a good. Here, BC Hydro is both a purchaser of electricity, as well as the entity providing electricity, or setting and approving the prices at which electricity is provided to our respondent companies. Therefore, not only is the regulation for purchase of a good held in

[986] *See* Petitioner Rebuttal Brief at 164-169.
[987] *See* GBC Brief at 86 (citing GBC Primary QNR Response Part 1 at Exhibit BC-BCH-36).
[988] *See* GBC Brief at 87.
[989] *See CVD Preamble*, 63 FR at 65379.
[990] *Id.*

reserve, but the *CVD Preamble* also does not address the situation where a government is both a provider of the good as well as the purchaser of the good.

While 19 CFR 351.512 relating to the purchase of a good is held in reserve, 19 CFR 351.503(b) outlines the principles that the Department will follow when dealing with alleged subsidies for which the regulations do not establish a specific rule. In such instances, we will normally consider a benefit to be conferred "where a firm pays less for its inputs . . . than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn." We have adopted this definition in our regulations because it captures an underlying theme behind the definition of benefit contained in section 771(5)(E) of the Act.[991] Specifically, section 771(5)(E) of the Act states that a "benefit shall normally be treated as conferred where there is a benefit to the recipient." Section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy and reflects the "benefit-to-the-recipient" standard, which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice."[992]

Given that 19 CFR 351.512 for the purchase of a good is held in reserve, and the fact that the *CVD Preamble* for 19 CFR 351.512 does not address or reference the unique situation before us with respect to this allegation, where a government is both the provider and purchaser of the good, we find that our benefit analysis is more appropriately based upon the standard set forth under 19 CFR 351.503(b), which is in turn drawn from and consistent with section 771(5)(E) of the Act and the SAA. Therefore, we have not analyzed the benchmark sources discussed by the parties within the three-tiered hierarchy of 19 CFR 351.511(a)(2). In so doing, we note that we have reached this conclusion based on the specific facts of this investigation (*e.g.*, an MTAR analysis in situations where the government is both a provider and a purchaser of the same good). However, in situations where the government is solely a purchaser of a good and does not engage in the provision of that same good, the Department recognizes that a tiered analysis similar to that set forth under 19 CFR 351.511 – the regulation for the provision of a good or service – may be more appropriate.

Having established that we will analyze the benefit conferred based on the benefit-to-the-recipient standard set forth in 19 CFR 351.503(b), we next consider an appropriate benchmark for measuring that benefit. As described above, the petitioner advocates use of the prices at which FortisBC purchased electricity from Tolko's Kelowna sawmill; and (2) Tolko, West Fraser, and the GBC advocate use of successful bid prices from BC Hydro's BioEnergy Phase I Call, or BC Hydro's long-run marginal costs (to show that the purchases were consistent with market principles). The petitioner, West Fraser, Tolko, and the GBC all argue that BC Hydro's published electricity sales prices are not an appropriate source for measuring the adequacy of remuneration for BC Hydro's purchases of electricity.

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[991] *See CVD Preamble*, 63 FR at 65359. In promulgating this provision, the Department clarified that we will normally consider a benefit to be conferred where "a firm pays less for its inputs (*e.g.*, money, *a good*, or a service) than in otherwise would pay in the absence of the government program, *or receives more revenues than it otherwise would earn*." *Id.* (emphasis added).

[992] *See* SAA at 927.

We disagree that we should not calculate the benefit conferred on Tolko and West Fraser by comparing sales to BC Hydro under the relevant EPAs to the electricity tariffs that BC Hydro charged these same respondents. During the POI, Tolko and West Fraser both sold electricity to BC Hydro under their respective EPAs. In addition, during the POI, both respondents also purchased electricity from BC Hydro. The electricity rates charged by BC Hydro to consumers in the province are all regulated and approved by the GBC through the BCUC, the provincial public utility regulatory agency.[993] The BCUC requires BC Hydro to sell electricity at prices that reflect its embedded costs for generating and acquiring power, plus a rate of return that BCUC approves.[994] Therefore, during the POI, the provincially-owned BC Hydro sold electricity to Tolko and West Fraser at rates approved by the GBC through the BCUC and purchased electricity from these respondents at the rates established under the EPAs.

Although we acknowledge that the electricity tariffs that are charged by both BC Hydro are regulated and approved by the GBC through the BCUC, we disagree that this precludes their use in determining the benefit to the recipients. To the contrary, we find that this benchmark best reflects the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA and conforms with the standard of benefit language codified within 19 CFR 351.503(b). Namely, if a government provides a good to a company for three dollars and then purchases the same good from the company for ten dollars, we cannot see how under the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA, the benefit is anything other than seven dollars. Therefore, we see no basis for not relying on the prices BC Hydro charges Tolko and West Fraser for electricity as an MTAR benchmark.[995]

In this investigation, BC Hydro sells electricity to both Tolko and West Fraser for rates that are approved by the BCUC while BC Hydro purchases electricity from both respondents under rates determined by the respective EPAs. As such, in the final determination, to determine whether Tolko and West Fraser received benefits under this program, we compared the prices that BC Hydro charged the two respondents for electricity to the rates that BC Hydro paid Tolko and West Fraser when it purchased electricity under the relevant EPAs. Based upon this comparison we find that BC Hydro purchased electricity from Tolko and West Fraser for MTAR during the POI.

The petitioner argues that we should use as a benchmark the electricity sales prices from one of Tolko's plants to FortisBC, a private investor-owned utility. We disagree that this benchmark best captures the "benefit to the recipient" under section 771(5)(E) of the Act. As articulated above, we find on this record that the best measure of the "benefit-to-the-recipient" is the difference between the price at which a government provided the good (*i.e.*, electricity) and the price at which the government purchased that same good. The FortisBC benchmark does not capture this difference.

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[993] *See* Tolko May 30, 2017 Supplemental Questionnaire Response at 10.
[994] *See* Tolko March 13, 2017 Initial Questionnaire Response at 128-29.
[995] We note that the petitioner has not alleged that the approved electricity tariff rates from BC Hydro are for LTAR; therefore, the Department has not considered how the benefit to the recipient may be calculated in an investigation where there is a corresponding LTAR allegation with respect to the same input allegedly provided for MTAR.

Both Tolko and West Fraser, as well as the GBC, argue that a more appropriate benchmark would be the winning bids received from BC Hydro's Bioenergy Power Call Phase I; however, the selection of such a benchmark, based on the information on the record, would be inconsistent with the statute and the Department's regulations because the benchmark used to measure the benefit from an investigated program cannot be from the program being investigated.[996] BC Hydro purchases energy from independent power producers pursuant to long-term EPAs, and we are investigating the benefit conferred by the EPAs signed between the provincially-owned utility company and the two respondent companies, Tolko and West Fraser. The benchmark that Tolko, West Fraser, and GBC propose using are winning bids on other EPAs. Therefore, they are arguing that we should determine whether there is a benefit under the program by measuring the rates provided under the investigated program with other rates within the investigated program. As noted above, we are measuring the benefit conferred on Tolko and West Fraser based on the benefit-to-the-recipient standard. Using rates from an investigated subsidy program to measure the benefit from that same investigated program is inconsistent with the benefit-to-the-recipient standard because, first, it does not capture the difference between the price at which the government *sold* electricity and the price at which it *purchased* electricity, and second, the comparison would be circular insofar as it would result in a comparison of an alleged subsidy with itself.

The GBC and Tolko also argue that these EPAs reflect the market-based prices for the specific electricity products sold by Tolko and West Fraser to BC Hydro and must be used on that basis. However, as we state above, it is incongruent to select as a benchmark price the same program price for electricity that is under investigation as providing a benefit, *i.e.*, comparing an allegedly subsidized price with the same allegedly subsidized price. The GBC also appears to be arguing that there are different types of electricity. While electricity can be generated using various sources – hydro, coal, gas, oil, solar, nuclear, biomass – there is no information on the record to demonstrate that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Indeed, BC Hydro itself does not track the source of the electricity that it sells to its customers.[997]

Tolko, West Fraser, and the GBC also argue that the prices at which BC Hydro purchases electricity under the West Fraser and Tolko EPAs are consistent with "market principles." As a tier-three benchmark, these parties propose a benchmark that reflects BC Hydro's long-run marginal costs of purchasing firm energy from renewable resources. First, as explained above, our analysis of the appropriate benchmark is based upon 19 CFR 351.503(b), and not a tiered analysis set forth in the regulation for the government provision of a good or service, 19 CFR 351.511. Second, we disagree that this benchmark best captures the "benefit to the recipient" under section 771(5)(E) of the Act. As articulated above, we find on this record that the best measure of the "benefit to the recipient" is the difference between the price at which a government provided the good (*i.e.*, electricity) and the price at which the government purchased that same good. The proposed benchmark of BC Hydro's long-run marginal costs does not capture this difference.

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[996] *See*, *e.g.*, 771(5)(E) of the Act; 19 CFR 351.503(b); 19 CFR 351.505; 19 CFR 351.506; 19 CFR 351.507; and 19 CFR 351.511(a)(2)(i)(ii).
[997] *See* GBC Primary QNR Response Part 1 at BC II-47.

Comment 52: Whether the GOQ's Purchase of Electricity Is Specific

Resolute argues that Hydro-Québec enters into agreements to purchase electricity from a wide range of companies in addition to those involved in the forest industries.[998] Resolute claims that forest biomass cogeneration represents less than six percent of the generating capacity of the long-term power purchase contracts to which Hydro-Québec was a party during the POI, and that none of those projects producing energy involved sawmills. On that basis, Resolute asserts that the purchases of energy by Hydro-Québec are not specific to an enterprise or industry.

The petitioner rebuts that the Department correctly found the purchase of electricity by Hydro-Québec to be *de facto* specific in the *Preliminary Determination*.[999]

Department's Position: We disagree with Resolute that our specificity analysis should focus on Hydro-Québec's relative purchase of electricity generated from various sources, such as wind, hydro-electric, natural gas cogeneration, and forest biomass cogeneration. First, as discussed with regard to Comment 54, we do not differentiate between various types of electricity. Moreover, section 771(5A)(D)(iii) of the Act directs the Department to determine whether a subsidy may be specific as a matter of fact by examining the enterprises or industries which received assistance under the program being investigation. The GOQ provided the number of producers that had a PAE 2011-01 agreement in each year from 2013 through 2015.[1000] The data indicate that, for each year, the number of producers benefitting from the program was limited, with just six producers in 2013, nine producers in 2014, and 12 producers in 2015.[1001] For 2014 and 2015, eight and 11 of the firms were forestry biomass producers, respectively.[1002] Based on the record evidence, we continue to find the purchase of electricity by Hydro-Québec to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number.

Comment 53: Whether Resolute's Electricity Sales Are Tied to Non-Subject Merchandise

Resolute argues that, if there were a benefit from Hydro-Québec's purchase of electricity from Resolute under the PAE 2011-01, it would be tied to the production of paper, which is downstream from the production of lumber.[1003] Resolute states that it produces and sells electricity to Hydro-Québec at its Dolbeau and Gatineau pulp and paper mills. Resolute adds that it books the revenues against the cost of goods sold at those mills, which reduces the cost of producing paper at those mills but does not benefit Resolute generally. Resolute submits that a subsidy is tied when the intended use is known to the subsidy giver and acknowledged prior to, or concurrent with, the bestowal of the subsidy. Resolute adds that because lumber is upstream to paper production, no paper from the mills is used as an input to Resolute's production of softwood lumber.

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[998] *See* Resolute Case Brief at 41-42.
[999] *See* Petitioner Rebuttal Brief at 129-130.
[1000] *See* GOQ Supp QNR 1 Response Volume I at 1.
[1001] *Id*.
[1002] *Id*.
[1003] *See* Resolute Case Brief at 42-44.

In rebuttal, the petitioner argues that, because the subsidy benefits electricity production, an input to both subject and non-subject merchandise, it is correct to attribute the benefits to Resolute's overall production.[1004] The petitioner adds that even if the GOQ's purchases are considered to be a subsidy tied to electricity production, electricity is an input to the production of softwood lumber. The petitioner submits that the question of whether a company actually uses the subsidized input in its production is irrelevant to the attribution of the subsidy.

Department's Position: We disagree with Resolute's argument that, because its Dolbeau and Gatineau pulp and paper mills sell electricity to Hydro-Québec, the benefits from the sales are tied to non-subject merchandise. The fact that Resolute manufactures non-subject merchandise at the Dolbeau and Gatineau mills does not change the fact that those two mills are part of the Resolute corporate group. The Dolbeau and Gatineau mills are not distinct corporate entities, which would require the Department to conduct an analysis under 19 CFR 351.525 (b)(6)(ii)-(v) to determine whether subsidies received by those two mills are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents and consolidates the financial statements of all of its mills – including Dolbeau and Gatineau – as one corporate entity.[1005] Neither the statute nor the Department's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."[1006] Further, the Department does not tie subsidies on a plant- or factory-specific basis.[1007]

The Department recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required). The manner in which Resolute records the benefit from the PAE 2011-01 program internally within its financial accounts is irrelevant to our analysis, which is informed by our regulations and practice.

The only exception is if the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of the Department's regulations states that, generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal.[1008] The Department's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (*i.e.*, the GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.[1009]

[1004] *See* Petitioner Rebuttal Brief at 134-135.
[1005] *See* Resolute Verification Report at 3-4; *see also* Resolute Supp QNR at 2, Exhibit RESA 1S-3, and Exhibit RESA 1S-5.
[1006] *See SC Paper from Canada* IDM at 161 (citing *CFS from the PRC* IDM at Comment 8).
[1007] *See*, *e.g.*, *SC Paper from Canada – Expedited Review* IDM at 99.
[1008] *See CVD Preamble*, 63 FR at 65403.
[1009] *See, e.g., Essar Steel Ltd.* at 1296.

Resolute contends that the electricity sales, which are used to reduce the pulp and paper mills' cost of goods sold, are tied to the production of non-subject merchandise because the production of paper is downstream from the production of lumber. However, there is no information on the record that establishes that, at the time of approval or bestowal, the benefits from the sale of electricity under PAE 2011-11 to Hydro-Québec are tied to the production of paper. The GOQ reported that the PAE 2011-01 is aimed at the purchase of 300 MW of energy from forest biomass cogeneration power plants.[1010] We thus find that there is no record evidence establishing that the sale of electricity under PAE 2011-01 is tied solely to producers of non-subject merchandise such as pulp and paper mills.

Comment 54: Whether the Department Should Use the Industrial L Rate as the Benchmark for the GOQ's Purchase of Electricity Under PAE 2011-01

In the *Preliminary Determination*, the Department calculated Resolute's benefit from the GOQ's purchase of electricity for MTAR using, as a benchmark, the Industrial L electricity rate that Resolute's pulp and paper mills paid to Hydro-Québec for electricity during the POI.[1011]

The GOQ and Resolute argue that the Department applied the wrong benchmark (*i.e.*, the Industrial L rate) to calculate the benefit from the sale of electricity to Hydro-Québec in the *Preliminary Determination*.[1012] The GOQ states that the Industrial L rate does not differentiate by the type of power sold. However, because hydropower accounts for more than 98 percent of Hydro-Québec's power supply, the GOQ argues that the Industrial L rate is effectively the price for hydropower. The GOQ asserts that a hydro-dominated rate is not the correct benchmark for a renewable energy-only program. Instead, the GOQ and Resolute submit that the Department should construct a benchmark using renewable energy prices as reported in the Merrimack study. They state that Hydro-Québec submitted the Merrimack study to the Régie de l'énergie as a benchmarking report to establish that the PAE 2011-01 prices reflect prevailing market conditions. Resolute states that the Merrimack study concludes that the average levelized cost of biomass-generated electricity in North America was C$110.70/MWh and, therefore, shows that Hydro-Québec paid Resolute a market price.

The GOQ further claims that the Department has, in 19 CFR 351.511(a)(2), established a three-tiered hierarchy for the identification of benchmarks, and that the Merrimack study provides a valid tier-two benchmark because it (1) reports a world market price using biomass price prices from Ontario and the United States; (2) the market studied for the benchmark is identical, not just comparable to sales under the PAE 2011-01; and (3) because the study set the purchase prices under the PAE 2011-01, the prices are available to consumers in Québec. The GOQ adds that the study may also be used as a tier-three benchmark because it is not only evidence of the government's price setting philosophy, but it was also used to establish the terms and conditions of the PAE 2011-01.

[1010] *See* GOQ Primary QNR Response at QC Volume III-a, page 55.
[1011] *See* PDM at 85-86.
[1012] *See* GOQ Case Brief at 49-57; *see also* Resolute Case Brief at 44-45.

The petitioner argues that the Industrial L rate is a reasonable benchmark and should be maintained for the final determination.[1013] The petitioner asserts that there is no tier-one benchmark because Hydro-Québec holds the monopoly on electricity distribution in Québec, and no tier-two benchmark because Hydro-Québec imports less than one percent of the volume of electricity it exports. Because the Department found that "there is no evidence on the record to suggest that the electricity rates paid by consumers in Québec are not market-based prices,"[1014] the petitioner asserts that the Industrial L rate reflects market principles and, thus, constitutes a valid tier-three benchmark.

The petitioner further argues that the Merrimack study is not a valid benchmark because (1) the biomass purchase rates in the study, namely the Ontario Power Authority and Vermont Public Service Board feed-in tariffs, are not appropriate benchmarks because Québec does not rely on imports of electricity; (2) the biomass purchase rates from other provinces are irrelevant as renewable energy policies and biomass purchase programs differ by province; and (3) feed-in tariffs are not based on market principles as noted in the study. In response to statements that the Industrial L rate is based on hydropower, the petitioner asserts that there is no evidence that that the rate is effectively the price for hydropower. The Industrial L rate is the price available to large industrial consumers, including Resolute's pulp and paper mills. The petitioner argues that differences in pricing and production methods for electricity do not make the Industrial L rate an inappropriate benchmark under the regulations. Moreover, the petitioner asserts that Department need only select a benchmark that is comparable, and not identical, and the respondents failed to demonstrate that their proposed benchmark is the only reasonable approach.

Department's Position: The SAA explains that section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy.[1015] Under that provision, a benefit is normally treated as conferred where there is a benefit to the recipient.[1016] In this investigation, Resolute is not merely selling electricity to Hydro-Québec; Resolute also purchases electricity from Hydro-Québec. For an MTAR program such as this one, where the government is acting on both sides of the transaction—*i.e.*, both selling a good to, and purchasing that good back from, a respondent—the benefit to the respondent is the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.

Resolute's pulp and paper mills purchase electricity from Hydro-Québec at the Industrial L rate, which is the tariff in effect during the POI. Those same mills sell electricity to back to Hydro-Québec under the PAE 2011-01 program at an administratively-set price. Thus, the benefit to Resolute is the difference between these two prices. We, therefore, continue to determine that the appropriate benchmark rate to calculate the benefit Resolute receives from the sale of electricity back to Hydro-Québec is the Industrial L rate. However, we are adjusting the Industrial L rate from that used in the *Preliminary Determination*, as discussed in Comment 55.

[1013] *See* Petitioner Rebuttal Brief at 169-178.
[1014] *See* PDM at 86.
[1015] *See* SAA at 927.
[1016] *See* section 771(5)(E) of the Act.

Moreover, to the extent that the parties argue for or against the use of a proposed benchmark on the basis of its "tier" under 19 CFR 351.511(a)(2), we disagree that 19 CFR 351.511(a)(2) provides the appropriate framework given the unique facts in this investigation. As discussed in the *CVD Preamble*, the Department has not codified a regulation which expressly provides instruction on how to analyze a government's purchase of goods for MTAR.[1017] We stated that "{u}nlike the case with the provision of goods and services, … we have not had the opportunity to gain sufficient experience" with MTAR allegations and, thus, were "hesitant" to set forth how we would analyze such allegations.[1018] We stated that we "expect{ed}" that 19 CFR 351.511, regarding the provision of goods and services by a government for LTAR would provide the Department with an approach to calculating the benefit received by a respondent where the government procures goods and services for MTAR.[1019] However, Hydro-Québec's presence on both sides of the electricity transaction with Resolute presents a unique situation that is different from either a standard provision program, in which the government only provides the respondent with a good, or what we envisioned as a standard procurement program at the time of the *CVD Preamble*, where the government is only a purchaser of a good from a respondent. Here, Hydro-Québec is both purchasing from, and selling to, Resolute electricity. Therefore, we disagree that our "regulations establish a three-tiered hierarchy for the identification of benchmarks"[1020] *with regard to MTAR programs*, or that an analysis informed by 19 CFR 351.511(a)(2) is necessary to calculate Resolute's benefit in this unique situation. For further information on the appropriate regulatory framework regarding the analysis of this type of MTAR program, please see Comment 51.

The GOQ asserts that the Industrial L rate is a hydropower price which cannot serve as the benchmark for a biomass energy program, such as the purchase of biomass electricity from Resolute by Hydro-Québec under PAE 2011-01. The GOQ relies on *Canada – Feed-In Tariff Program*, a WTO dispute, to support its contention. However, our determination to use the Industrial L rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR; the Act is fully consistent with the international obligations of the United States. Moreover, the Department is governed by U.S. law, and, as we have explained, our calculation of benefit using the Industrial L rate as a benchmark is fully consistent with section 771(5)(E) of the Act.

Moreover, the GOQ failed to provide any evidence that the prevailing market conditions for the provision of electricity by Hydro-Québec is differentiated based upon the manner in which the electricity is generated. The GOQ itself reported that, when explaining how electricity rates are set, "there is no distinction between sources of electricity generated."[1021] This statement is corroborated by the tariff schedules provided by the GOQ, which indicate that there is no distinction. Within the schedules, the Industrial L rate is listed with no disclosure as to the

[1017] *See CVD Preamble*, 63 FR at 65379.
[1018] *Id.*
[1019] *Id.*
[1020] *See* GOQ Case Brief at 54.
[1021] *See* GOQ Primary QNR Response at QC Volume III-a (part 15) at QC-BIO-12.

source from which that electricity is generated.[1022] This evidence indicates that electricity is electricity regardless of the source from which it was generated.[1023] Therefore, we find no merit to the GOQ's argument that a rate for electricity which might be generated from hydro-power cannot be used as a benchmark for the PAE-2011-01 program, and thus the Department must use the Merrimack study as a benchmark.

Comment 55: Whether the Industrial L Rate Benchmark Was Improperly Calculated

As discussed in Comment 54, Resolute argues that the Industrial L rate is not the correct benchmark. However, should the Department continue to use that rate as a benchmark, Resolute asserts that it must adjust the Industrial L rate to capture the entire price paid by Resolute's pulp and paper mills to Hydro-Québec for electricity.[1024] Resolute claims that the Department accounted for only part of what Resolute paid to Hydro-Québec for electricity under the Industrial L rate, *i.e.*, the variable part of the rate. However, Resolute also paid a fixed, or demand, charge as part of the rate, which was not included in the benchmark. Resolute claims that the Department can rely on the electricity invoices taken at verification to construct an accurate benchmark for the final.

The petitioner argues that Resolute confuses the two components of the Industrial L rate.[1025] The "fixed" component was 3.26¢ per kilowatt hour, which the Department applied as the benchmark. Therefore, the petitioner asserts that Resolute wants an adjustment to account for a variable cost. However, should the Department decide to account for a billing demand adjustment, the petitioner argues that it would also have to account for all other entries that impact the Industrial L rate paid by Resolute, rather than just the demand charge requested by Resolute.

Department's Position: The petitioner confuses the fixed and variable components of the Industrial L rate. In the *Preliminary Determination*, we applied, as the benchmark, the variable part of the Industrial L rate, which was 3.26¢ per kilowatt hour, effective April 1, 2015.[1026]

As discussed in Comment 54, we have determined that the benefit that Resolute received under this program is the difference between the amount that it paid to Hydro-Québec for its purchases of electricity, and the amount that it received from Hydro-Québec for its sales of electricity. Accordingly, the appropriate benchmark would be the total amount that Resolute paid to Hydro-Québec for electricity under the Industrial L rate.

We verified that Resolute paid to Hydro-Québec both a fixed demand charge rate and a variable consumption rate for the electricity that it purchased during the POI.[1027] Therefore, we agree

[1022] *Id.* at Exhibit QC-BIO-23, page 59 and Exhibit QC-BIO-24, page 55.
[1023] *See CRS from Korea* IDM at Comment 2.

[1024] *See* Resolute Case Brief at 45-47.
[1025] *See* Petitioner Rebuttal Brief at 178-180.
[1026] *See* Resolute Preliminary Calculations; *see also* GOQ Primary QNR Response at QC Volume III-a (part 15) at Exhibit QC-BIO-24, page 55.
[1027] *See* Resolute Verification Report at 16-17 and Exhibit VE-32.

with Resolute that, in addition to the variable consumption component, the fixed demand charge component of the Industrial L rate should be included in the benchmark. We have relied on electricity invoices for Resolute's pulp and paper mills, which sold electricity to Hydro-Québec, to derive an electricity benchmark rate that reflects the total amount that Resolute paid to Hydro-Québec under the Industrial L rate during the POI. The benchmark accounts for those items that formed the amount that Resolute paid Hydro-Québec under the Industrial L rate, exclusive of taxes, as demonstrated in the two POI monthly invoices obtained at verification.[1028] Therefore, on the basis of the record evidence, we have accounted for the entries that impacted the electricity rate paid by Resolute as argued by the petitioner.

Because the computation of the benchmark rate is based on proprietary data, a further discussion of the benchmark is contained in Resolute's final calculations memorandum.[1029]

Comment 56: Whether the Canada-New Brunswick Job Grant Program is Regionally Specific

In the *Preliminary Determination*, the Department calculated a countervailable subsidy for JDIL's receipt of funds under the Canada-New Brunswick Job Grant Program. The GNB argues that the Department erred in finding the program to be regionally specific, as it is part of the federal Canada Job Grant program and is available in all provinces.[1030] The petitioner argues that the Department's preliminary determination that the program is regionally specific is correct.[1031]

Department's Position: We disagree with the GNB that the Canada-New Brunswick Job Grant Program represents one aspect of a more comprehensive federal program. In its initial questionnaire response, the GNB described this program as one of a series of Canada Job Fund agreements between the federal government and individual provincial/territorial governments.[1032] We note that these are individual agreements on funding between the federal government of Canada and each individual province/territory. The primary responsibility for the design of this program rests with the GNB.[1033] Thus, our record demonstrates that it is the GNB that determines the eligibility for assistance under this program, and the distribution of this assistance. Our review of the agreement between the GOC and the GNB establishing this program confirms our finding that it was specifically tailored to the province of New Brunswick, and it is not available in other provinces or territories within Canada.[1034] Further, we find that the GNB's unique role in designing and administering this program distinguishes it from similar, but still distinct, programs that the GOC may fund in other provinces or territories. As such, consistent with our finding in the *Preliminary Determination*, we continue to determine that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act.

[1028] *Id*.
[1029] *See* Resolute Final Calculation Memorandum.
[1030] *See* GNB Case Brief at 44-45.
[1031] *See* Petitioner Rebuttal Brief at 130-131.
[1032] *See* GNB Primary QNR Response at NBIII-4.
[1033] *Id.* at Exhibit NB-CNBJG-1, page 1.
[1034] *Id.* at Exhibit NB-CNBJG-2.

Comment 57: Whether the Alberta Bioenergy Producer Credit Program is Countervailable

In the *Preliminary Determination*, the Department found that Alberta's BPCP is a recurring grant program expressly limited to bioenergy producers that confers a benefit equal to the amount of the grant received.[1035] According to the GOA and West Fraser, the record demonstrates that payments under the BPCP are not tied to the production of subject merchandise. Rather, the GOA and West Fraser argue that the BPCP grants are tied to the production of bioenergy, which they claim is non-subject merchandise.[1036] As a result, the Department should not have included benefits under the BPCP in the net subsidy rates calculated for respondents in the instant investigation.

The petitioner argues that, because the BPCP subsidy benefited the production of energy, an input to both subject and non-subject merchandise, the Department may appropriately attribute those benefits to the recipients' overall production pursuant to 19 CFR 351.525(b)(5)(ii).

The petitioner states that the Department preliminarily determined that the BPCP "provides funding for production of various types of biofuels, including electricity and heat produced from biomass, such as hog fuel."[1037] Thus, the petitioner argues that, even if the Department accepts the GOA and West Fraser's argument that BPCP grants are tied to the production of various types of biofuels,[1038] the Department should continue to attribute those grant benefits to West Fraser's overall production because energy (including energy from biofuels) is an input to that production, *i.e.*, the downstream products, even if the energy produced by West Fraser is not actually used in its softwood lumber production.[1039] The petitioner asserts that the question of whether a company actually uses the subsidized input in its production is irrelevant to the attribution of that subsidy.[1040]

In addition to arguing that BPCP payments were tied to non-subject merchandise, both the GOA and West Fraser, by reference to the GOC Consolidated Case Brief, incorporate the argument that because the Department did not initiate an investigation on BPCP, the program is not lawfully countervailable.[1041] The petitioner states this argument fails to appreciate the Department's statutory mandate. Section 775 of the Act states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition."[1042]

[1035] *See* PDM at 65.
[1036] *See* GOA Case Brief at 76-77; *see also* West Fraser Case Brief at 59-61.
[1037] *See* Petitioner Rebuttal Brief at 134 (citing PDM at 64).
[1038] *Id.* at 134 (citing GOA-ASLTC Case Brief at 76-77 and West Fraser Case Brief at 59-61).
[1039] *Id.* at 135 (citing *IPA from Israel*).
[1040] *Id.*
[1041] *Id.* at 141 (citing GOA Case Brief at 77; *see also* West Fraser Case Brief at 61).
[1042] *Id.* at 141 (citing section 775 of the Act; *see also* 19 CFR 351.311(b)).

Department's Position: We disagree with the GOA and West Fraser's claim that the record reflects that payments under the BPCP are tied to non-subject merchandise. According to 19 CFR 351.525(b)(5)(i), "if a subsidy is tied to the production or sale of a particular product," the Department "will attribute the subsidy only to that product." To determine whether a subsidy is "tied," the Department's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (that is, when the terms for the provision are set), and not on how a firm has *actually* used the subsidy.[1043] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents, *e.g.*, the application, contract or approval, explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[1044]

The record indicates that there is no such evidence of tying. Instead, under the BPCP, which is intended for bioenergy producers, there is no limitation on the type of production necessary to qualify for this program, as bioenergy is a byproduct of the production process.[1045] Specifically, West Fraser reports several input sources for its production of bioenergy, stating "the source for the bioenergy feed stocks of black liquor and hog fuel (residual wood fiber) is the wood fiber harvested from the Forest Management Areas (FMA's) associated with the pulp mills and saw mills owned and operated by West Fraser Mills Ltd. throughout Alberta."[1046] Accordingly, softwood lumber or pulp production may be used to produce the biofuels pursuant to the BPCP.[1047]

West Fraser references the GOA's bestowal documents in support of its claim that BPCP grants are tied to the production of bioenergy, not softwood lumber.[1048] However, consistent with the Department's practice, the Department continues to attribute the BPCP grant benefits to West Fraser's overall production because energy is used to power the company's operations West Fraser provided the BPCP Guidelines in WF-ALBOA-7, application submitted by Hinton Pulp & Paper in Exhibit WF-ALBOA-8, and the agreement between Alberta and Hinton Pulp & Paper in Exhibit WF-ALBOA-9. We find that there is no evidence in these documents that shows that the BPCP grants are tied to non-subject merchandise at the time of bestowal. Furthermore, under the CVD regulations, if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, the Department will attribute the subsidy to sales of all products produced by the company.[1049] Because electricity is required to operate the production facilities of West Fraser, the benefit from the investigated program is attributed to all products produced by West Fraser under 19 CFR 351.525(a).

[1043] *See CVD Preamble*, 63 FR at 65403 (emphasis added).
[1044] *See CVD Preamble*, 63 FR at 65402; *see also CRS from Korea* IDM at Comment 14; *see also Solar Cells from PRC* IDM at Comment 13.
[1045] *See* West Fraser Primary QNR Response, Part 1 at 78-82 and Exhibit WF-ALBOA-7.
[1046] *Id.* at Exhibit WF-ALBOA-8, at 2.
[1047] *Id.* at 78.
[1048] *See* West Fraser Case Brief at 60-61.
[1049] *See CVD Preamble*, 63 FR at 65400.

The BPCP grants are expressly limited to bioenergy producers and, therefore, *de jure* specific in accordance with 771(5A)(D)(i) of the Act.[1050] Further, we find that the BPCP confers a benefit equal to the amount of the grant received pursuant to 19 CFR 351.504(a).[1051] Accordingly, the Department continues to treat the BPCP as a countervailable subsidy in this final determination.

Finally, we disagree with West Fraser's and the GOA's arguments that because the Department did not formally initiate an investigation of the BPCP, the program is not lawfully countervailable. Specifically, as discussed in Comment 5, section 775 of the Act states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition."[1052] There is no legal requirement that the Department initiate a formal investigation before investigating (and ultimately countervailing) what appear to be countervailable subsidies discovered during an investigation. Accordingly, the Department continues to find that it is lawful to countervail the BPCP.

Comment 58: Whether the Department Incorrectly Analyzed the BC Hydro Power Smart: Load Curtailment Program

In the *Preliminary Determination*, the Department countervailed incentive payments to West Fraser under the Load Curtailment subprogram of the BC Hydro Power Smart program as recurring grants, and calculated a benefit for the POI.[1053] In their case briefs, the GBC and West Fraser claim that the Department made several errors in its findings regarding this subprogram. The GBC argues that this subprogram is neither *de jure* nor *de facto* specific; this argument is addressed more broadly with regard to this and the other BC Hydro Power Smart subprograms under Comment 59. Additionally, the GBC and West Fraser argue that we erroneously treated the payments as grants, rather than as compensation for service and, thus, unlawfully countervailed the purchase of a service by BC Hydro, which cannot give rise to a financial contribution under the Act (which only addresses an authority's purchase of goods).[1054] West Fraser also claims that we mistakenly included a payment received outside the 2015 POI and improperly attributed benefits tied to non-subject merchandise production at a pulp mill.[1055]

In rebuttal, the petitioner counters that the payment received outside the POI represented part of the benefit accrued in the POI and should remain in the calculation; that the Department does not tie subsidy benefits to individual plants or factories; and that treatment of the payments as "incentive" grants, rather than compensation for service, was reasonable and supported by the record facts.[1056]

Department's Position: Upon further review of the record, we find that in calculating the benefit under this subprogram for the *Preliminary Determination*, we included a payment to

[1050] *See* PDM at 65; *see also* GOA Supp QNR Response, Part 1 at Exhibit AB-BPCP-3.
[1051] *Id*.
[1052] *See* section 775 of the Act; *see also* 19 CFR 351.311(b).
[1053] *See* PDM at 66.
[1054] *See* West Fraser Case Brief at 61-64; *see also* GBC Case Brief at 82.
[1055] *See* West Fraser Case Brief at 61-64.
[1056] *See* Petitioner Rebuttal Brief at 136, 143-145

West Fraser in January 2016, which is outside the POI. We disagree with the petitioner that the benefit should be counted in the POI because it was accrued in the POI. Under 19 CFR 351.504(b), the Department considers receipt of benefit from a grant as occurring on the date the grant is received, *i.e.*, the date it is disbursed, which in this case was outside the POI. Consequently, we have corrected the calculation for the final determination by excluding this January 2016 payment from BC Hydro.

However, we disagree with West Fraser's claim that since the payments went to a pulp mill, they are tied to non-subject merchandise. We agree with the petitioner that the payments are untied subsidies. To determine whether a subsidy is "tied to the production or sale of a particular product" under 19 CFR 351.525(b)(5)(i), the Department examines "the purpose of the subsidy based on information available at the time of bestowal" (that is, when the terms for the provision are set), and not how a firm has *actually* used the subsidy.[1057] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents—*e.g.*, the application, contract or approval—explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[1058] The record indicates no such evidence of tying.

While the pulp mill is identified in the relevant contract as the facility receiving the subsidy,[1059] this fact alone does not constitute tying, which under our regulations is understood with reference to a product or the sale or production of a product,[1060] not to a component facility of the recipient company. The *CVD Preamble* states that a tied subsidy benefit is "a benefit bestowed specifically to promote the production of a particular product."[1061] Nothing in the relevant contract suggests that the incentive applies to, or is in support of, the production of pulp specifically. Under the Load Curtailment subprogram, a company qualifies for the incentives by agreeing to curtail energy usage at a given facility based on the level of load curtailment, not on the particular product or production of the facility. The pulp mill is a component division of the company, not a separate entity and neither the statute nor our regulations provide for, or require, the attribution of a domestic subsidy to a component part of a firm.[1062] Thus, we continue to treat the payments as untied subsidies attributable to the company's overall operations consistent with 19 CFR 351.525(b)(3).

We also disagree with the GBC and West Fraser that the Department erroneously treated the program payments as conferring a grant. We do not agree that the curtailment of power use during peak demand amounts to a performance of a service by the company. As noted by the petitioner and as described in the *Preliminary Determination*,[1063] the record evidence indicates that the payments are "incentives" to the company, provided in the manner of recurring grants.

[1057] *See CVD Preamble*, 63 FR at 65403.
[1058] *See CVD Preamble*, 63 FR at 65402; *see also*, *e.g., OCTG from Turkey* IDM at 59.
[1059] *See* West Fraser Primary QNR Response, Part I, at Exhibit WF-BHPS-13.
[1060] *See* 19 CFR 351.525(b); *see also CVD Preamble*, 63 FR at 65400 ("we attribute a subsidy to sales of the product or products to which it is tied").
[1061] *See CVD Preamble*, 63 FR at 65402 (incorporating, by reference, language from the 1989 Proposed Regulations).
[1062] *See, e.g.*, *SC Paper from Canada* IDM at 161; *see also CFS from the PRC* IDM at Comment 8.
[1063] *See* Petitioner Rebuttal Brief at 144; *see also* PDM at 66.

In particular, the GBC's own responses to questionnaires refer to the payments under this and the other subprograms of the Power Smart Program as "incentives to promote efficient energy usage…"[1064] Hence, these payments are more properly treated as grants, not as compensation. Accordingly, the GBC's and West Fraser's argument that we unlawfully countervailed compensation for services purchased by BC Hydro is misplaced.

Based on the change described above, the final program rate for West Fraser is 0.01 percent *ad valorem*.

Comment 59: Whether the Department Correctly Found That the Three BC Hydro Power Smart Programs Countervailed in the *Preliminary Determination* Are *De Jure* Specific

In the *Preliminary Determination,* the Department found each of the three BC Hydro Power Smart Programs to be *de jure* specific, on the basis that access to the subsidy is limited to certain enterprises or industries.[1065]

The GBC argues that the Department cannot reasonably conclude that the Energy Manager, Load Curtailment, and Incentives subprograms are specific to any industry or group of industries. Rather, the GBC states that the BC Hydro's Power Smart program, writ large, is available to each and every BC Hydro customer to incentivize energy conservation through DSM.[1066] According to the GBC, while making DSM incentives available across its customer classes, BC Hydro has logically tailored its DSM policies to meet the unique electricity demand profiles of its residential, commercial, and industrial customers.[1067] As a result, Power Smart has a number of subprograms, each of which is available to one or more customer segments.[1068] The GBC claims that BC Hydro's Power Smart program, as a whole, is available to the 1.9 million customers served by BC Hydro.[1069]

Further, the GBC argues that in the case of the Energy Manager subprogram, the fact that the subprogram is only available to industrial customers that consume more than 10 GWh of electricity per year does not make it *de jure* specific. The GBC argues that BC Hydro does not limit the types of industrial customers at this level of energy consumption that may participate in the Energy Manager subprogram.[1070] Moreover, according to the GBC, data provided by BC Hydro demonstrate that the Energy Manager subprogram is widely used outside of the softwood lumber industry and thus, the Energy Manager subprogram is also not *de facto* specific.[1071]

The GBC further contends that in the case of the Power Smart Load Curtailment Pilot subprogram, the Department incorrectly found the subprogram to be *de jure* specific because it is only available to industrial customers that are served at the transmission rate with a minimum of

[1064] *See, e.g.,* GBC Primary QNR Response, at II-1.
[1065] *See* PDM at 65-67.
[1066] *See* GBC Case Brief at 79.
[1067] *Id.*
[1068] *Id.*
[1069] *Id.* at 80.
[1070] *Id.*
[1071] *Id.*

5 MWs of curtailable load. The GBC argues that this rationale ignores the fact that BC Hydro offers capacity-focused demand side initiatives to its residential and commercial customers under other subprograms.[1072] Furthermore, the GBC argues that data provided by BC Hydro demonstrate that this subprogram has *only* been used outside of the softwood lumber industry.[1073]

Lastly, in the case of the Incentives subprogram, the GBC argues that the Department incorrectly determined that the program is *de jure* specific to industrial customers consumers consuming of more than one GWh of electricity annually. According to the GBC, this finding ignores that Power Smart also offers other incentive subprograms to its other customer classes, *e.g.*, the "Refrigerator Buy-Back" for residential customers and the Load Displacement incentives for commercial customers.[1074] The GBC further claims that that the data provided by BC Hydro demonstrate widespread usage of the industrial incentive subprograms outside of the softwood lumber industry.[1075]

In light of the above, the GBC contends that the Department in its final determination should find that the BC Power Smart subprograms are neither *de jure* nor *de facto* specific.

The petitioner argues that record evidence supports the Department's conclusions that each of the subprograms countervailed in the *Preliminary Determination* are *de jure* specific. The petitioner asserts, with respect to the GBC's arguments related to the Energy Manager subprogram, that the Department addressed a similar argument in *SC Paper from Canada – Expedited Review,* in which the Department found the Energy Manager program to be *de jure* specific.[1076] The petitioner further argues that the GBC mischaracterizes the Department's analysis on the Power Smart Load Curtailment Pilot subprogram. According to the petitioner, in analyzing specificity, the Department properly focused on whether the subprogram under investigation meets the statutory requirement of specificity and not on separate eligibility requirements that may exist for other customers.[1077] Moreover, the petitioner asserts that the Department has consistently found that *de jure* specificity can and does exist when eligibility is explicitly limited to certain activities because "only the industries involved" in those activities are eligible.[1078] The petitioner claims that the same logic applies for the Power Smart Incentives subprogram.[1079]

Department's Position: Based upon our analysis of the arguments submitted by the interested parties, we find no reason to change our specificity determinations that we made with respect to these subprograms in the *Preliminary Determination.* We continue to find the BC Power Smart subprograms to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. As an initial matter, we note that record evidence shows that BC Hydro operates multiple

[1072] *Id.* at 82.
[1073] *Id.*
[1074] *Id.* at 83.
[1075] *Id.*
[1076] *See* Petitioner Rebuttal Brief at 124.
[1077] *Id.* at 125.
[1078] *Id.*
[1079] *Id.*

subprograms under the broader Power Smart program.[1080] While all the subprograms under the umbrella Power Smart program share the same overarching goals, each subprogram has distinct and separate eligibility criteria.[1081] In particular, as is relevant here, the record evidence shows that (1) eligibility for the Incentives subprogram is limited to industrial customers that consume more than 1 GWh of electricity annually;[1082] (2) eligibility for the Energy Manager subprogram is limited to industrial customers that use more than 10 GWh of electricity per year;[1083] and, (3) eligibility for the Load Curtailment Pilot subprogram is limited to industrial customers served at the transmission service rate with a minimum bid of 5 MW of curtailable load.[1084] Therefore, we disagree with the GBC that the Department must look at the Power Smart program as a whole, or consider other subprograms, in assessing the specificity of the Energy Manager, Load Curtailment, and Incentives subprograms.

Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. As described above and in the *Preliminary Determination*, the subsidies that are provided by BC Hydro under each sub-program are expressly limited by law to enterprises that meet specific energy generation and consumption requirements, meaning that the GBC has established, by law, a limited group of enterprises that may receive grants from BC Hydro under these three Power Smart subprograms. The fact that the GBC may not have limited eligibility for these subprograms to specific industries, as the GBC contends, does not alter this conclusion.

Therefore, we continue to find that these subprograms are *de jure* specific under section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity under section 771(5A)(D)(i) of Act, we have not examined whether the subprograms are *de facto* specific under section 771(5A)(D)(iii) of the Act.

Comment 60: Whether Benefits Under the Load Displacement Component of the BC Hydro Power Smart Incentives Subprogram Were Tied to Non-Subject Merchandise

In the *Preliminary Determination,* the Department countervailed assistance that Canfor received under the Incentives subprogram of the broader BC Hydro Power Smart program. In calculating the benefit conferred upon Canfor under this subprogram, we attributed the benefit received by Canfor in the POI to its total sales in the POI and did not find the subsidy to be tied to non-subject merchandise.[1085]

Canfor and the GBC argue that payment from BC Hydro was to reimburse Canfor for its expenditures related to Canfor's construction of a generator at its Chetwynd pellet plant. Canfor states that the Chetwynd pellet plant produces pellets, not subject merchandise.[1086] Therefore,

[1080] *See* GBC Primary QNR Response, Part 1 at II-6, 8.
[1081] *Id.* at 4.
[1082] *See* GBC Primary QNR Response, Part 1 at Exhibit BC-BH-3.
[1083] *See SC Paper from Canada – Expedited Review* IDM at 30.
[1084] *See* GBC Primary QNR Response, Part1 at Exhibit BC-BH-3.
[1085] *See* PDM at 67.
[1086] *See* Canfor Case Brief at 38; *see also* GBC Case Brief at 84.

according to Canfor, this payment was tied to non-subject merchandise pursuant to 19 CFR 351.525(b)(5)(i), and it was improper for the Department to attribute this payment to subject merchandise in the *Preliminary Determination.*[1087] Further, Canfor asserts that this payment cannot be attributed to subject merchandise on the basis of it being tied to the production of an input product pursuant to 19 CFR 351.525(b)(5)(ii).[1088] The Chetwynd pellet plant's power generator did not commence production of electricity until March 2016 (after the POI), so Canfor argues that the Chetwynd plant could never have supplied any electricity input to Canfor during the POI.[1089] Because the Chetwynd pellet plant could not have provided any electricity to Canfor's Chetwynd saw mill, Canfor argues that it provided no input that was primarily dedicated to the production of the downstream product, *i.e.* softwood lumber.[1090]

No other party provided comments or rebuttal comments on this issue.

Department's Position: Based upon our analysis of all the arguments submitted by Canfor and the GBC, we find no reason to alter our findings from the *Preliminary Determination.* Notwithstanding Canfor's and the GBC's arguments, we continue to find that it is appropriate to attribute the benefit received by Canfor in the POI to its total sales in the POI pursuant to 19 CFR 351.525(b)(3). Section 351.525(b)(5)(i) of the Department's regulations states that "{i}f a subsidy is tied to the production or sales of a particular product, the {Department} will attribute the subsidy only to that product." Consistent with the *CVD Preamble*,[1091] we have generally stated that we will not trace how subsidies are used by companies, but rather analyze the purpose of the subsidy based on information available at the time of bestowal.[1092] For example, to determine whether a grant is tied to a particular product, we examine the grant approval documents.[1093]

There is no record evidence that this program is tied to production or sales of any particular product. In its initial questionnaire response, when asked whether the application or approval specified the merchandise for which assistance under the load displacement component of the Power Smart Incentives subprogram was to be provided, Canfor stated that "the application and approvals did not specify any particular merchandise for which this assistance was provided."[1094] The grant approval documents submitted by the respondents do not indicate any product restrictions.[1095] The GBC program description and guidelines indicate that the purpose of load displacement incentives was to encourage customers to construct and operate power generation

[1087] *Id.*
[1088] *Id.* at 39.
[1089] *Id.*
[1090] *Id.* at 40.
[1091] *See CVD Preamble*, 63 FR at 65402-65403.
[1092] *See, e.g.*, *Washers from Korea* IDM at Comment 7, pages 41-42; *see also Refrigerators from Korea - Final* IDM at 41.
[1093] *See CVD Preamble*, 63 FR at 65402-65403.
[1094] *See* Canfor Primary QNR Response, Part 1 at Exhibit C-2.
[1095] *Id.* at Exhibit C-1.

facilities on their own sites.[1096] The GBC does not link the condition of the approval to a specific product.[1097]

The approval documents also do not restrict the benefit to the Chetwynd pellet plant only; rather the approval documents clearly state that the corporate entity, Canfor Forest Products Ltd., is the recipient of payment.[1098] In any case, the Chetwynd pellet plant is not a separate entity, but a part of our mandatory respondent, Canfor.[1099] Canfor is the entity that is incorporated and registered in BC and Canfor files its taxes as one corporate entity.[1100] Neither the statute nor our regulations provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm.[1101] Therefore, Canfor and the GBC are misguided in concluding that because subsidies were provided to a *division* of a subject merchandise producer that itself does not produce subject merchandise, the subsidies are tied to the production of non-subject merchandise as contemplated by 19 CFR 351.525(b)(5).

For the reasons stated above, we find that the BC Load Displacement program is not tied to any particular product or to Canfor's Chetwynd pellet plant. Therefore, we continue to attribute the benefit received by Canfor in the POI under this subprogram to its overall operations and, accordingly, divide the benefit by its total sales in the POI, pursuant to 19 CFR 351.525(b)(3). Further, in light of this finding, Canfor's and the GBC's arguments that the Department cannot attribute the payment under this program to subject merchandise under the exception in 19 CFR 351.525(b)(5)(ii) for subsidies tied to the production of an input product are moot.

Comment 61: Whether the GNB's Reimbursement of Silviculture and License Management Expenses is Countervailable

In the *Preliminary Determination,* the Department found the reimbursement of both silviculture and license management expenses to be countervailable grants. We determined that the reimbursements provided were grants and constituted 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. The GNB and JDIL argue that these payments represent a purchase, by the GNB, of services provided by JDIL, and that pursuant to *Eurodif*, and relying on *Lumber IV*, the purchase of services is not countervailable.[1102] The GNB additionally argues there is no evidentiary basis for the Department to find license management fees to be specific.[1103]

The petitioner asserts that the Department should not deviate from its determination that these programs are countervailable in the final determination.[1104]

[1096] *See* GBC Primary QNR Response, Part 1 at II-5.
[1097] *Id.* at Exhibit BC-BCH-6.
[1098] *See* Canfor Primary QNR Response, Part 1 at Exhibit C-1.
[1099] *See* Canfor Case Brief at 38.
[1100] *See* Canfor Primary QNR Response, Part 1 at 7-10.
[1101] *See, e.g.*, *SC Paper from Canada* IDM at 161; *see also CFS from the PRC* IDM at Comment 8.
[1102] *See* GNB Case Brief at 28-40; *see also* JDIL Case Brief at 3-8.
[1103] *See* GNB Case Brief at 34-36.
[1104] *See* Petitioner Rebuttal Brief at 136-139.

Department's Position: Although we agree with the GNB and JDIL that a government's purchase of services is not countervailable, we find unpersuasive the GNB and JDIL's arguments that the GNB's reimbursement of silviculture and license management expenses are the purchase of services, and thus not countervailable. The parties rely on *Eurodif*, in which the Federal Circuit held that the governmental purchase of services does not constitute a financial contribution, and is thus not countervailable.[1105] Beyond that holding in *Eurodif*, however, the case is not applicable to the Department's analysis in this case because the facts in *Eurodif* are different then the facts in this case. *Eurodif* addressed the issue of whether the delivery of both money and goods in exchange for a processed good constituted a purchase of goods or a purchase of services.[1106] *Eurodif* did not discuss the difference between a grant and a purchase of services. *Lumber IV* is also inapplicable. Furthermore, the parties' reliance on *Lumber IV* is misplaced, because in that proceeding, silviculture was not a separately alleged subsidy program for which the Department initiated an investigation, as it is here. Indeed, the province of New Brunswick was exempted from the investigation in *Lumber IV*. Thus, in *Lumber IV*, the Department did not make any determinations regarding silviculture or license management activities, particularly in New Brunswick. Instead, in *Lumber IV*, the Department was examining stumpage prices paid, on an aggregate basis, and the Department determined it was appropriate, depending on the province, to adjust these prices because the fees charged for stumpage either included silviculture or were offset to account for silviculture. However, the facts of this case demonstrate that the New Brunswick stumpage price does not include an amount for silviculture.[1107] Thus, we considered the silviculture and license management fees as a distinct program for this proceeding. Moreover, all decisions in an investigation must be based upon the information on the record of that investigation. Therefore, the decisions made within the instant case are based upon the record evidence of this investigation; not upon the information that might or might not have been on the record of *Lumber IV*.

JDIL is the licensee on Crown timber licenses #6 and #7 (collectively referred to as License #7). JDIL or another Irving cross-owned company have been the licensee for License #6 since 1962 and for License #7 since 1981, and thus an Irving company has been a long-term leaseholder of the Crown lands from which it sources part of its input supply.[1108] At present, JDIL is under a 25-year FMA with the province. Under the CLFA, JDIL is obligated to perform basic silviculture and forest management obligations. Specifically, paragraph 38(2) states:

> The Minister
> (a) shall reimburse the licensee for such expenses of forest management as are approved in and carried out in accordance with the operating plan, including expenses with respect to
> i. pre-commercial thinning, …
> iii. tree planting, ….

[1105] *See Eurodif* at 1365, overturned on other grounds, 555 U.S. 305 (2009).
[1106] *Id.* at 1364.
[1107] *See* GNS Primary QNR Response at Exhibit NS-8.
[1108] *See* JDIL Primary QNR Response at Exhibit STUMP-05.

subject to the regulations and the provisions of any agreement between the licensee and the Minister, and

(b) shall compensate the licensee for other expenses of forest management in accordance with the regulations.[1109]

In accordance with the CFLA, JDIL's FMA defines basic silviculture and further specifies JDIL's requirement for both basic silviculture and licensee silviculture.[1110] In accordance with the FMA, basic silviculture is defined as the silvicultural activity required to produce the annual allowable harvest of timber as identified in paragraph 13.1.[1111] Licensee silviculture is defined as silvicultural treatments carried out at the expense of the licensee.[1112] Thus, the GNB is making a clear distinction between basic silviculture which is required and for which the GNB provides funds, and licensee silviculture, which is beyond basic silviculture, as described in the CLFA and is to be performed at the expense of the licensee.

In the *Preliminary Determination*, the Department found that basic silviculture and forest management activities provide countervailable subsidies because the GNB relieved JDIL of expenses incurred through a direct transfer of funds. The FMA goes on to stipulate that JDIL "shall carry out basic silviculture,"[1113] "the Minister will fund the basic silvicultural program"[1114] and JDIL's "obligations…will correspond to the level of basic silviculture funding provided by the Minister."[1115] Likewise the FMM, which forms part of the FMA, further outlines the specific responsibilities of the licensee and the Crown and defines license management fees as the "reimbursement to licensees for specific requested management services undertaken at the request of, and on behalf of DNR."[1116]

The assertion that JDIL was not fully reimbursed for either the silviculture or the forest management activities it performed is immaterial. This notion that the payments received by JDIL from the GNB do not cover JDIL's actual expenses for both silviculture and forest management activities does not negate the benefit from the payments received.[1117] These are activities that involve the renewal and maintenance of forestry land, *i.e.*, the management of JDIL's input and supply chain, and which JDIL would undertake even in the absence of the reimbursements. JDIL's arguments that as a licensee it has no right of possession to the land, or that if JDIL did not perform these activities the responsibility would ultimately lie with the GNB, are an attempt by JDIL to parse words, and its arguments remain unavailing. Despite JDIL's assertion that a licensee has no right of possession of Crown Lands, the fact remains that JDIL, as aforementioned, has been a licensee with access to Crown Land for over half a century. As stated, the facts of this investigation indicate that it is JDIL, not the GNB, that has the mandate

[1109] *Id.* at Exhibit STUMP-04.
[1110] *Id.* at Exhibit STUMP-10.
[1111] *Id.*
[1112] *Id.*
[1113] *Id.* at para. 13.1.
[1114] *Id.* at para. 13.3.
[1115] *Id.*
[1116] *Id.* at Exhibit STUMP-11
[1117] We note that JDIL's FMA para. 13.4 states that it "may, at its own expense …. carry out licensee silviculture in addition to basic silviculture and the Company…shall be the exclusive beneficiaries (on a prorated basis) of any immediate or future increase to the annual allowable harvest of timber as a result of such silvicultural treatments."

and ultimate responsibility to carry out basic silviculture and license management activities. As such, JDIL and the GNB mischaracterize the reimbursements and misconstrue the nature of the assistance being provided. Indeed, the manner in which the payments were provided, as reimbursements for obligatory expenses incurred, further indicates that the payments were provided to alleviate the financial burden to JDIL.

The GNB also challenges the Department's specificity finding for license management fees. In the *Preliminary Determination*, we found this program to be specific in accordance with section 771(5A)(D)(i) of the Act, because the funding is provided to a specific enterprise or industry – those who manage sublicenses under FMAs. The GNB contends that the program is not specific, arguing that these enterprises are simply in the most efficient position to perform license management activities. However, any reason the GNB may have for limiting this program to certain recipients is immaterial to our analysis. The fact remains that these reimbursements are limited only to license holders, and although the license holders may be in a more convenient position to fulfill the requirements to receive the grant payments than others, those license holders' efficiency is irrelevant to whether this program is limited, and thus, specific. In fact, by arguing that certain enterprises are more efficient position than others to perform license management activities, it appears that the GNB is recognizing the limited availability, and, thus, specificity, of this program.

In short, the GNB is providing JDIL with long-term, 25 years or more, access to the required input that allows it to operate as a business; does not charge it a fee for this long-term supply access; and then both the GNB and JDIL argue that, in addition to providing JDIL with a rent-free 25 year-long lease, the GNB should also provide JDIL with additional money to help it maintain the quality of its input supply. As such, the assistance provided constitutes a direct transfer of funds from the GNB to JDIL, in the form of a grant, and not the purchase of services by the government. As discussed above, the respondents have provided no credible information or argument that this government action does not provide a benefit under the CVD law to JDIL. Therefore, because the GNB provides reimbursements to JDIL for costs it incurs in the course of managing its input and ensuring the efficient operation of its supply chain, *i.e.*, activities it was obligated to undertake as part of its operations, we continue to find that these programs provide a financial continuation in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

Finally, while we disagree with the GNB's and JDIL's assertions regarding the nature of these silviculture and license management expense reimbursements, we agree with JDIL's argument that the benefits under the silviculture program should be the total amount JDIL received from the GNB, net of the HST. The record indicates that HSTs are a value added tax, not revenue.[1118] As such, we have excluded HST from JDIL's benefit under the silviculture program for this final determination.

Comment 62: Whether the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund Are *De Facto* Specific

[1118] *See*, *e.g.*, JDIL Supp QNR 1 Response at Exhibit Supp.-08.

In the *Preliminary Determination*, the Department calculated a countervailable subsidy rate for JDIL's receipt of funds under the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund. The GNB argues that it took no actions to limit the availability of these programs, and that out of more than 33,000 corporate tax payers in the province, the fact that only a few companies used the programs is based entirely on the taxpayers' own circumstances and decisions.[1119] The petitioner argues that the *de facto* specificity test is designed to measure the widespread use of a subsidy throughout an economy, and that the Department was correct in finding the use of these programs limited to a small number of users during the POI.[1120]

Department's Position: Consistent with our past practice,[1121] we continue to find these programs to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy.[1122] The SAA also states that in determining whether the number of industries using a subsidy is large or small, the Department can take into account the number of industries in the economy in question.[1123] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, the Department will take into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is large or small.[1124] Thus, we have followed the instructions of the SAA in analyzing whether this program is *de facto* specific. The number of enterprises that received this tax credit program is limited to a small number of enterprises out of approximately 33,000 potential corporate tax filers.[1125] In *Steel Plate from Korea*, the Department found an electricity discount program to be *de facto* specific when distributed to a small number of enterprises relative to the total number of enterprises, and stated: "{g}iven the data with respect to the small number of companies which received… electricity discounts during the POI, we determine that the… program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act."[1126] Therefore, in accordance with section 771(5A)(D)(iii)(I) of the Act and past Department practice, we continue to find this program to be *de facto* specific.[1127]

In arguing that these two programs are not *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, the GNB has made a number of incorrect statements with respect to both the statute and the analysis of *de facto* specificity. The GNB argues that the program is not specific because it is generally available to all companies in the province, that it took no action to limit access to the programs, and that only a limited number of companies decided to use the program. However,

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[1119] *See* GNB Case Brief at 45-47.
[1120] *See* Petitioner Rebuttal Brief at 125-129.
[1121] *See SC Paper from Canada - Final Determination* IDM at Comment 28.
[1122] *See* SAA at 929.
[1123] *See* SAA at 929, 931.
[1124] *See CRS from Korea* IDM at Comment 13.
[1125] *See* GNB Case Brief at 45-47; *see also id.* for the actual number of enterprises that used the program, which is business proprietary information.
[1126] *See Steel Plate from Korea,* 64 FR at 15535.
[1127] *See, e.g., Corrosion-Resistant Steel from Korea* accompanying IDM at 16.

the GNB has misconstrued the statute. Although "access" to a subsidy is a factor in the analysis of *de jure* specificity under section 771(5A)(D)(i) of the Act, under the *de facto* analysis required under section 771(5A)(D)(iii)(I) of the Act, the Department is to analyze the actual number of recipients of the investigated program. Furthermore, under the specificity test as set forth in the SAA, the Department is required to determine whether the subsidy program is "widely used throughout an economy."[1128] Accordingly, the number of companies which have "access" to the program is irrelevant under the *de facto* specificity analysis.

Comment 63: Whether the PCIP Is Countervailable

In the *Preliminary Determination*, the Department found the PCIP to be countervailable because it was *de jure* specific, and because Resolute reported receiving a payment during the POI in the form of a reimbursement under the PCIP.[1129] The GOQ argues that the Department failed to demonstrate that the reimbursement was a benefit under section 771(5)(E) of the Act.[1130] Under the PCIP, the MFFP requires harvesters to carry out partial cuts, which increases harvesting costs by prohibiting harvesters from using more efficient clear-cutting methods.[1131] By law, the PCIP program reimburses no more than 90 percent of the additional cost resulting from the partial cut prescriptions.[1132] Resolute reported the reimbursements it received under the PCIP in response to the Department's "other assistance" question.[1133] Resolute argues that the partial reimbursements it received under the PCIP were for performing costly work that would otherwise be unnecessary; therefore, it does not consider the reimbursements to be a form of assistance or a grant.[1134] According to the GOQ, harvesters receive no benefit under the program because the reimbursements are for costs that are incurred as a result of specific government action; therefore, the Department should find the program not countervailable.[1135]

The petitioner argues that the GOQ is offsetting a legally mandated cost that Resolute would otherwise be required to incur in its normal course of business; therefore, the reimbursements constitute a benefit under section 771(5)(E) of the Act.[1136] In addition, the petitioner asserts that there is no statutory requirement that a subsidy fully offset a cost incurred by a respondent for it to be found countervailable.[1137]

Department's Position: We agree with the petitioner that the GOQ is offsetting a cost that Resolute is legally required to incur in its normal course of business. As the landowner and steward of public forest areas, the GOQ requires harvesters who hold TSGs to perform various reforestation and land stewardship activities in order to maintain the long-term health and

[1128] *See* SAA at 929.
[1129] *See* PDM at 71.
[1130] *See* GOQ Case Brief at 61.
[1131] *Id*. at 63; *see also* Resolute Case Brief at 50.
[1132] *See* GOQ Case Brief at 62-63; *see also* Resolute Case Brief at 50-51.
[1133] *See* Resolute Case Brief at 14-17.
[1134] *Id*. at 17.
[1135] *See* GOQ Case Brief at 63.
[1136] *See* Petitioner Case Brief at 146.
[1137] *Id*. at 159.

sustainability of forest areas.[1138] Under the SFDA, the GOQ requires TSG-holders to perform "other forest development activities," which includes partial cuts, in which a harvester is limited to removing no more than 50 percent of the volume of a harvest stand.[1139] The GOQ mandates partial cuts on certain harvest stands in order to "encourage natural regeneration of forest areas without the need to replant…"[1140] During the POI, Resolute secured a significant proportion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of timber, Resolute must carry out the activities required of TSG-holders under the SFDA, including partial cuts on certain harvest stands.[1141]

The GOQ argues that "reimbursements under the PCIP cover less than the full cost associated with the partial cut restrictions imposed by Québec on public lands, {therefore} harvesters are not – and cannot be – fully compensated for the costs associated with the partial cut restrictions…"[1142] However, the fact that Resolute received a partial reimbursement does not negate the fact that a benefit was received.[1143]

Resolute received payments in the form of reimbursements under the PCIP, which partially offset a legally required activity; therefore, we determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 351.504(a). As a result, we determine that this program is countervailable.

For the Department's response to Resolute's arguments regarding the "other assistance" question, please *see* Comment 5.

Comment 64: Whether the Federal and Provincial SR&ED Tax Credits Are Specific

In the *Preliminary Determination*, the Department found the SR&ED tax credits provided by the federal government and the provincial governments of Alberta, British Columbia, Manitoba, New Brunswick and Québec to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, based on the number of recipients that received SR&ED tax credits compared to the total corporate tax filers in the country and in each province.[1144] Respondents argue that SR&ED tax credits are automatically available to all corporations that carry out qualifying SR&ED activities and are not limited to any particular enterprise or industry.[1145]

[1138] The SFDA prohibits "any cutting without regeneration and soil protection" when harvesting standing timber on Crown land. *See* GOQ Primary QNR Response at Exhibit QC-STUMP-22 at 60.
[1139] *Id*. at 116 and 119-120.
[1140] *Id*. at QC-OTHER-18; *see also* GOQ Case Brief at 62.
[1141] *See* Resolute Primary QNR Response, Part 2 at Exhibit RESB-16; *see also* Resolute Supp QNR 6 Response at Exhibits RESB-1S-3, RESB-1S-4, RESB-1S-5, and RESB-1S-6; *see also* Resolute Primary QNR Response, Part 2, Correction at Exhibit RESB-16.
[1142] *See* GOQ Case Brief at 63.
[1143] *See*, *e.g.*, discussion of benefit at page 65361 of the *CVD Preamble*.
[1144] *See* PDM at 74-78 and 83.
[1145] *See* West Fraser Case Brief at 64-67, *see also* GBC Case Brief at 100-101; *see also* GOA Case Brief at 74-75; *see also* GOM Case Brief at 3-4; *see also* JDIL Case Brief at 39-42; *see also* GOC Case Brief at 17-18.

Respondents argue further that the Department should not have analyzed specificity by looking at the percentage of users relative to total taxpayers, but rather based on the absolute number of enterprises using the program.[1146] The GOC and GOA assert that if the Department continues to evaluate percentages instead of the overall number of users of the SR&ED credit, it should reopen the record to obtain additional information for use in its numerator and denominator. In particular, the GOC and GOA argue that because not all corporations would be expected to purchase depreciable equipment in each year, the numerator should be the cumulative number of corporations that used the SR&ED program over a number of years in the numerator. And because not all corporations are engaged in research and development, only those that are should be included in the denominator.[1147]

The petitioner argues that the Department found that actual users of the SR&ED program constituted a very small percentage of eligible users. According to the petitioner, subsidy programs with such low usage rates cannot be considered to be widely used, and the fact that various governments did not intend to restrict access to any particular industry or enterprise is irrelevant. Further, the petitioner asserts that the fact that the subsidy programs at issue may have neutral or objective eligibility criteria does not preclude the Department from evaluating whether there is *de facto* specificity despite those criteria.[1148]

Department's Position: As stated in the SAA, the specificity test is an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy.[1149] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."[1150] The SAA also states that in determining whether the number of industries using a subsidy is large or small, the Department can take into account the number of industries in the economy in question.[1151] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, the Department reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.[1152] Thus, we have followed the instructions of the SAA and our practice in determining whether this program is *de facto* specific, and we disagree that we were required to analyze only the absolute number of users under section 771(5A)(D)(iii)(I) of the Act.

In this case, the Department considered whether the recipients were limited in number on an enterprise basis. The number of enterprises that received the federal tax credit is limited to 19,490 enterprises out of about 1,940,000, or about 1 percent of the potential corporate tax filers; 1,559 enterprises out of 322,500 (0.48 percent) in Alberta; and 150 enterprises out of 31,400

[1146] *See* West Fraser Case Brief at 64-67, *see also* GOA Case Brief at 74-75; *see also* GOM Case Brief at 3-4; *see also* GOC Case Brief at 17-18.
[1147] See GOC Case Brief at 17-18; GOA Case Brief at 75-76.
[1148] *See* Petitioner Rebuttal Brief at 126-129.
[1149] *See* SAA at 930.
[1150] *Id.*
[1151] *Id.* at 931.
[1152] *See CRS from Korea* IDM at Comment 13.

(0.48 percent) in New Brunswick.[1153] Usage in British Columbia, Québec, and Manitoba is similarly limited.[1154]

The respondents claim that the fact that the number of users that received this tax credits is limited reflects only that these companies conducted eligible research, not that the Canadian Revenue Agency limited the recipients. In addition, they maintain there was no predominant user of this tax credit. However, section 771(5A)(D)(iii)(I) of the Act does not require the administering authority to actively limit the program. Rather, it states that a program is specific if the "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." Nor does a finding of specificity under section 771(5A)(D)(iii)(I) of the Act depend on the fact that certain enterprises or industries were the predominant users of the program. Rather, predominant use is addressed by section 771(5A)(D)(iii)(II) of the Act, and is not the basis upon which the Department reached its specificity determination with respect to this program.[1155] Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, the Department will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of appearance. If a single factor warrants a finding of specificity, the Department will not undertake further analysis.

JDIL argues that the Department previously found the SR&ED program not specific in *OCTG from Canada* and *Lumber II* and should continue that finding in this investigation.[1156] The cases referenced by JDIL predate the *URAA* and, thus, predate the statutory provisions that the Department is applying in this investigation. As explained above, under the statutory provision we are evaluating in this investigation, section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, the Department will take into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is large or small.[1157] As described above, the Department finds the actual recipients are limited in number on an enterprise basis and therefore the program is *de facto* specific.

We also disagree with West Fraser, the GOC, and the GOM that the Department's specificity analysis for this program is inconsistent with its prior practice. First, we note that the Department conducts its *de facto* specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis. As the CAFC stated, specificity "must be determined on a case-by-case

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[1153] *See* GOC Etal Primary QNR Response at Exhibit GOC-CRA-SRED-4; *see also* GOC Etal Supp QNR 3 Response at GOC-SUPP2-1; *see also* GOA Primary QNR Response at Exhibit AB-SRED-5; *see also*, GOC Etal Supp QNR 2 Response at GOC-SUPP2-1.

[1154] *See* West Fraser Preliminary Calculations Memorandum, for the number of companies that were approved for assistance in BC under this program; *see also* GOC Etal Supp QNR 2 Response at GOC-SUPP2-1 and GBC Primary QNR Response Part 1 at Volume IV Exhibit BC-OA-6. *See* Tolko Preliminary Calculation Memorandum for the number of companies that were approved for assistance in Manitoba under this program; *see also*, GOC Etal Supp QNR 2 Response at GOC-SUPP2-1. For Québec, *see* GOC Etal Supp QNR 1 Response at Exhibit QC-Supp-Other-59 and GOC Etal Supp QNR 2 Response at GOC-Supp2-1.

[1155] *See* section 771(5A)(D)(iii) of the Act (providing that a program is *de facto* specific if "one or more" of the enumerated factors exist).

[1156] *See* JDIL Case Brief at 41.

[1157] *See CRS from Korea* IDM at Comment 13.

basis taking into account all facts and circumstances of a particular case."[1158] West Fraser and the GOM cite to *Royal Thai Government* and *Live Swine from Canada* to argue that the Department found usage of programs by companies in the hundreds or thousands to be not specific.[1159] However, those determinations did not indicate the potential users of the programs. In this investigation, the record evidence reflects that out of the total number of corporate tax filers, only between 0.48 and 1 percent of corporate tax filers in each province and nationally used the program.

Finally, the Department disagrees with the GOC's argument that the Department should reopen the record to obtain additional information for the purpose of re-analyzing specificity. This argument presupposes that the Department's methodology was unreasonable; as we describe in detail above, the Department is not bound to follow a particular formula in analyzing specificity and considering the number of users relative to total corporate taxpayers is reasonable and consistent with our prior practice.[1160] Further, the GOC and the GOA's argument that the Department should have limited its denominator to companies engaged in research and development is in effect an assertion that we should gauge whether the actual number of recipients is limited based on only the enterprises that have been targeted by the government as potential subsidy recipients. The respondents have provided no legal or case support for such a departure from the specificity test. As previously stated, to determine whether a program is not specific, the SAA explicitly states that the Department must determine that the subsidy is broadly available and widely used throughout an economy.[1161]

Comment 65: Whether the Department Should Countervail the Federal and Provincial SR&ED Tax Credits That Are Purportedly Tied to Non-Subject Merchandise

In the *Preliminary Determination*, the Department countervailed SR&ED tax credits provided by the federal and various provincial governments in Canada.[1162] Canfor and West Fraser argue the Department overstated the benefit to the federal and provincial SR&ED program by including tax credits tied to specific projects related to non-subject merchandise.[1163] The petitioner counters the Department properly attributed tax subsidy benefits because it generally treats tax subsidies as untied because the benefits from these subsidies decrease a corporation's overall tax burden.[1164]

Department's Position: We disagree with Canfor and West Fraser's claim that the record reflects that certain SR&ED tax credits are tied to non-subject merchandise. Under 19 CFR 351.525(b)(5)(i), "if a subsidy is tied to the production or sale of a particular product," the Department "will attribute the subsidy only to that product." To determine whether a subsidy is "tied," the Department's focus is on "the purpose of the subsidy based on information available

[1158] *See AK Steel.*
[1159] *See* West Fraser Case Brief at 65-67 and GOM Case Brief at 4.
[1160] *See CRS from Korea* IDM at Comment 13.
[1161] *See* SAA at 929; *see also SC Paper – Expedited Review* IDM at Comment 28.
[1162] *See* PDM at 74-75 (GOC), 75-76 (GOA), 77 (GBC), 78 (GOM), 83 (GOQ).
[1163] *See* Canfor Case Brief at 62-64; *see also* West Fraser Case Brief at 67-70.
[1164] *See* Petitioner Rebuttal Case Brief at 133-134 (citing *Washers from Korea* IDM at Comment 7, and *Granite Products from Italy* at "Tax Concessions Under Law 614," and *CRS from Korea* IDM at Comment 14).

at the time of bestowal" (that is, when the terms for the provision are set), and not on how a firm has *actually* used the subsidy.[1165] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents—*e.g.*, the application, contract or approval—explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[1166]

The record indicates no such evidence of tying. Instead, Canfor and West Fraser cite to a list of eligible SR&ED expenditures in their tax returns, and claim that certain of the SR&ED tax credits were earned for projects related to non-subject merchandise.[1167] However, we find that this information does not indicate that the federal and relevant provincial governments' decisions to bestow the tax credit were contingent upon research and development being conducted for certain merchandise, to the exclusion of subject merchandise. Nor has West Fraser or Canfor cited any evidence that the SR&ED tax credits can only be claimed for non-subject merchandise. Furthermore, these tax credits reduce West Fraser's and Canfor's overall tax burden. As such, there is no basis to find that the benefits are tied to any merchandise at the point of approval or bestowal. Thus, we continue to find benefits received under the SR&ED tax credits program to be untied subsidies that are attributable to the total sales of Canfor and West Fraser, as provided under 19 CFR 351.525(b)(3).

Comment 66: Whether the Department is Using the Correct Applicable Tax Rate for ACCA for Class 29 Assets

In the *Preliminary Determination*, the Department calculated the benefit from the ACCA for Class 29 Assets by, first, calculating the difference between the taxes that the recipient paid and the taxes that it would have paid absent the ACCA for Class 29 Assets program, and then multiplying this difference by the federal corporate tax rate of 38 percent.[1168] Instead of the 38 percent rate, Canfor argues that the Department should calculate the benefit using the 26 percent corporate tax rate that applies to Canfor, while JDIL argues that the Department should use the 27 percent corporate tax rate applicable to JDIL.[1169] The GOC also argues that the Department used an overstated federal income tax rate to calculate the benefit.[1170] The petitioner claims that Canfor and JDIL's applicable tax rate claims are incorrect and the Department should continue to use the 38 percent corporate tax rate to calculate the benefit from this program.[1171]

Department's Position: The GOC and Canfor state that 38 percent is the basic rate of federal income tax.[1172] However, we verified that the 38 percent base tax rate is first reduced by 10 percentage points for all corporate tax payers under Article 123(1) of the Canadian Income Tax

[1165] *See CVD Preamble,* 63 FR at 65403.
[1166] *Id.* at 65402; *see also CRS from Korea* IDM at Comment 14 and *Solar Cells from PRC* IDM at Comment 13.
[1167] *See* West Fraser Case Brief at 67-70.
[1168] *See* PDM at 72.
[1169] *See* Canfor Case Brief at 59; *see also* JDIL Case Brief at 31-32.
[1170] *See* GOC Case Brief at 15.
[1171] *See* Petitioner Rebuttal Brief at 152-153, footnote 510.
[1172] *See* GOC Etal Supp QNR 1 Response at Exhibit GOC-SUPP1-GEN1; *see also* Canfor Case Brief at 60; *see also* Canfor Verification Exhibits at Exhibit 7.

Act,[1173] and then further reduced to 15 percent under Article 123.4(2) for all corporate tax payers.[1174] Therefore, the actual federal corporate income tax rate applied to corporate income tax returns filed during the POI is 15 percent. We also verified that the British Columbia provincial tax rate is 11 percent, which, when combined with the federal income tax rate of 15 percent, results in a final applicable income tax rate of 26 percent for Canfor.[1175] A review of Canfor's tax return illustrates the applications of these provisions of the Income Tax Act and the BC provincial tax.[1176]

Similarly, JDIL explained that the federal income tax rate is 15 percent after the reductions applicable under Articles 123(1) and 123.4(2) of the Income Tax Act.[1177] In New Brunswick, the provincial tax rate is 12 percent.[1178] Thus, we verified that JDIL's corporate tax rate is 27 percent.[1179]

The petitioner claims that we should continue to use the 38 percent federal corporate tax rate, as we did in *SC Paper from Canada – Expedited Review*.[1180] However, in *SC Paper from Canada – Expedited Review*, we used the 38 percent corporate tax rate because J.D. Irving failed to substantiate its claim that further reductions applied under the Income Tax Act with record evidence;[1181] in the absence of such evidence, the Department relied on the 38 percent federal corporate tax rate, as shown on J.D. Irving's official tax form, to calculate the benefit for the ACCA for Class 29 Assets program.[1182] By contrast, in this investigation, Canfor has provided the statutory provisions that underlie the reductions, and has explained how those reductions affect the federal tax rate applicable to all corporate tax filers in Canada.[1183] Additionally, Canfor provided record evidence listing all provincial tax rates.[1184] Further, Canfor identified the reductions on its tax return.[1185] The same is true for JDIL: the record contains the statutory provisions that underlie the reductions, JDIL provided evidence on the record of its provincial tax rate, and JDIL identified the reductions on its tax return. Thus, for purposes of this final determination, we find that the record demonstrates that for Canfor (and the other respondents incorporated in BC), a tax rate of 26 percent, and for JDIL, a tax rate of 27 percent, are appropriate for purposes of calculating the benefit provided by the ACCA for Class 29 Assets program.[1186]

[1173] *Id.*
[1174] *Id.*
[1175] *Id.*
[1176] *See* Canfor Primary QNR, Part 1 at Exhibit 23; *see also* Canfor Case Brief at 60-61.
[1177] *See* JDIL Case Brief at 32; *see also* JDIL Verification Report at 12.
[1178] *Id.*
[1179] *Id; see also* JDIL Primary QNR, Part 1 at Exhibit JDIL-04.
[1180] *See SC Paper from Canada – Expedited Review* IDM at 123.
[1181] *Id.*
[1182] *Id.*
[1183] *See* Canfor Verification Exhibits at Exhibit 7; *see also* Canfor Verification Report at 22; *see also* Canfor Primary QNR, Part 1 at Exhibits 23 and A-2.
[1184] *See* Canfor Verification Exhibits at Exhibit 7.
[1185] *Id.*; *see also* Canfor Verification Report at 22; *see also* Canfor Primary QNR, Part 1 at Exhibits 23 and A-2.
[1186] *Id.; see also* GOC Etal Supp QNR 1 Response at Exhibit GOC-SUPP1-GEN1; *see also* JDIL Case Brief at 32; *see also* JDIL Verification Report at 12.

Comment 67: Whether the Department Should Use An Alternative Methodology for Calculating the Benefit of the ACCA for Class 29 Assets

In the *Preliminary Determination*, the Department calculated the tax savings under the ACCA for Class 29 Assets program by determining the difference, over a three-year period, between the tax deduction from the Class 29 accelerated depreciation program and the tax deduction from the Class 43 standard rate of depreciation.[1187] Canfor and JDIL argue that we should instead compare the two asset classes going back to 2007, the year in which the Class 29 program was implemented.[1188] The petitioner claims that the Department should continue to use the three-year period it used in the *Preliminary Determination*.[1189]

Department's Position: The amount of depreciation under Class 29 and Class 43 assets can be claimed as a deduction from taxable income.[1190] Although comprised of the same kinds of capital assets, the two asset classes are depreciated under different methodologies. Class 43 assets are continually depreciated on a declining-balance basis in which the asset is not fully depreciated until it is disposed of.[1191] Class 29 assets, on the other hand, are fully depreciated on a straight-line basis over a three-year period.[1192] Absent the ACCA for Class 29 Assets program, all assets eligible for the program would have been depreciated under the standard Class 43 asset depreciation methodology. Because, under the program, an eligible manufacturing asset can be classified as either a Class 29 or Class 43 asset, at the option of the taxpayer, we measured the tax benefit by measuring the value of Class 29 depreciation compared to what the value of the depreciation of the same assets would have been if those assets had been classified as Class 43 assets.[1193] As we did in the final determination of *SC Paper from Canada – Expedited Review*, for the *Preliminary Determination*, we calculated a benefit using this methodology over a three-year period. We used a three-year comparison period because the ACCA for Class 29 Assets program provides for full depreciation of those assets over a three-year period, and, thus, the assets comprising the Class 29 deduction claimed during the POI entered the company's books and records during the POI tax year and the prior two tax years. Accordingly, we preliminarily determined that the three-year period was appropriate for measuring the difference between the taxes the company paid under the program, and the taxes the company would have paid absent the program.[1194]

Canfor and JDIL argue that we should have calculated a benefit using a comparison period beginning in 2007, the year that the program was implemented.[1195] Canfor stated that this longer period is necessary to incorporate the total effect of the program.[1196] In addition, Canfor argued that because Class 43 assets depreciate over a much longer period, this longer period takes into

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[1187] *See* PDM at 72.
[1188] *See* Canfor Case Brief at 55-58; *see also* JDIL Case Brief at 31.
[1189] *See* Petitioner Rebuttal Brief at 148-152.
[1190] *See* PDM at 72.
[1191] *See* Canfor Case Brief at 56.
[1192] *Id.* at 55.
[1193] *See* PDM at 72; *see also* 19 CFR 351.509(a)(1).
[1194] *See SC Paper from Canada – Expedited Review* IDM at Comment 34.
[1195] *See* JDIL Case Brief at 31; *see also* Canfor Case Brief at 55-59.
[1196] *See* Canfor Case Brief at 56.

account all of the assets historically classified as Class 29 as though they were classified as Class 43 assets that would still be depreciating during the POI in the absence of the program.[1197]

Because our benefit calculation must necessarily consider the tax benefit obtained in the absence of the ACCA for Class 29 Assets program in accordance with 19 CFR 351.509(a)(1), the focus of this calculation is only the Class 29 assets that are included in the calculation of the tax deduction claimed during the POI. The Department's regulations require us to focus this program's calculation on the POI because as a tax deduction program, it has recurring benefits that require annual consideration under 19 CFR 351.524(c)(1). Both the calculation methodology we used in the *Preliminary Determination* and Canfor's proposed alternative methodology rely upon the Class 29 acquisition amounts shown in Canfor's federal tax returns.

However, Canfor proposes that we use the Class 29 acquisition amounts for years prior to 2012 (*i.e.*, three or more years prior to our POI) to calculate the alternative depreciation and resulting tax deduction available under Class 43.[1198] But because Class 29 assets are depreciated in three years, Class 29 assets acquired prior to 2012 are not included in the tax deduction claimed under the ACCA for Class 29 Assets program during the POI, and therefore should not be included in the benefit calculation. Considering assets purchased before 2012 would introduce an element of distortion into the calculation by overstating the Class 43 depreciation. This distortion would occur because of the difference in the depreciation period for Class 29 and 43 assets. Class 29 assets purchased before 2012 would have fully depreciated prior to the POI, due to their three-year depreciation period, and thus the ACCA for Class 29 Assets program does not confer a benefit on the respondents during the POI for Class 29 assets purchased prior to 2012. As discussed above, in our calculation and Canfor's proposed alternative calculation, the Class 29 assets are hypothetically considered to be Class 43 assets for the purpose of calculating benefit during the POI. In contrast, Class 43 assets do not have a time limit on their depreciation period, and, thus, Class 43 assets purchased prior to 2012 could still be depreciating during the POI. Thus, were we to consider Class 29 assets from prior to 2012 to be hypothetical Class 43 assets, we would include depreciation in the POI comparison period carried over from years before 2012, which would artificially inflate the Class 43 assets' hypothetical depreciation in relation to the Class 29 assets' actual depreciation. And, because we are calculating the respondents' benefit under the program by dividing the actual value of their Class 29 depreciation by the hypothetical value of the depreciation of the same assets had those assets had been classified as Class 43 assets, artificially inflating the denominator would distort our calculation of benefit. Therefore, for purposes of this final determination, based on the three year-depreciation schedule available under Class 29, we determine that the proper comparison period is three years.

Comment 68: Whether the ACCA for Class 29 Assets Program is Specific

In the *Preliminary Determination*, the Department preliminarily determined that the ACCA for Class 29 Assets program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because, as a matter of law, eligibility for the program is expressly limited to certain

[1197] *Id.*
[1198] *See* Canfor Preliminary Calculation Memorandum; *see also* Canfor Verification Exhibits at Exhibit 7.

industries.[1199] The GOC, JDIL, and West Fraser argue that the program is neither *de jure* nor *de facto* specific because it only excludes a few activities and is available to all qualified Canadian industries.[1200] The petitioner maintains that the Department was correct to preliminarily determine that ACCA for Class 29 Assets program is *de jure* specific.[1201]

Department's Position: Class 29 assets are machinery used in manufacturing or processing operations. Any taxpayer that acquired these assets after March 18, 2007, and before 2016, can claim a tax deduction under the ACCA for Class 29 Assets program. Under this allowance, Class 29 assets can be fully depreciated at an accelerated rate, over three years, and the amount of depreciation can be claimed as a deduction to reduce the taxpayer's taxable income.[1202]

Canada's Income Tax Act provides for deductions from taxable income for the capital cost of property.[1203] Canada's ITR further specifies and defines Class 29 as an allowable deduction.[1204] The ITR defines manufacturing and processing, for which Class 29 deductions are permitted, by excluding the following:

> for the purpose of … Class 29… 'manufacturing or processing' does not include: (a) farming or fishing; (b) logging; (c) construction; (d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation thereof; (e) extracting minerals from a mineral resource; (f) processing of (i) ore, other than iron ore or tar sands ore, from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent, (ii) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or (iii) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent; (g) producing industrial minerals; (h) producing or processing electrical energy or steam, for sale; (i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility; (j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent; or (k) Canadian field processing.[1205]

In the *Preliminary Determination* and in *SC Paper from Canada – Expedited Review*, we found this program to be *de jure* specific because the ITR excluded certain industries from the definition of manufacturing and processing, and thus, excluded these industries from using the Class 29 program.[1206] In response, JDIL and West Fraser argue that the ACCA for Class 29 Assets program is not limited, but rather is available to all taxpayers that purchased manufacturing equipment.[1207] We disagree, because the ITR excludes enterprises and industries

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[1199] *See* PDM at 72.
[1200] *See* GOC Case Brief at 3-13; *see also* JDIL Case Brief at 29-30; *see also* West Fraser Rebuttal Brief at 4-6.
[1201] *See* Petitioner Rebuttal Brief at 110-116.
[1202] *See* GOC Etal Primary QNR Response at CRA-56-57.
[1203] *Id.* at Exhibit GOC-CRA-ACCA-1.
[1204] *Id.*
[1205] *Id.*
[1206] *See SC Paper – Expedited Review Final Determination* IDM at Comment 32.
[1207] *See* JDIL Case Brief at 29; *see also* West Fraser Rebuttal Brief at 4.

that are engaged in numerous activities from eligibility for the ACCA for Class 29 Assets tax deduction.

The GOC similarly asserts that this program is available to all enterprises and is, thus, like a program that the Department examined in *CRS from Russia*, where the Department found that a tax deduction program was not *de jure* specific because any company could claim a tax deduction if it performed certain activities.[1208] However, in *CRS from Russia*, and unlike here, we found that the program was not *de jure* specific because the applicable law's "articles do not stipulate the eligibility requirements or any limitation on eligibility."[1209] There are many examples where the Department has found a program to be *de jure* specific based upon a limitation of activities. For example, in *CWP from the UAE*, the Department found a program to be *de jure* specific because it excluded enterprises involved with the extraction or refining of petroleum, natural gas, or minerals.[1210] Similarly, in *Nails from Oman*, the Department found a program to be *de jure* specific that excluded "enterprises or industries engaged in the field of oil exploration and extraction, and enterprises engaged in the field of extraction of metal ores."[1211] Like the ACCA for Class 29 Assets program, these programs specifically identified industries or activities that were not eligible for benefits under the program.[1212] Lastly, in *Citric Acid from the PRC*, the Department found programs to be *de jure* specific based upon the exclusion of companies conducting certain projects.[1213]

The GOC argues that the ITR excludes activities and not industries and, therefore, the ACCA for Class 29 Assets program is not specific under section 771(5A)(D)(i) of the Act.[1214] However, as discussed above, the ITR explicitly excludes certain activities from its definition of manufacturing or processing; enterprises and industries engaged exclusively in the excluded activities are not eligible for the ACCA for Class 29 Assets program. Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries. As described above, in *CWP from the UAE* and *Nails from Oman* the Department also found programs to be *de jure* specific that excluded certain activities.[1215] Moreover, although the GOC states that the excluded activities identified in the ITR are eligible for comparable tax benefits available under other provisions of Canadian tax code,[1216] the existence of these other tax provisions are not subject to our examination in this investigation and are not material to our examination of the ACCA for Class 29 Assets program.

The GOC argues that even if the Department appropriately considered activities in its *de jure* specificity analysis, the scope of the activity exclusion is very limited.[1217] We disagree that the record reflects that the exclusion is very limited or that this program is widely available. Section

[1208] *See* GOC Case Brief at 5; *see also CRS from Russia* IDM at 117.
[1209] *Id.*
[1210] *See CWP from the UAE* IDM at 17.
[1211] *See Nails from Oman* IDM at 12.
[1212] *Id.*
[1213] *See*, *e.g. Citric Acid from the PRC* IDM at 22.
[1214] *See* GOC Case Brief at 3-4.
[1215] *See CWP from the UAE* IDM at 17; *see also Nails from Oman* IDM at 12.
[1216] *See* GOC Case Brief at 10.
[1217] *Id.* at 4.

771(5A)(D)(i) of the Act states that a program is *de jure* specific if the governing authority "expressly limits access to the subsidy." Here, the ITR expressly limited access to the subsidy by excluding numerous activities. For example, enterprises or industries that are engaged exclusively in farming, fishing, construction, or oil or gas extraction are not eligible to receive benefits under this program. Although the GOC is correct that the specificity test is intended to winnow out broadly available assistance spread throughout an economy, it is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law."[1218]

We also disagree with the GOC that the Department's practice supports a different result.[1219] In *Laminated Hardwood Trailer Flooring from Canada*, the Department found the Decentralized Fund for Job Creation Program (DFJC) of the Société Quebecoise de Developpement de la Main-d'Oeuvre to not be *de jure* specific.[1220] However, the Department also found assistance under the DFJC program to be "distributed to many sectors representing virtually every industry and commercial sector found in Quebec," as it excluded only retail businesses, nonprofits, and local and regional municipalities.[1221] Here, the ACCA for Class 29 Assets program contains numerous additional eligibility restrictions. Similarly, in *Live Swine from Canada (II)*, the Department found the Transitional Assistance/Risk Management Funding grant program to not be *de jure* specific because it was available to most of the agricultural sector with the exception of producers of processed agricultural products.[1222] In addition to the fact that this investigation does not require that the Department analyze specificity of an agricultural subsidy (which is governed by special rules, under 19 CFR 351.502(d)), again, the ACCA for Class 29 Assets program contains numerous additional eligibility restrictions. Finally, in *Fresh Cut Flowers from the Netherlands*, the Department found that a program was not *de jure* specific because it excluded "one narrow type of agricultural activity."[1223] This case predates the statutory amendments made under the URAA, and in any event, is not analogous to the numerous activities that are excluded under the ACCA for Class 29 Assets program.

Finally, West Fraser argues that the ACCA for Class 29 Assets program is not *de jure* specific under section 771(5A)(D)(ii) of the Act because it has "objective criteria or conditions governing the eligibility for, and the amount of, {the tax reduction}" that are based on neutral criteria not favoring one enterprise over another.[1224] We disagree. The eligibility criteria do not satisfy the statutory requirement for "objective criteria," insofar as they "favor one enterprise or industry over another."[1225] That is, the ITR favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.[1226]

[1218] *See* SAA at 930.
[1219] *See* GOC Case Brief at 9.
[1220] *See Laminated Hardwood Trailer Flooring from Canada*, 61 FR at 59084.
[1221] *Id.*
[1222] *See Live Swine from Canada (II)* IDM at 27.
[1223] *See Fresh Cut Flowers from the Netherlands*, 52 FR at 3301 and 3306.
[1224] *See* West Fraser Rebuttal Brief at 6-7.
[1225] *See* section 771(5A)(D)(ii) of the Act.
[1226] *See* GOC Etal Primary QNR Response at Exhibit GOC-CRA-ACCA-1.

We therefore determine that the ACCA for Class 29 Assets program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for this tax program is expressly limited to certain enterprises or industries. As a result of this finding, we need not address the respondents' arguments regarding *de facto* specificity.

Comment 69: Whether the ACCA for Class 29 Assets is a Tax Deferral

In the *Preliminary Determination*, the Department preliminarily determined that the ACCA for Class 29 Assets provided a tax benefit in the form of a deduction from taxable income through the accelerated depreciation of Class 29 assets.[1227] West Fraser and Canfor argue that the program does not provide tax benefits, but, rather a tax deferral. They claim that a benefit should, thus, be calculated as though the amount of tax deferred was a government-provided loan in accordance with 19 CFR 351.509(a)(2).[1228] West Fraser argues that whether the assets are classified as Class 29 or Class 43, the amount depreciated in each asset class is eventually the same, and only the time period over which the depreciation is recognized is different.[1229] West Fraser claims that there is no reduction in the amount of taxes owed under the ACCA for Class 29 Asset Program.[1230] West Fraser maintains that the accelerated depreciation defers tax savings to subsequent years' taxes and is, therefore, a method of tax deferral in accordance with 19 CFR 351.509(a)(2).[1231] The petitioner maintains that treating this program as a tax deferral would contradict the Department's longstanding policy with respect to accelerated depreciation programs, as articulated in the *CVD Preamble*.[1232]

Department's Position: We disagree that this should be treated as a tax deferral program. West Fraser's characterization of the Class 29 program, as compared with the alternative Class 43 normal depreciation, as the deferral of taxes, runs counter to the purpose of the ACCA for Class 29 Assets program, which is to provide an incentive for firms to purchase eligible manufacturing equipment.[1233] The accelerated depreciation under the program permits the realization of the tax benefit more quickly than if the assets were classified under Class 43.[1234] While it is true that there is no difference in the amount of depreciation over time for each asset class, this argument ignores that accelerated depreciation provides a deduction against taxable income during a shorter period, during which taxable income is more easily forecasted. Class 29 deductions, which are depreciated over a three-year period, occur in a shorter time frame than Class 43 assets, and that shorter time frame permits some anticipation of tax status. As such, if a company foresees that the upcoming three years may be particularly profitable, it may be beneficial to that company to participate in the program, thereby deducting from its taxable income the increased Class 29 depreciation value during those three years. In contrast, Class 43 deductions occur over a much longer depreciation period, during which there is no assurance that tax savings can be obtained (*i.e.*, that the company would have taxable income during each year from which to deduct the standard Class 43 depreciation value). Further, a conclusion that this is a tax deferral

[1227] *See* PDM at 72.
[1228] *See* West Fraser Rebuttal Brief at 9-12; *see also* Canfor Case Brief at 58.
[1229] *See* West Fraser Rebuttal Brief at 9.
[1230] *Id.*
[1231] *Id.*
[1232] *See* Petitioner Rebuttal Brief at 148, footnote 497 (citing *CVD Preamble*, 63 FR at 65375-76).
[1233] *See* GOC Etal Primary QNR Response at CRA-45-46 and Exhibit GOC-CRA-ACCA-4.
[1234] *Id.* at CRA-45-46.

would require taxable income to remain stable; but there is no certainty from year to year that a company will have taxable income to offset with this deduction, or that the benefits will be offset by higher taxes in the future. Additional potential factors, such as changes in tax provisions, government tax policies, or the possibility that the recipient company is in a future tax loss position, might prevent the taxes "deferred" due to depreciation under the program from materializing.

Because of this uncertainty, it has been the Department's practice to treat accelerated depreciation programs as a tax savings (deduction) in the relevant year rather than a tax deferral.[1235] Further, the *CVD Preamble* specifically discusses our approach to accelerated depreciation:

> {w}e will, therefore continue our current methodology for calculating the tax benefits from accelerated depreciation schemes on a year by year basis… {w}e agree with the commenters that our guiding principle is to treat as a countervailable benefit the difference between the taxes a company actually pays and the taxes it would have paid if it had not incurred a loss or a diminished profit as a result of accelerated depreciation or a loss carryforward[1236]

Therefore, we do not calculate the tax benefits from this type of program on a prospective basis, but on a year-by-year basis by calculating the difference between what the firm paid under the ACCA for Class 29 Assets program, and what it would have paid in the absence of the program (*i.e.*, had those assets been classified as Class 43 assets).[1237] Accordingly, we determine that we will not treat this accelerated deprecation program as a tax deferral and will maintain our methodology from the *Preliminary Determination*.

Comment 70: Whether the AJCTC is Specific

In the *Preliminary Determination* the Department found the AJCTC *de jure* specific under section 771(5A)(D)(i) of the Act.[1238] The GOC argues that this program is neither *de jure* nor *de facto* specific.[1239] The petitioner asserts that the Department should continue to find the program to be *de jure* specific in the final determination.[1240]

Department's Position: The AJCTC allows employers to claim a tax credit of 10 percent of wages for qualifying apprentices in the first two years of the apprentice's employment, up to a maximum of C$2,000 per apprentice per year.[1241] In the *Preliminary Determination*, we found this program to be *de jure* specific because a qualifying apprentice is defined as someone working in a prescribed trade. The prescribed trades that are eligible to benefit from this

[1235] *See*, *e.g.*, *SSP from Belgium*, 64 FR at 15580-15581; *see also OCTG from the PRC* IDM at Comment 42; *see also Pressure Pipe from the PRC* IDM at Comment 30.
[1236] *See CVD Preamble*, 63 FR at 65375-65376.
[1237] *See* 19 CFR 351.509(a)(1).
[1238] *See* PDM at 73.
[1239] *See* GOC Case Brief at 15-17.
[1240] *See* Petitioner Rebuttal Brief at 109-114, 119-120.
[1241] *See* GOC Etal Primary QNR Response at GOC-CRA-31.

program are only those listed as Red Seal Trades.[1242] Thus, to qualify for a tax credit under the program, an employer must employ an apprentice working in one of the 56 identified Red Seal Trades.[1243] This program is *de jure* specific under section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for these programs is expressly limited to certain industries.

However, the GOC argues that because this program is limited by "trade," it is limited neither by industry nor enterprise as required under section 771(5A)(D)(i) of the Act. The GOC argues that the Red Seal Trades are types of jobs, and thus this program is open to all industries and only limited by activities. We find this argument unavailing. We do not distinguish, and neither the statute nor the regulations require us to distinguish, between an enterprise or industry and an activity performed by that enterprise or industry for purposes of evaluating *de jure* specificity.[1244] Instead, the pertinent question under section 771(5A)(D)(i) of the Act is whether access to the program is expressly limited to certain enterprises or industries. As we have found, the AJCTC is expressly limited to enterprises or industries that are engaged in one of the limited "Red Seal Trades."

The GOC also argues that the AJCTC is not limited to a "group" of industries as required by section 771(5A)(D) of the Act because the eligible industries are "widely disparate."[1245] Again, we find this argument to be misplaced. Under section 771(5A)(D)(i) of the Act, access to assistance need only be limited to an enterprise or industry, or groups thereof; the heterogenous or homogeneous nature of the industries included or excluded is immaterial to our analysis.[1246]

Therefore, the Department continues to find this program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, the program expressly limits eligibility to certain activities, which by extension limits it to certain industries. Because of this finding, we need not address the GOC's arguments regarding whether the AJCTC is *de facto* specific.

Comment 71: Whether the Department Must Account for Gains and Losses in Tax Savings in the AITC Program

In the *Preliminary Determination*, the Department preliminarily determined that that a benefit was conferred to JDIL under the AITC in the amount of the tax credit used to reduce taxes payable under 19 CFR 351.509(a)(1).[1247] Under the program, a participant may take 10 percent of the cost of qualified property as a credit against taxes owed.[1248] JDIL argues that: (1)

[1242] *Id.*
[1243] *Id.*; *see also* Exhibit GOC-CRA-AJCTC-1.
[1244] Furthermore, in practice, we have found programs to be *de jure* specific where eligibility was limited to enterprises or industries engaged in certain activities or projects. *See*, *e.g.*, *CWP from the UAE* IDM at 17; *see also Nails from Oman* IDM at 12.
[1245] *See* GOC Case Brief at 16.
[1246] 19 CFR 351.502(b) (stating that in determining whether a subsidy is provided to a "group" for purposes of section 771(5A)(D) of the Act, the Department is not required to consider whether there are "shared characteristics" within the group of eligible enterprises or industries).
[1247] *See* PDM at 73-74.
[1248] *Id.*

qualified property includes certain machinery and equipment, including Class 29 assets; (2) the depreciable value of Class 29 assets is deducted in the calculation of taxable income; and, thus, (3) when AITCs are applied against taxes payable, they reduce the depreciable value of the qualified property under the program, resulting in lower tax savings than the AITC itself.[1249] JDIL argues that the Department must account for the both gains and losses in tax savings to properly calculate the AITC program benefit.[1250] The petitioner argues that accounting for the losses would be an impermissible offset.[1251]

Department's Position: We disagree with JDIL that we must account for its proposed offsets to properly calculate its benefit for the AITC program under 19 CFR 351.509(a)(1). Section 771(6) of the Act permits the Department to calculate the net countervailable subsidy to a respondent by allowing for only three narrow offsets to a respondent's gross benefit: (1) the deduction of application fees, deposits or similar payments to qualify for or receive a subsidy, (2) accounting for losses due to deferred receipt of the subsidy, if the deferral is mandated by the Government and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy. The offset that JDIL requests—to account for diminished tax savings as a result of the reduced depreciable value of certain assets—is not one of the three enumerated offsets that are permitted by the statute. Furthermore, the Department previously evaluated similar arguments in *SC Paper from Canada – Expedited Review*, and also found that the offset JDIL requested in the form of additional taxes it may have paid as a result of utilizing the AITC was not permissible under section 771(6) of the Act.[1252] Moreover, in accordance with 19 CFR 351.503(e), the Department does not consider the tax consequences of a benefit. Accordingly, we continue to calculate JDIL's benefit from the AITC tax program as we did in the *Preliminary Determination*.

Comment 72: Whether the Benefit for the Atlantic Investment Tax Credit Should be Adjusted

In the *Preliminary Determination*, the Department found the AITC to be to be a credit against federal income tax owed, and that JDIL benefitted under this program.[1253] In its case brief, the petitioner argues that the Department did not reflect the total credit claimed against JDIL's tax liability.[1254] Specifically, the petitioner argues that the Department should include both the tax credit earned in the tax year, as well as the AITC claim that was carried forward from previous tax years. JDIL rebuts that the benefit should be the amount of tax savings resulting from the program, not the amount of tax credit.[1255]

Department's Position*:* We agree with the petitioner. In the *Preliminary Determination*, the Department inadvertently accounted only for the tax credit earned in tax year 2014, instead of the

[1249] *See* JDIL Case Brief at 27; *see also* JDIL Rebuttal Brief at 2.
[1250] *Id.*
[1251] *See* Petitioner Rebuttal Brief at 153.
[1252] *See SC Paper from Canada – Expedited Review* IDM at 124.
[1253] *See* PDM at 74.
[1254] *See* Petitioner Case Brief at 69-70.
[1255] *See* JDIL Rebuttal Brief at 2.

tax credit claimed during the tax year. For this final determination, consistent with 19 CFR 351.509(a)(1), we are including the full amount of credit claimed by JDIL during the POI.[1256]

JDIL has also argued that the Department must take into account additional taxes that the company may have paid as a result of utilizing the AITC.[1257] As discussed in Comment 71, we disagree that we should adjust JDIL's benefit from this program to take into account the secondary effect of JDIL's additional tax obligations due to its use of the program. Therefore, beyond updating the benefit to reflect the full amount of the tax credit applied against JDIL's taxes due in the POI, we have not further modified the benefit for this program, because the argument presented by JDIL is contrary to law, as it is not permitted by 19 CFR 351.503(e) or section 771(6) of the Act.

Comment 73: Whether the Alberta TEFU Marked Fuel Program Provides a Countervailable Subsidy

The GOA and West Fraser argue that the Alberta TEFU Marked Fuel Program is not *de jure* specific because eligibility is not limited to any particular industries, and because this program merely identifies the uses for which fuel may be purchased at a lower tax rate. The GOA and West Fraser also argue that the program is not *de jure* specific pursuant to section 771(5A)(D)(ii) of the Act because it has objective, neutral criteria that are clearly set forth in provincial statutes and regulations, eligibility is automatic, and the conditions for eligibility are strictly followed.[1258] The GOA and West Fraser likewise assert that, because the Alberta forestry industries' usage of marked fuel is not disproportionate to the Alberta forestry industries' share of the Alberta economy, nor is the forestry industry a predominant user of the program, there is no basis for the Department to find that the TEFU Marked Fuel Program is *de facto* specific.[1259] The GOA asserts that the applicable laws limiting eligibility for these subsidies are "activity-based exclusions, not industry-based ones," and that "all industries are in fact eligible to claim the {benefit} for the non-excluded activities they perform." Finally, the GOA argues that the TEFU Marked Fuel Program does not provide a financial contribution to any companies in Alberta because the GOA is not foregoing any tax revenue that would otherwise be collected.[1260]

The petitioner argues that that the Department correctly determined that the GOA fuel tax subsidy programs are *de jure* specific pursuant to section 771(5A)(D)(i) of the Act because the tax exemptions, reductions, and refunds are expressly limited to certain categories of consumers.[1261] According to the petitioner, *de jure* specificity exists when eligibility is explicitly limited to certain activities because "only the industries involved" in those activities are eligible.[1262] Concerning the programs at issue, only users purchasing fuel for a prescribed list of

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[1256] *See* JDIL Final Calculation Memorandum.
[1257] *Id.*
[1258] *See* GOA Case Brief at 69-72; *see also* West Fraser Case Brief at 55-57.
[1259] *See* GOA Case Brief at 73; *see also* West Fraser Case Brief at 57-58.
[1260] *See* GOA Case Brief at 73-74.
[1261] *See* Petitioner Rebuttal Brief at 120.
[1262] *Id*. at 121 (citing *CRS from Brazil* IDM at 51-54; *see also HRS from Brazil* IDM at 51-54; *see also Citric Acid from the PRC* IDM at 22; *see also Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman* IDM at Comment 2.

approved activities may obtain the tax exemption or reduction. Accordingly, these programs are *de jure* specific in accordance with the statute and the Department's established practice.

The petitioner asserts that the Department can also make a determination that the Alberta fuel tax exemption program is *de facto* specific pursuant to section 771(5A)(D)(iii)(II) of the Act because a group of industries is the predominant users of this subsidy.[1263]

Department's Position: The Marked Fuel Tax Exemption program, which is part of the GOA's larger TEFU program, provides a tax exemption of nine cents per liter to eligible companies and municipalities when fuel is used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities.[1264] Consistent with the *Preliminary Determination*, we continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because the program expressly limits access to the tax exemption to enterprises or industries that use marked fuel for one of these limited, prescribed purposes. Specifically, eligibility for this program is limited in Alberta's *Fuel Tax Regulation* to those entities that have a valid fuel tax exemption certificate.[1265] And only consumers that purchase marked fuel for specific purposes or uses set forth in section 8(3) of the *Fuel Tax Regulation* are eligible for a fuel tax exemption certificate to purchase marked fuel.[1266]

The specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly used throughout an economy, but it is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law."[1267] Although West Fraser and the GOA argue that all enterprises or industries *can* claim the tax exemption, provided that they satisfy the eligibility criteria, we disagree. Access to the subsidy is expressly limited to enterprises or industries engaged in certain activities, and West Fraser and the GOA do not argue or cite evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which a tax exemption certificate can be granted.

Furthermore, the Department's finding here is consistent with our past practice. For example, in *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman*, the Department found that a particular subsidy program "expressly limit{ed} access . . . to certain enterprises or industries" when the "{t}he GCC Industrial Rules specifically exclude{d}" certain enterprises or industries, such as those that mined or extracted raw materials but did not convert them into semi-finished or finished products.[1268] Thus, the Department may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

[1263] *See* Petitioner Rebuttal Brief at 121.
[1264] *See* GOA Primary QNR Response at ABI-1-ABI-10.
[1265] *Id*. at Exhibit AB-TEFU-5, Fuel Tax 10(1).
[1266] *Id*. at Fuel Tax 8(3).
[1267] *See* SAA at 930.
[1268] *See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman* IDM at Comment 2; *see also Nails from Oman* IDM at Comment 1; *see also Pipe from the UAE* IDM at Comment 1.

We also disagree with the GOA and West Fraser that the program is not *de jure* specific pursuant to section 771(5A)(D)(ii) of the Act, because it has "objective criteria" governing eligibility.[1269] Under section 771(5A)(D)(ii) of the Act, the term "objective criteria" means criteria "that are neutral and that do not favor one enterprise or industry over another." Under this program, the eligibility criteria limits access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities.[1270] Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises, that is, those enterprises or industries that use marked fuel for one of those limited, prescribed purposes. We find that *de jure* specificity exists when eligibility is clearly limited to certain activities because only the industries involved in those activities are, in fact, eligible to obtain the tax exemption or reduction. Thus, we find that these programs are *de jure* specific in accordance with the statute and the Department's established practice. Because we continue to determine that this program is *de jure* specific, we need not address the parties' arguments regarding whether this program is *de facto* specific

Finally, we disagree with the GOA's argument that the program does not provide a financial contribution because marked fuel was originally not taxed, and only recently became taxed at a lower rate than other fuel.[1271] This exemption results in the GOA foregoing tax revenue that would otherwise be due.[1272] Specifically, absent the marked fuel program, companies would be paying a fuel tax rate that, during the POI, ranged from nine cents to thirteen cents per liter to the GOA for marked fuel purchases.[1273] It is irrelevant that the GOA, in the past, may not have taxed these purchases. Accordingly, we determine that the TEFU partial tax exemption constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act, and provides a benefit to the recipient equal to the amount of additional taxes the recipient would have paid in the absence of the program, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).

Comment 74: Whether the Coloured Fuel Program Evaluated in the *Preliminary Determination* Provides Countervailable Subsidies

In the *Preliminary Determination*, the Department calculated a countervailable benefit for the "Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification" program.[1274] The GBC, Canfor, and West Fraser argue that the lower tax rate applied to coloured fuel does not provide a financial contribution.[1275] The GBC and Canfor argue that there is a policy rationale for drawing a distinction between clear and coloured fuel, and applying two different tax rates based on the usage of the fuel. In particular, the GBC and Canfor assert that the tax reflects that vehicles using coloured fuel (predominantly for off-highway purposes) do not contribute to the expense of maintaining roads and transportation infrastructure to the same extent as vehicles operated on

[1269] *See* GOA Case Brief at 70-71; *see also* West Fraser Case Brief at 56-57.
[1270] *See* GOA Primary QNR Response at ABI-7-ABI-8.
[1271] *See* GOA Case Brief at 73-74.
[1272] *See* section 771(5)(D)(ii) of the Act.
[1273] *See* GOA Primary QNR Response at ABI-12.
[1274] *See* PDM at 76-77.
[1275] *See* GBC Case Brief at 99-100; *see also* Canfor Case Brief at 40-41; *see also* West Fraser Case Brief at 58.

highways.[1276] Canfor and West Fraser also argue the program is not *de jure* specific because the *Motor Fuel Tax Act* does not expressly limit access to the lower tax rate for coloured fuel to companies engaging in off-highway applications of motor fuel, nor does it expressly limit access to any enterprise or industry.[1277] Canfor and West Fraser also argue that none of the *de facto* specificity criteria apply.[1278]

In addition to arguments regarding financial contribution and specificity, Canfor argues that the program does not provide a tax benefit because all vehicles are subject to the same clear fuel tax rate when using public roads.[1279] West Fraser, further argues, the Department did not initiate on this program and therefore it is not lawfully countervailable.[1280]

The petitioner rebuts that, in past proceedings, the Department has reasonably determined that foreign governments cannot circumvent U.S. CVD laws simply by using "activities" or "projects" as proxies for enterprises or industries. As long as a subsidy program's criteria limit eligibility to enterprises or industries (or subsets of industries) engaged in those specific activities or projects—and exclude others—the Department may lawfully make a finding of *de jure* specificity.[1281]

Department's Position: For the reasons described below, the Department continues to find that under this program, a financial contribution exists in the form of revenue foregone under section 771(5)(D)(ii) of the Act, that the program is specific under section 771(5A)(D)(i) of the Act, and that the program provides a benefit to the recipient in the amount of the tax savings under 19 CFR 351.510(a)(1). In its questionnaire response, the GBC described that coloured fuel is gasoline or diesel to which a specific dye has been added in order to distinguish it from standard fuel, *i.e.*, clear gasoline and diesel.[1282] Depending on the jurisdiction in which clear fuel is purchased the motor fuel tax is between 14.5 cents per liter and 25.5 cents per liter. In comparison, coloured fuel is subject to a motor fuel tax of 3 cents per liter, regardless of the region in the province where it is purchased.[1283] To be eligible to purchase coloured fuel, and thus, to claim the lower motor fuel tax, purchasers of coloured fuel are required to submit a certification, Coloured Fuel Certification (FIN-430), certifying that the purchased coloured fuel will be used for authorized purposes.[1284] The authorized purposes are, in turn, expressly identified in section 15(1) of the *Motor Fuel Tax Act*, and limit the use of coloured fuel to certain activities, primarily "off-highway."[1285] The combined effect of this scheme is that the *Motor Fuel Tax Act* restricts access to the lower motor fuel tax to enterprises or industries that are engaged in one of the limited uses for which coloured fuel is authorized.

[1276] *See* GBC Case Brief at 99-100; *see also* Canfor Case Brief at 40-41.
[1277] *See* Canfor Case Brief at 40-44; *see also* West Fraser Case Brief at 55-59.
[1278] *See* Canfor Case Brief at 39-40; *see also* West Fraser Case Brief at 57-58.
[1279] *See* Canfor Case Brief at 40.
[1280] *See* West Fraser Case Brief at 55.
[1281] *See* Petitioner Rebuttal Brief at 110-114.
[1282] *See* GBC Supp QNR 2 Response at BC-66.
[1283] *Id.* at BC-66 – BC-67.
[1284] *Id.* at BC-68.
[1285] *Id.* at Exhibit-BC-OA-SUPP-29,

A financial contribution for purposes of section 771(5)(D)(ii) of the Act means foregoing or not collecting revenue that is otherwise due.[1286] Section 15(3) of the *Motor Fuel Tax Act*, explicitly states the "otherwise", "{that} a person who uses coloured fuel for the purpose not authorized by subsection (1) must pay to the government, at the prescribed time and in the prescribed manner, tax equal to the difference between (a) the tax that the person would have paid on that fuel if the fuel had not been taxed as coloured fuel, and (b) the tax paid by the person on that fuel."[1287] Vehicles that use coloured fuel on the highway, an unauthorized purpose, must pay the tax difference between 3 cents per liter for coloured fuel and the location-specific tax for clear fuel. Therefore, this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone. It is irrelevant to this inquiry whether—as the GBC and Canfor contend—the GBC's differential tax scheme is supported by a policy rationale.

We likewise disagree with Canfor that the program did not provide a benefit. Under 19 CFR 351.510(a)(1), "{i}n the case of a program, other than an export program, that provides for a full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program." As described above, coloured fuel is authorized only for certain purposes in British Columbia, and absent the coloured fuel program, Canfor would be taxed at clear fuel rates between 14.5 cents per liter and 25.5 cents per liter depending on the jurisdiction.[1288] Record evidence demonstrates that BC respondents participated in the program and benefited from the reduced tax rate in accordance to 19 CFR 351.510(a)(1). Therefore, under the methodology established under the Department's regulations, a benefit has been conferred. Although Canfor argues that "all vehicles are subject to the same clear fuel tax rate when using public roads,"[1289] this does not alter the fact that when Canfor participates in the coloured fuel program, it receives a benefit.

With regard to specificity, we continue to find that this program is *de jure* specific, in accordance to section 771(5A)(D)(i) of the Act, because the *Motor Fuel Tax Act* expressly restricts access to the subsidy to enterprises or industries that are engaged in a limited number of authorized purposes off-highway, including trucks when used for hauling logs or trucks when used for hauling lumber. The specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly used throughout an economy, but it is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law."[1290] Although Canfor and West Fraser argue that all enterprises or industries *can* claim the lower tax rate, provided that they use the fuel for an authorized purpose, we disagree. Access to the subsidy is expressly limited to enterprises or industries engaged in certain activities, and Canfor and West Fraser do not argue or cite evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which use of coloured fuel is authorized.

[1286] *See* GBC Case Brief at 99-100; *see also* Canfor Case Brief at 40-41; *see also* West Fraser Case Brief at 58.
[1287] *See* GBC Supp QNR 2 Response at Exhibit-BC-OA-SUPP-29.
[1288] *Id.* at BC-66 – BC-67.
[1289] *See* Canfor Case Brief at 40.
[1290] *See* SAA at 930.

Furthermore, this approach is consistent with our past practice. For example, in *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman*, the Department found that a particular subsidy program "expressly limit{ed} access . . . to certain enterprises or industries" when the "{t}he GCC Industrial Rules specifically exclude{d}" certain enterprises or industries, such as those that mined or extracted raw materials but did not convert them into semi-finished or finished products.[1291] Thus, the Department may make a finding of *de jure* specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

We also disagree with the GBC, Canfor, and West Fraser that the program is not *de jure* specific pursuant to section 771(5A)(D)(ii) of the Act, because it has "objective criteria" governing eligibility.[1292] Under section 771(5A)(D)(ii) of the Act, the term "objective criteria" mean criteria "that are neutral and that do not favor one enterprise or industry over another." Under this program, the eligibility criteria limits access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities.[1293] Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises, that is, those enterprises or industries that use marked fuel for one of those limited, prescribed purposes. Because we continue to determine that this program is *de jure* specific, we need not address the parties' arguments regarding whether this program is *de facto* specific.

Finally, we disagree with West Fraser's argument that because the Department did not formally initiate an investigation of the "Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification" program, the program is not lawfully countervailable. Specifically, as discussed in Comment 5, section 775 of the Act states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition."[1294] There is no legal requirement that the Department initiate a formal investigation before investigating (and ultimately countervailing) what appear to be countervailable subsidies discovered during an investigation. Accordingly, the Department continues to find that it is lawful to countervail the "Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification" program.

Comment 75: Whether the GNB's Gasoline and Fuel Tax Exemptions and Refund Program Provides a Financial Contribution and Is Specific

In the *Preliminary Determination*, the Department calculated a countervailable subsidy for JDIL's receipt of funds under the GNB Gasoline & Fuel Tax Exemptions and Refund Program. The GNB claims that there is no basis for the Department's preliminary determination, arguing that there is no financial contribution because only those using public highways should be

[1291] *See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman* IDM at Comment 2; *see also Nails from Oman* IDM at Comment 1; *see also Pipe from the UAE* IDM at Comment 1.
[1292] *See* West Fraser Case Brief at 56-57.
[1293] *See* GBC Supp QNR 2 Response at Exhibit-BC-OA-SUPP-29.
[1294] *See* section 775 of the Act; *see also* 19 CFR 351.311(b).

subject to fuel taxation under the Gasoline and Motive Fuel Tax Act.[1295] JDIL echoes this argument, while also adding that the program is not specific.[1296]

Department's Position: We find, as we did in the *Preliminary Determination*, that this program constitutes a countervailable subsidy, as it meets all the criteria that define a countervailable subsidy, namely, financial contribution, specificity, and benefit.[1297] Neither the GNB nor JDIL have provided support for their assertion that the purpose behind the imposition of an indirect tax, *i.e.*, road and highway maintenance, in any way trumps the structure of the law and regulation underlying the tax, and defining the exemptions thereto. In this case, we have reviewed the *Gasoline and Motive Fuel Tax Act*, sections 3(1) and 6(1) of which imposes taxes of 15.5 cents on each litre of gasoline and 21.5 cents on each litre of motive fuel, respectively.[1298] Under the *Gasoline and Motive Fuel Tax Act*, a sales tax on gasoline and motive fuel is applied throughout the province generally, "for the public use of the Government," and is essentially a revenue due to the GNB based on the volume of fuel purchased or consumed within the province. However, sections (3)(6) and (6)(6) of the *Gasoline and Motive Fuel Tax Act* carve out certain exemptions or refunds of the indirect taxes for purchases of gasoline and motive fuel, respectively, that would otherwise be due. Thus, the *Gasoline and Motive Fuel Tax Act* applies a generally applicable indirect tax on an activity within the province's jurisdiction, and then exempts (or refunds to) a certain class of consumer from paying these revenues that are otherwise due. We find that this exemption (or refund) is a financial contribution by the GNS, within the meaning of section 771(5)(D)(ii) of the Act, to those exempted from paying the tax that would otherwise have been applicable to them, and to those whose taxes paid under the program are later refunded.

Furthermore, we find that the *Gasoline and Motive Fuel Tax Act* is specific because it clearly defines a limited number of professions or field of activity that are eligible to be exempted from, or to be refunded, taxes that are generally applicable to all purchasers or consumers of gasoline in the province. In this case, aquaculturists, farmers, silviculturists, producers of electricity for sale, persons consuming fuel in the preparation of food, lighting and heating of premises or heating of domestic hot water, wood producers, forest workers, manufacturers, mining or quarrying operators, and registered vessels operators[1299] are exempted from paying the sales tax on gasoline or motive fuel, or are entitled to receive refunds of taxes paid. All other consumers of gasoline and motive fuel in New Brunswick are required to pay these taxes, and are not entitled to receive a refund of taxes paid. Therefore, as in the *Preliminary Determination*, we continue to find that this program is *de jure* specific under section 771(5A)(D)(i) of the Act.

[1295] *See* GNB Case Brief at 43-44.
[1296] *See* JDIL Case Brief at 37-39.
[1297] *See* section 771(5) of the Act.
[1298] *See* GNB Primary QNR Response at Exhibit NB-GF-2.
[1299] *Id.* at Exhibit NB-GF-1 and Exhibit NB-GF-2.

Comment 76: Whether LIREPP Constitutes a Financial Contribution and Confers a Benefit on Irving Companies

In the *Preliminary Determination*, we found that JDIL and IPL were cross-owned, that IPL received Net LIREPP credits on its monthly electricity bills from NB Power, and that IPL transferred those credits to JDIL. We further preliminarily found that those credits constituted a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act. JDIL stated that JDIL and certain of its cross-owned affiliates IPL and IPP as well as SGP participate in LIREPP collectively as an "Eligible Large Industrial Enterprise."[1300] JDIL and the GNB argue that NB Power did not forego revenue, but, rather, this program should be analyzed as an MTAR program to determine whether NB Power purchased renewable electricity from the participating Irving companies for more than adequate remuneration.[1301] Specifically, the parties argue that the C$95/MWh rate that NB Power paid to the participating Irving companies through the credits on its electricity bills is less than what NB Power pays for other sources of renewable energy, or the cost for other sources of renewable energy.[1302] Thus, the GNB and JDIL argue, the LIREPP credit is money that NB Power owes the participating Irving Companies, not money that NB Power is entitled to receive, and, therefore, NB Power did not forgo any revenue "otherwise due" from the Irving Companies.[1303]

The petitioner argues that in *SC Paper from Canada – Expedited Review,* the Department reasonably considered the operation of LIREPP as a whole, rather than distinct purchases of electricity from, and sales of electricity to, NB Power. According to the petitioner, treating the credit as "money that NB Power owes" to the relevant Irving entities ignores that this money is intended to incentivize certain energy consumption and production behaviors, while limiting the analysis to the adequacy of NB Power's electricity purchases ignores the fact that those purchases only occurred in context with NB Power's sales to the Irving entities.[1304] The net effect of these transactions results in a credit that is used to reduce Irving's electricity payment to NB Power, a Crown corporation.[1305] Accordingly, the petitioner argues that the Department should continue to find that this program is revenue foregone, consistent with *SC Paper from Canada – Expedited Review*.

Department's Position: Based upon our analysis of all the arguments submitted by the interested parties, we continue to find that the LIREPP program is properly analyzed as a revenue foregone program, rather than as a possible MTAR program. We continue to find that the amount of LIREPP credits that IPL transfers to JDIL confers a benefit to JDIL, in accordance with 19 CFR 351.525(b)(6)(v). Although we found that the LIREPP program is *de facto* specific in the *Preliminary Determination*, upon further review of the record in this investigation, we determine that LIREPP program is *de jure* specific in accordance with section 771 (5A)(D)(i) of

[1300] *See* JDIL Case Brief at 35. We will refer to IPL, IPP, SGP, and JDIL collectively as participating Irving companies. In the SC Paper Expedited Review, we found JDIL, IPL, and IPP are cross-owned as a result of their ownership by the same holding company that owns IPL. *See SC Paper from Canada - Expedited Review* IDM at 10.
[1301] *See* GNB Case Brief at 40-41; *see also* JDIL Case Brief at 34-35.
[1302] *Id.*
[1303] *Id.*
[1304] *See* Petitioner Rebuttal Brief at 140.
[1305] *Id*. at 141.

the Act, because the GNB expressly limits access to LIREPP to certain eligible enterprises by law.[1306] Accordingly, consistent with our practice, because we have now found that the LIREPP program is *de jure* specific, we are not reaching a final determination regarding whether the LIREPP program is also *de facto* specific.

As detailed in the JDIL's verification report and the GNB verification report in *SC Paper from Canada – Expedited Review*,[1307] LIREPP is a multifaced program. The purpose of the LIREPP program is for New Brunswick to (1) reach NB Power's mandate to supply 40 percent of its electricity from renewable sources by 2020; and (2) bring New Brunswick's large industrial enterprises' net electricity costs in line with the average cost of electricity in other Canadian provinces.[1308] According to the GNB verification report in *SC Paper from Canada – Expedited Review*, GNB officials from NB Power, a Crown corporation, and from DERD, explained one of the reasons that the LIREPP program was implemented was for industries to get credit applied to their electricity bill for the renewable energy they generated.[1309]

To determine the amount of the LIREPP credit, the GNB first determines the Canadian Average Rate, which is the average electricity rate for users across all of Canada that are in the same industry as the LIREPP participant. The GNB next determines the Target Reduction Percent, *i.e.,* the percentage that the New Brunswick average electricity rate would have to be reduced in order for it to match the Canadian Average Rate.[1310] The Target Reduction Percent is the starting point to determine how much renewable electricity will be purchased under LIREPP from a particular company.[1311] The GNB then calculates the Target Discount by summing the previous month's firm electricity bills for the LIREPP participant (here, the participating Irving companies), and then multiplies the billed amount by the applicable Target Reduction Percent.[1312] The total is called the Target Discount.[1313] The NB Power officials stated that "the purpose of LIREPP is that 'you want to buy enough to get them to the target discount,'" adding that "we want to buy a certain of {electricity}, then we resell at firm rates, then the difference is the NET LIREPP Adjustment."[1314] In other words, the NET LIREPP adjustment is the difference between the amount of renewable electricity that NB Power will purchase from the LIREPP participant (here, the participating Irving companies), and the amount of electricity that NB Power will sell to the LIREPP participant (again, the participating Irving companies). The

[1306] *See* GNB Primary QNR Response at 21-22, Exhibit NB-LIREPP-2, and NB-LIREPP-3. According to the GNB, LIREPP is only available to large industrial companies that produce eligible renewable sources of energy and owns and operates an eligible facility that has an electrical energy requirement of not less than 50 GWh per year; obtain all or a portion of its electricity on a firm basis from NB Power; and at least 50 percent of the primary products produced by the facility are exported to another province or territory of Canada or elsewhere. Eligible renewable sources of energy mean electricity generated in the Province at an eligible facility at which electricity is generated through the combustion of woody biomass or its by-products from the chemical manufacture of pulp, including black and red liquors, for the purposes of cogeneration of producing combined heat and power.
[1307] *See* JDIL Primary QNR Response at Exhibit LIREPP-07; *see also* JDIL Verification Report at 17.
[1308] *Id.*
[1309] *See* JDIL Primary QNR Response at Exhibit LIREPP-07.
[1310] *Id.*
[1311] *Id.*
[1312] *Id.*
[1313] *Id.*
[1314] *Id.*

net LIREPP adjustment is provided to participating Irving companies, including JDIL, as credits that are applied to their monthly electricity invoices.[1315] Thus, while the program does encompass, in part, the purchase of a good or service, the credits reduce the participating Irving Companies' monthly electricity bills, and it is the amount of the monthly credits that we have determined is the countervailable benefit consistent with section 771(5)(E) of the Act.

Further, although the participating Irving Companies "sell" electricity to NB Power for C$95/MWh, that rate is immaterial to the calculation of the NET LIREPP adjustment.[1316] This is because the volume of electricity that the participating Irving Companies "sell" to NB Power, most of which is not transmitted to or through the grid, is derived each month using the Target Discount and the C$95/MWh rate. The C$95/MWh rate is fixed in the Electricity Act.[1317] Thus, even if this rate varied, because NB Power works backwards from the Target Discount, the program guarantees that the Target Discount is reached each month by adjusting the volume of NB Power's purchases of electricity from the participating Irving companies. In other words, NB Power has determined in advance the amount of credits it wishes to give the participating Irving companies. As such, we reaffirm our preliminary decision to treat the benefit from this program as the amount of Net LIREPP credits that are provided to participating Irving companies including JDIL to reduce their monthly electricity payments from NB Power, a Crown corporation.

Comment 77: Whether LIREPP is Tied to Non-Subject Merchandise

JDIL and the GNB argue that Irving companies' participation in LIREPP is tied to the production of non-subject merchandise (*i.e.* paper products), and is thus not countervailable in this investigation. The parties argue that the participating Irving companies signed an agreement to participate in the program (the LIREPP Agreement), and the GNB was aware at the time the LIREPP Agreement was adopted that an objective of the Agreement was to bring the electricity costs of the Irving companies' pulp and paper facilities in line with those of pulp and paper producers in other Canadian provinces.[1318] In particular, the Target Reduction Percent for the Irving companies, used to calculate the NET LIREPP adjustment applied to the Irving companies' electricity bill, was calculated based on the average firm electricity rate for the Canadian "pulp and paper mill sector."[1319] The parties further argue that the LIREPP Agreement signed between NB Power and the Irving companies made clear that the Irving companies had paper facilities, and, in fact, specifically highlights JDIL's LUP Division.[1320] JDIL further argues that, during the JDIL's verification, the Department traced LIREPP electricity credits directly to the LUP Division's income statement.[1321]

[1315] *Id.*
[1316] *Id.*
[1317] *Id.*
[1318] *See* GNB Case Brief at 42.
[1319] *See* JDIL Case Brief at 34.
[1320] *Id.*
[1321] *See* GNB Case Brief at 42-43.

The petitioner argues that the Department should continue to treat this as a grant for electricity that subsidizes the Irving companies' operations and attribute the benefit to all sales. In *SC Paper from Canada – Expedited Review,* the Department attributed the subsidy benefits across JDIL's total production after finding that the credit resulting from this program was not tied to an operating division producing only non-subject merchandise.[1322] Moreover, the petitioner argues, LIREPP benefits reflect a grant for the production and consumption of an input (*i.e.*, electricity) by multiple entities in the Irving companies; that grant is bestowed as a single credit on one entity's electricity bill and subsequently transferred, in part, to JDIL.[1323]

Department's Position: Based upon our analysis of all the arguments submitted by the interested parties, we continue to determine that LIREPP is not tied to non-subject merchandise. Given the complications of this program, we first find it necessary to describe the relevant players. As stated above, JDIL, our sole producer of subject merchandise, and certain of its cross-owned affiliates IPL and IPP as well as SGP participate in LIREPP. LUP is a division within JDIL. To help satisfy NB Power's renewable energy obligations, NB Power "purchases biomass energy from IPP and hydroelectric power from SGP pursuant to LIREPP and the LIREPP Agreement."[1324] Instead of paying the full amount owed for "purchased" renewable energy to IPP and SGP directly, NB Power applies the "NET LIREPP' credits to the monthly electricity bill issued to IPL, a cross-owned paper producer.[1325] IPL then transfers some of the NET LIREPP credit to JDIL's LUP.[1326]

Pursuant to 19 CFR 351.525(b)(5)(i), "{i}f a subsidy is tied to the production or sales of a particular product, the Secretary will attribute the subsidy only to that product." Consistent with the *CVD Preamble*, we have generally stated that we will not trace how subsidies are used by companies, but rather analyze the purpose of the subsidy based on information available at the time of bestowal.[1327] In other words, under our regulation and the *CVD Preamble*, a financial contribution (in this case the NET LIREPP credits for electricity bills) is deemed to benefit a company's overall production absent a requirement explicitly made at the time of bestowal—*i.e.*, when the terms for the provision are set—that the financial contribution may only be used for a certain subset of a company's production. The Department will only find that a subsidy is tied to a particular product when the intended use is known to the subsidy giver (in this case, NB Power) and so acknowledged prior to or concurrent with the bestowal of subsidy.[1328] For example, in determining whether receipt of a grant was tied to a particular product, the Department examines the grant approval document. [1329]

The eligibility criteria provided by GNB states that the LIREPP program is available to any large industrial enterprise that owns and operates an eligible facility that generates eligible

[1322] *See* Petitioner Rebuttal Brief at 136.
[1323] *Id.*
[1324] *See* JDIL Primary QNR Response at LIREPP-01
[1325] *Id.*
[1326] *Id.*
[1327] *See CVD Preamble*, 63 FR at 65403.
[1328] *Id.* at 65402.
[1329] *Id.*

electricity.[1330] The purpose of this program is two-fold: (1) to reach NB Power's mandate to supply 40 percent of its electricity from renewable sources by 2020; and (2) to bring New Brunswick's large industrial enterprises' net electricity costs in line with the average cost of electricity in other Canadian provinces.[1331] The participating Irving companies are eligible to participate the LIREPP program because of their ability to meet the program's requirements for producing eligible renewable energy, not because the companies produce any specific products (*i.e*. pulp and paper). Further, the terms of the LIREPP agreements signed between the participating Irving companies and NB Power do not link the bestowal of NET LIREPP credits to any specific products.[1332]

The LIREPP's lack of tie to pulp and paper products is evident when the program is contrasted with programs which we have found to be tied to pulp and paper. For example, in the *SC Paper from Canada* investigation and in the *Preliminary Determination*, we found that the FPPGTP program is tied to pulp and paper, because the grant applicant's guide clearly states that the intent of the program was to improve the environmental performance of Canada's pulp and paper industry, and credits were only to be granted to Canadian pulp and paper companies.[1333] Additionally, in order to be eligible for the program, the projects must be capital investments at Canadian pulp and paper mills that are directly related to the mill's industrial process,[1334] and the project location must be a pulp and paper mill in Canada.[1335] Further, costs associated with lumber products are ineligible for the program.[1336] In contrast, the LIREPP program is available to large industrial companies in any industry that meets the eligibility requirements. The program was not designed to assist specific products. The GNB does not link the bestowal of the LIREPP credit to any specific industry or products. Further, the LIREPP Agreements signed between the participating Irving companies and NB Power does not place any requirement on the Irving companies to effectuate a transfer of the credit between IPL and JDIL, nor does it speak to the Irving companies' use of the LIREPP credit once it is applied to IPL's electricity bill.

Lastly, the LUP is not a separate entity, but rather is a sub-division of JDIL, which produces subject merchandise.[1337] JDIL is incorporated and registered in New Brunswick,[1338] and JDIL

[1330] *See* GNB Primary QNR Response at 21-22 and Exhibits NB-LIREPP-2 and NB-LIREPP-3. According to the GNB, LIREPP is only available to large industrial company that produces eligible renewable sources of energy and owns and operates an eligible facility that has an electrical energy requirement of not less than 50 GWh per year; obtain all or a portion of its electricity on a firm basis from NB Power; and at least 50 percent of the primary products produced by the facility are exported to another province or territory of Canada or elsewhere. Eligible renewable sources of energy mean electricity generated in the Province at an eligible facility at which electricity is generated through the combustion of woody biomass or its by-products from the chemical manufacture of pulp, including black and red liquors, for the purposes of cogeneration of producing combined heat and power.
[1331] *Id.*
[1332] *See* JDIL Primary QNR Response at LIREPP-07 and LIREPP-15.
[1333] *See SC Paper from Canada* IDM at 26-27; *see also* PDM at "Federal Pulp and Paper Green Transformation Program."
[1334] *Id.*
[1335] *Id.*
[1336] *Id.*
[1337] *See SC Paper Expedited Review* IDM at 98.
[1338] *Id.*

files its taxes as one corporate entity (including its subdivision LUP).[1339] Neither the statute nor our regulations provided for, or require, the attribution of a domestic subsidy to a specific entity within a firm.[1340] JDIL and the GNB are misguided in concluding that because subsidies were provided to a *division* of a subject merchandise producer that itself does not produce subject merchandise, the subsidies are tied to the production of non-subject merchandise as contemplated by 19 CFR 351.525(b)(5).

Comment 78: **Whether Credits for Road Construction Are a Countervailable Subsidy**

The GOQ and Resolute assert that the Department should not have preliminarily found "Credits for the Construction and Major Repair of Public Access Road," to be countervailable[1341] because the 2006 SLA Arbitration LCIA 81010 offset any benefit that Resolute could have received.[1342] They argue that adding countervailing duties on top of the trade remedy (*i.e.*, 2.6 percent export charge) imposed on lumber shipments from Québec from March 2011 to October 2013, is a double remedy. Resolute states that it paid more in export taxes on its lumber shipments in advance of any refunds received in the POI. Therefore, the GOQ and Resolute argue that the refund received by Resolute is not a benefit because it was offset by the compensation awarded in LCIA 81010. Additionally, Resolute claims that the program should not be countervailed because it is a partial reimbursement only of its costs for the construction of roads owned by the government and operated for public use.

The petitioner argues that LCIA 81010 has no bearing on this investigation, and any amounts paid in relation to the arbitral award cannot be used to offset the benefit received under the program, referencing section 771(6) of the Act, which provides only for certain specific offsets to a subsidy.[1343] The petitioner asserts that the GOQ relieved Resolute of expenses incurred for the construction of roads, and Resolute received that benefit in 2015.

Department's Position: We agree with the petitioner that LCIA 81010 is irrelevant to the Department's analysis. Within this investigation, the Department is responsible for determining whether a government is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of subject merchandise sold for importation into the United States, pursuant to section 701(a) of the Act. The Department examines subsidies that producers and exporters received during the investigation period as stated in 19 CFR 351.204(b)(2). Because Resolute received a refundable tax credit during the POI, the Department is permitted to examine it. We further agree with the petitioner that any amounts paid in relation to the arbitral award cannot be used to offset the benefit because such payments are not a permissible offset under section 771(6) of the Act.

As discussed in the *Preliminary Determination*, Revenue Québec permits corporations that incurred expenses for the construction or major repair of eligible access roads or bridges in

[1339] *See SC Paper from Canada* IDM at 161 (citing *CFS from the PRC* IDM at Comment 8).
[1340] *See SC Paper from Canada* IDM at 161 (citing *CFS from the PRC* IDM at Comment 8).
[1341] *See* PDM at 82-83.
[1342] *See* GOQ Case Brief at 58-61; *see also* Resolute Case Brief at 47-49.
[1343] *See* Petitioner Rebuttal Brief at 156-159.

public forest areas to claim a refundable tax credit for a portion of the expenses on their income tax returns.[1344] The GOQ reported that, in order to qualify for the refundable tax credit, an applicant must hold a qualification certificate issued by MFFP for each access road or bridge, and must have entered into a forest management agreement, a timber supply and forest management agreement, or a forest management contract with MFFP.[1345] We verified that Québec sawmills are legally mandated to fulfill several obligations with regard to their TSGs, which include road construction, repairs, and maintenance.[1346] During the POI, Resolute received a refundable tax credit as reimbursement of Resolute's costs for the construction of roads.[1347]

We agree with the petitioner that the GOQ is offsetting a cost that Resolute is legally required to incur in its normal course of business. As the landowner and steward of public forest areas, the GOQ requires harvesters who hold TSGs to perform various forest management activities in order to maintain the sustainability of forest areas.[1348] During the POI, Resolute secured a significant proportion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of timber, Resolute must carry out the activities required of TSG-holders under the SFDA, including the construction and repair of roads and bridges in the public forest areas.[1349]

We find that the manner in which the payments were provided, as reimbursements for obligatory expenses incurred, indicates that the payment was provided by the GOQ to relieve Resolute of a financial burden that Resolute would have otherwise incurred. Therefore, because the GOQ provides reimbursements to Resolute for costs it incurs for the construction or major repair of access roads or bridges in the public forest area, we find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement. Further, we continue to find that program is *de jure* specific under section 771(5A)(D)(i) of the Act because eligibility is limited to entities that hold a certificate issued by MFFP and have a forest management agreement, a timber supply and forest management agreement, or forest management contract with MFFP.

[1344] *See* PDM at 82-83.
[1345] *See* GOQ Primary QNR Response at QC-TAX-19 and QC-Tax-27; *see also* Resolute Supp QNR 5 at 8.
[1346] *See* GOQ Verification Report at 11.
[1347] *See* Resolute Primary QNR Response, Part 1 at 51-54; *see also* Resolute Verification Report at 17-18; *see also* Resolute Case Brief at 47-49.
[1348] *See* GOQ Primary QNR Response at Exhibit QC-STUMP-22 (SFDA). Section 4(1) of the SFDA defines "forest management activity" as "an activity related to the cutting and harvesting of timber, the cultivation and exploitation of a sugar bush for maple syrup purposes, *the construction, improvement, rehabilitation, maintenance and closure of infrastructure*, implementation of silvicultural treatments, including reforestation and use of fire, and control of fires, insect outbreaks, cryptogamic diseases and competing vegetation, as well as any other activities of the same nature that have a tangible effect on the resources of the forest" (emphasis added).
[1349] *See* GOQ Verification Report at 11 and Exhibit QC-20.

Comment 79: Whether the Benefit of the Québec Private Forest Tax Incentive Was Overstated

Both the GOQ and Resolute argue that the Department preliminarily overstated the benefit amount for the "Tax Incentives for Private Forest Producers – Property Tax Refund for Forest Producers on Private Woodlands in Québec" program.[1350] They state that the Department countervailed both a refundable credit claimed on the company's 2014 income tax return filed in the POI and a refunded credit, which was claimed in 2011 but received in the POI. They assert that were the Department to count both the amount received from a tax credit and the amount claimed for a tax credit year after year, it would be double-counting the benefit. The Department may offset only amounts actually received and, thus, must correct the benefit calculation for this tax program.

Petitioner argues that the Department properly included both amounts in its benefit calculation because Resolute both claimed a refundable tax credit and received a refunded tax credit in the POI.[1351]

Department's Position: Based on clarification of this refundable tax credit program at verification,[1352] we agree with Resolute and the GOQ that the benefit amount was overstated in the *Preliminary Determination*. Specifically, we learned that refunded credits are not always received in the year that they are claimed as demonstrated by the credit claimed in 2011 but refunded during the POI, and the 2014 credit that Resolute claimed in its tax return filed in the POI but not refunded in the POI. We agree that countervailing credits both when they are claimed and when they are refunded—where the two events occur in different years—would double-count the benefit received by Resolute from that credit. Accordingly, in Resolute's final benefit calculation, we have included in the numerator only the assistance amount that was actually received by the company under this program in the POI.[1353] We determine that the benefit is less than 0.005 percent *ad valorem* of Resolute's total sales for the POI and, therefore, this tax program did not confer a measurable benefit. As such, we have not included this tax program in our final subsidy rate calculation for Resolute. Also, because the program did not confer a measurable benefit, we need not make a final determination as to the countervailability of the program.[1354]

Comment 80: Whether the M&P ITC and MITC are *De Jure* Specific

In the *Preliminary Determination* the Department found Saskatchewan's M&P ITC and Manitoba's MITC *de jure* specific under section 771(5A)(D)(i) of the Act.[1355] The GOM and

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[1350] *See* GOQ Case Brief at 63-64; *see also* Resolute Case Brief at 51-52; *see also* PDM at 82; *see also* Resolute Preliminary Calculation Memorandum.
[1351] *See* Petitioner Rebuttal Case Brief at 154-156.
[1352] *See* Resolute Verification Report at 17-18.
[1353] *See* Resolute Final Calculation Memorandum.
[1354] In its case brief, Resolute argued that the tax program is not specific to any industry or enterprise. *See* Resolute Case Brief at 13-14. In its rebuttal brief, the petitioner argues that the tax program is *de jure* specific. *See* Petitioner Rebuttal Brief at 122-123.
[1355] *See* PDM at 78-79, 84.

GOS argue that these programs are neither *de jure* nor *de facto* specific.[1356] The petitioner asserts that the Department should continue to find these programs *de jure* specific in the final determination.[1357]

Department's Position: Saskatchewan's M&P ITC provides corporations in Saskatchewan with a five percent tax credit on purchases of qualified capital assets, including manufacturing and processing equipment that can be applied against corporate income tax payable in the year earned.[1358] Manitoba's MITC provides corporations with a 10 percent tax credit of purchases of qualified property to be used for manufacturing or processing that can be applied against corporate income tax payable in the year earned.[1359] As set forth below, we continue to find both of these programs to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

Both programs limit the tax credit to purchases of qualified property that are used primarily for "manufacturing or processing" goods for sale or lease. The tax credit is fully refundable in Saskatchewan and 80 percent refundable in Manitoba.[1360]

With regard to the M&P ITC, the tax credit is provided for in Saskatchewan's *Income Tax Act*. In particular, section 60.1 defines "manufacturing or processing" as "…within the meaning of subsection 125.1(3) of the {federal *Income Tax Act*}, and includes qualified activities as defined in the federal regulations made for the purposes of the definition of Canadian manufacturing and processing profits in subsection 125.1(3) of the {federal *Income Tax Act*}."[1361] The federal *Income Tax Act*, subsection 125.1(3) in turn states:

> "manufacturing or processing does not include (a) farming or fishing, (b) logging, (c) construction, (d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation of petroleum or natural gas, (e) extracting minerals from a mineral resource, (f) processing (i) ore (other than iron ore or tar sands ore) from a mineral resource located in Canada to any stage that is not beyond the prime metal stage or its equivalent, (ii) iron ore from a mineral resource located in Canada to any stage that is not beyond the pellet stage or its equivalent, or (iii) tar sands ore from a mineral resource located in Canada to any stage that is not beyond the crude oil stage or its equivalent, (g) producing industrial minerals, (h) producing or processing electrical energy or steam, for sale, (i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility, (j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent, (k) Canadian field processing, or (l) any manufacturing or processing of goods for sale or lease, if, for any taxation year of a corporation in respect of which the expression is being applied, less than 10% of its gross

[1356] *See* GOS Case Brief at 2-6; *see also* GOM Case Brief at 5-9.
[1357] *See* Petitioner Rebuttal Brief at 109-114, 116-118.
[1358] *See* GOS Supp QNR 1 Response at SK-SUPP-1 and Exhibit SK-SUPP-MP-2.
[1359] *See* GOM Supp QNR 1 Response at Exhibit MB-SUPP-MITC-1, para. 7.2(2).
[1360] *See* GOS Supp QNR 1 Response at Exhibit SK-SUPP-MP-2, para 60.1(1); *see also* GOM Supp QNR 1 Response at Exhibit MB-SUPP-1, para. 7.2(1.1) and page MBP-SUPP-12.
[1361] *See* GOS Supp QNR 1 Response at Exhibit SK-SUPP-MP-2.

> revenue from all active businesses carried on in Canada was from (i) the selling or leasing of goods manufactured or processed in Canada by it, and (ii) the manufacturing or processing in Canada of goods for sale or lease, other than goods for sale or lease by it.[1362]

Manitoba's *Income Tax Act* also tracks the federal *Income Tax Act* definition of "manufacturing or processing" in defining eligibility for the tax credit.[1363]

In the *Preliminary Determination*, we found that these programs were *de jure* specific because the federal *Income Tax Act* excludes certain enterprises or industries from the definition of manufacturing or processing, and these enterprises or industries are ineligible for the tax credit programs under investigation. The GOS and GOM argue that these programs are available to any corporate taxpayer acquiring machinery and equipment for the purpose of manufacturing or processing goods and thus, the programs are not specific because they are generally available.[1364] We disagree. In fact, both the GOM and GOS acknowledge that these programs are available to all corporate taxpayers *only so long as* the machinery and equipment purchased are used "primarily for the purpose of manufacturing and processing goods."[1365] Thus, both programs limit access to the tax credits by excluding the enterprises or industries engaged in the activities identified in the *Income Tax Act*.

In addition, the GOM and GOS argue that because the federal *Income Tax Act*, which defines manufacturing or processing, limits the eligibility for these tax credits by *activities*, not by *industries*, section 771(5A)(D)(i) of the Act is not applicable because the subsidy does not expressly limit access to an "enterprise or industry."[1366] We find this argument unavailing. We do not distinguish, and the law does not require that we distinguish, between an industry and an activity performed by that industry. Thus, as an example, the definition excludes farming, fishing, and logging. Therefore, enterprises or industries engaged solely in farming, fishing, and logging, are ineligible to receive these tax credits for the acquisition of equipment related to these activities.[1367]

The GOM and GOS further argue that the Department's findings in its *Preliminary Determination* are inconsistent with its findings in other proceedings. We find that reliance on these cases is misplaced. The GOS and GOM specifically cite to *CORE from Korea*, *DRAMS from Korea*, and *Refrigerators from Korea*, arguing that these are instances where a similar widely available program has not been countervailed. However, the programs parties reference in each of these proceedings did not have specific limiting language, as is the case here with the

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[1362] *Id.* at Exhibit SK-SUPP-MP-3.
[1363] *See* GOM Supp QNR 1 Response at Exhibit MB-SUPP-MITC-1 for the Manitoba Income Tax Act providing for the manufacturing investment tax credit at section 7.2(1) and defining "manufacturing or processing" at section 7.2(2) as having the meaning assigned by subsection 125.1(3) of the federal *Income Tax Act*.
[1364] *See* GOS Case Brief at 2; *see also* GOM Case Brief at 5.
[1365] *Id.*
[1366] *See* GOS Case Brief at 3; *see also* GOM Case Brief at 5.
[1367] We note that the Department has previously found programs *de jure* specific though eligibility may have been limited by activities. For some examples of these proceedings, ***see*** the discussion for ACCA *infra* at Comment 69.

definition of "manufacturing or processing" that we have in the federal *Income Tax Act*.[1368] Therefore, we do not consider them probative to our analysis of the M&P ITC and MITC. Moreover, as stated in the SAA, the Department conducts its specificity analysis on a case-by-case basis.[1369]

The GOS and GOM further assert that record evidence indicates that a variety of companies in various industries claim the credit in any given year.[1370] However, the usage of a program is not part of a *de jure* analysis. Rather, the Department would consider such arguments if it was performing a *de facto* specificity analysis, for which there is no need in this instance. Nor is it relevant for a *de jure* analysis, as the GOS and GOM state, that the credits are used by a "wide range of industries."[1371]

Finally, the GOS and GOM argue that the M&P ITC and MITC programs are not *de jure* specific under section 771(5A)(D)(ii) of the Act because the legislation establishes objective criteria, eligibility is automatic, and the eligibility criteria are strictly followed and clearly set forth.[1372] We disagree. The eligibility criteria do not satisfy the statutory requirement for "objective criteria," insofar as they "favor one enterprise or industry over another."[1373] That is, the federal *Income Tax Act*, and thus the M&P ITC and MITC programs, favor enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.

Therefore, the Department continues to find these programs *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, in excluding enterprises or industries engaged in certain activities, access to these programs is expressly limited. Because of this finding, we need not address the parties' arguments regarding *de facto* specificity.

Comment 81: Whether to Include Kent Building Supplies Division's Sales in JDIL's Denominator

JDIL claims that, in the *Preliminary Determination*, the Department inadvertently omitted sales of subject merchandise JDIL sold through one of its divisions, Kent Building Supplies Division. JDIL asserts that these sales, as verified by the Department, should be included for the final determination.[1374]

The petitioner states that JDIL does not demonstrate the sales were not included; however, to the extent that JDIL is correct, the Department should also ensure that all relevant benefits received by Kent Building Supplies Division have been included in the relevant numerators. The

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[1368] *See CORE from Korea*, 71 FR at 53420, *DRAMS from Korea* IDM at 34, *Refrigerators from Korea*, 76 FR at 55052.
[1369] *See* SAA at 930.
[1370] *See* GOS Case Brief at 3-4; *see also* GOM Case Brief at 6-7.
[1371] *See, e.g.*, 19 CFR 351.502(b) (providing that the Department is not required to consider or examine whether the enterprise or industry groupings share characteristics).
[1372] *See* GOS Case Brief at 3; *see also* GOM Case Brief at 6.
[1373] *See* section 771(5A)(D)(ii) of the Act.
[1374] *See* JDIL Case Brief at 49-50.

petitioner further argues that if the Department changes its longstanding practice regarding tying stumpage benefits, all benefits bestowed upon cross-owned companies must be appropriately attributed to JDIL.[1375]

Department's Position: JDIL provided, and the Department accepted, minor corrections at verification that included revisions to its sales of subject merchandise from the Kent Building Supplies Division.[1376] For this final determination, we have included these verified minor corrections to the sales of subject merchandise from the Kent Building Services Division during the POI to measure stumpage benefits and other appropriate subsidy programs, as necessary.[1377]

Comment 82: Whether the Department Intended to Address the AIF Program Rather than the Business Development Program in its *Preliminary Determination*

In the *Preliminary Determination*, the Department preliminarily determined that a benefit was conferred to JDIL under the AIF.[1378] The petitioner argues that the Department mistakenly identified the Business Development Program rather than the AIF program in the *Preliminary Determination*.[1379] The petitioner also contends that the Department should address AIF's countervailability.[1380]

Department's Position: In its *Preliminary Determination*, the Department incorrectly identified the Business Development Program as a program under which JDIL received a countervailable subsidy of 0.01 percent *ad valorem*. Upon further review of the record, we agree with the petitioner that this countervailable subsidy is the result of assistance provided to JDIL under the AIF, which was correctly identified in the calculation memorandum.[1381] The Business Development Program did not convey a measurable benefit.[1382]

The AIF program is administered by ACOA and was established by the GOC in 2000 with the following objectives:

> To increase activity in and to build capacity for innovation, research and development (R&D) which leads to technologies, products, processes, or services which contribute to economic growth in Atlantic Canada; {t}o increase the capacity for commercialization of R&D outputs; {t}o strengthen the region's innovation capacity by supporting research, development and commercialization partnerships and alliances among private sector firms, universities, research institutions, and other organizations in the Atlantic System of Innovation, and to increase their critical mass; and {t}o maximize benefits from the national R&D programs. [1383]

[1375] *See* Petitioner Rebuttal Brief at 87.
[1376] *See* JDIL Verification Report at 1.
[1377] *See* JDIL Final Calculation Memorandum.
[1378] *See* JDIL Preliminary Calculation Memorandum at 7.
[1379] *See* PDM at 86-87; *see also* Petitioner Case Brief at 50.
[1380] *Id.* at 51.
[1381] *See* JDIL Preliminary Calculation Memorandum at 7.
[1382] *Id.* at 8.
[1383] *See* GOC Etal Primary QNR Response at GOC-ACOA-AIF-1-2.

Under the AIF, recipient companies operating in the Atlantic Region of Canada can receive transfer payments that are conditionally repayable, repayable, or non-repayable.[1384] JDIL reported that it received two repayable transfer payments that were outstanding during the POI under the AIF program.[1385]

We determine that the AIF is regionally specific under section 771(5A)(D)(iv) of the Act, because benefits administered by the GOC under the program are available only to commercial businesses and non-commercial entities operating in one or more of the four provinces defined by the program as the Atlantic Region of Canada.[1386] Furthermore, loans provided under this program constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act. In accordance with 19 CFR 351.505(a), these loans provide a benefit to the extent that the amount of interest JDIL pays on the AIF-provided loans is less than JDIL would pay under the applicable benchmark interest rate. In both the *Preliminary Determination* and this final determination, we calculated the benefit as the difference between the interest that JDIL paid on the loans during the POI and the interest calculated using the benchmark interest rate.[1387] To calculate a subsidy rate for JDIL, we divided the calculated benefit by the company's total sales during the POI, to determine an *ad valorem* rate of 0.01 percent for the AIF program.[1388]

Comment 83: Whether to Include Sales of Downstream Products by JDIL's Cross-Owned Companies

In the *Preliminary Determination*, we attributed the benefit from subsidies that JDIL received to its total sales.[1389] Furthermore, to calculate JDIL's benefit from the provision of stumpage for LTAR, the Department limited the sales denominator to JDIL's "total softwood lumber sales and total softwood co-product sales (*i.e.*, products produced by sawmills) during the POI."[1390]

JDIL argues that pursuant to 19 CFR 351.525(b)(6)(iv), JDIL supplies an input (wood chips) to its cross-owned companies for production of downstream products (pulp and paper) for which purpose wood chips are primarily dedicated, and thus the Department must attribute subsidies received by JDIL to the combined sales of JDIL and its cross-owned producers of pulp and paper (minus intercompany sales).[1391] According to JDIL, not accounting for the sales of its cross-owned producers of pulp and paper would overstate the subsidy rate calculated for JDIL.[1392] JDIL further contends that limiting the sales denominator for calculation of stumpage subsidies to subject merchandise and sawmill byproducts and co-products was inconsistent with 19 CFR

[1384] *Id.*
[1385] *See* JDIL Verification Report at 11.
[1386] *Id.* at Exhibits GOC-ACOA-1 and GOC-ACOA-2A.
[1387] *See* JDIL Calculation Memorandum at 7.
[1388] *Id.*
[1389] *See* PDM at 17.
[1390] *Id.* at 51.
[1391] *See* JDIL Case Brief at 44-47.
[1392] *Id.*

351.525(b)(6)(iv).[1393] Although the Department limited the sales denominator in this way in *Lumber IV*, that investigation was done on an aggregate basis. JDIL argues that this investigation is evaluating specific companies, and thus the cross-ownership attribution rules are applicable. Moreover, JDIL argues that the Department attributed subsidies received by JDIL to its cross-owned paper producer in *SC Paper from Canada – Expedited Review*, and excluding the downstream producers' sales in this proceeding would result in an overcollection of CVD duties.[1394]

The petitioner counters that it is the longstanding practice of the Department to attribute subsidies from the provision of stumpage for LTAR to the sales of products produced in sawmills (lumber and byproducts), but not value added products such as further manufactured lumber products and further produced value-added products such as pulp, paper, or electricity.[1395] The Department followed this practice for the *Preliminary Determination*, and the petitioner contends that this practice is consistent with the regulation and thus we should continue to follow it for the final determination.[1396]

Department's Position: As noted in the *Preliminary Determination*, in the "Attribution of Subsidies" section, the Department did not include as part of its calculations IPP, IPL, or Irving Tissue's sales of pulp and paper products, pursuant to 19 CFR 351.525(b)(6)(iv).[1397] The Department continues to not include these companies' sales in the denominator for this final determination.

When applying the attribution regulations at 19 CFR 351.525(b)(6)(i) – (v), the Department has recognized four exceptions to its normal rule of attributing a subsidy to the products produced by the corporation that received the subsidy.[1398] One of these exceptions is 19 CFR 351.525(b)(6)(iv) when there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to the production of the downstream product. Under those circumstances, the Department will attribute subsidies received by the input supplier to the combined sales of the input and downstream products produced by both corporations, minus inter-company sales.[1399] However, because in crafting the appropriate numerator and denominator we focus on the impact of the subsidy on the production of subject merchandise,[1400] the input must, generally, be an input for the production of subject merchandise or derived downstream products.[1401]

[1393] *Id.* at 47-49.
[1394] *Id*.
[1395] *See* Petitioner's Rebuttal Brief at 83-85.
[1396] *Id*. at 85-87.
[1397] *See* PDM at 17.
[1398] *See CVD Preamble*, 63 FR at 65348, 65402 "Paragraph (b)(6) begins by stating a general rule, which is followed by four exceptions to that rule …"
[1399] *See* 19 CFR 351.525(b)(6)(iv).
[1400] *See CVD Preamble*, 63 FR at 65402 ("However, we do not intend to investigate subsidies to affiliated parties unless cross-ownership exists or other information, such as a transfer of subsidies, indicates that such subsidies may in fact benefit the subject merchandise produced by the corporation under investigation.").
[1401] *See, e.g.*, *SC Paper Investigation* IDM at Comment 19 (framing "the question {as} whether the input could have been used to produce the subject merchandise exported to the United States," and concluding that "pulp is, in fact, used in the production of subject merchandise (*i.e.* SC paper), and, thus, necessarily could be used to produce the

Here, neither IPP, IPL, nor Irving Tissue received subsidies that are attributable to JDIL under 19 CFR 351.525(b)(6)(i) – (v). Indeed, JDIL acknowledged that subsidies received by IPP, IPL, and Irving Tissue do not meet any of the four exceptions for attributing to the production of subject merchandise subsidies received by cross-owned corporations under 19 CFR 351.525(b)(6)(ii) - (v), such that questionnaire responses were required from these companies.[1402] As none of these three companies fall under the exceptions to the general rule laid out in 19 CFR 351.525(b)(6)(ii) – (v), we have not expanded the denominator to include their sales.

Although JDIL attempts to argue that we should expand its denominator because it is an "input supplier" to IPL, IPP, and Irving Tissue under 19 CFR 351.525(b)(6)(iv), the wood chips it supplies to these companies are not a primarily dedicated input to the production of our subject merchandise, softwood lumber. As discussed above, the "input product" under that provision must generally be an input for the production of subject merchandise or a derived downstream product, *i.e.*, the "downstream products" under that provision. JDIL cites to *SC Paper from Canada – Expedited Review* as support for including IPP, IPL, and Irving Tissue's sales in the denominator.[1403] The Department determined in that proceeding that the wood chips that JDIL provided to IPP and IPL was an input product primarily dedicated to a downstream product, supercalendered paper, which was the investigated product. However, the subject merchandise in this proceeding is certain softwood lumber, not supercalendered paper, and although wood chips are an input for supercalendered paper, they are not an input for softwood lumber and softwood lumber is a not a downstream product of woodchips.[1404] Because we are evaluating how a subsidy benefits the production of (or provision of inputs for) the subject merchandise under investigation, the Department's attribution of subsidies received by JDIL in *SC Paper from Canada – Expedited Review*, a case involving different subject merchandise, and thus inputs, will not be identical to this proceeding.

Because IPL, IPP, and Irving Tissue, do not provide primarily dedicated inputs for, or produce, subject merchandise, such that subsidies received by them would be attributable to JDIL under 19 CFR 351.525(b)(6)(ii) – (v), subsidies and sales from these entities are not relevant to this

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downstream product (*i.e.*, paper)."); *Lined Paper Products from Indonesia*, at comment 3 (finding that although "downstream products" as used in 19 CFR 351.525(b)(6)(iv) is somewhat broader than "subject merchandise," the input, pulp logs, are used to make pulp, which was in turn an input into paper, including certain lined paper products, the investigated merchandise; thus the sales of the cross-owned companies providing pulp logs to the respondent were included in the denominator); *Pasta from Italy 7th AR*, at Attribution of Subsidies ("The issue in question in 19 CFR 351.525(b)(6)(iv) is … whether the input supplier is producing a product that is primarily dedicated to the production of the subject merchandise.").

[1402] *See* JDIL Case Brief at 45, footnote 146.

[1403] *See SC Paper from Canada – Expedited Review – Preliminary Results* IDM at 10 (unchanged in the final results).

[1404] *See SC Paper from Canada – Expedited Review* IDM at Comment 34 ("Because the input is not tied only to the production of subject merchandise, and the Department does not trace subsidies, the Department allocates such the subsidies to the input producer over the sales of the input and the downstream products produced by the respondent to reflect the added value of the input on all derived downstream products produced by the corporation." Citing *SC Paper Investigation* IDM at Comment 19.

investigation. Therefore, we are not expanding JDIL's denominator to include the sales of IPL, IPP, and/or Irving Tissue in this investigation.

Comment 84: Whether to Continue to Find Programs Not Used or Not Measurable for Resolute

Resolute states that the Department verified that certain programs provided no countervailable benefits or were not used by the company.[1405] The GOQ states that the Department's preliminarily decision that five Québec programs provided no measurable benefit to Resolute is correct and should be carried forward to the final determination.[1406] Similarly, the GOQ states that the Department's preliminarily non-use findings for Resolute were correct and should be confirmed in the final determination.[1407] No other party provided comments or rebuttal comments on this issue.

Department's Position: We agree and continue to find that certain programs were not used by or did not provide countervailable benefits to Resolute. *See* Appendix II.

Comment 85: Whether the Department Was Correct to Not Countervail Certain Ontario Programs

Resolute states that the Department correctly did not countervail Ontario's NIER and FSPF because assistance under each program is tied to sales of non-subject merchandise (*i.e.*, pulp and paper).[1408] No other party provided comments or rebuttal comments on this issue.

Department's Position: We agree and continue to find that the programs provide assistance tied to non-subject merchandise.

Comment 86: Whether Discrepancies Identified at Resolute's Verification Should Be Corrected

The petitioner states that the Department identified discrepancies in the reported subsidy amounts received by Resolute under the "GOQ's Purchase of Electricity under the PAE 2011-01" and "Cooperative Education Tax Credit" programs at verification and should use the corrected figures for the final determination.[1409] Resolute acknowledged the discrepancies in its rebuttal brief.[1410]

Department's Position: We agree and used the corrected figures as verified in Resolute's final calculations.[1411]

[1405] *See* Resolute Case Brief at 55.
[1406] *See* GOQ Case Brief at 71-79.
[1407] *Id.* at 80.
[1408] *See* Resolute Case Brief at 52-54.
[1409] *See* Petitioner Case Brief at 70; *see also* Resolute Verification Report at 16-19.
[1410] *See* Resolute Rebuttal Brief at 10.
[1411] *See* Resolute Final Calculation Memorandum.

Comment 87: Whether the Department Was Correct To Not Countervail Certain Québec Programs

Resolute states that the Department correctly did not countervail Québec's CEP, namely, the ARTT and CAR initiatives, because they are generally available and do not satisfy the specificity requirement. [1412] The GOQ states that the CEP is neither *de jure* nor *de facto* specific to the softwood lumber industry and, therefore, the Department should continue to determine that the CEP is not countervailable.[1413] No other party provided comments or rebuttal comments on this issue.

Department's Position: We agree, and continue to find the CEP to be not countervailable.

Comment 88: Whether the Department Should Use Tolko's Final Stumpage Prices and Updated Supplemental Data for the Final Determination

In the *Preliminary Determination*, the Department found that the stumpage rates charged for Crown-origin standing timber by the GBC constitute the provision of a good for LTAR.[1414] Regarding Tolko, specifically, the Department based its preliminary calculations on the values Tolko reported in Table 1A of Tolko's Primary QNR Response.[1415] Tolko argues that these data fail to reflect the final stumpage prices charged by the GBC, net of final adjustments made after the POI. Therefore, for the final determination, Tolko argues that the Department should use the final stumpage values reported by Tolko for the timbermarks included in Table 1C of its Primary QNR Response. For log purchases that Tolko originally reported in Table 2, but that were later reported as stumpage payments in Tables B2, E, and H in response to the Department's request for a change in reporting methodology after the *Preliminary Determination*, Tolko argues that the Department should similarly use Tolko's reported "final" stumpage payment rather than the values reported as its "accrued" stumpage payment.[1416] Finally, Tolko argues that, other than the log purchases reported in Table D of Tolko's supplemental questionnaire response of May 30, 2017,[1417] all transactions reported in all other tables should be treated as stumpage transactions rather than as log purchases.[1418]

Department's Position: The "final" stumpage prices reported in Table 1C that Tolko argues the Department should use for purposes of calculating the benefit from the GBC's provision of stumpage for LTAR were reported by Tolko by going outside the POI for the final stumpage values, and attributing adjustments made to stumpage volumes and values by the province of British Columbia to volumes delivered during the POI. Tolko maintains that the Department should not continue to use "interim" prices that were subject to later adjustment.

[1412] *See* Resolute Case Brief at 54-55.
[1413] *See* GOQ Case Brief at 75-76.
[1414] *See* PDM at 55.
[1415] *See* Tolko Preliminary Calculation Memorandum at 7-10.
[1416] *See* Tolko Case Brief at 15-17; *see also* Tolko Supp QNR 2 Response, Part 1.
[1417] *See* Tolko Supp QNR 2 Response, Part 1.
[1418] *See* Tolko Case Brief at 14-15.

However, regardless of the merits of Tolko's argument, the record does not contain the information needed to make the adjustments using Table 1C as Tolko proposes. Specifically, Tolko did not report the costs associated with the purchases reported in Table 1C. In Table 1A, submitted prior to the *Preliminary Determination*, Tolko did report costs associated with its stumpage transactions. Furthermore, after the *Preliminary Determination*, when the Department requested that Tolko submit additional tables and provide additional and more detailed cost reporting, Tolko did not update its Table 1C to reflect the additional cost information subsequently reported.[1419] Tolko has not proposed a way for, or provided the information that would enable the Department to translate or transcribe the costs reported in Tables A and B1 to Table 1C. Moreover, the burden is on a respondent to demonstrate the appropriateness of an adjustment that is to its benefit.[1420] Again, Tolko provided no cost information for Table 1C and therefore the Department finds that it cannot use the information provided in this table.

Additionally, Tolko argues that the Department should use Tolko's reported "final" stumpage payments rather than the "accrued" stumpage payments it also reported in Tables B2, E, and H of its May 30th questionnaire response. Tolko explained that the accrued value column of these tables shows the amounts for stumpage charges it accrues on its books. Tolko does this in situations where Tolko is not the tenure holder but either pays the stumpage fees directly because it is ultimately the party with liability to the Crown, or where Tolko elected to pay the stumpage on behalf of the tenure holder where it purchased logs from a reseller.[1421] The "final" stumpage values reported by Tolko in these tables represent the average of the rates on HBS invoices by timbermark. Yet, these "final" stumpage values are not recorded in Tolko's books and records contemporaneously with the stumpage purchases. Rather, the accrued value is initially entered into Tolko's Contractor Pay System; the record does not show the timing of the entry into Tolko's system of the "final" values.[1422] Furthermore, because the "final" value reported is an average of all volumes and values for each timbermark, in many instances those volumes and values may be based on invoices that were issued outside of the POI.

In this final determination, we have limited our analysis to invoices received within the POI for purchases also made within the POI. We find for purposes of this final determination that this methodology best reflects the benefit conferred on Tolko *during the POI*, considering that Tolko's "final" reported stumpage values may be the result of adjustments to and averages of invoices occurring outside the POI.

Finally, Tolko argues that only the purchases reported in Table D should be treated as log purchases. All of the purchases reported in Tables A, B1, B2, E and H of Tolko's May 30th supplemental response should be analyzed as stumpage transactions, according to Tolko. We disagree, in part. In Table H, Tolko reported log purchases from a reseller, for which Tolko paid the stumpage fees directly to the Crown even though they were not the tenure holder and not

[1419] *See* Tolko Supp QNR 2 Response, Part 1.
[1420] *See* SAA at 829; *see also Ribbons from the PRC* IDM at note 83 (stating "{t}he burden to establish entitlement to an adjustment is on the party seeking the adjustment because that party has access to the necessary information.").
[1421] *See* Tolko Supp QNR 2 Response, Part 1 at Exhibit 19.
[1422] *See* Tolko Supp QNR 2 Response, Part 1 at 31 (Tolko notes that it is providing the final stumpage values, but gives no indication as to when these values enter Tolko's financial systems).

legally obligated to pay the stumpage fees to the Crown.[1423] We consider that these log purchases do not represent stumpage purchases from the Crown, because in these instances, Tolko has purchased harvested logs, and we are treating them as log purchases for purposes of the Log Export Restraint analysis.[1424] Perhaps, most importantly, Tolko states, "*if not for the stumpage remittance, these log purchases would be on Table D*" (emphasis Tolko's).[1425] This statement demonstrates that Tolko itself had no legal obligation to pay the stumpage fees to the Crown on these transactions, and thus these transactions constitute log purchases. That Tolko opted to pay the stumpage fees on these purchases does not require that we shift our examination and treat these purchases as anything other than what they are – purchases of logs.

Accordingly, for purposes of this final determination, the Department considers Tables D, H, and parts of B2 as log purchases and Tables A, B1, parts of B2 and E as stumpage purchases.

Comment 89: Definition and Examples of Finished Products in Scope Language

In the Preliminary Scope Memorandum, the Department determined that finished products are outside the scope of these investigations, and proposed additional scope language to provide interested parties guidance as to what constitutes a finished product.[1426] Canfor, the GOC, RILA and IKEA do not oppose the Department's decision to adopt a definition for finished products, but request that the Department add additional language to the scope identifying particular finished products.[1427] The petitioner agrees that finished products are outside the scope of these investigations, and supports the Department's proposed definition. However, the petitioner does not agree that it is appropriate or necessary to list all finished goods that have been determined to be out of scope in the language of the scope itself.[1428]

Department's Position: In the Preliminary Scope Memorandum, the Department preliminarily determined that "finished products" are outside the scope of these investigations.[1429] Of those who commented on the administrative record regarding this issue, each party agreed with the conclusion that "finished products" are not subject to the scope of these investigations. In determining the appropriate language to include in the scope of the investigations to define a finished product, we proposed the following language be added directly to the scope:

> Finished products are not covered by the scope of these investigations. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily

[1423] *See* Tolko Supp QNR 2 Response, Part 1 at Exhibit 19.
[1424] The Department is also moving certain transactions from Table B2 to Table D. These are transactions for which Tolko did not pay stumpage. Tolko agrees with the Department that these transactions should be moved to Table D. Tolko Case Brief at note 33.
[1425] *See* Tolko Supp QNR 2 Response, Part 1 at Exhibit 19.
[1426] *See* Preliminary Scope Memorandum at Comment 6.
[1427] *See* Canfor Scope Brief at 2; Canadian Parties Joint Scope Brief at 6; RILA Scope Brief at 2; IKEA Scope Rebuttal at 2.
[1428] *See* Petitioner Scope Rebuttal at 17-18.
[1429] *See* Preliminary Scope Memorandum at Comment 6.

> differentiated from merchandise subject to these investigations at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered "finished," for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.[1430]

No interested party opposed the inclusion of such clarifying language. First, the language explains clearly our understanding of what characteristics describe such products: 1) they contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products; and 2) such products can be readily differentiated from merchandise subject to these investigations at the time of importation.

Second, recognizing that differentiation of finished products from other products might not always be obvious, we added language that explained that "such differentiation may, for example, be shown through marks of special adaption as a particular product." There are many different types of finished products, and we fully recognize that not all finished products will be identified through unique "marks of special adaption," but nonetheless, we have provided this language to further clarify the scope.

Finally, we identified several products that fall within the category of "finished products," and emphasized that this list is simply illustrative: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

No party challenges the Department's proposed descriptive characteristics or "differentiation" example. With respect to the illustrative list, however, RILA and IKEA request that various additional terms and language be added to the scope to prevent confusion regarding the scope status of particular products.[1431] Specifically: 1) RILA and IKEA request that furniture kits be added to the list of illustrative out-of-scope products;[1432] and 2) RILA further requests that butcher-block countertops, assembled wood toys, assembled wood blinds, clothes hangers, tableware, trays, wall art, and marquetry be added to the list.[1433]

We agree with the parties' arguments that one of the Department's goals in defining the scope of an investigation is to make the scope clear and administrable. We also agree that if we included the list of finished goods proposed by RILA and IKEA, it might provide a greater amount of certainty upon importation *for those products specifically*. However, we also believe that adding even more products to the scope could result in a greater degree of confusion with respect to *all other finished products* not listed in the scope.

[1430] *Id.*

[1431] *See* RILA Scope Brief at 2; IKEA Scope Rebuttal at 2. Canfor and Central Canada also request that the language of the scope be modified to address a particular specification of I-joists. *See* Canfor Scope Brief at 2; Central Canada Scope Brief at 12. However, we address those comments separately below.

[1432] *See* IKEA Scope Rebuttal at 2; RILA Scope Brief at 2.

[1433] *See* RILA Scope Brief at 5. RILA also requests that "craft kits" be excluded from the scope of these investigations as finished goods. We address this request separately, below.

The products listed above, which are highlighted by RILA were explicitly considered by the Department in our Preliminary Scope Memorandum, and were determined to be out-of-scope.[1434] We explained that:

> The Department finds that the majority of the products identified as "finished goods" by the parties – including assembled pallets; assembled trusses; assembled garage doors; assembled door frames; assembled window frames; assembled I-joists, open-webbed floor joists; edge-glued wood; cross-laminated timber; assembled furniture; butcher block countertops; cutting boards; assembled wood toys; assembled wooden frames for paintings, photographs and mirrors; assembled wood blinds; clothes hangers; tableware; trays; wall art; and marquetry – have all been processed to such an extent that they are individually identifiable as "finished products."[1435]

The Department's position with respect to the products identified above remains unchanged from the *AD Preliminary Determination*. Accordingly, we have determined that these products are out-of-scope and therefore no further clarification is necessary. To the extent that RILA is concerned that there is any ambiguity in the scope because its products are not specifically enumerated in the list of "illustrative examples," we are expressly determining in this final determination that those products meet the finished products exclusion and should be excluded from the scope of these investigations. We believe such a determination provides sufficient certainty with respect to those products.

We provided five illustrative examples in the proposed scope which we believe are sufficiently diverse to provide a wide-range of examples of finished products. The petitioner supported those examples, and we continue to believe those five examples are appropriate. If we added additional examples, we are concerned that the list would begin to appear less like an illustrative list, and more like a comprehensive summary of all the finished products excluded from the scope – which is not our intention in providing a few illustrative examples in the scope language. For obvious reasons, given the number and variety of finished products, the Department cannot list every conceivable finished product in the scope of the investigation itself.

In addition, with respect to RILA's and IKEA's request that furniture kits be added to the list of illustrative out-of-scope products, we preliminarily determined, as stated in the Preliminary Scope Memorandum that "finished furniture kits are not covered by the scope of these investigations."[1436] Again, we are expressly determining in this final determination that these kits also are covered by the finished products exclusion and conclude that such a determination provides sufficient certainty with respect to these products. Accordingly, we determine that it is unnecessary to add these products to the list of illustrative examples in the language of the scope itself.

In addition to RILA's and IKEA's arguments that the Department should add to its illustrative list products which we had already preliminarily determined to be finished goods in the

[1434] *See* Preliminary Scope Memorandum at Comment 6.
[1435] *Id.* (internal citations omitted).
[1436] *Id.* at Comment 15.

Preliminary Scope Memorandum, the GOC argues that the Department should also expand the list to include additional products which the Department did not preliminarily determine to be finished goods. Specifically, the GOC asserts that "{u}nassembled parts or components – if sufficiently processed so that they may be used solely for their intended purposes – also qualify as 'finished products' under the reasoning articulated by the Department"[1437] and should be included in the illustrative example list. We disagree. As a preliminary matter, the GOC's proposed interpretation of the finished products provision contradicts the plain language of the scope, which states that "{c}omponents or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above are within the scope of these investigations." Furthermore, the GOC misstates the Department's reasoning with respect to finished products. We stated that products are "finished" when they have "undergone sufficient processing such that they can no longer be considered intermediate products, *and such products can be readily differentiated from merchandise subject to these investigations at the time of importation*."[1438] The GOC's argument ignores the second portion of this sentence: to constitute a finished good, merchandise must be readily differentiable from subject merchandise at the time of importation. Furthermore, as the Department has noted, there are numerous types of components which fall squarely within the scope of these investigations.[1439]

Finally, the GOC also asserts that, pursuant to the General Rules of Interpretation that govern the HTSUS, an "incomplete or unfinished article" may be classified under the heading for a finished product if it "has the essential character of the complete or finished article."[1440] However, the Department is not required to follow the HTSUS General Rules of Interpretation in defining the scope of its investigations, and indeed, in defining the scope of our investigations, the HTSUS categories are provided for guidance only. As the Department explained in the language of the preliminary scope, "{a}lthough these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive."[1441] Here, the written description of the scope is clearly intended to cover components. The fact that such goods might be classified in a certain manner under the HTSUS does not alter our analysis.

For the reasons stated, we continue to find that finished products are outside the scope of these investigations. Additionally, the Department will not modify the language regarding finished products in the manner requested by RILA, IKEA, or the GOC.

[1437] *See* Canadian Parties Joint Scope Brief at 6. The GOC also summarily asserts that numerous additional products constitute finished goods which were not preliminarily determined by the Department to be finished goods in the Preliminary Scope Memorandum, and asserts that they should be included in the illustrative list of finished products. Specifically, the GOC claims that fence pickets and fencing materials, truss kits, pallet kits, window and door frame components, flooring products, tongue and grooved products that are end-matched, tongue and grooved paneling, certain siding, pre-cut bridging, pre-finished products of a certain thickness, ripped and chopped softwood lumber items, and landscape ties are finished products. We address those arguments separately, below.

[1438] *See* Preliminary Scope Memorandum at Comment 6 (emphasis added).

[1439] *See, e.g.*, Preliminary Scope Memorandum at Comments 16 (window and door frame components), 21 (notched stringers) and 34 (bed-frame components).

[1440] *See* Canadian Parties Joint Scope Brief at 8.

[1441] *See AD Preliminary Determination*, 82 FR 29833, 29836.

However, in light of parties' expressed concerns regarding CBP's administration of this scope, in addition to our standard CBP instructions, we will provide CBP with a list of products which we have determined are finished goods, and thus not covered by the scope of these investigations.

Comment 90: Exclusions requested for Certain Types of Lumber Harvested from Western Red Cedar, Douglas Fir, and Hemlock Trees

In the *AD Preliminary Determination,* the petitioner did not agree to, and the Department did not grant, OCFP's request to exclude certain types of high-value, fine-grain lumber harvested from Western Red Cedar, Douglas Fir, and Hemlock trees and based on "minimum dollar values."[1442]

OCFP argues that the Department should grant its exclusion request because the imports described in OCFP's narrowly-defined scope exclusion request do not compete with U.S. production in commercially meaningful quantities. Also, despite the petitioner's assertion that allowing this exclusion raises circumvention concerns, OCFP argues that its scope exclusion request is highly similar to the exclusion for wood harvested and produced in the Atlantic Provinces to which the petitioner has agreed. OCFP notes that judicial precedent established that the Department retains the ultimate responsibility for determining the scope of these investigations, and that the circumstances of this case warrant that the Department grant OCFP's request.

The petitioner notes that the products for which OCFP seeks an exclusion are types of softwood lumber that fall within the scope of these investigations, and no party has argued otherwise. The petitioner acknowledges that it has stated that it would be willing to consider a scope exclusion from OCFP if such an exclusion were administrable and sufficient to address issues of circumvention. However, the petitioner asserts that OCFP's proposed exclusion does not currently meet either of those criteria and is different from the exclusion of lumber certified by the Atlantic Lumber Bureau. The petitioner therefore opposes OCFP's request.

Department's Position: We have not granted OCFP's exclusion request. As noted, the alleged "fine-grain" softwood lumber for which OCFP seeks an exclusion is lumber produced from Douglas Fir, Western Red Cedar, and Hemlock -- all species of softwood lumber. The scope does not provide for exclusions based solely on species of softwood lumber. Likewise, the scope provides no exceptions for softwood lumber based on price. Thus, all products for which OCFP has requested an exclusion are covered by the scope of these investigations.

With respect to OCFP's argument that, despite opposition from the petitioner, the Department has the authority to exclude products from the scope, we do not disagree that there are specific situations in which the Department can modify a proposed scope over a petitioner's objections. However, we do not find that such a situation exists with respect to OCFP's merchandise.

The CAFC has explained that a "purpose of the petition is to propose an investigation," while a "purpose of the investigation is to determine what merchandise should be included in the final order."[1443] In defining the scope of an order, the CAFC has explained that the Department has a

[1442] *See* OCFP Scope Brief at 1-10.
[1443] *See Duferco Steel, Inc.*, 296 F. 3d 1087, 1089.

"large" amount of discretion to determine "the appropriate scope" of an order to ensure that it "will be effective to remedy" the dumping or CVD subsidies determined to exist during an investigation.[1444]

While the Department possesses the authority to determine the scope of an investigation, the Department's standard practice is to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding. Thus, in establishing the scope of an investigation, the Department strives to craft a scope that both includes the specific products for which the injured party, the petitioner, has requested relief, and excludes those products which would otherwise fall within the general scope physical description, but for which the petitioner does not seek relief.[1445] Thus, the Department generally defers to the intent of the petition, fulfills the Department's statutory mandate to provide, where appropriate, the relief requested by the petitioning industry,[1446] and, "absent an overarching reason to modify the scope in the petition, the Department accepts {the scope}" as written.[1447]

There are, however, as OCFP argues, situations in which public policy requires that the Department modify the petitioner's proposed scope. In those occasions, the leading reasons for such modification are to ensure that the scope can be sufficiently administered and to prevent the scope from being susceptible to circumvention and evasion.[1448]

The petition scope did not exclude "fine-grain" lumber harvested from Douglas Fir, Hemlock, and Red Cedar trees; nor did it exclude certain products based on dollar value. Furthermore, the petitioner has continuously stated on this record that due to difficulty in identifying species, grade and value,[1449] there are significant circumvention concerns which would accompany such an exclusion, and neither OCFP, nor any other party, has provided sufficient evidence that there exists a method for both instituting such an exclusion, and ensuring that the threat of circumvention through such an exclusion is extinguished. Thus, we determine that this is not an

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[1444] *See Mitsubishi I*, 700 F. Supp. 538, 556, *aff'd* by *Mitsubishi II*, 898 F.3d at 1583 (finding that the Department "has the authority to define and/or clarify what constitutes the subject merchandise to be investigated as set forth in the petition … taking into consideration such factors as … the known tactics of foreign industries attempting to avoid a countervailing duty order"); *see also* S. Rep. No. 96-249 (1979), at 45 (stating that "domestic petitioners and the administrators of the law have reasonable discretion to identify the most appropriate group of products for purposes of both the subsidy and injury investigations"); *Smith Corona*, 796 F. Supp. 1532, 1535; *Allegheny Bradford*, 342 F. Supp. 2d 1172, 1187-88; *Torrington*, 745 F. Supp. 718, 721, *aff'd* 938 F.2d 1276 (Fed. Cir. 1991) (holding that in certain circumstances the Department may "narrow" the definition of the scope as proposed in a petition as long as such that modification is based on record evidence and not "unreasonable"; finding the existence of five classes or kinds of merchandise, rather than one, as alleged in the petition).

[1445] *See, e.g., Nails from the PRC,* 73 FR 33977, 33979; *Spring Table Grapes*, 66 FR 26831, 26832-33.

[1446] *See, e.g., Narrow Woven Ribbons from the PRC,* 75 FR 7244, 7247, unchanged in *Narrow Woven Ribbons from Taiwan*.

[1447] *See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the PRC Prelim*, 73 FR 51788, 51789, unchanged in *Circular Welded Austenitic Stainless Pressure Pipe from the PRC Final.*

[1448] *See, e.g., Steel Wheels from the PRC AD* IDM at Comment 1.

[1449] As noted by the petitioner, grade, value, and species are all difficult characteristics to confirm. This was attested to by the association on which OCFP wanted to rely to verify these characteristics for the purpose of administering this exclusion. *See* OCFP Comments – Scope 3 at 2-4.

appropriate situation in which to modify the proposed scope, especially in light of the petitioner's legitimate circumvention concerns.

The Department received numerous comments in this investigation requesting that the Department modify the proposed scope against the expressed intentions of the petitioner. Tellingly, however, no party, including OCFP, cited to examples in which the Department made a modification outside of the context of concerns of administration or evasion. To be clear, however, the Department's practice is only to modify the scope as proposed by the petitioner if that proposed scope cannot be administered without difficulty or there are evasion concerns *as a result of the proposed scope language*. The Department's practice is not, as it appears some parties have argued, to allow for an exclusion not supported by the petitioner simply because the hypothetical exclusion of a product could be administered with little difficulty and the possibility of evasion is allegedly low. In other words, in the vast majority of cases, the Department will defer to the petitioner's proposed language, and only consider modifying that language when the proposed scope, itself, raises certain concerns with the Department and CBP.[1450] As that is not the situation in this case, we agree with the petitioner that OCFP's merchandise is covered by the scope of these investigations, and an exclusion is not warranted.

Comment 91: Previous Scope Determinations

In the *AD Preliminary Determination*, the Department stated that it would not adopt scope exclusions simply based on a product's status in the earlier softwood lumber proceedings or under the *2006 SLA*[1451] and noted that the scope coverage of *Lumber IV* and the *2006 SLA* is not determinative of the scope of these investigations.[1452]

While acknowledging that the Department's prior scope determinations in *Lumber IV* are not dispositive of the scope issues in these investigations, the GOC claims that the Department is still required to explain its reasoning for deviating from prior scope determinations and cites to several decisions by the CIT that it claims supports its contention.[1453]

The petitioner states that the Department did not err in its preliminary scope determinations for the simple reason that the scope of these investigations is different from that in earlier softwood lumber proceedings and under the SLA 2006, and as such, the factual findings of these proceedings are not directly applicable to the current investigation.

Department's Position: The GOC's arguments are legally incorrect. Section 19 CFR 351.225(k)(1) of the Department's regulations require that after an investigation is completed,

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[1450] *See, e.g., Narrow Woven Ribbons from the PRC,* 75 FR 7244, 7247, unchanged in *Narrow Woven Ribbons from Taiwan*; *see also Lumber IV Final AD Determination* IDM at "Scope Issues."
[1451] *See 2006 SLA*. *See* Petition, Volume I, Exhibit 63.
[1452] *See* Preliminary Scope Memorandum at Comment 4.
[1453] *See Springwater Cookie*, 20 C.I.T. 1192 where the CIT stated "Commerce has not expressed any intention of or rational reasons for deviating from its method of analysis in similar cases." *See also Allegheny Bradford*, 342 F. Supp. 2d 1172 where the CIT explained that the Department has a "general obligation to follow prior, similar scope determinations," and noted that adherence to prior scope determinations "is premised in part on the fact that the prior decisions are indeed determinations, with formal procedures to ensure reliable results."

and the scope of an order has been defined, if a party requests a scope ruling, the Department will consider as part of that scope ruling "prior determinations" of the agency. Accordingly, in the bevy of cases cited by the GOC, the CIT held repeatedly that the Department must look to its prior scope determinations and rulings arising out of the same AD or CVD order and consider those determinations to "either conform to its prior norms and decisions or explain the reason for its departure from such precedent."[1454] The Court has *not* held, however, that the Department "must consider its prior scope rulings," as the GOC claims, arising out of former, differently-worded scopes from different investigations with different petitioners and different injury determinations, and "articulate why" it is making a determination "departing from those rulings."[1455] The GOC claims that the Department "contravenes substantial CIT precedent," without understanding what that precedent means or the basis for that precedent in the first place.[1456] It is simply not true that the Department "reversed course" from prior lumber scope rulings or "departed" from "prior scope determinations,"[1457] because these are new investigations with a new petitioner, and the products allegedly causing harm differ from the products allegedly causing harm in previous lumber investigations.

Put another way, the underlying facts in *Lumber IV* are not the facts before us in these investigations, just as the facts in the *2006 SLA* were not the same as the facts before us in these investigations. Thus, the GOC is incorrect in claiming that the Department is required to distinguish between its treatment of certain products in the context of the scope of these investigations when compared to the treatment of such products in *Lumber IV* and the *2006 SLA*.

In any case, in the Preliminary Scope Memorandum, we set forth the reasons why each of the following products in question are covered by the scope of these investigations. Primarily, the reason was simple: the merchandise falls within the description of the scope of these investigations, and the party alleged to be harmed by dumping and subsidization, the petitioner, has not agreed to an exclusion for these products:

- Fence Pickets and Fencing Materials (discussed in detail in the Preliminary Scope Memorandum at Comment 11),
- Truss Kits (Comment 12),
- Pallet Kits (Comment 13),
- Home Package Kits (Comment 14),
- Notched Stringers (Comment 21) and
- Box-spring frame components (Comment 34).[1458]

In *Lumber IV*, the petitioner proposed a scope in the underlying investigations and agreed to modifications to the scope that resulted in exclusions for each of the products listed above that

[1454] *See Russ Berrie*, 57 F. Supp. 2d 1184 where the CIT determined that the Department's analysis of its prior similar scope determinations "satisfi{ed} the principle of administrative law that an agency must either conform to its prior norms and decisions or explain the reason for its departure from such precedent."
[1455] *See* Canadian Parties' Joint Scope Brief at 11-12.
[1456] *Id.* at 12.
[1457] *Id.* at 14, 17.
[1458] *See* Preliminary Scope Memorandum at Comments 11-14, 21, and 34.

are now covered by the scope of these current investigations.[1459] While at times, the stated reason for the non-coverage of certain products in *Lumber IV* is stated to be that the scope does not cover the merchandise in question[1460] and at other times the merchandise is stated to be excluded,[1461] what is clear is that the petitioner articulated that it had no interest in covering that merchandise in *Lumber IV* and that the Department ultimately stated that it was excluding each of these products in line with the petitioner's wishes. However, here, the petitioner has explicitly stated in its rebuttal case brief[1462] and throughout these proceedings, that the scope of these investigations is intended to cover each of the products listed above which were not covered in *Lumber IV*.

With regard to product-specific arguments, the GOC claims that truss kits are finished products and that the Department acknowledged this in *Lumber IV* when it stated that "{p}etitioners accept the principle that pallets and 'legitimate' pallet kits are outside the scope of these investigations" and the Department's statement that "truss kits are finished trusses unassembled."[1463] However, the GOC has taken these statements out of context. As the memorandum cited by the GOC indicates, the petitioner had already agreed to exclude truss kits in *Lumber IV* and the quotations cited by the GOC were generated from a discussion of how to create an administrable exclusion.[1464] If the truss kits had already been found to be outside of the scope, a discussion as to how to exclude the truss kits would be unnecessary.

With respect to the GOC's "finished products" claim, the GOC has cited to no analysis undertaken by the Department in *Lumber IV* to determine whether truss kits are finished products and thus outside the scope. On the other hand, we did conduct a finished product analysis in the Preliminary Scope Memorandum of these investigations.[1465] The Department preliminarily determined in these investigations that truss kits do not qualify as finished products, but instead "that truss kits contain minimally-processed lumber that is explicitly covered by the scope."[1466] We further cited to industry descriptions of truss kits demonstrating that they consist primarily of dimension lumber.[1467] Thus, we explained in the Preliminary Scope Memorandum the reasons for our finding that certain components of truss kits are not finished products and are thus covered by the scope of these investigations.

In its scope brief, the GOC did not specifically address the Department's analysis and reasoning in the Preliminary Scope Memorandum for why we find truss kits to be within the scope of these investigations. Instead, it merely stated that it does not agree with the conclusion of this analysis

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[1459] *See Lumber IV Prelim Determination*, 66 FR 43186, 43187 (August 17, 2001).
[1460] *Id.*
[1461] *See* Memorandum, "Class or Kind Determinations and Consideration of Certain Scope Exclusion Requests," dated March 12, 2002 (Lumber IV Preliminary Scope Memorandum) at Appendix II. This memorandum was included in the Preliminary Scope Memorandum at Attachment III. *See also Lumber IV AR Final* at section entitled "Scope of the Order."
[1462] *See* Petitioner Rebuttal Brief at 17-19 and 46-59.
[1463] *See* Canadian Parties' Joint Scope Brief at 14-16.
[1464] *See* GOC Comments Scope 1 at Attachment 4 (containing a memorandum titled, "Scope Clarification in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada").
[1465] *See* Preliminary Scope Memorandum at Comment 12.
[1466] *Id.*
[1467] *Id.* at Comment 12.

and that "legitimate truss … kits are not intended to be within the scope of these investigations."[1468] For the reasons we have provided, that conclusion is not supported by the expressed intentions of the petitioner, nor by the record evidence. Accordingly, we have determined for the purposes of this final determination that truss kits are covered by the scope of these investigations.

The GOC has stated that its arguments regarding truss kits apply equally to pallet kits. Just as we explained why truss kits were not finished products and were covered by the scope of these investigations, we also did so with regard to pallet kits in the Preliminary Scope Memorandum, explaining that pallet kits consist largely of dimensional lumber.[1469] We further noted that the scope states that it covers softwood lumber that may be classified by CBP as pallet components and also explicitly states that it covers notched stringers, which are the main component of pallets.[1470] Just as with truss kits, another difference between these investigations and those in *Lumber IV* is that here the petitioner has explicitly stated that it does not agree to an exclusion for pallet kits and that pallet kits are in-scope merchandise. In addition, in its brief, the GOC also did not address any of the details or arguments set forth in the Preliminary Scope Memorandum that were the basis for our finding pallet kits to be covered by the scope of these investigations. Instead, it argued only that it disagreed with this finding and that "legitimate … pallet kits are not intended to be within the scope of these investigations."[1471] For the reasons we have provided, that conclusion is neither supported by the expressed intentions of the petitioner, nor by the record evidence. Accordingly, we have determined for purposes of this final determination that pallet kits are also covered by the scope of these investigations.

Comment 92: Whether Certain Products are Finished Products

In the Preliminary Scope Memorandum, the Department rejected arguments that it exclude the products enumerated below. We stated that the products were covered, most of them explicitly, by the scope of these investigations and that the factors that the GOC identifies as distinguishing features of the products in question did not differentiate the products from softwood lumber covered by the scope of these investigations.

We did not find any of the following products to meet our definition of finished products, and we preliminarily determined these products were within the scope of the investigations.[1472] We also noted that the scope did not provide for an exclusion for any of the products identified below, and that the petitioner had not supported exclusions for these products:

- Fence Pickets and Fencing Materials (discussed in detail in the Preliminary Scope Memorandum at Comment 11);
- Truss Kits (Comment 12);

[1468] Canadian Joint Scope Brief at 15. We note that the Structural Component Building Association (SCBA) commented on the *AD Preliminary Determination* with respect to trusses. *See* SCBA Scope Comments. Because SCBA's comments do not address the Department's conclusions regarding the status of assembled trusses as finished products, we do not further consider SCBA's comments here.
[1469] *See* Preliminary Scope Memorandum at Comment 13.
[1470] *Id*.
[1471] *Id.* at 15.
[1472] *See* Preliminary Scope Memorandum at Comment 6.

- Pallet Kits (Comment 13);
- Window and door frame components (Comment 16);
- Flooring Products (Comment 17);
- Tongue and Grooved Products That are End-Matched (Comment 18);
- Tongue and Grooved Paneling (Comment 19);
- Certain Siding (Comment 20);
- Notched Stringers (Comment 21);
- Pre-Cut Bridging (Comment 22);
- Pre-Finished Products of a Certain Thickness (Comment 23);
- Ripped and Chopped Softwood Lumber Items (Comment 24); and
- Landscape Ties (Comment 26).[1473]

The GOC argues that all of these products meet the Department's definition of finished products and thus, based on the Department's acknowledgement at Comment 6 of the Preliminary Scope Memorandum that finished products are outside the scope of these investigations, these products should be excluded. The GOC argues that the petitioner's main motivation for not excluding the products at issue is due to alleged circumvention and/or administrability concerns, which are unfounded and thus cannot be a basis for a refusal to exclude the products at issue.

The petitioner states that none of the products in question are finished products, that the scope covers each product, and that the scope as proposed was intended to cover each of these products. Additionally, the petitioner states that an exclusion for any of the products in question would pose a particularly high risk of circumvention and would present unique administrability challenges for CBP.

Department's Position: All of these products, which were found to be in-scope merchandise in the *AD Preliminary Determination*,[1474] are covered by the scope of the investigations, and are not finished products outside the scope of these investigations.

We disagree with the GOC's blanket statement that the above-referenced products meet the definition of finished products set forth in Comment 1. As noted above, in the Preliminary Scope Memorandum we provided individual explanations addressing why each of the products under discussion here are covered, and thus do not meet our definition of finished products.[1475] The GOC did not address the reasoning and analysis we set forth in the Preliminary Scope Memorandum concerning why these products are covered by the scope in its brief. Accordingly, our decisions regarding these products remain unchanged.

While the GOC speculates that the petitioner's main motivation for not excluding the products in question is due to unjustified circumvention concerns, as we noted in the Preliminary Scope Memorandum[1476] and as we detailed in Comment 2 above, if the petitioner identifies a particular

[1473] *Id*. at Comments 11-13, 16-24, and 26.
[1474] *Id.* We note that SCBA commented on the *AD Preliminary Determination* with respect to wood paneling. *See* SCBA Scope Comments at 1-4. Because SCBA's comments do not address the Department's discussion regarding the status of wood paneling, we do not further consider them here.
[1475] *See* Preliminary Scope Memorandum at Comments 11-13, 16-24, and 26.
[1476] *Id.* at Comment 4.

product as covered by the scope during the course of the investigation, the Department will give substantial deference to the petitioner to determine whether a product-based exclusion is appropriate. It is the petitioner that is allegedly harmed by GOC subsidization and dumped Canadian exports, and therefore it is the petitioner whose concerns about circumvention should be considered and addressed.

Accordingly, we take no heed of the GOC's assertion that the petitioner's concerns regarding circumvention are "unfounded," or that there exist methods for limiting circumvention concerns. As noted above, if the petitioner believes certain scope language is necessary to address potential circumvention, and we find that such language is otherwise administrable, the Department will generally defer to the petitioner's desired scope language.

Furthermore, even if the petitioner was required to state its reasons for refusing to exclude certain merchandise from these investigations, which it is not, it has satisfied that requirement in this case. For each of the products listed above, the petitioner has explained that the product is explicitly covered by the AD/CVD petitions, or that the exclusion of the product would allow circumvention of a potential order by allowing other products to be imported without the assessment of AD/CVD duties, notwithstanding the petitioner's intent to cover such merchandise in the petition.

The GOC argues that the petitioner claims that it is only being injured by dimensional lumber, but the petitioner has stated clearly on the record that it is being injured not only by dimensional lumber, but also by semi-finished lumber, and even finished lumber products that could be interchanged with semi-finished or raw dimensional lumber, such as fence pickets.[1477] The petitioner's basis for covering such merchandise is that there is little difference between these products and general lumber, as the products could be used in a myriad of applications.[1478] Thus, the GOC's argument that the products listed above are either outside the scope or should be excluded because they are not the products for which the petitioner seeks relief, is incorrect. These products do not fit the definition of finished products as applied to these investigations and are the very type of products for which the petitioner seeks relief.

As noted throughout this case, due to the limited or complete lack of difference between dimensional lumber and many of the products that the GOC argues should be excluded, the petitioner's circumvention concerns are not unreasonable. Pallet components, truss components, stringers, fencing materials, and landscape ties are all covered by the definition of subject merchandise, as described in the scope of these investigations. Thus, allowing an exclusion for such products would appear to provide an opportunity for exporters of subject lumber to circumvent the order by allowing them to identify exports of lumber, regardless of actual intent, as pallet or truss components, or as other products for which the GOC requests an exclusion or a finding that the product is out of scope. The petitioner has cited, throughout this record, to instances of circumvention or administrability challenges posed by the products under discussion. For instance, the petitioner has cited to difficulties experienced by CBP in

[1477] *See* Petitioner Supp QNR 1 Response, at 1-6.
[1478] *Id*.

distinguishing truss components from general lumber,[1479] fenceposts from general lumber,[1480] and prefabricated home components from general lumber.[1481] Thus, the GOC's assertions that many of the products in question here, if excluded, would not raise circumvention concerns is not supported by the evidence on the record.

Once the ITC and Department have agreed to initiate an investigation on a certain scope, it is uncommon for the petitioner to be compelled to justify why it has rejected demands that it change such a scope. However, here, the petitioner has further demonstrated that its refusals to change the current scope are justified because such products are either the very products from which it seeks relief, or products that present reasonable circumvention concerns. While the Department has the discretion to modify a proposed scope in certain circumstances, use of such discretion is inappropriate here, where the petitioner has raised legitimate concerns that changing a scope would create significant potential for circumvention. Accordingly, we find that fence pickets and fencing materials, truss kits, pallet kits, window and door frame components, flooring products, tongue and grooved products that are end-matched, tongue and grooved paneling, certain siding, notched stringers, pre-cut bridging, pre-finished products of a certain thickness, ripped and chopped softwood lumber items, and landscape ties are all subject to the scope of these investigations.

Comment 93: Craft Kits

In the Preliminary Scope Memorandum, in our analysis relating to finished goods, the Department determined that there was insufficient information on the record to determine the scope status of "craft kits."[1482] RILA asserts that the Department should explicitly add craft kits to the illustrative list of out-of-scope products.[1483]

The petitioner argues that the Department should not add "craft kits" to the illustrative list of out-of-scope products at this time.[1484]

Department's Position: We agree with the petitioner, in part. RILA asserts that the Department's proposed language relating to finished goods was "not sufficiently comprehensive because it would not cover such items as craft kits and other do-it-yourself consumer items that are unassembled at the time of import," and asserts that the Department should explicitly add "craft kits" to the illustrative list of out-of-scope products.[1485] RILA argues that "craft kit" is not a vague term, and that the term is a "commonly accepted retail term."[1486] However, regardless of

[1479] *Id.* at 1-2.
[1480] *See* Petitioner Rebuttal Comments – Scope at 10.
[1481] *Id.* at 18-19. While the GOC has not discussed prefabricated home kits here, it has elsewhere, and such kits are highly similar to the products under discussion here and the circumvention attempts identified by CBP are instructive.
[1482] *See* Preliminary Scope Memorandum at Comment 6.
[1483] *See* Canfor Scope Brief at 2; Canadian Parties' Scope Brief at 6; RILA Scope Brief at 2; IKEA Scope Rebuttal at 2.
[1484] *See* Petitioner Scope Rebuttal at 22.
[1485] *See* RILA Scope Brief at 6.
[1486] *Id.*

whether the term is well understood in a retail context, as with any scope determination, the Department must have a confident understanding of the product in question in order to determine that product's scope status. In our Preliminary Scope Memorandum, we explained that the record did not permit us to make a scope determination for products characterized as "craft kits."[1487] Accordingly, we agree with the petitioner that it is not appropriate to list "craft kits" among the goods identified as finished products.

However, in its scope brief, RILA lists a number of products that, it asserts, fall within the broader category of "craft kits," including "wood bird feeders, toys, model houses, cars, boats and other vehicles."[1488] We agree that such products are finished goods – and are not softwood lumber covered by the scope of these investigations. Accordingly, we will include "wood bird feeders," "wood toys," and "model houses, cars, boats and other vehicles" in our list of products identified as out-of-scope finished goods that will be submitted to CBP following the final determination in these investigations.

Comment 94: Whether Certain Scope Language Should be Removed

The GOC argues that the Department should remove the following paragraph from the scope language:

> Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.99.70.40; and 4421.99.97.80.[1489]

The GOC states that it is well-settled Department practice that the written scope description, rather than particular HTSUS codes, controls what merchandise is covered. Thus, it is the GOC's contention that the above language is not only unnecessary, but will cause confusion because the products described above are finished products that the Department, supported by the petitioner, has determined are not within the scope.

The petitioner notes that it included the language above in the scope because it will help prevent circumvention. Thus, the petitioner opposes its removal. The petitioner notes that to the extent parties may have "cause for concern" or confusion regarding the applicable HTSUS codes listed in the scope of these investigations, parties should rely on the written description of the scope.

Department's Position: We disagree with the GOC and have not removed the paragraph in question. The GOC claims that the paragraph only identifies items that are finished products. It does not. Each product mentioned in the above-referenced paragraph was explicitly determined

[1487] *See* Preliminary Scope Memorandum at Comment 6.
[1488] *Id.*
[1489] The last two HTSUS numbers were inadvertently listed as 4421.91.70.40 and 4421.91.97.80 in the scope accompanying the preliminary determination in the AD investigation.

in the Preliminary Scope Memorandum to be in-scope merchandise and, thus, found not to be a finished good for the purposes of these investigations: stringers in Comment 21; square cut box-spring-frame in Comment 34; fence pickets in Comment 11; truss components in Comment 12; pallet components in Comment 13; flooring in Comment 17; and door and window frame parts in Comment 16.

Some of the HTSUS categories in the paragraph in question contain both in-scope-merchandise (*i.e.*, stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts) and out-of-scope merchandise. We believe specifying in the scope which products are covered (stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts) and which products are not covered (finished products, which we have now defined in the scope) will, contrary to the claims made by the GOC, make it easier to identify which products covered by these HTSUS categories are inside and outside of the scope. Thus, we have continued to include this paragraph in the scope of these investigations.

Comment 95: Wood Shims

In our Preliminary Scope Memorandum, the Department determined that wood shims are within the scope of these investigations.[1490] JDIL asserts that wood shims are finished products, and are therefore outside of the scope.[1491] The petitioner asserts that the Department should not modify its analysis, and should continue to find such products to fall within the scope.[1492]

Department's Position: We agree with the petitioner. JDIL asserts that wood shims are finished products.[1493] However, as we explained in the Preliminary Scope Memorandum, to constitute finished products for the purposes of these investigations, products must have "undergone sufficient processing such that they can no longer be considered intermediate products," and such products must be "readily differentiated from merchandise subject to these investigations at the time of importation."[1494] Wood shims do not meet the second criteria.

The scope covers "{c}oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters." The products identified by JDIL are wood shims that are made from coniferous wood that, in part, exceed 6 millimeters in thickness. Although the wood shims described by JDIL are tapered to widths of less than 6 millimeters, the scope does not indicate that products are not covered by the scope if a portion of the product is less than 6 millimeters in thickness.[1495] Accordingly, we find that wood shims are covered by the scope because they

[1490] *See* Preliminary Scope Memorandum at Comment 10.
[1491] *See* JDIL Scope Brief at 3.
[1492] *See* Petitioner Scope Rebuttal at 57-59.
[1493] *See* JDIL Scope Brief at 3.
[1494] *See* Preliminary Scope Memorandum at Comment 6.
[1495] The petitioner also expresses concern that JDIL's proposed interpretation regarding tapered woods products would create avenues for circumvention, *i.e.*, by allowing irregularly cut wood products to avoid duties. *See* Petitioner Scope Rebuttal at 58.

cannot be readily differentiated from in-scope softwood lumber, and therefore do not constitute finished products as defined by the scope of these investigations.

Comment 96: Pre-Painted Wood Products

In our Preliminary Scope Memorandum, the Department determined that pre-painted wood products are within the scope of these investigations.[1496]

Woodtone and Maibec assert that pre-painted decorative wood products are finished products, and therefore should be determined to be out-of-scope.[1497] Woodtone and Maibec assert that pre-painted decorative wood products including "individual pieces used for siding" and "complete siding project kits" meet the Department's criteria for finished goods.[1498] In support of their position, Woodtone and Maibec assert that "pre-painted wood products go through extensive, costly and sufficient processing such that the merchandise can no longer be considered an intermediate product."[1499] Woodtone and Maibec explain that the production process:

> 1) uses specific species of wood that are particularly amenable to coating, 2) involves remanufacturing of standard dimensional lumber into non-standard dimensions without grade stamps for structural application, and 3) results in a variety of surfaces, including smooth, brush faced and combed, and a variety of profiles, including tongue and groove, and beveling. Finally, the pre-painted/stained products need no further processing before sale and use. Moreover, in Maibec's case the pre-painted wood products are sold as dedicated kits for use in a specific application (siding) at a specific site, and thus cannot be sold to the general market and are of limited value if returned unused by the customer.[1500]

Woodtone and Maibec emphasize that these factors demonstrate that the products are highly processed and are not properly considered intermediate goods.[1501] As a result, they assert, the merchandise must instead be considered finished products.

The petitioner asserts that such products fall within the scope of these investigations.[1502]

Department's Position: The Department disagrees with Woodtone and Maibec. We continue to find that "pre-painted decorative wood products" are within the scope of these investigations.

We disagree with Woodtone and Maibec's assertion that pre-painted wood products, as described by the parties, constitute finished goods.[1503] As the Department discussed in its

[1496] *See* Preliminary Scope Memorandum at Comment 7.
[1497] *See* Woodone/Maibec Scope Brief at 2.
[1498] *Id.*
[1499] *Id.* at 3.
[1500] *See* Woodtone/Maibec Scope Brief at 3-4.
[1501] *Id.* at 4.
[1502] *See* Petitioner Scope Rebuttal at 54-57.
[1503] *Id.* at 4.

treatment of finished goods, for the purpose of this scope, we have defined finished goods as products that are not properly considered intermediate goods, and goods which "can be readily differentiated from merchandise subject to these investigations at the time of importation."[1504] The merchandise described by Woodtone and Maibec, however, cannot be readily differentiated from in-scope merchandise. The parties describe their products as "individual pieces used for siding," "individual siding and trim components" and "complete siding project kits."[1505] Siding, however, is explicitly covered by the scope of these investigations, which covers "{c}oniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed." The other characteristics of Woodtone's and Maibec's merchandise (*e.g.*, relating to price, finishing, etc.) do not render the merchandise out-of-scope for the reasons discussed throughout the Preliminary Scope Memorandum.[1506]

Finally, to the extent that Woodtone and Maibec seek to have their merchandise excluded from the scope, the petitioner has stated that the companies' description of their merchandise is insufficiently detailed to permit an exclusion, and therefore it does not agree to an exclusion.[1507] As noted above, the Department generally defers to the petitioner with respect to matters involving intended scope coverage, and in this case there are no administrability or evasion concerns that warrant an exclusion of the merchandise in question. For these reasons, we continue to find that pre-painted decorative wood products are within the scope of these investigations.

Comment 97: I-Joists

In the Preliminary Scope Memorandum, the Department determined that I-joists constitute finished products, and are therefore outside the scope of these investigations.[1508]

Central Canada and Canfor assert that the Department should continue to find that I-Joists are finished products outside the scope of these investigations. Moreover, Central Canada and Canfor assert that the Department should include a specific definition of I-joists in the scope.[1509] Specifically, Central Canada and Canfor assert that the Department should include the following language in the scope to define the parameters of the term I-joist:

> Fully assembled I-Joists, also known as I-Beams or I-Joist Beams, meeting the following description: I-shaped structural members made by gluing together an

[1504] *See* Preliminary Scope Memorandum at Comment 6.
[1505] *See* Woodtone/Maibec Scope Brief at 2, 5.
[1506] Woodtone and Maibec assert that there is limited potential for circumvention if pre-painted wood products are determined to be out-of-scope, because these products require a high degree of processing, and cannot be used in structural applications. However, given that the Department finds these products to be in scope, this argument is moot. *See* Woodtone/Maibec Scope Brief at 5.
[1507] *See* Petitioner Scope Rebuttal at 57.
[1508] *See* Preliminary Scope Memorandum at 16-17.
[1509] *See* Canfor Scope Brief at 2; Central Canada Scope Issues Brief at 12.

> oriented strand board sheet, as their center web, with grooved flanges made from 1650f-1.5E to 2400f-2.0E machine stress rated (MSR) lumber, finger-jointed or not, or from laminated veneer lumber (LVL) or other non-lumber products, in lengths up to 64 feet. Effective as of January 1, 2017, they are classified under HTSUS subheading 4418.99.90.40.

The petitioner agrees that I-joists are outside the scope of these investigations, but does not agree that it is appropriate to include a definition of I-joists in the scope.[1510]

Department's Position: The Department agrees with the petitioner. We continue to find that I-joists, for the reasons articulated in the Preliminary Scope Memorandum,[1511] are outside of the scope of these investigations and are accordingly not subject merchandise. We also agree with the petitioner, Central Canada and Canfor that the particular I-joist products[1512] described by Central Canada and Canfor, are included in the larger group of all I-joists that are out-of-scope merchandise.[1513]

However, we disagree that the text of the scope should be amended further to identify these particular I-joist products, because including such language in the text of the scope is not necessary or appropriate. As an initial matter, to the extent possible, the Department attempts to avoid using HTSUS classifications in defining the parameters of a scope.[1514] Additionally, in the revised scope, the Department has explained that I-joists – as a class of products – are not subject merchandise.[1515] Identifying one particular type of I-joist in the language of the scope, such as the product identified by Central Canada and Canfor, would serve to create confusion and ambiguity regarding the scope status of other I-joists that are slightly different from the I-joist specification described above. The Department must take into consideration whether a modification could create additional complications in administering the finalized scope when defining the scope of an investigation.[1516] We determine the modification proposed by Central Canada and Canfor would do so.

The Department continues to find that the described I-joists are not within the scope of these investigations. However, we will not include the additional language suggested by Central Canada and Canfor, which describes a particular type of I-joist, in the scope of these investigations.

[1510] *See* Petitioner Scope Rebuttal at 17-18.
[1511] *See* Preliminary Scope Memorandum at Comment 6. We note that SCBA commented on the *AD Preliminary Determination* with respect to I-joists. *See* SCBA Comments at 1-4. Because SCBA's comments do not address the Department's discussion regarding the status of I-joists as finished products, we do not further consider them here.
[1512] *See* Canfor Scope Brief at 2; Central Canada Scope Brief at 12.
[1513] The petitioner also agrees that the particular product described by Central Canada and Canfor is outside the scope of these investigations. *See* Petitioner Scope Rebuttal at 17-18.
[1514] *See Nails from Oman* IDM at 3.
[1515] Specifically, we state that: "The following products are illustrative of the type of merchandise that is considered 'finished,' for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors."
[1516] *See, e.g., Steel Wheels from the PRC AD* IDM at Comment 1.

Comment 98: Miscellaneous Products Discussed by the GBC and the BCLTC

In our Preliminary Scope Memorandum, we stated that high-value products, Western Red Cedar, and lumber from private lands, including First Nation Treaty Settlement Lands, are covered by the scope of these investigations.[1517] The GBC and the BCLTC assert that the above-referenced products should be excluded from the scope of these investigations.[1518]

Department's Position: We disagree with the GBC and the BCLTC. In our Preliminary Scope Memorandum, we addressed the parties' extensive arguments regarding high-value products, Western Red Cedar, and lumber from private lands, including First Nation Treaty Settlement Lands, and determined that each of these products is covered by the scope of these proceedings.[1519] The GBC and the BCLTC have provided a cursory discussion of each product and have raised no new arguments. Accordingly, for the reasons stated in our Preliminary Scope Memorandum, we continue to find that these products are covered by the scope of these investigations.

Comment 99: Bed-Frame Components/Crating Ladder Components

In the *Preliminary Determination*, the Department adopted exclusions for bed-frame kits and for particular bed-frame components, and noted that it would consider expanded exclusionary language covering bed-frame components and an exclusion covering crating ladder components, if submitted by interested parties. BarretteWood, EACOM, and Central Canada[1520] have submitted revised exclusionary language relating to bed-frame components:

> Box-spring frame components, also known as bed-frame components, meeting all of the following conditions, regardless whether packaged or shipped together or separately: (1) Sold as complete sets with all the necessary wooden components to assemble a certain number of boxspring frames with no further processing required; (2) The end rails must be radius-cut at both ends and must be substantial cuts so as to completely round one corner; (3) None of the components exceeds 1" in actual thickness or 84" in length; and (4) at least 25 percent by volume (MBF) of each entry must consist of radius-cut components.

Parties have submitted an analogous request for an exclusion for crating ladder components.

One domestic producer of bed frames, UFP, submitted rebuttal comments arguing that the proposed language covering bed-frame components "regardless whether packaged or shipped together or separately" would not be administrable and would be unenforceable.[1521] Furthermore, the petitioner also concluded in its rebuttal brief that "the Department should not

[1517] *See* Preliminary Scope Memorandum at Comment 27, 30, and 32.
[1518] *See* GOC Etal Common Issues Case Brief at 103-105.
[1519] *See* Preliminary Scope Memorandum at Comment 27, 30, and 32.
[1520] *See* Barrette Wood and EACOM Scope Brief at 3-4; Central Canada Scope Brief at 14-15.
[1521] *See* UFP's Scope Rebuttal at 6.

grant the requests of Central Canada and Barrette and EACOM to exclude bed or box spring frame components, or crating ladder components, from the scope of these investigations," on the same basis – that there would be too great a risk of circumvention and concerns with respect to the "administrability of the exclusion by the Department and Customs."[1522]

Department's Position: The Department will not adopt the proposed exclusions. The Department held consultations with CBP,[1523] and CBP advised that the proposed exclusion was not administrable and subject to a large risk of circumvention. CBP highlighted administration problems relating to assessing whether merchandise qualifies for an exclusion when portions of such merchandise enters in separate shipments and customs entries. Further, with respect to the exclusion for bed-frame components, assessing the volume of merchandise meeting the "radius-cut" requirement would be impractical for field agents. Finally, CBP raised concerns regarding potential circumvention. CBP's concerns regarding this language are consistent with the Department's concerns, as expressed earlier in this proceeding, as well as those reflected by UFP and the petitioner in their rebuttal briefs.

Throughout this investigation, the Department has held numerous meeting and phone calls with interested parties in an effort to achieve a workable and commercially viable exclusion for bed-frame components and crating ladder components. Additionally, the Department has adopted less expansive exclusions covering bed-frame components, where possible.[1524] Ultimately, as explained above in Comment 2, it is the Department's obligation to ensure that the scope of these investigations is administrable for CBP and the Department, and that any resulting order is not ripe for circumvention. Given these concerns, we are not able to adopt the parties' proposed exclusionary language.

Comment 100: U.S.-Origin Lumber Sent to Canada For Further Processing

In the Preliminary Scope Memorandum, the Department adopted language jointly submitted by the petitioner and the GOC to exclude from the scope of these investigations U.S.-origin lumber that has undergone three types of processing in Canada: (1) kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.[1525] In adopting that exclusion, we declined to adopt a broader version of the exclusion as proposed by two interested parties. However, we explained: "should interested parties, including the petitioner, agree to expand the scope of this exclusion in the manner described by CIFQ and Matra, the Department would consider modifying the exclusionary language for the final determinations to reflect the agreed upon language provided the Department has sufficient time to do so."[1526]

Central Canada, NAFP and Woodtone assert that the Department should expand the parameters of the exclusion.[1527] Central Canada asserts that neither the Department nor any of the other

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[1522] *See* Petitioner's Rebuttal Scope Brief, at 34-37.
[1523] *See* Proposed Exclusion Language Call Memo.
[1524] *See* Preliminary Scope Memorandum at 49-50.
[1525] *Id*. at Comment 1.
[1526] *Id.*
[1527] *See* Central Canada Scope Brief at 2-3; NAFP Scope Brief at 2-3; Woodtone Scope Brief at 2-3; Central Canada Scope Rebuttal at 2-3.

parties has provided a reason as to why the exclusion should not be expanded to include lumber that is sent to Canada for profiling along any of its edges, ends or faces, or finger jointing. NAFP asserts that trimming, ripping/edging, re-sawing, and notching do not alter the U.S.-origin status of the lumber, and do not change the name, use or character of the U.S.-origin lumber in a degree that is substantially different from sanding, planning or kiln drying, *i.e.*, the agreed upon processing steps that meet the subject exclusion. Similarly, Woodtone requests that texturing/resawing, profiling, and pre-painting/staining do not alter the U.S.-origin status of the lumber, and do not change the name, use or character of the U.S.-origin lumber in a degree that is substantially different from sanding, planning or kiln drying.

The petitioner opposes any expansion of the exclusion.[1528]

Department's Position: The Department disagrees with Central Canada, NAFP and Woodtone. In the Preliminary Scope Memorandum, in adopting an exclusion for U.S.-origin lumber sent to Canada for further processing, we declined to adopt a broader version of the exclusion as proposed by two interested parties; however, we explained: "should interested parties, including the petitioner, agree to expand the scope of this exclusion in the manner described by CIFQ and Matra, the Department would consider modifying the exclusionary language for the final determinations to reflect the agreed upon language provided the Department has sufficient time to do so."[1529] The petitioner has not agreed to any modification to the above-referenced exclusion.

Central Canada asserts that neither the Department nor any of the other parties has provided a reason as to why the exclusion should not be expanded to include lumber that is sent to Canada for profiling along any of its edges, ends or faces, or finger jointing.[1530] Central Canada's argument on this point, however, is inapposite – the petitioner has explicitly opposed this request.[1531] It is the Department's practice "to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding."[1532] In light of the lack of consent from the petitioner, the Department will not agree to the proposed expanded exclusion.

NAFP requests that trimming, ripping/edging, re-sawing, and notching be added to the list of processing steps that lumber may undergo while still meeting the requirements of this exclusion.[1533] Woodtone requests that texturing/resawing, profiling, and pre-painting/staining similarly be added to the list of processing steps permitted under this exclusion.[1534] NAFP provides several explanations for why the Department should modify the above-referenced exclusion. NAFP asserts that trimming, ripping/edging, re-sawing, and notching do not alter the U.S.-origin status of the lumber, and do not change the name, use or character of the U.S.-origin

[1528] *See* Petitioner Scope Rebuttal at 39-40.
[1529] *See* Preliminary Scope Memorandum at 9.
[1530] *See* Central Canada Scope Brief at 2.
[1531] *See* Petitioner Scope Rebuttal at 39-40.
[1532] *See Washers from Mexico* IDM at 7; *see also* Preliminary Scope Memorandum at 6 (*citing Narrow Woven Ribbons from the PRC*, 75 FR 7244, 7247, unchanged in *Narrow Woven Ribbons from Taiwan*).
[1533] *See* NAFP Scope Brief at 3.
[1534] *See* Woodtone Scope Brief at 3.

lumber in a degree that is substantially different from sanding, planning or kiln drying, *i.e.*, the agreed upon processing steps that meet the subject exclusion.[1535] NAFP also asserts that such processing would not change the tariff heading or country of origin for NAFTA purposes.[1536] Finally, NAFP argues that adoption of its proposed expanded exclusion would allow remanufacturers to purchase lumber from U.S. sawmills without undermining the remedial nature of any potential AD and CVD orders.[1537] Woodtone presents an analogous set of arguments in support of its position that texturing/resawing, profiling, and pre-painting/staining should be added to the list of processing steps permitted under this exclusion.[1538]

Despite the arguments provided by NAFP and Woodtone, the petitioner has not agreed to a revised exclusion. The petitioner states that it took into consideration the "types of processes" that would be "minor and sufficient to ensure that Customs could readily discern whether" lumber is of U.S. origin.[1539] The petitioner explains that outside of the three processing for which it has agreed to an exclusion, the additional processes proposed by NAFP and Woodtone do not meet its criteria. The petitioner states, for example, that notched lumber is covered by the plain language of the scope and cannot be considered a minor process, and asserts that "staining, pre-painting, ripping, and the other processes described by NAFP and Woodtone would prevent Customs from readily discerning whether the lumber is of U.S. origin."[1540]

As we explained in the Preliminary Scope Memorandum, and above, the Department gives substantial deference to the petitioner in fashioning the scope of a petition and the subsequent investigations.[1541] The Department's practice "is to allow petitioner to define the scope because petitioners have close knowledge of the products for which they seek relief"[1542] and the Department will accept the scope as written without "an overarching reason to modify the scope in the petition."[1543] The petitioner has explained that it does not believe an exclusion is appropriate for U.S.-origin lumber which is further processed beyond the kiln drying, planing, or sanding processes described above, and we do not believe that there are administration-related or evasion-related concerns which would otherwise justify a broadening of the product exclusion. Accordingly, the Department will not modify the scope of the investigations to include an exclusion for U.S. origin lumber which is processed in Canada using the processes identified by Central Canada, NAFP and Woodtone.

[1535] *See* NAFP Scope Brief at 3.
[1536] *Id.*
[1537] *Id.*
[1538] *See* Woodtone Scope Brief at 3-4.
[1539] *See* Petitioner Scope Rebuttal Brief at 40.
[1540] *Id.*
[1541] *See Washers from Mexico* IDM at Comment 7; *see also* Preliminary Scope Memorandum at 6.
[1542] *Notice of Final Determination of Sales at Less Than Fair Value: Outboard Engines from Japan* IDM at Comment 2.
[1543] *See* Preliminary Scope Memorandum at 7 (*citing Circular Welded Austenitic Stainless Pressure Pipe from the PRC Prelim*, 73 FR 51788, 51789, unchanged in *Circular Welded Austenitic Stainless Pressure Pipe from the PRC Final*).

Comment 101: Softwood Lumber Produced in Canada from U.S.-Origin Logs

In the Preliminary Scope Memorandum, the Department declined to adopt an exclusion covering lumber produced in Canada from U.S.-origin logs.[1544] Central Canada asserts that the Department should exclude from the scope of these investigations any lumber produced in Canada from U.S. logs.[1545] Specifically, Central Canada asserts that U.S. logs are not the merchandise of concern to the petitioner because those logs did not benefit from alleged stumpage subsidies in Canada. Because the logs did not benefit from stumpage, Central Canada argues that the softwood lumber produced from those logs should not be considered subject to the scope of these investigations. Further they claim that not granting an exclusion would cause serious injury to the U.S. timber industry and that the exclusion would be readily enforceable. The petitioner opposes this exclusion, asserting that the exclusion relates to products that are covered by the plain language of the scope, and there is no question that those products are softwood lumber made in Canada. Further, the petitioner asserts that the issue of whether U.S.-origin logs benefitted from countervailable subsidies or are sold at fair market prices is immaterial to the Department's scope analysis, as the potential injury to this industry does not relate to the language of the scope, which expressly covers the product at issue.[1546]

Department's Position: The Department disagrees with Central Canada. As an initial matter, we note that lumber produced from U.S-origin logs clearly constitutes Canadian softwood lumber. Such logs enter Canada as non-subject merchandise, and are processed into subject merchandise in Canada. No party argues otherwise. Accordingly, the request from Central Canada is that we treat certain types of Canadian softwood lumber in a different manner than other types of Canadian softwood lumber solely because of the log's place of harvesting.

As we have explained, in determining the scope of an AD or CVD investigation, the Department gives substantial deference to the intent of the party allegedly being injured by dumping and subsidization – the petitioner. In this case, the petitioner has explicitly, and consistently, opposed an exclusion for lumber made in Canada from logs harvested in the United States.[1547]

Central Canada asserts that despite the petitioner's opposition, the Department should nonetheless grant an exclusion for lumber made in Canada from U.S.-origin logs, because the thrust of the petitioner's CVD allegations is that Canadian provincial governments provide stumpage subsidies to Canadian softwood lumber manufacturers, and therefore Canadian lumber manufactured from U.S. logs cannot have benefited from those specific alleged subsidies.[1548]

We disagree that this argument justifies an exclusion from the scope of the investigations. First, this scope applies equally to both the investigation addressing subsidization of Canadian softwood lumber products, as well as the investigation addressing Canadian sales at less-than-fair-value of softwood lumber. With respect to the less-than-fair-value investigation, the existence or non-existence of stumpage programs covering U.S.-origin logs is of no import.

[1544] *See* Preliminary Scope Memorandum at Comment 31.
[1545] *See* Central Canada Scope Brief at 3-11.
[1546] *See* Petitioner Scope Rebuttal at 37-39.
[1547] *Id.*
[1548] *See* Central Canada Scope Brief at 3-11.

Furthermore, with respect to the CVD investigation, the Department is investigating several Canadian subsidy programs which have an alleged effect on the production of subject merchandise, and the investigation does not relate solely to stumpage.

Additionally, Central Canada asserts that failure to exclude Canadian lumber manufactured from U.S. logs from the scope of these investigations will cause serious injury to the U.S. timber industry. Furthermore, Central Canada asserts that an exclusion covering Canadian lumber made from U.S.-origin logs would be limited and readily enforced.[1549]

These arguments made by Central Canada are essentially the same arguments as those which were considered, and rejected, in the Preliminary Scope Memorandum. [1550] At issue in these investigations is the alleged injury to the COALITION caused by dumped or subsidized imports of Canadian softwood lumber. That is the industry which we must consider in assessing the scope of the investigations.

Furthermore, as explained above, in the vast majority of cases, the Department will defer to the petitioner's proposed language, and will only consider modifying that language when the proposed scope language raises certain concerns with the Department and CBP. As that is not the situation in this case, we agree with the petitioner that softwood lumber produced from logs harvested in the United States should not be excluded from the scope of these investigations.

For these reasons, we are not granting an exclusion for lumber made in Canada from U.S.-origin logs.

Comment 102: Remanufactured Goods

In our Preliminary Scope Memorandum, we determined that the scope of these proceedings covers remanufactured products.[1551] The GOC asserts that remanufactured products constitute a different class or kind of merchandise from the dimensional lumber that is the focus of these investigations, and that the Department should separate the merchandise identified in the petition into two or more separate classes or kinds of merchandise.[1552] The petitioner responds that the Department should continue to find that the merchandise covered by the scope of these investigations constitutes a single class or kind of merchandise.[1553]

Department's Position: We agree with the GOC that the Department has the authority to determine if a product, although covered by the proposed scope in a petition, is a different class or kind of merchandise from other products covered by the proposed scope.[1554] However, in this case, we disagree with the GOC's assertion that the general category of "remanufactured goods"

[1549] *Id.*
[1550] *See* Preliminary Scope Memorandum at Comment 31.
[1551] *Id.* at Comment 9.
[1552] *See* GOC Etal Common Issues Case Brief, at 103-107.
[1553] *See* Petitioner Scope Rebuttal at 3-8.
[1554] *See Torrington*, 745 F. Supp. at 728.

is a different class or kind of merchandise from all other merchandise covered by the scope of the investigations.

As we stated in our Preliminary Scope Memorandum, these investigations cover lumber products beyond dimensional lumber, and the petitioner explicitly included products that have undergone various levels of remanufacturing within the scope.[1555] Furthermore, numerous responses on the record of these proceedings clearly indicate that the scope covers lumber products beyond structural lumber. [1556]

The GOC summarily asserts that applying the *Diversified Products* criteria demonstrates that "dimensional lumber and the remanufactured products included in the scope of this investigation have different uses, different physical characteristics, different purchaser expectations, different channels of trade, and different manners in which the product is advertised and displayed."[1557] However, it is telling that the GOC has provided little argument and no facts on the record to permit the Department to conduct such an analysis with regard to remanufactured products on a product-by-product basis, or even at a more general level. Accordingly, as in our Preliminary Scope Memorandum, we cannot apply the Department's *Diversified Products* analysis to the general term "remanufactured products."

We do note that, for certain remanufactured products, particular interested parties did provide scope arguments with sufficient facts to permit such an analysis, as explained above. In these instances, the Department addressed those arguments in the context of product-specific scope requests.

Comment 103: Eastern White Pine

In *Lumber IV*, the Department based its determination concerning the scope status of Eastern White Pine (EWP) on a careful and thorough evaluation of the entire case record concerning the *Diversified Products* criteria.[1558] As part of this proceeding, the ITC considered comparable criteria and reached the same conclusion, *i.e.*, that EWP cannot be distinguished as a separate class or kind of softwood lumber distinct from the merchandise covered by these investigations.[1559] In the Preliminary Scope Memorandum we analyzed record evidence

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[1555] *See* Preliminary Scope Memorandum at Comment 9; *see also* Petitioner Supp QNR 1; Petitioner Rebuttal Comments – Scope.
[1556] *See* Petitioner Supp QNR 1; Petitioner Rebuttal Comments – Scope.
[1557] *See* GOC Etal Common Issues Case Brief, at 103-107.
[1558] On March 12, 2002, as part of the *Lumber IV* investigation, the Department issued a memorandum preliminarily determining that certain lumber products for which a class or kind determination had been requested did not constitute a separate class or kind. *See* Memorandum, "Class or Kind Determinations and Consideration of Certain Scope Exclusion Requests," dated March 12, 2002 (*Lumber IV* Preliminary Scope Memorandum, included in the Preliminary Scope Memorandum as Attachment III. This determination was unchanged in *Lumber IV Final AD Determination*. Notably, in the litigation which followed before a NAFTA Panel, the Department's class or kind determination with respect to EWP was upheld by the Panel as lawful. *See In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Antidumping Determination*, Sec. No. USA-CDA-2002-1904-02 (July 17, 2003) at 161-162 (holding that the Department's "determination not to treat EWP as a separate 'class or kind' of merchandise is supported by substantial evidence on the record, and is not contrary to law").
[1559] *See ITC Preliminary Determination* at 8-12.

concerning EWP based on the *Diversified Products* criteria finding, consistent with *Lumber IV* and the ITC preliminary determination, that EWP is the same class and kind of merchandise as the softwood lumber covered by the scope of these investigations.[1560]

Central Canada argues that EWP, while botanically a softwood, commercially is a hardwood and maintains that EWP is distinct from softwood lumber in every respect, and consequently is a separate class or kind of merchandise. Central Canada presented arguments addressing each of the five *Diversified Products* criteria.[1561]

In arguing that EWP has distinct physical characteristics from the lumber under investigation, Central Canada argues that EWP cannot bear loads and is not used structurally. Rather, Central Canada argues it is a discrete species of an appearance grade lumber that is presented and dressed in a unique way, is weaker and softer than the subject merchandise lumber, is permeable, and is cut to unique and distinct sizes. Central Canada claims that EWP is valued primarily for its overall attractive appearance, and that producers use manufacturing methods designed to maximize the quality and appearance of the wood when displaying it, similar to hardwood producers. Central Canada contends that the focus of these investigations is construction grade, framing lumber, which EWP is not. Central Canada claims that the Department misconstrued the ITC's statement that it is interchangeable with other types of softwood lumber. Central Canada claims that the ITC was referring to how EWP could be interchanged with other types of hardwood.

As it stated in comments submitted prior to the preliminary determination, Central Canada asserts that EWP is prized for its dimensional stability and aesthetic appeal, but does not have the strength required for construction uses. EWP has its own grading system based on the product's appearance, distinguishing it from other types of softwood lumber. Purchasers can expect from EWP a uniquely aesthetic, workable, appearance-grade wood fiber and expect it to be offered in unique and distinct sizes. Central Canada states that customers expect to pay 50 or even 100 percent more for EWP than typical softwood lumber. Central Canada claims that EWP is often cut to secondary manufacturers specifications and is produced in mills typically dedicated to EWP production. Further, Central Canada claims that the 15-year-old data from *Lumber IV* that the Department relied on in its preliminary decision is out of date, and therefore provides an insufficient basis to support the Department's finding that softwood lumber products sell at prices similar to EWP.

Concerning end use, Central Canada states that due to its appearance, workability, moisture content and dimension, EWP is distinctly suitable for end uses such as furniture applications, exterior siding, interior paneling, and crafts. These same characteristics, and its high price, it argues, render it unsuitable for uses such as general construction. Central Canada notes that while the Department claims that EWP could be used in construction, the Department failed to provide any examples of such use. Central Canada claims the Department did not rebut the proof it presented regarding the differing expectations regarding the size and price of EWP.

[1560] *See* Preliminary Scope Memorandum at Comment 27.
[1561] The criteria from *Diversified Products*, 572 F. Supp. 883, 889 as set forth in 19 CFR 351.225(k)(2).

With respect to channels of trade, Central Canada contends, as it did in pre-preliminary determination comments, that EWP is sold primarily to furniture, window and other specialty product manufacturers that make use of its appearance and high dimensional stability, whereas softwood lumber is delivered to distribution centers for subsequent delivery to home builders or retailers. EWP, it claims, is sold predominantly in the eastern United States while the Western Pines are sold in the West. In addition, Western Pine, it claims, is usually transported by rail, whereas EWP is moved almost exclusively by truck. Central Canada notes that the Department has placed nothing on the record to contradict its statements regarding distribution channels.

Central Canada asserts that the following statements made in pre-preliminary determination comments were not disputed by the Department: The lumber industries market EWP in a different manner than softwood lumber by giving EWP its own grading system. EWP grading rules are developed for appearance. By contrast, the rules for dimension lumber are based on structural uses. The differences in grading rules reflect the wide recognition that EWP's end uses are directly related to its appearance, rather than strength and resistance to impact. In these and many other respects, EWP is more like hardwoods than softwoods. Also, Central Canada argues that EWP producers present more creative marketing in support of their products that do Western Pine producers. Central Canada also notes that EWP is shipped in different lengths and sizes because it is often cut to precise specifications. Further, due to the importance of appearance, EWP is individually packed and shipped by truck, while Western Pine is typically transported by rail.

The petitioner responds that, because all species of softwood lumber are covered by the plain language of the scope, EWP, a species of softwood lumber, is covered by the plain language of the scope. Further, the petitioner points out that this interpretation of the scope is consistent with the Department's conclusions in *Lumber IV*.

With respect to the Department's scope regulations, the petitioner points out that the regulation which contains the *Diversified Products* factors, 19 C.F.R. 351.225, specifies in subsection (a) that "the Department issues 'scope rulings' {under section 225} that clarify the scope of an order or suspended investigation with respect to particular products," only after an investigation is completed. Therefore, petitioner argues the Department is not required by law to apply the *Diversified Products* criteria in this investigation because the scope of an order or suspension agreement has not yet been issued.

In any case, the petitioner emphasizes that 19 CFR 351.225(k)(2) of the Department's regulations states that the Department resorts to a *Diversified Products* analysis only when the 19 C.F.R. 351.225(k)(1) factors – descriptions of the merchandise contained in (1) the petition, (2) the initial investigation, and (3) the determinations of the Department (including prior scope determinations) and the Commission – "are not dispositive." Thus, even if the regulation did apply, the petitioner argues that Central Canada's reliance on the *Diversified Products* criteria is misplaced because, in fact, the (k)(1) factors are dispositive on this issue.

However, should the Department address the *Diversified Products* criteria, with regard to physical characteristics, the petitioner argues that EWP shares general physical characteristics with other species of softwood lumber. The petitioner also contends that despite Central

Canada's comments to the contrary, the Department did not misconstrue the ITC's findings, as the ITC expressly stated in its preliminary determination that "{Central Canada} acknowledged that EWP is interchangeable with other appearance-grade woods rather than with species used for framing."[1562] With regard to the ultimate purchasers of EWP, the petitioner cites to the Department's finding in *Lumber IV* that customer expectations for all appearance-grade lumber are quite similar as they are all based on the appearance of the lumber itself.[1563] The petitioner cites to Central Canada's statement that EWP is marketed and displayed separately from dimensional lumber and notes that such a characteristic is not unique among appearance-grade lumber, as the Department found that Western Red Cedar and Eastern White Cedar are also marketed differently than dimensional lumber.[1564] With regard to end-use, the petitioner highlights the Department's citation to the ITC's preliminary report and the United States Department of Agriculture (USDA) Forest Service Wood Handbook, which state that EWP is used in wide range of uses, including as structural lumber, and notes that softwood lumber products such as sugar pine, ponderosa pine, Idaho pine, and spruce are interchangeable with white pine in the same applications.[1565] Finally, with respect to advertising, the petitioner states that EWP is marketed and sold in a similar manner to other types of appearance grade softwood lumber.

Department's Position: The plain language of the proposed scope covers all species of softwood lumber and no party, including Central Canada, has contended that EWP is not a species of softwood lumber. While the petitioner has argued that, because EWP is covered by the plain language of the proposed scope, there is no need to rely on an analysis under the *Diversified Products* criteria, we disagree. Regardless of whether a product is covered by a proposed scope during an investigation, pursuant to section 731 of the Act, AD and CVD orders cover only one class or kind of merchandise. Thus, if EWP were found to be a different class or kind of merchandise from all other in-scope merchandise during this investigation, the Department would have to determine if a separate AD and CVD order is appropriate to solely cover EWP. As noted above, the Department has the authority to determine if a product, although covered by the proposed scope of an investigation, is a different class or kind of merchandise from the other products covered by the proposed scope.[1566]

Accordingly, for these reasons, as it did in *Lumber IV*[1567] and as the ITC did in its preliminary determination,[1568] the Department conducted an analysis under the *Diversified Products* criteria in the preliminary determination. The results of all three analyses is that EWP is of the same class or kind of merchandise as the other products covered by the scope of these investigations. Central Canada has not offered arguments beyond those already addressed in the preliminary determination.[1569] Thus, we are not going to repeat our analysis regarding the application of

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[1562] *See ITC Preliminary Determination* at 14.
[1563] *See Lumber IV Final AD Determination* IDM at Comment 52.
[1564] *Id.*
[1565] *See* Preliminary Scope Memorandum at Comment 27.
[1566] *See Torrington*, 745 F. Supp. at 728.
[1567] *See Lumber IV* Preliminary Scope Memorandum.
[1568] *See ITC Preliminary Determination* at 8-12.
[1569] *See* Preliminary Scope Memorandum at Comment 27.

each of the five diversified criteria to EWP, which we addressed extensively in the Preliminary Scope Memorandum.[1570]

We do emphasize, however, that despite Central Canada's claims to the contrary, the ITC noted that EWP is interchangeable with other appearance grade woods. In fact, the ITC explained that "the record demonstrates that softwood lumber products such as sugar pine, ponderosa pine, Idaho pine, and spruce are interchangeable with white pine in the same applications."[1571] This conclusion is significant, because the ITC determined that the record demonstrated that EWP was interchangeable with other types of *softwood*, and not hardwood, lumber. This conclusion was made despite the fact that Central Canada continually argues that EWP is more akin to a hardwood. We note that following this statement, the ITC preliminary determination then proceeded to state that "EWP is interchangeable with other appearance-grade woods"[1572] and that "EWP is not the only species of softwood lumber for which the grading system is not based on strength."[1573] Central Canada's claims notwithstanding, as shown from the ITC's statements excerpted above, the Department did not misconstrue the ITC's conclusions.

As was the case in its pre-preliminary determination, Central Canada contends that the focus of these investigations is softwood lumber used for structural purposes. Central Canada argues that EWP is not used for structural purposes and thus it constitutes a different class or kind of merchandise from softwood lumber used for structural purposes. However, the USDA Forest Service Handbook notes that a large proportion of EWP, mostly second-growth knotty wood or lower grades, is used for structural lumber.[1574] While Central Canada contends that EWP is too expensive to be considered for use in structural lumber, this argument does not appear to address the USDA's statement that customers buy lower grade EWP for structural uses. The Department also explained in *Lumber IV* that information on the record indicated that EWP had been, and was being, used in construction. Therefore, we agreed with, and cited to, a finding in *Lumber IV* that "differences in structural strength are not so great (between EWP and other lumber) to be deemed unique when compared to other softwoods."[1575]

Leaving aside for the moment the question of whether EWP can be used in structural lumber applications, the scope of these investigations is softwood lumber, which covers a wide range of products, many of which have applications aside from structural applications and many of which have applications that include both structural and non-structural applications. If the Department were to categorize each species of softwood lumber into groups that had the same applications and average prices, as argued for by Central Canada, the result would likely be a determination that there are as many class or kinds of merchandise as there are softwood lumber species. Such an application of the *Diversified Products* criteria is unreasonable and there is no legal

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[1570] *Id*.
[1571] *See ITC Preliminary Determination* at 10.
[1572] *Id*.
[1573] *Id*.
[1574] *See* Memorandum, "Certain Softwood Lumber Products from Canada: Scope Exclusion Requests Received from Oregon-USDA Forest Service Wood Handbook - Wood as an Engineering Material," dated February 10, 2017, (USDA Forest Service Handbook) at 2-13.
[1575] *See Lumber IV* Preliminary Scope Memorandum at 28.

requirement for the Department to categorize scopes into arbitrarily narrow classes or kinds of merchandise in this manner.

Central Canada states that EWP is not typically produced at the same mills as other types of softwood lumber. To the extent that EWP is produced at mills dedicated to producing only EWP, and it is not clear that such mills exist, this is hardly unique to EWP. Canfor reported making fencing and boards at its WynnWood sawmill.[1576] Tolko has mills dedicated to producing only Western Red Cedar products, another mill whose only production of in-scope-merchandise is dunnage, pallets, lathe strips and economy stud lumber.[1577] Similarly, West Fraser maintains mills dedicated to a small number of particular products.[1578]

While Central Canada claims that EWP is often cut to secondary manufacturer's specifications, this is hardly unique to EWP. Not only does the dimensional lumber cited throughout this record consist of many lengths, widths, and thicknesses, but the scope specifies as in-scope merchandise shims, pallet runners, flooring and siding that have been tongued, grooved, molded and rounded. The scope also covers semi-finished lumber, and covers products sold in many shapes and sizes. The shapes and sizes of EWP, and the manner in which it is packaged, falls well within the spectrum of how other in-scope-merchandise is packaged and sold.

Central Canada also relies significantly on its assertion that, as opposed to SPF lumber, EWP is used and purchased for its appearance. Being purchased based on appearance is hardly unique to EWP. The National Lumber Grades Authority (NLGA) is replete with types of softwood lumber graded based on appearance.[1579] The ITC found that other premium products such as Redwood and other types of Cedar, including Atlantic White Cedar, are priced based on their appearance.[1580] Likewise, the Department found that many other pines are selected based on appearance.[1581] The ITC noted that, while there is a separate grading system for EWP, EWP is not the only species of softwood lumber for which the grading system is not based on strength.[1582]

Central Canada also cites to the higher price of EWP relative to average prices of softwood lumber as a reason for finding it to be a distinct class or kind from the merchandise under consideration. However, as noted above, the ITC found that many softwood lumber products, such as Ponderosa Pine, Idaho White Pine, Redwood, Eastern Red Cedar, Yellow Cedar, Port Orford Cedar, Bald Cypress, Atlantic White Cedar, also sell at prices similar to EWP.[1583] While Central Canada notes that the pricing data cited to by the Department are 15 years old, Central Canada has presented no evidence demonstrating that these data and conclusions no longer apply.

[1576] *See* Canfor's February 28, 2017, Section A Response (Canfor AQR), at A-38.
[1577] *See* Tolko Comments QNR Clarification Request 3, at 3-5.
[1578] *See* Letter from West Fraser, "Certain Softwood Lumber Products from Canada. Case No. A-122-857: Rebuttal Comments on Product Characteristics," dated February 13, 2017, at 2-7.
[1579] *See* National Lumber Grades Authority, 2014, placed on this record on February 10, 2017, at Section 5.
[1580] *See ITC Preliminary Determination* at 10.
[1581] *See Lumber IV* Preliminary Scope Memorandum at 30.
[1582] *Id*.
[1583] *See ITC Preliminary Determination* at 14.

Central Canada claims that EWP cannot be used for any of the end uses of typical softwood lumber; yet, based on Central Canada's own assessment, while 75 percent of all softwood lumber is used for construction applications, 25 percent of softwood lumber applications are non-construction uses. Both the USDA Forest Service Handbook and the NLGA identify many different applications for softwood lumber, including decking, siding, flooring, products used based on their appearance, fencing, and many other applications structural purposes.[1584] With so many colors, sizes, and densities among the different forms of softwood lumber, the scope of this investigation of softwood lumber includes many different types of wood with many different applications and a wide range of prices – all of which constitute subject merchandise. Further, many single species of softwood lumber have many different applications, as evidenced above, and thus EWP is not distinct from the softwood lumber covered by the scope of this investigation in that it has many different potential applications.

With respect to EWP sales information, aside from a declaration placed on the record from a sales manager of a company arguing to exclude EWP,[1585] Central Canada has provided few details demonstrating how EWP is sold in different channels of trade from other softwood lumber, despite being provided with ample opportunity to do so. This declaration stands in contrast to other record evidence. As noted above, the USDA noted that other species of softwood lumber are used in identical applications as EWP, and the ITC found that other softwood lumber products (such as Ponderosa Pine, Idaho White Pine, Redwood, Eastern Red Cedar, Yellow Cedar, Port Orford Cedar, Bald Cypress, Atlantic White Cedar) also sell at prices similar to EWP.[1586] Central Canada claims that EWP is sold predominantly in eastern North America and shipped by truck, while Western White Pine is sold predominantly in the west. Even if true, this only distinguishes EWP from Western White Pine and not the myriad of other softwood lumber products on the record, and Central Canada has not demonstrated that being shipped by truck in the more densely populated eastern North America is unique to EWP. Thus, there is nothing on this record that would distinguish our analysis from our decision in *Lumber IV*, where we found that the information on the record did not substantiate the claim that EWP is "sold in unique and distinguishable channels."[1587]

As discussed above and demonstrated on the record, softwood lumber consists of many species that create a spectrum of densities, applications, appearances, and many other characteristics. Further, each species of softwood lumber has a multitude of applications. If the Department were to categorize each species of softwood lumber into groups that had the same applications and average prices, the result would likely be a determination that there are as many kinds and classes of merchandise as there are softwood lumber species. Not only would such a result be impossible to administer, as discussed above and in the Preliminary Scope Memorandum, the ITC Preliminary Determination, and in *Lumber IV*, such precision in determining separate classes and kinds of merchandise is inconsistent with the application of the *Diversified Products* criteria to softwood lumber. This is because many, if not most, species of lumber, such as EWP,

[1584] *See* USDA Forest Service Handbook and Memorandum, "Certain Softwood Lumber Products from Canada: NLGA," dated February 10, 2017.
[1585] *See* OFIA and CIFQ Scope Comments at Attachment 2.
[1586] *See ITC Preliminary Determination* at 14.
[1587] *See Lumber IV Final AD Determination* IDM at Comment 52.

do not just have one defining use or physical characteristic, but instead have a wide range of overlapping physical characteristics, end uses, customer expectations, and selling strategies. For instance, while softwood lumber species A may have a different primary application than softwood lumber species B, the secondary application of A, often overlaps with the primary application of B.

Central Canada has not cited to an example of an instance where all five *Diversified Products* criteria differ with respect to EWP and all other species of softwood lumber. This is due to the wide-ranging and overlapping characteristics of softwood lumber. Thus, we continue to find that EWP is not sufficiently different from the range of products subject to these investigations to be considered a separate class or kind of merchandise from the merchandise under consideration. Additionally, the petitioner has not supported an exclusion for these species, and we defer to its intention to have this merchandise covered by the scope of the investigations.

Comment 104: Whether the Department Should Conduct a Pass-Through Analysis for Independent Remanufacturers That Purchase Softwood Lumber at Arm's Length

The GOC argues that this case could have a substantial impact on a significant number of independent remanufacturers who do not hold harvest rights on Crown lands, are not affiliated or cross-owned with entities that hold harvest rights on Crown lands, and that purchase all their lumber in arm's-length transactions.[1588] Citing a decision from the CAFC and a WTO determination, the GOC argues that the Department may not presume a pass-through of a benefit in arm's-length transactions and, therefore, in the case of independent remanufacturers, the Department must conduct a pass-through analysis before it may countervail any alleged subsidies on the lumber that independent remanufacturers use to produce remanufactured products.[1589] The GOC further argues that the Department should establish a separate "all-others" rate for independent remanufacturers in this final determination, which incorporates a pass-through analysis.[1590]

Department's Position: In essence, the GOC is arguing for a countervailing duty analysis to be performed for independent remanufacturers not selected as mandatory respondents and who did not seek to be examined as voluntary respondents. However, when we conduct a company-specific, rather than an aggregate, investigation, and we limit our selection of respondents, we do not conduct a countervailing duty analysis—including a pass-through analysis—for companies that are not individually examined. None of the cases cited by the GOC contradict this position. Although the cases cited by the GOC suggest that the Department may conduct a pass-through analysis where a company is individually examined,[1591] or where we conduct an investigation on

[1588] *See* GOC Etal Common Issues Case Brief at 108.
[1589] *Id*. at 109.
[1590] *Id.* at 110-1154.
[1591] I*d.* at 108-109 (citing *Delverde, SrL v. United States*, 202 F.3d 1360, 1366-67 (CAFC 2000) and *Allegheny Ludlum Corp. v. United States*, 367 F.3d 1339, 1347 (CAFC 2004).

an aggregate basis,[1592] the GOC has failed to support its contention that the Department must conduct a pass-through analysis for respondents that would fall into the "all-others" category.

Rather, the all-others rate established in AD and CVD proceedings is established to cover such scenarios: a rate applicable to all non-selected companies exporting softwood lumber products to the United States meeting the description of the scope of these investigations. Pursuant to section 705(c)(1)(B)(i)(I) of the Act, the Department will determine the estimated countervailable subsidy rate for each exporter and producer individually investigated, and will determine, in accordance with section 705(c)(5) of the Act, the estimated all-others rate for all exporters and producers not individually investigated. Section 705(c)(5) unambiguously directs that, where the Department conducts a company-specific investigation, "the all others rate *shall* be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely {using facts available with an adverse inference}."[1593] Thus, the Department has no authority to establish a different rate for certain subcategories of exporters and producers other than through the rates calculated for individually examined exporters and producers. We have calculated the all-others rate, which will apply to independent remanufacturers, as directed by the statute. However, as noted above, exporters and producers seeking their own CVD rate can request that they be individually reviewed as part of an expedited review after the publication of the CVD order, should the ITC reach an affirmative injury determination. A company that receives a *de minimis* or zero subsidy rate in an expedited review will be excluded from the CVD order.

Comment 105: Whether Countervailing Duties Should Only Be Applicable on a First Mill Basis

The GOC notes that the mandatory respondents' sales of in-scope merchandise are of dimensional lumber and the subsidy allegations for the most part relate to dimensional lumber as well. Thus, the GOC argues, any calculated subsidy rate for all intents and purposes will be a subsidy rate for dimensional lumber, similar to what was done in a prior lumber proceeding.[1594] Accordingly, the Department should order that duties to be collected on the same basis, which is essentially a first mill basis. The GOC argues that it would be unfair to apply CVD cash deposit rates to the extra value added by remanufacturing, which is unrelated to the alleged subsidies.[1595]

Department's Position: Absent any product exclusions or other exclusions based on a *de minimis* or zero subsidy rate, this investigation covers all softwood lumber products entering the United States that meet the description of the scope of these investigations, including any remanufactured products. In accordance with section 705(c)(1)(B)(ii) of the Act, we will direct

[1592] *See id.* at 109 (citing *US – Softwood Lumber IV*). We also note that the Department is governed by U.S. law, which is, in turn, fully consistent with our WTO obligations. As we have explained, our decision not to conduct a pass-through analysis for not not-individually examined remanufacturers in this determination is fully consistent with the Act.
[1593] *See* section 705(c)(5)(A)(i) of the Act (emphasis added). *See also* section 777A(e)(2) of the Act ("The individual countervailable subsidy rates determined … shall be used to determine the all-others rate under section 705(c)(5).").
[1594] *Id*. at 115.
[1595] *Id*.

CBP to collect cash deposits on merchandise subject to this investigation (including remanufactured products that are in-scope) "in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable." Because, as discussed in Comment 104, the statute requires that the all-others rate applicable to exporters and producers other than the five individually-examined respondents be based on those individually-examined rates, and because the statute further requires the Department to instruct CBP to order the posting of cash deposits in the amount of the estimated all-others rate, we will not direct CBP to instead require duties only on a first mill basis. Further, to the extent the GOC is arguing that First Mills should be examined individually, as noted elsewhere, the Department continues to find that it does not have the authority to conduct a company exclusion process in the context of this investigation for respondents that have not been individually-investigated.

Comment 106: Whether the Department Should Exclude Softwood Lumber Products from New Brunswick

Subsequent to the *Preliminary Determination*, the Department excluded from the investigation softwood lumber products certified by the ALB to be both harvested and produced in Newfoundland and Labrador, Nova Scotia, and Prince Edward Island.[1596] The GNB argues that the Department should exercise its authority and also exclude New Brunswick products from this investigation because not doing so would result in a grave injustice to lumber producers in the province of New Brunswick. Specifically, the GNB contends that it would be grossly unfair for the Department to apply the 19.88 percent preliminary all-others rate to New Brunswick softwood lumber producers because it has no semblance of reality, particularly in light of the oligopsony effect the Department preliminarily identified in the New Brunswick stumpage market.[1597] The GNB notes that if JDIL's calculated subsidy rate, as adjusted for the arguments made by JDIL in its case and rebuttal briefs are adopted, falls below one percent for the final determination, then the other producers in New Brunswick should also have a similar rate. The GNB also argues that there is also a lack of concern from the U.S. industry about subsidies being received by softwood lumber producers from the Maritime provinces, including New Brunswick.[1598] Finally, the GNB argues that excluding softwood lumber products from New Brunswick would reduce the Department's administrative burden by avoiding the need for individual company reviews for each producer in New Brunswick.

Department's Position: On May 5, 2017, the petitioner amended the scope in the Petition,[1599] indicating that it had no interest in seeking relief in connection with Canadian exports of lumber both harvested and produced in the Atlantic Provinces.[1600] The petitioner has not alleged subsidies provided by the governments of the Atlantic Provinces, and none of the mandatory respondents reported producing softwood lumber products in these provinces.[1601] On June 23,

[1596] *See* Preliminary Exclusion Memorandum.
[1597] *See* GNB Case Brief at 48-49.
[1598] *Id.* at 49.
[1599] *See* Petitioner Amendment to the Petition.
[1600] Provinces of Newfoundland and Labrador, Nova Scotia, and Prince Edward Island.
[1601] *Id*.

2017, in response to arguments and upon consideration of the Petition Amendment, the Department preliminarily determined that certain softwood lumber products certified by the ALB as being first produced in the Atlantic Provinces from logs harvested in these provinces are excluded from the scope of the AD and CVD investigations.[1602] In that Preliminary Exclusion Memorandum, the Department did not exclude softwood lumber products from New Brunswick.

In this CVD investigation, we preliminarily found that JDIL, a lumber producer in New Brunswick being examined as a voluntary respondent, received countervailing subsidies, including subsidized stumpage, at a CVD rate of 3.02 percent. In the final determination, the record supports continuing to find that JDIL received countervailable subsidies. To the extent that the GNB argues that "if the Department's unproven theory of there being an oligopsony in the New Brunswick market is actually true, then the small producers in the province with less control of the market would pay a higher price for stumpage than JDIL and therefore would receive a lower subsidy margin than JDIL."[1603] This argument is speculative, and, in any event, because we continue to determine that JDIL received countervailable subsidies, we have no information on the record to demonstrate that all other softwood lumber producers in the province would have received *de minimis* subsidies. We are particularly unwilling to engage in such speculation when individual softwood lumber producers may request an expedited review for the Department to determine an individual subsidy rate.

With respect to the suggestion that other softwood lumber producers in New Brunswick should receive the same CVD rate as JDIL, section 705(c)(1)(B)(i)(I) of the Act directs the Department to determine the estimated countervailable subsidy rate for each exporter and producer individually investigated and determine, in accordance with section 705(c)(5) of the Act, the estimated all-others rate for all exporters and producers not individually investigated. Section 705(c)(5) unambiguously directs that, where the Department conducts a company-specific investigation as it is doing here, "the all others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely {using facts available with an adverse inference}."[1604] Thus, the Department has no authority to establish a different rate for certain subcategories of exporters and producers other than through the rates calculated for individually examined exporters and producers. Accordingly, we have calculated the all-others rate, which will apply to those producers and exporters in New Brunswick that were not selected for individual examination, as directed by the statute.

In addition, we note that the petitioner did not amend the Petition to exclude products from New Brunswick from these investigations. As we stated in the Preliminary Exclusion Memorandum, it is the Department's general practice to defer to the intent of the petitioner and fulfill the Department's statutory mandate to provide, where appropriate, the relief requested by the

[1602] *See* Preliminary Exclusion Memorandum at 1.
[1603] *See* GNB Case Brief at 48-49.
[1604] *See* section 705(c)(5)(A)(i) of the Act (emphasis added). *See also* section 777A(e)(2) of the Act ("The individual countervailable subsidy rates determined … shall be used to determine the all-others rate under section 705(c)(5).").

petitioning industry.[1605] Therefore, because we continue to find that countervailable subsidies exist in New Brunswick, and received by JDIL, and because the Petitions Amendment did not seek to exclude softwood lumber products from New Brunswick, we have not excluded New Brunswick from these investigations for the final determination. However, as noted above, exporters seeking their own CVD rate can request an expedited review after the publication of the CVD order. A company that receives a *de minimis* or zero subsidy rate in an expedited review will be excluded from the CVD order.

Comment 107: Whether the Department Should Finalize the Exclusion of Softwood Lumber Products from the Atlantic Provinces

As noted above in Comment 106, subsequent to the *Preliminary Determination*, the Department excluded from the investigation softwood lumber products certified by the ALB as being both harvested and produced in the Atlantic provinces.[1606] The GNS supports the Department's exclusion as articulated in the Preliminary Exclusion Memorandum, but wants to alleviate any concerns that the Department may have regarding CBP's ability to effectively administer this exclusion. Specifically, the GNS argues that given CBP's long history with this exclusion (over three decades), CBP has experience administering a scope exclusion covering these types of softwood lumber products.[1607] Moreover, given the close parallel between the previous certificate from the prior cases and the SLA, CBP will be familiar with the document and the exclusion process.[1608] In addition, the GNS notes that given CBP's experience with certifications in other cases, it is clear this process is familiar to CBP, making this exclusion process manageable, removing any concerns from the parties to this proceeding.[1609] Finally, the GNS argues that CBP can leverage its experience to effectively monitor and enforce the exclusion by, for example, requiring that the ALB certificate be included with each entry and/or requiring that the ALB certificate of origin number be identified on each CBP Form 7501. The Department also has the authority to prescribe how CBP must administer the exclusion.

Department's Position: We agree with the GNS and given that no party challenged the Department's *Preliminary Determination* to exclude from the investigation softwood lumber products certified by the ALB as being both harvested and produced in the Atlantic provinces, we have adopted this exclusion for the final determination. We have also determined that we will instruct CBP to require that the ALB certificate be included with each entry and require that the ALB certificate of origin number be identified on each CBP Form 7501, for such entries to be excluded from the scope of the order, if issued. If an order is issued, we will instruct CBP to refund cash deposits collected on any suspended entries accompanied with the ALB certificate.

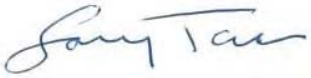
[1605] *Id*. at 5-6.
[1606] *See* Preliminary Exclusion Memorandum at 1.
[1607] *See* Nova Scotia Scope Case Brief at 2.
[1608] *Id*. at 3.
[1609] *Id*. at 3-4

Conclusion

Based on our analysis of the comments received, we recommend adopting all the above positions. If these recommendations are accepted, we will publish the final determination in the *Federal Register*, and we will notify the ITC of our determination.

☒	☐
Agree	Disagree

11/1/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

APPENDIX I

ACROYNM AND ABBREVIATION TABLE

This section is sorted by Complete Name.

Acronym/Abbreviation	Complete Name
Abitibi-Bowater	Abitibi-Bowater Canada Inc.
ACCA	Accelerated Capital Cost Allowance
AR	Administrative Review
AFA	Adverse Facts Available
AGFOR	AGFOR Inc.
SCM Agreement	Agreement on Subsidies and Countervailing Measures
AFoA	Alberta Forests Act
AFRIR	Alberta Forests Resources Improvement Regulation – AR 38/2013
Joint Management Committee	Alberta Joint Energy/Utility and Forest Industry Management Committee
AMAF	Alberta Ministry of Agriculture and Forestry
ASR	Alberta Scaling Regulation – AR 195/2002
ATMR	Alberta Timber Management Regulation – AR 404/1992
AAC	Annual Allowable Cut
AOP	Annual Operating Plans
AWS	Annual Work Schedule
AD	Antidumping Duty
AJCTC	Apprenticeship Job Creation Tax Credit
ARTT	Arrangement and Reduction of Work Time
ACOA	Atlantic Canada Opportunities Agency
AIF	Atlantic Innovation Fund
AITC	Atlantic Investment Tax Credit
ALB	Atlantic Lumber Board
ACE	Automated Commercial Environment
AHA	Available Harvest Area
AUV	Average Unit Volumes
AUL	Average Useful Life
Barrette	Barrette Wood, Inc.
BPCP	Bioenergy Producer Credit Program
BPP	Bioenergy Producer Program
Bowater	Bowater Canadian Ltd.
BC	British Columbia
BCAA	British Columbia Assessment Authority
BCLTC	British Columbia Lumber Trade Council

BCTS	British Columbia Timber Sales
BCUC	British Columbia Utilities Commission
BPI	Business Proprietary Information
CRA	Canada Revenue Agency
CAD	Canadian Dollars
CFP	Canadian Forest Products, Ltd.
Canfor	Canfor Corporation, Canfor Wood Products Marketing Ltd. and, Canadian Forest Products, Ltd.
Canfor Pulp	Canfor Pulp Products Inc.
CWPM	Canfor Wood Products Marketing, Ltd.
Central Canada Alliance	Central Canadian Alliance of the Ontario Forest Industries Association and the CIFQ
Softwood Lumber	Certain Softwood Lumber Products
CFR	Code of Federal Regulations
CTP	Commercial Timber Permits
Petitioner	Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (a.k.a. COALITION)
CCTP	Coniferous Community Timber Permit (and License)
Quota	Coniferous Timber Quota Certificates
CTQ	Coniferous Timber Quotas
CIFQ	Conseil de l'Industrie Forestiere du Québec
CEP	Consultation for Employment Program
CVD	Countervailing Duty
CAFC	Court of Appeals for the Federal Circuit
CIT	Court of International Trade
CFSA	Crown Forest Sustainability Act
CLFA	Crown Lands and Forests Act
Deloitte	Deloitte LLP
DSM	Demand Side Management
DERD	Department of Energy and Resource Development
DFATD	Department of Foreign Affairs, Trade and Development
DNR	Department of Natural Resources
DBH	Diameter at Brest Height
Hendricks Report	Dr. Kenneth Hendricks - An Economic Analysis of the Ontario Timber Market and an Examination of Private Market Prices in that Competitive Market (March 10, 2017) (see GOO Primary QNR Response at Exhibit ON-PRIV-2)
EACOM	EACOM Timber Corporation
EPA	Electricity Purchase Agreement
eFAR	Electronic Facility Annual Return
EIPA	Export and Import Permits Act

EDC	Export Development Canada
EGP	Export Guarantee Program
FPPGTP	Federal Pulp and Paper Green Transformation Program
FTEAC	Federal Timber Export Advisory Committee
FTC	Federal Trade Commission
FAIP	Financial Assistance to Industries Program
FY	Fiscal Year
FHP	Forest Harvest Plans
FMA	Forest Management Agreement
FMP	Forest Management Plans
FMU	Forest Management Unit
FRIAA	Forest Resource Improvement Association of Alberta
FRIP	Forest Resource Improvement Program
FRL	Forest Resource License
FRIR	Forest Resources Improvement Regulation
FortisBC	FortisBC Inc.
G&A	General and Administrative
GDP	General Development Plans
GWh	Gigawatt Hours
GTA	Global Trade Atlas
GOA	Government of Alberta
GBC	Government of British Columbia
GOC	Government of Canada
GOM	Government of Manitoba
GNB	Government of New Brunswick
GNS	Government of Nova Scotia
GOO	Government of Ontario
GOQ	Government of Québec
GOS	Government of Saskatchewan
HST	Harmonized Sales Tax
HTS	Harmonized Tariff Schedule
HTSUS	Harmonized Tariff Schedule of the United States
HBS	Harvest Billing System
HHI	Herfindahl-Hirschman Methodology
IKEA	IKEA Supply AG and IKEA Distribution Services Inc.
IPI	Implict Price Index
ITA	Income Tax Act
ITR	Income Tax Regulations
IESO	Independent Electricity System Operator

IPP	Independent Power Producer
IQR	Initial Questionnaire Response
IFTA	International Fuel Tax Agreement
IPL	Irving Paper Limited
IPP	Irving Pulp & Paper, Limited
IDM	Issues and Decision Memorandum
JDIL	J.D. Irving Limited
Jendro & Hart Report	Jendro & Hart, LLC - Critique of Petitioner's Proposed Cross-Border Subsidy Methodology (March 13, 2017) (see GBC Primary QNR Response Part 1 at Vol. I Exhibit BC-S-183)
BC Dual Scale Study	Jendro & Hart, LLC - Dual-Scale Study of the Principal Conifer Species of the Interior British Columbia Applying the BC Metric and Scribner Short Log Measurement Rules (2016) (See Appendix A of Jendro & Hart report contained in GBC Primary QNR Response Part 1 at Vol. I Exhibit BC-S-183)
Kalt Report	Kalt, Joseph - Economic Analysis of Remuneration for Canadian Crown Timber: Are In-Jurisdiction Benchmarks Distorted by Crown Stumpage? (see GOC Etal Primary QNR at Exhibit GOC-Stump-5)
KPMG Report	KPMG LLP - Report on 2015-16 Ontario Softwood Timber Costs and Sources (March 6, 2017) (see GOO Primary QNR at Exhibit ON-PRIV-1)
LUP	Lake Utopia Paper
LBIP	Land-Based Investment Program and Successor Programs
LIREPP	Large Industrial Renewable Energy Purchase Program
LTAR	Less Than Adequate Remuneration
LMF	License Management Fee
LCIA	London Court of International Arbitration
Maibec	Maibec Inc.
MITC	Manitoba's Manufacturing Investment Tax Credit
M&P ITC	Manufacturing and Processing Investment Tax Credit
M&P	Manufacturing and Processing Tax Credit
MPS	Market Pricing System
Marshall Report	Marshall, Robert C. - Expert Report (March 2017) (see GOQ Primary QNR at Exhibit QC-Stump-78)
MWh	Megawatt Hours
MW	Megawatts
MFLNRO	Ministry of Forests, Lands and Natural Resource Operations
MFFP	Ministry of Forests, Wildlife and Parks
MTESS	Ministry of the Work, Employment and Social Solidarity

MNP Ontario Survey	MNP LLP - A Survey of the Ontario Private Timber Market (March 3, 2017) (see GOO Primary QNR at Exhibit ON-PRIV-1)
Montana Lumber	Montana Reclaimed Lumber Co.
MTAR	More Than Adequate Remuneration
MPB	Mountain Pine Beetle
NB	New Brunswick
NBDNR	New Brunswick Department of Natural Resources
NBLP	New Brunswick Lumber Producers
NB Power	New Brunswick Power
NFI	New Factual Information
NSA	New Subsidy Allegations
NAFP	North America Forest Products Ltd.
NAFTA	North American Free Trade Agreement
NAICS	North American Industry Classification System
NS	Nova Scotia
NSDNR	Nova Scotia Department of Natural Resources
NSUARB	Nova Scotia Utility and Review Board
OFIA	Ontario Forest Industries Association
FSPF	Ontario Forest Sector Prosperity Fund
NIER	Ontario Northern Industrial Electricity Rate
OIC	Order in Council
ODNR	Oregon Department of Natural Resources
OCFP	Oregon-Canadian Forest Products Inc.
PNW	Pacific Northwest
PCIP	Partial Cut Investment Program
POI	Period of Investigation
POR	Period of Review
PDM	Preliminary Decision Memorandum
PwC	PricewaterhouseCoopers
PFTF Report	Private Forest Task Force Report
Petit-Paris	Produits Forestiers Petit-Paris Inc.
PAE 2011-01	Purchase Power Program 2011-01
QR	Questionnaire Response
CAR	Reclassification of Assistance Committee
R&D	Research and Development
RDTC	Research and Development Tax Credit
RV	Residual Value
Resolute Forest Products	Resolute Forest Products Inc.

Resolute	Resolute FP Canada Inc.
Resolute Growth	Resolute Growth Canada Inc.
Resolute Sales	Resolute Sales Inc.
RILA	Retail Industry Leaders Association
SAFIS	Safety Achievement Financial Incentive System
SR&ED	Scientific Research and Experimental Development
SR&ED- GOA	Scientific Research and Experimental Development Tax Credit - Alberta
SR&ED-GBC	Scientific Research and Experimental Development Tax Credit - British Columbia
SR&ED-Quebec	Scientific Research and Experimental Development Tax Credit - Manitoba
SR&ED-GOM	Scientific Research and Experimental Development Tax Credit - Quebec
SMB	Small and Medium-Sized Businesses
Opitciwan	Societe en Commandite Scierie Opitciwan
SLA	Softwood Lumber Agreement
SPF	Spruce-Pine-Fir
SGP	St. George Power LP
SAA	Statement of Administrative Action (From the URAA)
STATCAN	Statistics Canada
Stoner & Mercurio Report	Stoner, Robert and Mercurio, Matthew - Economic Analysis of Price Distortions in a Dominant-Firm/Fringe Market (January 2002) (see Petition at Exhibit 105)
SFDA	Sustainable Forest Development Act
SFL	Sustainable Forest License
Act	Tariff Act of 1930, As Amended
TEFU	Tax Exempt Fuel Use
Terminal	Terminal Forest Products Ltd.
June 1 Aid Package	The GOC's June 1, 2017, announcement of additional assistance to forest industry workers and communities
Canadian Parties	The Governments of Canada (GOC), Alberta (GOA), British Columbia (GBC), Manitoba (GOM), Ontario (GOO), Quebec (GOQ), and Saskatchewan (GOS), the Alberta Softwood Lumber Trade Council, and the British Columbia Lumber Trade Council; the Government of New Brunswick (GNB); Tolko Marketing and Sales Ltd. and Tolko Industries Ltd. (Tolko); West Fraser Mills Ltd. (West Fraser); Canfor Corporation (Canfor); Resolute FP Canada (Resolute); and J.D. Irving, Limited (JDIL)
MBF	Thousand Board Feet
TDA	Timber Damage Assessment
TEAC	Timber Export Advisory Committee
TMR	Timber Management Regulation
TSL	Timber Sale License
TSG	Timber Supply Guarantee
Tolko	Tolko Marketing and Sales Ltd.

CBP	U.S. Customs and Border Protection
Department	U.S. Department of Commerce
ITC	U.S. International Trade Commission
UFP	UFP Western Division, Inc. and UFP Eastern Division, Inc., and their various operating affiliates and subsidiaries within the U.S.
USDOJ	United States Department of Justice
USFS	United States Forest Service
URAA	Uruguay Round Agreements Act
VLM	Vancouver Log Market
Woodtone	W.I. Woodtone Industries Inc.
WDNR	Washington Department of Natural Resources
West Fraser	West Fraser Mills Ltd.
BMMB	Wood Marketing Bureau (Quebec)
WTO	World Trade Organization

ADMINISTRATIVE DETERMINATIONS, COURT DECISIONS, AND NOTICES, ETC. TABLE

This section is sorted by Full Citation.

Short Citation	Administrative Case Determinations/Court Decisions
2006 SLA	2006 Softwood Lumber Agreement Between the Government of the United States of America and the Government of Canada Extending the Softwood Lumber Agreement Between the Government of the United States of American and the Government of Canada, As Amended (Jan. 23, 2012)
Acciai Speciali Terni S.p.A.	*Acciai Speciali Terni S.p.A. v. United State*s, 26 Ct. Int'l Trade 148, 167 (2002)
AK Steel	*AK Steel Corp. v. United States*, 192 F.3d 1367, 1384 (Fed.Cir. 1999).
Algoma Steel Corp.	*Algoma Steel Corp. v. United States*, 865 F.2d 240, 243 (Fed. Cir. 1989)
Allegheny Bradford	*Allegheny Bradford Com. v. United States*, 342 F. Supp. 2d 1172, 1187-88 (CIT 2004)
Allegheny I	*Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150 (CIT 2000)
Allegheny II	*Allegheny Ludlum Corp. v. United States*, 25 Ct. Int'l Trade 816, 821 (2001)
Aluminum Extrusions from the PRC First Review	*Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014)
Ansaldo Componeti, S.p.A.	*Ansaldo Componeti, S.p.A. v. United State*s, 628 F. Supp. 198, 205 (CIT 1986)
Preliminary Critical Circumstances Determination	*Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstance*, 82 FR 19219 (April 26, 2017)
Preamble	*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997)
WTO Appellate Body Decision - HRS from India	*Appellate Body Report, United States – Countervailing Measures on Certain Hot-Rolled Carbon Flat Products from India*, WT/DS436/AB/R, AB-2014-07 (December 8, 2014)
WTO Appellate Body Decision - Certain Products from the PRC	*Appellate Body Report, United States – Countervailing Measures on Certain Products from China*, WT/DS437/AB/R, AB-2014-08 (December 18, 2014)
WTO Appellate Body Decision - Lumber from Canada	*Appellate Body Report, United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, 163, WT/DS257/AB/R (19 Jan. 2004)
Beijing Tianhai	*Beijing Tianhai Industry Co., Ltd. v. United States, 52 F. Supp. 3d at 1374 (CIT 2015)*
Borusan	*Borusan Mannesmann Boru Sanayi v Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1325 (CIT 2015)
Refrigerators from Korea - Final	*Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 17410 (March 26, 2010)

Refrigerators from Korea	*Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 76 FR 55044 (September 6, 2011)
Canada Feed-In Tariff Program	*Canada – Measures Relating to the Feed-In Tariff Program*, (WT/DS426/AB/R), adopted May 6, 2013
Cut-To-Length Plate From the Republic of Korea	*Certain Carbon and Alloy Steel Cut-To-Length Plate From the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination,* 82 FR 16341 (April 4, 2017)
CPP from Indonesia	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination,* 75 FR 59209 (September 27, 2010)
Coated Paper	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China*, 75 FR 59212 (September 27, 2010)
Fresh Cut Flowers from Mexico	*Certain Fresh Cut Flowers From Mexico; Final Negative Countervailing Duty Determination,* 49 FR 15007 (April 16, 1984)
Shrimp from Ecuador	*Certain Fresh Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination,* 78 FR 50389 (August 19, 2013)
Shrimp from the PRC	*Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 78 FR 50391 (August 19, 2013)
HRS from India 2007 AR	*Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009)
HRS from India 2006 AR	*Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008)
Kitchen Racks from the People's Republic of China	*Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009)
OTR from the PRC	*Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480, 40483 (July 15, 2008)
OCTG from Canada	*Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Canada*, 51 FR 15037 (April 22, 1986)
OCTG from the PRC Review	*Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011,* 78 FR 49475 (August 14, 2013)
OCTG from Turkey	*Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 79 FR 41964 (July 18, 2014)
Pasta from Italy 2012 AR	*Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11172 (March 2, 2015)
Pasta from Italy 7th AR	*Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review,* 69 FR 70657 (December 7, 2004)

Pressure Pipe from the PRC	*Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010)
NAFTA June 7, 2004, Panel Decision	*Certain Softwood Lumber Products from Canada*, USA-CDA-2002-1904-03 Panel Decision (June 7, 2004)
Postponement	*Certain Softwood Lumber Products From Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 82 FR 9055 (February 2, 2017)
Initiation	*Certain Softwood Lumber Products from Canada: Initiation of Countervailing Duty Investigation*, 81 FR 93897 (December 22, 2016)
Preliminary Determination	*Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017) and accompanying Decision Memorandum (PDM)
AD Preliminary Determination	*Certain Softwood Lumber Products From Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 29833 (June 30, 2017)
Nails from the PRC	*Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977, 33979 (June 16, 2008)
Nails from Oman	*Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015)
Steel Wheels from the PRC	*Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 77 FR 17017(March 23, 2012)
Steel Wheels from the PRC AD	*Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012)
CUP from Indonesia	*Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination,* 81 FR 3104 (January 20, 2016)
Changzhou Trina Solar Entergy Co.	*Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1341-47 (CIT 2016)
Chevron v. Nat'l Res. Def. Council	*Chevron, U.S.A., Inc. v. Nat'l Res. Def. Council, Inc.,* 467 U.S. 837, 843 (1984)
Chlorinated Isocyanurates from the People's Republic of China	*Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review,* 82 FR 27466 (June 15, 2017)
Circular Welded Austenitic Stainless Pressure Pipe from the PRC Final	*Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 4913 (January 28, 2009)
Circular Welded Austenitic Stainless Pressure Pipe from the PRC Prelim	*Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 51788 (September 5, 2008)

Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman	*Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Affirmative Countervailing Duty Determination,* 77 FR 64473 (October 22, 2012)
CWP from the UAE	*Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination, 77 FR 64465 (October 22, 2012)*
Citric Acid from the PRC	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010,* 77 FR 72323 (December 5, 2012)
CFS from Indonesia	*Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination,* 72 FR 60642 (October 25, 2007)
CFS from the PRC	*Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007)
Corus Staal BV	*Corus Staal BV v. United States,* 395 F.3d 1343, 1348 (Fed. Cir. 2005)
1988 CVD Preamble	*Countervailing Duties*, 53 FR 52306 (December 27, 1988)
CVD Preamble	*Countervailing Duties; Final Rule,* 63 FR 65348 (November 25, 1998)
WCP from Oman	*Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012)
Tetra from the PRC	*Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 79 FR 62594 (October 20, 2014)
Geogrid Products from the PRC	*Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017)
CRS from Brazil	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination,* 81 FR 49940 (July 20, 2016)
CRS from Korea	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination,* 81 FR 49943 (July 29, 2016)
Corrosion-Resistant Steel from Korea	*Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination,* 80 FR 68842 (November 6, 2015)
HRS from Brazil	*Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, and Final Determination of Critical Circumstances, in Part*, 81 FR 53416 (March 24, 2016)
HRS from Korea	*Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016)
Solar Cell from PRC	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administration Review, and Partial Rescission of Countervailing Duty Administration; 2014,* 82 FR 32678 (July 17, 2017)
Delverde, Allegheny Fed. Circuit	*Delverde, SrL v. United States, 202 F.3d 1360, 1366, 1367 (Fed. Cir. 2000); see also Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1347 (Fed. Cir. 2004)*

Diversified Products	*Diversified Products Corp. v. United States*, 572 F. Supp. 883, 889 (CIT 1983)
Sinks from the PRC	*Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 78 FR 13017 (February 26, 2013)
Drill Pipe from the PRC	*Drill Pipe From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011,* 78 FR 150 (August 5, 2013)
Duferco Steel Inc.	*Duferco Steel, Inc. v. United States*, 296 F. 3d 1087, 1089 (Fed. Cir. 2002)
Essar Steel Ltd.	*Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285 (CIT 2010), 678 F.3d 1268 (Fed. Cir. 2012)
Eurodif	*Eurodif S.A. v. United States*, 411 F.3d 1355 (CAFC 2005)
Carbon Steel Wire Rod from Saudi Arabia	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Saudi Arabia,* 51 FR 4206 (February 3, 1986)
Steel Wire Nails From New Zealand	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails From New Zealand,* 52 FR 37196 (October 5, 1987)
Extruded Rubber Thread From Malaysia	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia,* 57 FR 38472 (August 25, 1992)
CRS from Russia	*Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination,* 81 FR 49935 (July 29, 2016)
Lined Paper from Indonesia	*Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia,* 71 FR 47174 (August 16, 2006)
Ball Bearing From Thailand	*Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearing and Parts Thereof From Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Bal or Tapered Roller Bearings) and Parts Thereof From Thailand,* 54 FR 19130 (May 3, 1989)
Cut-to-Length Carbon-Quality Steel Plate from Indonesia	*Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia,* 64 FR 73155 (December 29, 1999)
CTL Steel Plate from Korea	*Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,* 64 FR 73176, 73182 (December 29, 1999)
Hot-Rolled Carbon Steel Flat Products From Thailand	*Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001)
Pasta From Italy	*Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy,* 61 FR 30288, 30289 (1996)
Steel from Austria	*Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217 (July 9, 1993)
Cold-Rolled Carbon Steel Flat-Rolled Products From Korea	*Final Affirmative Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat-Rolled Products From Korea; and Final Negative Countervailing Duty Determination; Carbon Steel Structural Shapes From Korea,* 49 FR 47284 (December 3, 1984)

DRAMS from Korea	*Final Affirmative Countervailing Duty Determination: Dynamic Random Access memory Semiconductors from the Republic of Korea,* 68 FR 37122 (June 23, 2003)
Steel Wire Rod From Trinidad and Tobago	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago,* 62 FR 55003 (October 22, 1997)
Steel Wire Rod from Venezuela	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997)
Hot-Rolled Steel from Thailand	*Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001)
Fresh Cut Flowers from the Netherlands	*Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from the Netherlands,* 52 FR 3301 (February 3, 1987)
SSP from Belgium	*Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium,* 64 FR 15567 (March 31, 1999)
Certain Steel Products From Korea	*Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea,* 58 FR 37338 (July 9, 1993)
Magnesium From Canada	*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada,* 57 FR 30946 (July 13, 1992)
Silica Bricks and Shapes from the PRC	*Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China,* 78 FR 70918 (November 27, 2013)
Steel Plate from Korea	*Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530 (March 31, 1999)
Live Swine from Canada (II)	*Final Negative Countervailing Duty Determination: Live Swine from Canada,* 70 FR 12186 (March 11, 2005)
Granite Products from Italy	*Final Negative Countervailing Duty Determination; Certain Granite Products from Italy*, 53 FR 27197 (July 19, 1988)
Certain Textile Mill Products and Apparel from Singapore	*Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Singapore,* 50 FR 9840 (March 12, 1985)
Lumber NSR	*Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005)
Geneva Steel	*Geneva Steel v. United States*, 914 F.Supp. 563, 609 (CIT 1996)
IPA from Israel	*Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13628-31 (March 20, 1998)
Spring Table Grapes	*Initiation of Antidumping Duty Investigations: Spring Table Grapes from Chile and Mexico*, 66 FR 26831, 26832-33 (May 15, 2001)
Inland Steel Bar Co.	*Inland Steel Bar Co. v. United States, 155 F.3d 1370 (Fed.Cir. 1998).*
Kajaria Iron Castings	*Kajaria Iron Castings Pvt. Ltd. v. United States,* 156 F.3d 1163, 1174 (Fed. Cir. 1998)
LWS from the PRC	*Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances,* 73 FR 35639, 35641 (June 24, 2008)

Washers from Korea	*Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 75975 (December 26, 2012)
Marsan Gida Sanayi Ve Ticaret A.S.	*Marsan Gida Sanayi Ve Ticaret A.S. v. United States, 931 F. Supp. 2d 1258, 1280 (CIT 2013)*
Melamine From Trinidad and Tobago	*Melamine From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination,* 80 FR 68849 (November 6, 2015)
Mitsubishi I	*Mitsubishi Electric Corporation v. United States*, 700 F. Supp. 538, 556 (CIT 1988)
Narrow Woven Ribbons from the PRC	*Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 7244 (February 18, 2010),
Ribbons from the PRC	*Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 41801 (July 19, 2010)
Lumber IV Final Determination	*Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002)
Low Enriched Uranium From France	*Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium From France,* 66 FR 65901 (December 21, 2001)
Lumber IV Final AD Determination	*Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002)
Washers from Mexico	*Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico*, 77 FR 76288 (December 27, 2012)
Narrow Woven Ribbons from Taiwan	*Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan,* 75 FR 41804 (July 19, 2010)
Lumber IV AR Final	*Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005)
Final Results of 1st AR	*Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada*, 69 FR 75917 (December 20, 2004)
Final Results of 2nd AR	*Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada,* 70 FR 73448 (December 12, 2005)
Lumber IV Prelim Determination	*Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43187 (August 17, 2001)
Preliminary Results of 2nd AR	*Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088 (June 7, 2005)
Preliminary Results of 1st AR	*Notice of Preliminary Results of Countervailing Duty Review: Certain Softwood Lumber from Canada*, 69 FR 33204, (June 14, 2004)

Oil Country Tubular Goods From Argentina	*Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty Administrative Review,* 62 FR 32307 (June 13, 1997)
OCTG from the PRC	*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)
Outboard Engines from Japan	*Outboard Engines from Japan*, 70 FR 326 (January 4, 2005)
PAM, S.p.A.	*PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1369 (Ct. Int'l Trade 2007)
Lumber II	*Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada,* 51 FR 37453 (October 22, 1986)
Laminated Hardwood Trailer Flooring from Canada	*Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring ("LHF") from Canada,* 61 FR 59079 (November 20, 1996)
CORE from Korea	*Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,* 71 FR 53413 (September 11, 2006)
Policy Bulletin	*Proposed Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber from Canada,* 68 FR 37456 (June 24, 2003)
Lumber IV Remand	*Remand Redetermination, Certain Softwood Lumber Products from Canada, Final Affirmative Countervailing Duty Determination,* USA-CDA-2002-1904-03 (January 12, 2004)
Royal Thai Government	*Royal Thai Government v. United States*, 341 F.Supp.2d 1315, 1318-1320 (U.S. Ct Int'l Trade, 2004), upheld by *Royal Thai Government v. United States*, 436 F.3d 1330, 1336 (Fed. Cir. 2006)
Russ Berrie	*Russ Berrie & Co. v. United States*, 57 F. Supp. 2d 1184 (Ct. Int'l Trade 1999)
RZBC Group	*RZBC Group Shareholding Co. v. United States,* 100 F. Supp. 3d 1288 (CIT 2015)
Sandt Tech	*Sandt Tech., Ltd. v. Resco Metal & Plastics Corp.,* 264 F.3d 1344, 1350-51 (Fed. Cir. 2001)
Shenzhen	*Shenzhen Xinboda Industries Co., Ltd. v. United States,* 976 F. Supp. 2d 1333 (CIT 2014)
Smith Corona	*Smith Corona Corp. v. United States*, 796 F. Supp. 1532 (CIT 1992)
Solar World Ams, Inc.	*Solar World Ams, Inc. v. United States*, 125 F. Supp. 3d 1318 (CIT 2014)
ITC Preliminary Determination	*Softwood Lumber Products from Canada*, Inv. Nos. 701-TA-566 and 731-TA-1342 (Preliminary) Determinations and Views of the Commission, USITC Publication No. 4463 (January 2017)
Springwater Cookie	*Springwater Cookie & Confections, Inc. v. United States*, 20 C.I.T. 1192 (1996)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
Reinforcing Bar from Turkey	*Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 26907 (June 12, 2007)

SC Paper from Canada – Expedited Review	*Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review and accompanying Issues and Decision Memorandum*, 82 FR 18896 (April 24, 2017)
SC Paper from Canada	*Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination,* 80 FR 63535 (October 20, 2015)
SC Paper from Canada Preliminary Determination	*Supercalendered Paper From Canada: Preliminary Affirmative Countervailing Duty Determination,* 80 FR 45951 (August, 3, 2015)
SC Paper from Canada – Expedited Review – Preliminary Results	*Supercalendered Paper From Canada: Preliminary Results of Countervailing Duty Expedited Review,* 81 FR 85520 (November 28, 2016)
Timken Co.	*Timken Co. v. United States, 354 F.3d 1334, 1344 (Fed. Cir. 2004)).*
TMK IPSCO	*TMK IPSCO v. United States*, 179 F. Supp. 3d 1328, 1336 (CIT 2016)
Torrington	*Torrington v. United States*, 745 F. Supp. 718, 721 (CIT 1990)
H. Rep. No. xx-xxx (1979)	Trade Agreements Act of 1979, House Report Number xx-xxx (1979)
S. Rep. No. 96-249 (1979)	Trade Agreements Act of 1979, Senate Report Number 96-249 (1979)
Transweb	*Transweb LLC v. 3M Innovative Props. Co.,* 812 F.3d 1295, 1301-02 (Fed. Cir. 2016)
Wind Towers from the PRC	*Utility Scale Wind Towers from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 33422 (June 6, 2012).
Welded Line Pipe From the Republic of Korea	*Welded Line Pipe From the Republic of Korea: Final Negative Countervailing Duty Determination,* 80 FR 61365 (October 13, 2015)

CASE-RELATED DOCUMENTS

This section is sorted by Date.

Date	Short Citation	Complete Document Title
November 25, 2016	Petition	Letter from Petitioner, "Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada," dated November 25, 2016
November 25, 2016	Stoner & Mercurio Report	Petition at Exhibit 105, Economic Analysis of Price Distortions in a Dominant-Firm/Fringe Market (January 4, 2002)
November 30, 2016	Petitioner Supp QNR 1	Letter from the Department to Petitioner, "Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Certain Softwood Lumber Products From Canada: Supplemental Questions," dated November 30, 2016
December 1, 2016	Petitioner Supp QNR 1 Response	Letter from Petitioner, "Supplement to the Petitions for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Response to the Department's Supplemental Questions," dated December 1, 2016
December 2, 2016	Petition Exhibits Correction	Letter from Petitioner to the Department, "Supplement to the Petition for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Correction of Production Errors," dated December 2, 2016
December 2, 2016	Petitioner Supp QNR 2	Letter from the Department to Petitioner, "Petition for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber from Canada: Supplemental Questions," dated December 2, 2016
December 5, 2016	Lumber IV AR2 Calculations	Second Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada: Final Results Calculations for the Province of British Columbia," dated December 5, 2005
December 5, 2016	Petitioner Supp QNR 2 Response	Letter from Petitioner, "Petition for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Response to Supplemental Questions," dated December 5, 2016

December 7, 2016	GOC Etal Consultations Memorandum	Department Memorandum, "Countervailing Duty Petition: Certain Softwood Lumber Products from Canada: Consultations with Officials from the Government of Canada," dated December 7, 2016
December 8, 2016	Petitioner Comments – GOC Consultations	Letter from Petitioner, "Comments on Government of Canada's Consultations Paper," dated December 8, 2016.
December 15, 2016	Initiation Checklist	Department Memorandum, "Countervailing Duty Investigation Initiation Checklist: Certain Softwood Lumber Products from Canada," December 15, 2016.
December 22, 2016	CBP Query Results	Department Memorandum, "Results of Customs and Border Protection Query," date December 22, 2016
December 29, 2016	Canfor Respondent Selection Comments	Letter from Canfor, "Certain Softwood Lumber from Canada, Case No. C-122-858: Comments on CBP Data and Respondent Selection Methodology," dated December 29, 2016
December 29, 2016	Central Canada Alliance Comments – CBP Data	Letter from the Central Canada Alliance, "Softwood Lumber from Canada: Comments on CBP Data," dated December 29, 2016
December 29, 2016	Central Canada Alliance Comments – Initiation	Letter from Central Canada Alliance, "Softwood Lumber from Canada: Comments on Subsidy Rate Methodology And CVD Respondent Selection," dated December 29, 2016
December 29, 2016	GNB Comments Methodology	Letter from the GNB, "Comments on Methodology: Softwood Lumber from Canada," dated December 29, 2016
December 29, 2016	GNS Comments Methodology	Letter from the GNS, "Softwood Lumber from Canada: Comments Regarding the Appropriate Subsidy Rate Methodology for this Investigation," dated December 29, 2016
December 29, 2016	GOC Comments Initiation	Letter from the GOC, "Certain Softwood Lumber Products from Canada: Comments on Appropriate Subsidy Rate Methodology and Selection of Respondents," dated December 29, 2016
December 29, 2016	GOO Comments Pre-Prelim	Letter from the GOO, "Certain Softwood Lumber Products from Canada: Comments on the Appropriate Subsidy Rate Methodology to Use in the Investigation," dated December 29, 2016
December 29, 2016	GOQ Comments Initiation	Letter from the GOQ, "Certain Softwood Lumber from Canada: Comments of the Government of Québec on Appropriate Subsidy Methodology and Respondent Selection," dated December 29, 2016

December 29, 2016	JDIL Comments Respondent Selection	Letter from JDIL, "Softwood Lumber from Canada: Comments on Respondent Selection," dated December 29, 2016
December 29, 2016	NBLP Comments Methodology	Letter from the NBLP, "Softwood Lumber from Canada: New Brunswick Lumber Producers' Comments on Appropriate Subsidy Rate Methodology," dated December 29, 2016
December 29, 2016	Petitioner Comments – Methodology	Letter from Petitioner, "Certain Softwood Lumber from Canada: Comments on the Department's Subsidy Rate Methodology," dated December 29, 2016
December 29, 2016	Petitioner Comments – Respondent Selection	Letter from Petitioner, "Certain Softwood Lumber from Canada: Comments on CBP Data and Respondent Selection," dated December 29, 2016
December 29, 2016	Tembec Comments CBP Data	Letter from Tembec Inc., "Certain Softwood Lumber Products from Canada: Comments on CBP Data," dated December 29, 2016
December 30, 2016	GOC Scope Comment Extension Request	Letter from the GOC, "Certain Softwood Lumber from Canada: Request for Extension of Deadline to Submit Comments on Scope," dated December 30, 2016
December 30, 2016	Montana Lumber Comments Scope	Letter from Montana Lumber, "Certain Softwood Lumber from Canada: Limit of Scope of Duties to New Wood," dated December 30, 2016
January 3, 2017	GOC Comments Respondent Selection	Letter from the GOC, "Certain Softwood Lumber Products from Canada: Rebuttal Comments on Appropriate Subsidy Rate Methodology and Selection of Respondents," dated January 3, 2017
January 3, 2017	JDIL Rebuttal Comments Respondent Selection	Letter from JDIL, "Softwood Lumber from Canada: Rebuttal Comments on Respondent Selection," dated January 3, 2017
January 4, 2017	IKEA Comments Scope	Letter from IKEA, "Certain Softwood Lumber Products from Canada: Comments of Scope of Investigation," dated January 4, 2017
January 4, 2017	Scope Comment Deadline Extension	Department Memorandum, "Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada – Extension of Scope Comment Deadline," dated January 4, 2017
January 9, 2017	Barrette Comments Scope 1	Letter from Barrette, "Softwood Lumber Products from Canada: Scope Comments – Bed-Frame Components," dated January 9, 2017
January 9, 2017	Central Canada Alliance Comments – Scope	Letter from the Central Canada Alliance and, "Softwood Lumber from Canada: OFIA and CIFQ's Scope Comments," dated January 9, 2017

January 9, 2017	CIFQ Comments Scope 1	Letter from CIFQ, "Softwood Lumber from Canada: CIFQ's Scope Comments," dated January 9, 2017
January 9, 2017	GBC Comments Scope 1	Letter from the GBC, "Certain Softwood Lumber Products from Canada: Scope Comments of the Government of British Columbia," dated January 9, 2017
January 9, 2017	GNS Comments Scope 1	Letter from the GNS, "Softwood Lumber from Canada: Scope Comments from the Government of Nova Scotia," dated January 9, 2017
January 9, 2017	GOC Comments Scope 1	Letter from the GOC, "Certain Softwood Lumber Products from Canada: Comments on Product Coverage and Scope of the Investigations," dated January 9, 2017
January 9, 2017	JDIL Comments Scope 1	Letter from JDIL, "Softwood Lumber from Canada: Comments on Scope of the Investigation," dated January 9, 2017
January 9, 2017	NBLP Comments Scope	Letter from the NBLP, "Certain Softwood Lumber from Canada: New Brunswick Lumber Producers Comments on Scope of the Investigation," dated January 9, 2017
January 9, 2017	OCFP Comments – Scope 1	Letter from OCFP, "Independent comments to DOC Inv. Nos. A-122-857, C-122-858 and ITC Inv Nos, 701-TA-_ and 731- TA- _," dated January 9, 2017
January 9, 2017	Resolute Comments Scope 1	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Scope Comments," dated January 9, 2017
January 9, 2017	RILA Comments Scope 1	Letter from RILA, "Certain Softwood Lumber Products from Canada: RILA Scope Comments," dated January 9, 2017
January 9, 2017	Terminal Comments Scope 1	Letter from Terminal Forest Products Ltd., "Certain Softwood Lumber from Canada (A-122-857/C-122-858): Scope Comments," dated January 9, 2017
January 9, 2017	WFP Comments Scope	Letter from Western Forest Products, "Softwood Lumber from Canada: Comments on Scope of the Investigation," dated January 9, 2016
January 10, 2017	Canfor Comments Scope 1	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Comments on the Scope of the Investigation," dated January 10, 2017
January 10, 2017	Memorandum OCFP Comments	Department Memorandum to File, "Certain Softwood Lumber Products from Canada: Scope Exclusion Requests Received from Oregon-Canadian Forest Products," dated January 10, 2017
January 18, 2017	Referenced Respondent Selection Memoranda	Department Memorandum, "Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada – Referenced Respondent

		Selection Memoranda," dated January 18, 2017
January 18, 2017	Respondent Selection Memorandum	Department Memorandum, "Subsidy Rate Methodology and Respondent Selection," dated January 18, 2017
January 18, 2017	Revised CBP Data	Department Memorandum, "Revised CBP Data and Company Rankings," dated January 18, 2017
January 18, 2017	Tolko Memorandum	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada – Tolko Marketing & Sales Ltd.," dated January 18, 2017
January 19, 2017	CIFQ Rebuttal Comments Scope	Letter from CIFQ, "Softwood Lumber from Canada: CIFQ's Rebuttal Scope Comments," dated January 19, 2017
January 19, 2017	IKEA Rebuttal Comments Scope	Letter from IKEA, "Certain Softwood Lumber Products from Canada: IKEA Rebuttal Comments," dated January 19, 2017
January 19, 2017	Petitioner Rebuttal Comments – Scope	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Response to Comments on Scope," dated January 19, 2017
January 19, 2017	Primary QNR	Letter from Department to the GOC (and the mandatory respondents), "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Countervailing Duty Questionnaire," dated January 19, 2017
January 25, 2017	JDIL Request Voluntary Treatment	Letter from JDIL, "Softwood Lumber from Canada: Request for Voluntary Respondent Treatment," dated January 25, 2017
January 26, 2017	Petitioner Request Postponement	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Request for Extension of the Preliminary Determination," dated January 26, 2017
January 27, 2017	GOC Etal Ex-Parte Meeting Primary QNR	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Ex-Parte Meeting," dated January 27, 2017
January 27, 2017	GOC Etal Primary QNR Clarification 1	Letter from the GOC, "Certain Softwood Lumber from Canada: Submission of Memorandum Regarding Preliminary Issues Identified in the CVD Initial Questionnaire," dated January 27, 2017
January 27, 2017	Tolko QNR Distribution Memorandum	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Tolko Marketing & Sales Ltd," dated January 27, 2017.

January 31, 2017	Canfor QNR Clarification Request 1	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Letter Requesting Exclusion from Reporting Requirement," dated January 31, 2017
January 31, 2017	GOC Etal Pimary QNR Response Addendum	Letter from the Department to the GOC, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Addendum to CVD Initial Questionnaire," dated January 31, 2017
January 31, 2017	Request for Monthly Q&V	Department Letter, "Antidumping/Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Request for Monthly Quantity and Value Shipment Data," dated January 31, 2017
February 2, 2017	GOC Etal Comments NSA 1	Letter from the GOC, "Certain Softwood Lumber from Canada: Response to Petitioner's Additional Subsidy Allegations," dated February 2, 2017
February 2, 2017	GOC Etal Primary QNR Clarification 2	Letter from the GOC, "Preliminary Issues Identified by Canadian Governmental Parties with the Department's Initial Questionnaire in Lumber," dated February 2, 2017
February 2, 2017	JDIL Affiliation Response	Letter from JDIL, "Softwood Lumber from Canada," dated February 2, 2017
February 2, 2017	Resolute Affiliation Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to Affiliated Companies Questionnaire," dated February 2, 2017
February 2, 2017	Tolko Comments QNR Clarification Request 1	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Exclusion Request," dated February 2, 2017
February 2, 2017	West Fraser Comments QNR Clarification Request	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Letter Notifying of Reporting Difficulties," dated February 2, 2017
February 3, 2017	Canfor Ex-Parte Meeting 1	Department Memorandum, "Ex Parte Meeting with Representatives of Canfor Corp, West Fraser Mills Ltd., and Tolko Marketing and Sales Ltd.," dated February 3, 2017
February 3, 2017	GOC Etal Primary QNR Clarification 3	Letter from the Department to the GOC, "Certain Softwood Lumber from Canada: Addressing Preliminary Issues Identified in the CVD Initial Questionnaire," dated February 3, 2017
February 6, 2017	GOC Etal Primary QNR Clarification 4	Letter from the Department to the GOC, "Certain Softwood Lumber from Canada: Addressing Preliminary Issues Identified in the CVD Initial Questionnaire," dated February 6, 2017

February 6, 2017	GOC Etal Primary QNR Clarification 5	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Telephone Conversation with Counsel to Government of Canada," dated February 6, 2017
February 6, 2017	Petitioner Comments – Tolko Exclusions	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Partial Opposition to Tolko Request to Limit Reporting," dated February 6, 2017
February 6, 2017	Plant Tour Memorandum	Department Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Visit to Rex Lumber Company," dated February 6, 2017
February 7, 2017	West Fraser Affiliation Response	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Section III, Questions C.1 and C.2," dated February 7, 2017
February 8, 2017	Canfor Affiliation Response	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Request for Additional Sales Data," dated February 8, 2017
February 8, 2017	Canfor QNR Clarification Request 2	Letter from the Department to Canfor, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated February 8, 2017
February 8, 2017	GOC Etal Primary QNR Clarification 6	Letter from the GOC, "Issues Identified by Canadian Governmental Parties with the Department's January 31, 2017 Questionnaire," dated February 8, 2017
February 8, 2017	Petitioner Comments – Resolute Affiliation	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on Resolute's Affiliated Companies Questionnaire Response," dated February 8, 2017
February 8, 2017	Tolko Affiliation Response	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Affiliated Party Submission," dated February 8, 2017
February 8, 2017	Tolko Comments QNR Clarification Request 2	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Further Comments on Reporting Exclusion Request," dated February 8, 2017
February 8, 2017	West Fraser QNR Clarification 1	Letter from the Department to West Fraser, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated February 8, 2017
February 9, 2017	Resolute Supp QNR 1	Letter from the Department to Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Affiliated Companies

		Questionnaire Response of Resolute FP Canada Inc.," dated February 9, 2017
February 9, 2017	West Fraser Supp QNR 1	Letter from the Department to West Fraser, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated February 9, 2017
February 10, 2017	GOC Etal Primary QNR Clarification 8	Department Memorandum, "Countervailing Duty Investigation on Certain Softwood Lumber Products from Canada: Telephone Conversation with Counsel for Manitoba and Saskatchewan," dated February 10, 2017
February 10, 2017	GOC Etal Primary QNR Clarification 7	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated February 10, 2017
February 10, 2017	Petitioner Comments Tolko Affiliation	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on Tolko's Affiliated Companies Questionnaire Response," dated February 10, 2017
February 10, 2017	Petitioner West Fraser Comments	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on West Fraser's Affiliated Companies Questionnaire Response," dated February 10, 2017
February 13, 2017	Petitioner Comments on Canfor QNR Response 1	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on Canfor's Affiliated Companies Questionnaire Response," dated February 13, 2017
February 13, 2017	Tolko Comments QNR Clarification Request 3	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Further Comments on Reporting Exclusion Request," dated February 13, 2017
February 13, 2017	West Fraser Supp QNR 1 Response	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Department's February 9, 2017 Affiliation Supplemental Questionnaire," dated February 13, 2017
February 15, 2017	GOC Etal Ex-Parte Meeting Provincial Exclusion	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Ex-Parte Meeting," dated February 15, 2017
February 15, 2017	GOC Etal Ex-Parte Meeting Company Exclusions I	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Ex-Parte Meeting with Counsel to the Government of Canada," dated February 15, 2017

February 15, 2017	Resolute Supp QNR 1 Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to Affiliation Supplemental Questionnaire" dated February 15, 2017
February 17, 2017	GOC Etal Primary QNR Correction I	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Initial Questionnaire – Section III Loan Benchmark and Loan Guarantee Appendix," dated February 27, 2017
February 17, 2017	Resolute Supp QNR 2	Letter from the Department to Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Second Supplemental Questionnaire on Affiliated Companies of Resolute FP Canada Inc.," dated February 17, 2017
February 21, 2017	Resolute Supp QNR 2 Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to Second Supplemental Affiliation Questionnaire," February 21, 2017
February 21, 2017	Resolute Supp QNR 3	Letter from the Department to Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Third Supplemental Questionnaire on Affiliated Companies of Resolute FP Canada Inc.," dated February 21, 2017
February 22, 2017	Canfor Shipment Data 1	Letter from Canfor, "Certain Softwood Lumber Products from Canada. Case No. C-122-858: Quantity and Value Shipment Data for January 2015 – January 2017," dated February 22, 2017
February 22, 2017	Canfor Supp QNR 1	Letter from the Department to Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Affiliated Companies Section Questionnaire Response," dated February 22, 2017.
February 22, 2017	JDIL Shipment Data1	Letter from JDIL, "Certain Softwood Lumber Products from Canada," dated February 22, 2017
February 22, 2017	Resolute Shipment Data1	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to Critical Circumstances Questionnaire," dated February 22, 2017
February 22, 2017	Tolko Shipment Data1	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Response to Department's Request for Monthly Sales Data," dated February 22, 2017
February 22, 2017	West Fraser Shipment Data1	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to the Department's Request for Monthly Quantity and Value Shipment Data," dated February 22, 2017

February 23, 2017	OCFP Rebuttal Comments – Scope	Letter from OCFP, "Oregon-Canadian Forest Products Response to Coalition letter on Scope Exemption Requests January 19, 2017," dated February 23, 2017
February 23, 2017	Petitioner Ex-Parte Meeting 1	Department Memorandum, "Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada: Ex-Parte Meeting with Counsel to Petitioners," dated February 23, 2017
February 23, 2017	Resolute Affiliation Memorandum	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated February 23, 2017
February 23, 2017	West Fraser QNR Clarification 2	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated February 23, 2017
February 24, 2017	GOC Etal Comments Critical Circumstances	Letter from the GOC, "Countervailing Duty and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Comments on Allegations of Critical Circumstances," dated February 24, 2017
March 2, 2017	Petitioner Comments Critical Circumstances 2	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Response to Government of Canada's Comments on Allegations of Critical Circumstances," dated March 2, 2017
March 6, 2017	GBC Comments Company Exclusions	Letter from the GBC, "Certain Softwood Lumber Products from Canada: Ex-Parte Meeting – Company Exclusions II," dated March 6, 2017
March 7, 2017	GOC Etal Primary QNR Clarification 9	Department Letter, "Standard Questions Appendix," dated March 7, 2017
March 7, 2017	Primary QNR – Correction 1	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Standard Questionnaire Appendix," dated March 7, 2017
March 8, 2017	Canfor Supp QNR 1 Response	Letter from Canfor, "Certain Softwood Lumber from Canada, Case No. C-122-858: Affiliated Companies Section Questionnaire Response," dated March 8, 2017
March 8, 2017	GOC Etal Primary QNR Clarification 10	Department Memorandum, "Standard Questions Appendix – Provision of Stumpage for LTAR," dated March 7, 2017
March 8, 2017	Resolute Supp QNR 3 Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to Third Supplemental Affiliation Questionnaire," dated February 21, 2017

March 9, 2017	GOC Comments Critical Circumstances Rebuttal	Letter from the GOC, "Countervailing Duty and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Rebuttal Comments on Allegations of Critical Circumstances," dated March 9, 2017
March 13, 2017	Canfor Primary QNR Response, Part 1	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Initial Questionnaire Response," dated March 13, 2017
March 13, 2017	JDIL Primary QNR Response	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Response to Section III of the Questionnaire for Producers/Exporters," dated March 13, 2017
March 13, 2017	Tolko Primary QNR Response	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Response to Section III of the Department's CVD Questionnaire," dated March 13, 2017
March 13, 2017	West Fraser Primary QNR Response, Part 1	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Department's January 19, 2017 Countervailing Duty Questionnaire," dated March 14, 2017
March 14, 2017	GBC Primary QNR Response Part 1	Letter from GBC, "Response Of The Government Of British Columbia To The Department's January 19, 2017 Initial Questionnaire," dated March 14, 2017
March 15, 2017	Canfor Shipment Data 2	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Quantity and Value Shipment Data for January 2015 – February 2017," dated March 15, 2017
March 15, 2017	GOA Primary QNR Response	Letter from GOA, "Certain Softwood Lumber Products from Canada: Response of the Government of Alberta to the Department's Standard Questions Appendix for Stumpage," dated March 16, 2017
March 15, 2017	GOC Etal Primary QNR Response	Letter from the GOC, "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan to the Department's January 19, 2017 Initial Questionnaire and January 31, 2017 Addendum to CVD Initial Questionnaire," dated March 15, 2017
March 15, 2017	GOO Primary QNR Response	Letter from the GOO, "Response fo the Government of Ontario to U.S. Department of Commerce January 19, 2017 Questionnaire and January 31, 2017 Addendum," dated March 15, 2017

March 15, 2017	JDIL Shipment Data2	Letter from JDIL, “Certain Softwood Lumber Products from Canada,” dated March 15, 2017
March 15, 2017	Petitioner NSA 1	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Additional Subsidy Allegations," dated March 15, 2017
March 15, 2017	Resolute Primary QNR, Part 1	Letter from Resolute, Part I for Non-Stumpage programs, “Softwood Lumber from Canada: Resolute’s Response to Section Ill of Initial Questionnaire on General Issues and Non-Stumpage Programs,” dated March 15, 2017
March 15, 2017	Resolute Primary QNR, Part 2	Letter from Resolute, Part II for Stumpage programs, “Softwood Lumber from Canada: Resolute’s Response to Section III of Initial Questionnaire on Stumpage Programs,” dated March 15, 2017
March 15, 2017	Resolute Shipment Data2	Letter from Resolute, “Softwood Lumber from Canada: Resolute's Updated Response to Critical Circumstances Questionnaire,” dated March 15, 2017
March 15, 2017	Tolko Shipment Data2	Letter from Tolko, “Certain Softwood Lumber Products from Canada: Response to Department’s Request for Monthly Sales Data, Inclusive of February 2017,” dated March 15, 2017
March 15, 2017	West Fraser Shipment Data2	Letter from West Fraser, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to the Department’s Request for Monthly Quantity and Value Shipment Data,” dated March 15, 2017
March 16, 2017	Canfor Primary QNR Response, Part 2	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Standard Questions Appendix for Stumpage," dated March 16, 2017
March 16, 2017	GOO Primary QNR Response Addendum	Letter from the GOO, “Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Response to the Standard Questionnaire Appendix for Ontario provincial stumpage,” dated March 16, 2017
March 16, 2017	GOQ Primary QNR Response	Letter from GOQ, “Certain Softwood Lumber from Canada: Response of the Government of Québec to the Standard Questions Appendix Relating to Stumpage,” dated March 16, 2017
March 16, 2017	West Fraser Primary QNR Response, Part 2	Letter from West Fraser, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Department's March 7, 2017 Request to Submit a Response to the Standard Questions Appendix as It Pertains to

		Provincial Stumpage Programs," dated March 16, 2017
March 17, 2017	GNB Primary QNR Response	Letter from GNB, "Questionnaire Response of the Government of the Province of New Brunswick Certain Softwood Lumber Products from Canada," dated March 17, 2017
March 17, 2017	GNS Primary QNR Response	Letter from the GNS, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to the Department's Questionnaire Addendum for the Provincial Governments," dated March 17, 2017
March 17, 2017	GNS QNR Clarification Request 1	Letter from GNS, "Certain Softwood Lumber Products from Canada: Letter from the Government of Nova Scotia Addressing the Department's Questionnaire Regarding "Other Assistance," dated March 17, 2017
March 20, 2017	GBC Primary QNR Response Part 2	Letter from GBC, "Certain Softwood Lumber Products from Canada: Response to Standard Questionnaire Appendix for British Columbia Stumpage," dated March 20, 2017
March 21, 2017	Ex-Parte Meeting Exclusions	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Ex-Parte Meeting," dated March 21, 2017
March 21, 2017	GNS Supp QNR 1	Letter from the Department to the GNS, "Countervailing Duty Investigation of Softwood Lumber Products from Canada: Supplemental Questionnaire," dated March 21, 2017
March 22, 2017	Resolute Supp QNR 4	Letter from the Department to Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Non-Stumpage Programs – First Supplemental Questionnaire for Resolute FP Canada Inc.," dated March 22, 2017
March 24, 2017	Resolute Supp QNR 5	Letter from the Department to Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Non-Stumpage Programs – Second Supplemental Questionnaire for Resolute FP Canada Inc.," dated March 24, 2017
March 27, 2017	BCLTC NFI Submission	Letter from BCTLC, "Certain Softwood Lumber Products from Canada: Submission of Factual Evidence Potentially Relevant to Measurement of Adequacy of Remuneration," dated March 27, 2017

March 27, 2017	Canfor NFI Submission 1	Letter from Canfor, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Benchmark Factual Information Submission,” dated March 27, 2017
March 27, 2017	GBC NFI Submission 1	Letter from the GBC, “Certain Softwood Lumber Products from Canada: Government of British Columbia Benchmark Information,” dated March 27, 2017
March 27, 2017	GBC Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated March 27, 2017
March 27, 2017	GNS Supp QNR 2	Letter from the Department, "Letter to the Government of Canada, “Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan,” dated March 27, 2017.
March 27, 2017	GOA NFI Submission 1, Part 1	Letter from the GOA, “Certain Softwood Lumber Products from Canada: Submission of Factual Information to Measure Adequacy of Remuneration Pursuant to 19 C.F.R. 351.301(c)(3)(i),” dated March 27, 2017
March 27, 2017	GOA NFI Submission 1, Part 2	Letter from the GOA, “Certain Softwood Lumber Products from Canada: Submission of Factual Information Regarding Log Seller Profit,” dated March 27, 2017
March 27, 2017	GOA Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated March 27, 2017
March 27, 2017	GOC Etal Comments NSA 2	Letter from GOC Etal, "Certain Softwood Lumber from Canada: Response to Petitioner’s Additional Subsidy Allegations," dated March 27, 2017
March 27, 2017	GOC Etal Primary QNR Response, Errata 1	Letter from the GOC et. al., “Certain Softwood Lumber from Canada: Errata to the Response of the Government of Canada and the Governments of Alberta, British Columbia, and Ontario to the Department’s January 19, 2017 Initial Questionnaire,” dated March 27, 2017

March 27, 2017	GOC Etal Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated March 27, 2017
March 27, 2017	GOM Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated March 27, 2017
March 27, 2017	GOO NFI Submission	Letter from the GOO, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: factual information concerning the adequacy of remuneration," dated March 27, 2017
March 27, 2017	GOO Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated March 27, 2017
March 27, 2017	GOQ NFI Submission	Letter from the GOQ, "Certain Softwood Lumber from Canada: Submission of Factual Information by the Government of Québec," dated March 27, 2017
March 27, 2017	GOQ Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated March 27, 2017
March 27, 2017	GOS Comments GNS Response	Letter from the GOS, "Softwood Lumber from Canada – Comments on the Government of Nova Scotia's March 17, 2017 Questionnaire Response," dated March 27, 2017
March 27, 2017	GOS Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated March 27, 2017
March 27, 2017	JDIL NFI Submission 1	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Submission of Factual Information under 19 CFR 351.102(b)(21)(v) & 351.301(c)(5)," dated March 27, 2017

March 27, 2017	JDIL NFI Submission 2	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Submission of Factual Information to Measure the Adequacy of Remuneration," dated March 27, 2017
March 27, 2017	Petitioner Comments – Primary QNR Responses	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on Initial Questionnaire Responses," dated March 27, 2017
March 27, 2017	Petitionner NFI Submission 1	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Benchmark Information," dated March 27, 2017
March 27, 2017	Resolute Comments NSA	Letter from Resolute, "Softwood Lumber From Canada: Resolute's Response To The COALITION's Additional Subsidy Allegations," dated March 27, 2017
March 27, 2017	Resolute NFI Submission	Letter from Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: New Factual Information," dated March 27, 2017
March 27, 2017	Tolko NFI Submission	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Benchmark Factual Information Submission," dated March 27, 2017
March 27, 2017	West Fraser NFI Submission	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Submission of Additional Factual Information to Measure the Adequacy of Remuneration and Technical Correction to Response to Department's January 19, 2017 Countervailing Duty Questionnaire," dated March 27, 2017
March 28, 2017	GNB NFI Submission 1	Letter from the GNB, "Government of New Brunswick's Submission of Factual Information Concerning the Adequacy of Remuneration Under 19 CFR 351.511(a)(2) and other Factual Information," dated March 28, 2017
March 28, 2017	GOC Etal Primary QNR Response, Errata 2	Letter from the GOC et. al., "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Correction to the Public Version of Part 7 of Volume VI of the Government of Canada's Response to the Department's January 19. 2017 Initial Questionnaire," dated March 28, 2017
March 28, 2017	Scope Language Request	Department Memorandum, "Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language," dated March 28, 2017

March 29, 2017	GOC Comments Company Exclusions	Letter from the GOC, “Proposal for Company Exclusions,” dated March 29, 2017
March 29, 2017	GOC Etal Comments Exclusions	Letter from the GOC Etal, "Proposal for Company Exclusions," dated March 29 2017
March 30, 2017	Canfor Supp QNR 2	Letter from the Department to Canfor, “Certain Softwood Lumber from Canada: Supplemental Questionnaire for Canfor,” dated March 30, 2017
March 30, 2017	GBC Supp QNR 2	Letter from the Department to the GBC, "Countervailing Duty Investigation of Certain Softwood Lumber Products From Canada: Stumpage Programs," dated March 30, 2017
March 30, 2017	Petitioner Comments – Company Exclusions	Letter from Petitioner, “Certain Softwood Lumber Products from Canada: Response to Government of Canada's Proposal for Company Exclusions,” dated March 30, 2017
March 30, 2017	Resolute Supp QNR 6	Letter from the Department to Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Stumpage Programs – {Stumpage Programs -} First Supplemental Questionnaire for Resolute FP Canada Inc.," dated March 30, 2017
March 30, 2017	Tolko Supp QNR 1	Letter from the Department to Tolko, “Certain Softwood Lumber from Canada: Supplemental Questionnaire for Tolko,” dated March 30, 2017
March 31, 2017	Ex-Parte Meeting BC Stumpage	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Ex-Parte Meeting," dated March 31, 2017
March 31, 2017	GNB Comments Exclusions 1	Letter from the GNB, “Softwood Lumber from Canada: Proposals for Product- or Company-Based Exclusions from the CVD Investigation,” dated March 31, 2017
March 31, 2017	GOC Etal Comments GNS Data 1	Letter from GOC Etal, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Comments from the Governments of Alberta, British Columbia, Manitoba, Ontario and Québec on the Government of Nova Scotia’s Initial Questionnaire Response," dated March 31, 2017
March 31, 2017	Terminal Comments Scope 2	Letter from Terminal, “Certain Softwood Lumber from Canada (A-122-857/C-122-858): Rebuttal Scope Comments,” dated March 31, 2017
April 3, 2017	Barrette Comments Scope 2	Letter from Barrette, “Softwood Lumber from Canada: Proposed Scope Language

		for Bed-Frame Components," dated April 3, 2017
April 3, 2017	Canfor Comments Scope 2	Letter from Canfor, "Certain Softwood Lumber Products from Canada. Case No. C-122-858: Proposed Scope Language I-Joists," dated April 3, 2017
April 3, 2017	Canfor Rebuttal NFI Submission 1	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Rebuttal Factual Information," dated April 3, 2017
April 3, 2017	CIFQ Comments Scope 2	Letter from CIFQ, "Softwood Lumber from Canada: Proposed Scope Language – I-Joists," dated April 3, 2017
April 3, 2017	CIFQ Comments Scope 3	Letter from CIFQ, "Softwood Lumber from Canada: Proposed Scope Language – Maibec," dated April 3, 2017
April 3, 2017	GBC Comments Scope 2	Letter from the GBC, "Certain Softwood Lumber Products from Canada: Comments in Support of Clarifying and Exclusionary Language Proposed by Canada Regarding the Scope of these Investigations," dated April 3, 2017
April 3, 2017	GNS Supp QNR 1 Response	Letter from the GNS, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to the Department's Supplemental Questionnaire," dated April 3, 2017
April 3, 2017	GOC Comments Scope 2	Letter from the GOC, "Certain Softwood Lumber Products from Canada: Clarifying or Exclusionary Language Regarding the Scope of the Investigations," dated April 3, 2017
April 3, 2017	GOC Etal Supp QNR 2	Letter from the Department to the GOC, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Government of Canada and the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec, and Saskatchewan," dated April 3, 2017
April 3, 2017	JDIL Comments Scope 2	Letter from JDIL, "Softwood Lumber from Canada: Proposed Scope Language," dated April 3, 2017
April 3, 2017	Petitioner Comments Scope	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Additional Comments on Scope," dated April 3, 2017
April 3, 2017	Petitioner Scope Comments 1	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Additional Comments on Scope," dated April 3, 2017
April 3, 2017	Resolute Comments Scope 2	Letter from Resolute, "Softwood Lumber from Canada: Proposed Scope Language – Bedframe Components," dated April 3, 2017

April 3, 2017	Resolute Supp QNR 4 Response	Letter from Resolute, “Softwood Lumber from Canada: Resolute’s Response to the First Supplemental Questionnaire on Non-Stumpage Programs,” dated April 3, 2017
April 3, 2017	Resolute Supp QNR 7	Letter from the Department to Resolute, "Non-Stumpage Programs – Addendum to Second Supplemental Questionnaire for Resolute FP Canada Inc.," dated April 3, 2017
April 3, 2017	RILA Comments Scope 2	Letter from RILA, “Certain Softwood Lumber Products from Canada: RILA Scope Comments,” dated April 3, 2017
April 3, 2017	Tolko Rebuttal Comments Scope	Letter from Tolko, “Certain Softwood Lumber Products from Canada: Response to Petitioner Comments Submitted on March 27, 2017,” dated April 3, 2017"
April 3, 2017	UFP Comments Scope 1	Letter from UFP, “Certain Softwood Lumber Products from Canada: Proposed Clarifying Scope Language Submitted by UFP Western Division, Inc. and UFP Eastern Division, Inc. (A-122-857 C-122-858),” dated April 3, 2017
April 3, 2017	West-Wood Comments Scope	Letter from West-Wood, “Certain Softwood Lumber from Canada: West-Wood Industries Ltd.,” dated April 3, 2017
April 3, 2017	Woodtone Comments Scope	Letter from Woodtone, ‘Certain Softwood Lumber from Canada (A-122-857/C-122-858): Rebuttal Scope Comments,” dated April 3, 2017
April 4, 2017	Canfor Supp QNR 3	Letter from the Department to Canfor, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Initial Questionnaire Response,” dated April 4, 2017
April 4, 2017	JDIL Voluntary Respondent Memorandum	Letter from the Department, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Whether to Select a Voluntary Respondent," dated April 4, 2017.
April 4, 2017	Voluntary Respondent Selection Memorandum	Department Memorandum, “Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Whether to Select a Voluntary Respondent,” dated April 4, 2017
April 4, 2017	West Fraser Supp QNR 2	Letter from the Department to West Fraser, “Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Non-Stumpage Programs – First Supplemental Questionnaire for West Fraser Mills Ltd.,” dated April 4, 2017
April 5, 2017	Canfor Supp QNR 2 Response	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Supplemental Cost Table

		Questionnaire Response," dated April 5, 2017
April 5, 2017	GBC Rebuttal NFI Submission 1, Part 1	Letter from the GBC, “Certain Softwood Lumber Products from Canada: Government of British Columbia Benchmark Rebuttal Information,” dated April 5, 2017
April 5, 2017	GBC Rebuttal NFI Submission 1, Part 2	Letter from the GBC, "Certain Softwood Lumber Products from Canada: Comments in Support of Clarifying and Exclusionary Language Proposed by Canada Regarding the Scope of these Investigations," dated April 5, 2017
April 5, 2017	GBC Supp QNR 3	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Governments of Canada, British Columbia and New Brunswick," dated April 5, 2017
April 5, 2017	GNB Supp QNR 1	Letter from the Department, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Governments of Canada, British Columbia and New Brunswick," dated April 5, 2017
April 5, 2017	GNS Supp QNR 2 Response	Letter from the GNS, “Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to the Department’s Supplemental Questionnaire to the Government of Canada,” dated April 5, 2017
April 5, 2017	GOC Comments Remanufactured Lumber	Letter from the GOC, "Certain Softwood Lumber from Canada: Request that Remanufactured Lumber Be Treated as a Separate Class or Kind of Merchandise and That a Separate Rate Be Established for Independent Remanufacturers," dated April 5, 2017
April 5, 2017	GOC Etal Supp QNR 3	Letter from the Department to the GOC, “Certain Softwood Lumber from Canada: Supplemental Questionnaire for the Governments of Canada, British Columbia and New Brunswick,” dated April 5, 2017
April 5, 2017	GOQ NFI Submission, Refile Part 1	Letter from the GOQ, “Certain Softwood Lumber from Canada: Re-filing of back-up data sets and files to the expert report of Robert C. Marshall, Ph.D,” dated April 5, 2017
April 5, 2017	GOQ NFI Submission, Refile Part 2	Letter from the GOQ, “Certain Softwood Lumber from Canada: Resubmission of .txt files from Re-filing of back-up data sets and files to the expert report of Robert C. Marshall, Ph.D,” dated April 5, 2017

April 5, 2017	Tolko Rebuttal NFI Submission 1	"Letter from Tolko," "Certain Softwood Lumber Products from Canada: Response to Petitioner Benchmark Information Submitted on March 27, 2017," dated April 5, 2017
April 5, 2017	Tolko Supp QNR 1 Response	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Cost Table Supplemental Response," dated April 5, 2017
April 6, 2017	BCLTC Rebuttal NFI Submission	Letter from BCLTC, "Certain Softwood Lumber Products from Canada: Reply to Petitioner's Benchmark Submission and Comments on Initial Questionnaire Responses," dated April 6, 2017
April 6, 2017	Canfor Rebuttal NFI Submission 2	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Rebuttal Benchmark Factual Information," dated April 6, 2017
April 6, 2017	GBC Supp QNR 1 Response	Letter from GBC, "Certain Softwood Lumber Products from Canada: Government of British Columbia Supplemental Stumpage Response to Department's March 30, 2017 Supp QNR," dated April 6, 2017
April 6, 2017	GNS Rebuttal NFI Submission 1	Letter from the GNS, "Certain Softwood Lumber Products from Canada: Rebuttal Factual Information Submission of the Government of Nova Scotia in Response to Resolute's New Factual Information," dated April 6, 2017
April 6, 2017	GOA Rebuttal NFI Submission 1, Part 1	Letter from the GOA, "Certain Softwood Lumber Products from Canada: Submission of Factual Information to Rebut, Clarify, or Correct Factual Information Contained in Petitioner's March 27, 2017 Filing of Factual Information to Measure Adequacy of Remuneration pursuant to 19 CFR 351.301(c)(3)(iv)," dated April 6, 2017
April 6, 2017	GOC Etal Comments Rebuttal to Petitioner Primary QNR Response Comments	Letter from the GOC, "Certain Softwood Lumber from Canada: Reply of the Government of Canada and the Government of British Columbia to Petitioner's Rebuttal to the Initial Questionnaire Response," dated April 6, 2017
April 6, 2017	OCFP Comments – Scope 2	Letter from OCFP, "Oregon-Canadian Forest Products Response to Coalition Additional Comments on Scope, April 3, 2017," dated April 6, 2017
April 6, 2017	Resolute Supp QNR 5 Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to the Second Supplemental Questionnaire on Non-Stumpage Programs," dated April 6, 2017

April 6, 2017	West Fraser Supp QNR 2, Addendum	Letter from the Department to West Fraser, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Addendum to First Supplemental Questionnaire for West Fraser Mills Ltd.," dated April 6, 2017
April 7, 2017	Canfor Revised Sales Information	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Revised Public Version of Exhibit 25," dated April 7, 2017
April 7, 2017	GNS Rebuttal NFI Submission 2	Letter from the GNS, "Certain Softwood Lumber Products from Canada: Submission of Factual Information to Rebut, Clarify and Correct Comments Filed by the Governments of Alberta, British Columbia, Manitoba, Ontario and Quebec," dated April 7, 2017
April 7, 2017	GOC Etal Supp QNR 1 Response	Letter from the GOC et. al., "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Governments of Manitoba, Ontario, Québec, and Saskatchewan to the Department's March 27, 2017 Supplemental Questionnaire," dated April 7, 2017
April 7, 2017	GOM Supp QNR 1 Response	Letter from the GOQ, "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Governments of Manitoba, Ontario, Québec, and Saskatchewan to the Department's March 27, 2017 Supplemental Questionnaire," April 7, 2017
April 7, 2017	GOO Supp QNR 1 Response	Letter from the GOO, "Response Of The Government Of Ontario To The Department's March 27, 2017 Supplemental Questionnaire," dated April 7, 2017
April 7, 2017	GOQ Supp QNR 1 Response	Letter from the GOQ, "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Governments of Manitoba, Ontario, Québec, and Saskatchewan to the Department's March 27, 2017 Supplemental Questionnaire," dated April 7, 2017
April 7, 2017	GOS Supp QNR 1 Response	Letter from the GOQ, "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Governments of Manitoba, Ontario, Québec, and Saskatchewan to the Department's March 27, 2017 Supplemental Questionnaire," dated April 7, 2017

April 7, 2017	Petitioner Comments Denominator	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Deficiencies in Respondent Information Regarding Stumpage Subsidy Denominator," dated April 7, 2017
April 7, 2017	Petitioner Comments – Stumpage Denominator	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Deficiencies in Respondent Information Regarding Stumpage Subsidy Denominator," dated April 7, 2017
April 7, 2017	Petitioner Request – Additional NFI Scope	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Request for Leave to Submit New Factual Information Regarding the Scope of the Investigation," dated April 7, 2017
April 7, 2017	Request for Sales Information	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Request for Publicly-Ranged Data," dated April 7, 2017
April 7, 2017	Resolute Supp QNR 7 Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to the Department's Addendum to the Second Supplemental Non-Stumpage Questionnaire," dated April 7, 2017
April 10, 2017	Ex-Parte Meeting Atlantic Canada	Department Memorandum, "Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Consultation Documents," dated April 10, 2017
April 10, 2017	Resolute Rejection Request	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Request that the Department Reject the Rebuttal Factual Information Submission of the Government of Nova Scotia as Nonconforming," dated April 10, 2017
April 11, 2017	Canfor Pre-Prelim Comments	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Pre-Preliminary Comments," dated April 11, 2017
April 11, 2017	GBC Comments Pre-Prelim	Letter from the GBC, "Certain Softwood Lumber Products from Canada: Comments for the Preliminary Determination of Investigation," dated April 11, 2017
April 11, 2017	GBC Supp QNR 2 Response	Letter from the GBC, " Certain Softwood Lumber from Canada: Response of the Government of British Columbia and Partial Response of the Government of Alberta to the Department's March 27, 2017 Supplemental Questionnaire," dated April 11, 2017
April 11, 2017	GOA Request Corrections	Department Memorandum, "Countervailing Duty Investigation – Certain Softwood Lumber Products from

		Canada: New Factual Information Submission," dated April 11, 2017
April 11, 2017	GOA Supp QNR 1 Response, Part 1	Letter from the GOA, " Certain Softwood Lumber from Canada: Response of the Government of British Columbia and Partial Response of the Government of Alberta to the Department's March 27, 2017 Supplemental Questionnaire," dated April 11, 2017
April 11, 2017	GOC Etal Comments GNS Data 2	Letter from GOC Etal, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Comments from the Governments of Alberta, British Columbia, Manitoba, Ontario, Québec and Saskatchewan on the Government of Nova Scotia's April 3, 2017 Questionnaire Response," dated April 11, 2017
April 11, 2017	GOM Comments Pre-Prelim	Letter from the GOM, "Softwood Lumber from Canada – Comments by the Government of Manitoba for the Preliminary Determination," dated April 11, 2017
April 11, 2017	GOO Comments Pre-Prelim	Letter from the GOO, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Government of Ontario Comments for the Preliminary Determination," dated April 11, 2017
April 11, 2017	GOQ NFI Submission, DOC Request for Clarification	Department Memorandum, "Countervailing Duty Investigation – Certain Softwood Lumber Products from Canada: New Factual Information Submission," dated April 11, 2017
April 11, 2017	GOS Comments Pre-Prelim	Letter from the GOS, "Softwood Lumber from Canada – Comments by the Government of Saskatchewan for the Preliminary Determination," dated April 11, 2017
April 11, 2017	JDIL Comments Pre-Prelim	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Pre-Preliminary Determination Comments," dated April 11, 2017
April 11, 2017	JDIL Sales Information 1	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Request for Publicly-Ranged Data," dated April 11, 2017
April 11, 2017	Petitioner Pre-Prelim Comments 1	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Pre-Preliminary Comments," dated April 11, 2017
April 11, 2017	Petitioner Pre-Prelim Comments 2	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Pre-Prelim Comments on Non-Stumpage Subsidy Programs," dated April 11, 2017

April 11, 2017	Petitioner Rebuttal Comments– Remanufactured Lumber	Letter from Petitioner, “Certain Softwood Lumber Products from Canada: Response to GOC Request Regarding 'Remanufactured' Lumber,” dated April 11, 2017
April 11, 2017	Tolko Comments Pre-Prelim	Letter from Tolko, “Tolko Pre-Preliminary Determination Comments,” dated April 11, 2017
April 11, 2017	Tolko DOC Request for Corrections	Department Memorandum, “Department Memorandum, “Countervailing Duty Investigation – Certain Softwood Lumber Products from Canada: New Factual Information Submission,” dated April 11, 2017
April 11, 2017	Tolko Sales Information	Letter from Tolko, “Certain Softwood Lumber Products from Canada: Tolko’s Publicly-Ranged Export Sales Data,” dated April 11, 2017
April 12, 2017	Atlantic Canada Allow Additional NFI	Department Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada – Response to April 10, 2017, Request for Leave to Submit New Factual Information," dated April 12, 2017
April 12, 2017	GBC Supp QNR 3 Response	Letter from GBC, "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Government of British Columbia to the Department’s April 5, 2017 Supplemental Questionnaire," dated April 12, 2017
April 12, 2017	GNB Supp QNR 1 Response	Letter from the GNB, “Response of the Government of New Brunswick to the Department’s April 5, 2017 Supplemental Questionnaire Certain Softwood Lumber Products from Canada,” dated April 12, 2017
April 12, 2017	GOC Etal Supp QNR 3 Response	"Letter from the GOC et. al., "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Government of British Columbia to the Department’s April 5, 2017 Supplemental Questionnaire,"" dated April 12, 2017
April 12, 2017	GOQ NFI Submission, Clarification	Letter from the GOQ, “Certain Softwood Lumber from Canada: Response to the Department’s request for a written explanation identifying the relevant subsection(s) of 19 CFR 351.102(b)(21) applicable to our March 27, 2017 filing," dated April 12, 2017
April 12, 2017	Petitioner Request Alignment	Letter from Petitioner, “Certain Softwood Lumber Products from Canada: Request for Alignment of the Countervailing Duty Final Determination with the Companion

		Antidumping Duty Final Determination," dated April 12, 2017
April 12, 2017	Resolute Supp QNR 6 Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to the First Supplemental Questionnaire on Stumpage Programs," dated April 12, 2017
April 13, 2017	GOC Etal Comments Pre-Prelim	Letter from the GOC, "Certain Softwood Lumber Products from Canada: Government of Canada Pre-Preliminary Determination Comments," dated April 13, 2017
April 13, 2017	GOC Etal Primary QNR Response, Errata 3	Letter from the GOC et. al., "Certain Softwood Lumber Products from Canada: Submission of Factual Information in Errata to the Response of the Government of Canada and the Governments of Alberta, British Columbia, and Ontario to the Department's January 19, 2017 Initial Questionnaire," dated April 13, 2017
April 13, 2017	GOQ Comments Pre-Prelim	Letter from the GOQ, "Certain Softwood Lumber from Canada: Comments of the Government of Québec for the Preliminary Determination," dated April 13, 2017
April 13, 2017	JDIL Rebuttal NFI Submission 1 GNS Data	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Factual Information Submitted to Rebut, Clarify, or Correct Questionnaire Response," dated April 13, 2017
April 13, 2017	Preliminary Critical Circumstances Calculation Memorandum	Department Memorandum, "Calculations for Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated April 13, 2017
April 13, 2017	Request for Additional Sales Information	Letter from the Department to respondents, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Request for Respondents to Submit Additional Sales Data," dated April 13, 2017.
April 13, 2017	Resolute Primary QNR, Part 2, Correction	Letter from Resolute, Part II for Stumpage programs, "Softwood Lumber from Canada: Replacement to Exhibit Submitted in Initial Questionnaire Response on Stumpage Programs," dated April 13, 2017
April 13, 2017	Resolute Rebuttal NFI Submission 1	"Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to The Government of Nova Scotia's April 5, 2017 Supplemental Questionnaire Response," dated April 13, 2017

April 13, 2017	Tolko NFI Submission Corrections	Letter from Tolko, “Certain Softwood Lumber Products from Canada: March 27, 2017 Factual Information Submission Clarification,” dated April 13, 2017
April 13, 2017	West Fraser NFI Submission Clarification	Letter from West Fraser, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Additional Explanation Regarding March 27, 2017 Submission of Additional Factual Information,” dated April 13, 2017
April 14, 2017	Canfor Supp QNR 3 Response	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to April 4, 2017 Supplemental Questionnaire," dated April 14, 2017
April 14, 2017	GOA Comments Pre-Prelim	Letter from the GOA, "Certain Softwood Lumber Products from Canada: Pre-Preliminary Determination Comments by the Government of Alberta,” dated April 14, 2017
April 14, 2017	GOA Supp QNR 1 Response, Part 2	Letter from the GOA, "Certain Softwood Lumber from Canada: Partial Response of the Government of Alberta to the Department’s March 27, 2017 Supplemental Questionnaire," dated April 14, 2017
April 14, 2017	GOC Etal Supp QNR 2 Response	"Letter from the GOC et. al., "Certain Softwood Lumber from Canada: Response of the Government of Canada and the Governments of Alberta and British Columbia to the Department’s April 3, 2017 Supplemental Questionnaire," dated April 14, 2017
April 14, 2017	JDIL Shipment Data3	Letter from JDIL, “Certain Softwood Lumber Products from Canada,” dated April 14, 2017
April 14, 2017	West Fraser Shipment Data3	Letter from West Fraser, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to the Department’s Request for Monthly Quantity and Value Shipment Data,” dated April 14, 2017
April 16, 2017	Petitioner NFI Submission 2	Letter from Petitioner, “Certain Softwood Lumber Products from Canada: New Factual Information Regarding ALB-Certified Lumber,” dated April 16, 2017
April 16, 2017	West Fraser Supp QNR 2 Response	Letter from West Fraser, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Response to Department’s April 5, 2017 Countervailing Duty Supplemental Questionnaire,” dated April 16, 2017
April 17, 2017	Canfor Shipment Data 3	Letter from Canfor, “Certain Softwood Lumber Products from Canada, Case No. C-122-858: Quantity and Value Shipment

		Data for January 2015 – March 2017," dated April 17, 2017
April 17, 2017	JDIL Sales Information 2	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Additional Sales Data," dated April 17, 2017
April 17, 2017	Resolute Shipment Data3	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Updated Response to Critical Circumstances Questionnaire," dated April 17, 2017
April 17, 2017	Tolko Sales Information 2	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Affiliated Party Submission," dated April 17, 2017
April 17, 2017	Tolko Shipment Data3	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Response to Department's Request for Monthly Sales Data, Inclusive of March 2017," dated April 17, 2017
April 17, 2017	West Fraser Comments Pre-Prelim	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Additional Explanation Regarding March 27, 2017 Submission of Additional Factual Information," dated April 17, 2017
April 17, 2017	West Fraser Sales Information	Letter from West Fraser, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Information Regarding Co-Products and By-Products Produced in Sawmills," dated April 17, 2017
April 18, 2017	Resolute Additional Sales Information	Letter from Resolute, "Softwood Lumber from Canada: Response To Request For Respondents To Submit Additional Sales Data Regarding Co-products/Bv-products," dated April 18, 2017
April 19, 2017	Petitioner Comments Critical Circumstances 1	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on Respondents' Critical Circumstances Responses," dated April 19, 2017
April 20, 2017	GOC Comments Critical Circumstances Responses Rebuttal	Letter from the GOC, "Countervailing Duty and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Rebuttal Comments on Petitioner's Comments on Respondents' Critical Circumstances Responses," dated April 20, 2017
April 20, 2017	GOC Rebuttal Comments Company Exclusions	Letter from the GOC, "Certain Softwood Lumber from Canada: Reply to Petitioner's Response to the Government of Canada's Proposal for Company Exclusions," dated April 20, 2017
April 24, 2017	British Columbia Diameter Analysis	Department Memorandum, "Analysis of Top and Butt Diameter Data Provided in Exhibit BC-S-164 of the Initial Question

		of the Government of British Columbia," April 24, 2017
April 24, 2017	Canfor Preliminary Calculation Memorandum	Department Memorandum, "Preliminary Determination Calculations for Canfor," dated April 24, 2017
April 24, 2017	CEP Analysis Memo	Department Memorandum, "Consultation for Employment Program," dated April 24, 2017
April 24, 2017	JDIL Preliminary Calculation Memorandum	Department's Memorandum, "Preliminary Determination in the Countervailing Duty Investigation of Softwood Lumber from Canada: Preliminary Determination Calculations for J.D. Irving Limited," dated April 24, 2017
April 24, 2017	Lumber IV Profit Data	Department Memorandum, "Profit Data from Lumber IV," dated April 24, 2017
April 24, 2017	Market Memorandum	Department Memorandum to the File, "Provincial Market Preliminary Analysis Memorandum," dated April 24, 2017.
April 24, 2017	Nova Scotia Preliminary Benchmark Calculation Memorandum	Department Memorandum, "Benchmark Calculation Memorandum for the Preliminary Determination," dated April 24, 2017
April 24, 2017	Preliminary All Others Rate Calc Memo	Department Memorandum, "Calculation of the "All-Others" Rate in the Preliminary Determination of the Countervailing Duty Investigation of Softwood Lumber Products from Canada," dated April 24, 2017
April 24, 2017	Resolute Joint Ventures Memorandum	Department Memorandum, "Resolute Company Affiliation: Joint Ventures," dated April 24, 2017
April 24, 2017	Resolute Preliminary Calculation Memorandum	Department Memorandum, "Preliminary Determination Calculations the Resolute FP Canada Inc.," dated April 24, 2017
April 24, 2017	Tolko Preliminary Calculation Memorandum	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada – Tolko Marketing & Sales Ltd.," dated April 24, 2017
April 24, 2017	U.S. Log Price Memorandum	Department Memorandum, "Washington Department of Natural Resources Delivered Log prices for 2015," dated April 24, 2017
April 24, 2017	USFS 2009 Sawmill Profile Memorandum	Department Memorandum, "Placement on Record of Investigation – United States Forestry Service Report, "Profile 2009: Softwood Sawmills in the United States and Canada," dated April 24, 2017
April 24, 2017	West Fraser Preliminary Calculation Memorandum	Department Memorandum, "Preliminary Determination of the Countervailing Duty Investigation on Softwood Lumber Products from Canada: Preliminary Determination Calculations for West

		Fraser Mills, Ltd. and its cross-owned affiliates," dated April 24, 2017
April 24, 2017	PDM	Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated April 24, 2017
April 25, 2017	Company Exclusion Memorandum	Department Memorandum, "Countervailing Duty Investigation of Softwood Lumber Products from Canada: Company Exclusions," dated April 25, 2017
April 27, 2017	Petitioner Scope Clarification on U.S. Lumber	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Clarification Regarding U.S. Origin Lumber Undergoing Certain Types of Processing in Canada," dated April 27, 2017
April 28, 2017	*Preliminary Determination*	*Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017)
May 1, 2017	GOC Etal Ministerial Error Comments	Letter from the GOC, "Countervailing Duty and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Comments Regarding Ministerial Errors and Submission of New Factual Information Concerning the Department's Preliminary Affirmative Critical Circumstances Determination," dated May 1, 2017
May 1, 2017	JDIL Ministerial Error Comments	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Ministerial Error Comments," dated May 1, 2017
May 2, 2017	Oregon Industrial Scope Comments	Letter from Oregon Industrial, "Independent Comments on the Scope," dated May 2, 2017
May 3, 2017	GNS Comments Scope 2	Letter from GNS, "Certain Softwood Lumber from Canada: Scope Comments from the Government of Nova Scotia," dated May 3, 2017
May 5, 2017	Barrette & ISPA Comments Scope	Letter from Barrette, "Scope Comments for Crating Ladder Components Exclusion," dated May 5, 2017
May 5, 2017	Barrette, EACOM, ISPA Comments Scope	Letter from Barrette, "Scope Comments for Bed-Frame Components Exclusion," dated May 5, 2017

May 5, 2017	Canfor Comments Scope 3	Letter from Canfor, "Certain Softwood Lumber Products from Canada. C No. C-l22-858: Comments on Proposed Scope Exclusions," dated May 5, 2017
May 5, 2017	CIFQ Comments Scope 4	Letter from CIFQ, "Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – I-Joists," dated May 5, 2017
May 5, 2017	CIFQ Comments Scope 5	Letter from CIFQ, "Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – Lumber Made From U.S. Origin Logs," dated May 5, 2017
May 5, 2017	CIFQ Comments Scope 6	Letter from CIFQ, "Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – U.S. Origin Lumber Further Processed in Canada," dated May 5, 2017
May 5, 2017	GBC Comments Scope 3	Letter from GBC, "Certain Softwood Lumber Products from Canada: Scope Comments of the Government of British Columbia," dated May 5, 2017
May 5, 2017	GNS Comments Scope 3	Letter from GNS, "Certain Softwood Lumber from Canada: Scope Comments Requesting the Exclusion from the Antidumping and Countervailing Duty Investigations of ALB-Certified Softwood Lumber Products," dated May 5, 2017
May 5, 2017	GOC Comments Scope 3	Letter from the GOC, "Certain Softwood Lumber Products from Canada: Comments on Proposed Scope Exclusions Currently under Consideration by the Department," dated May 5, 2017
May 5, 2017	IWPA Scope Comments	Letter from IWPA, "Canadian Softwood Lumber Exclusion Request by Oregon-Canada Forest Products Dear Secretary," dated May 5, 2017
May 5, 2017	Matra Scope Comments	Letter from Matra, "Independent Comments on Scope," dated May 5, 2017
May 5, 2017	OCFP Comments – Scope 3	Letter from OCFP, "Comments on OCFP's Proposed Scope Exclusion Request Currently Under Consideration by the Department," dated May 5, 2017
May 5, 2017	OFIA Scope Comments	Letter from OFIA, "Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – Eastern White Pine," dated May 5, 2017
May 5, 2017	Petitioner Amendment to the Petition	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Amendment to the Petitions," dated May 5, 2017

May 5, 2017	Petitioner Ministerial Error Rebuttal Comments	Letter from Petitioner, “Certain Softwood Lumber Products from Canada: Response to Requests for Correction of Alleged Critical Circumstances Ministerial Errors,” dated May 5, 2017
May 5, 2017	Petitioner Ministerial Error Rebuttal Comments	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Response to Requests for Correction of Alleged Critical Circumstances Ministerial Errors," dated May 5, 2017
May 5, 2017	Petitioner Scope Comments 2	Letter from Petitioner, “Certain Softwood Lumber Products from Canada: Comments on Proposed Scope Exclusions,” dated May 5, 2017
May 5, 2017	Resolute Scope Comments	Letter from Resolute, “Countervailing and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Proposed Scope Language – Bedframe Components,” dated May 5, 2017
May 5, 2017	RIlA Comments Scope 3	Letter from RILA, “Certain Softwood Lumber Products from Canada: RlLA Scope Comments,” dated May 5, 2017
May 5, 2017	Terminal Comments Scope 3	Letter from Terminal, “A-122-857/C-122-858: Certain Softwood Lumber Products from Canada: Additional Comments on Scope- Edge Glued Lumber,” dated May 5, 2017
May 5, 2017	UFP Comments Scope 2	Letter from UFP, “Certain Softwood Lumber Products from Canada: Comments on Proposed Scope Exclusion for Bed Frame/Box Spring Components Submitted by UFP Westem Division, Inc. and UFP Eastem Division Inc.,” dated May 5, 2017
May 5, 2017	WFA Scope Comments 1	Letter from WFA, “Certain Softwood Lumber from Canada: Comments Regarding Proposed Exclusion of Certain Western Red Cedar Products,” dated May 5, 2017
May 5, 2017	WFA Scope Comments 2	Letter from WFA, “Certain Softwood Lumber from Canada: Comments Regarding Proposed Exclusion of Certain Yellow Cedar Products,” dated May 5, 2017.
May 8, 2017	GNS Supp QNR 3	Letter from the Department to the GNS, “Countervailing Duty Investigation of Softwood Lumber Products from Canada: Supplemental Questionnaire,” dated May 8, 2017
May 8, 2017	Primary QNR – Correction 2	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Standard Questions Appendix –

		Provision of Stumpage for LTAR," dated March 8, 2017
May 11, 2017	Canfor Supp QNR 4	Letter from the Department to Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Supplemental Questionnaire," dated May 11, 2017
May 11, 2017	GBC Supp QNR 4	Letter from the Department to the GBC, "Countervailing Duty Investigation of Certain Softwood Lumber Products From Canada: Second Supplemental Questionnaire for the Government of British Columbia," dated May 11, 2017
May 11, 2017	JDIL Supp QNR 1	Letter from the Department to JDIL, "Certain Softwood Lumber from Canada: Supplemental Questionnaire," dated May 11, 2017
May 11, 2017	Tolko Supp QNR 2	Letter from the Department to Tolko, "Certain Softwood Lumber from Canada: Supplemental Questionnaire for Tolko," dated May 11, 2017
May 11, 2017	West Fraser Supp QNR 3	Letter from the Department to West Fraser, "Supplemental Questionnaire for West Fraser Mills Ltd. (West Fraser)," dated May 11, 2017
May 12, 2017	GNB Supp QNR 2	Letter from the Department to the GNB, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the Government of New Brunswick," dated May 12, 2017
May 12, 2017	GOA Supp QNR 2	Letter from the Department to the GOA, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire for the Government of Alberta," dated May 12, 2017
May 15, 2017	GOA Supp QNR 2 Addendum	Letter from the Department to the GOA, "Addendum to May 12, 2017 Supplemental Questionnaire for the Government of Alberta," dated May 15, 2017
May 15, 2017	Petitioner Comments Critical Circumstances 3	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Treatment of March 2, 2017 Response to Government of Canada's Comments on Allegations of Critical Circumstances," dated May 15, 2017
May 16, 2017	GOO Supp QNR 2	Letter from the Department to the GOO, "Countervailing Duty Investigation of Softwood Lumber Products from Canada: Post-Preliminary Supplemental Questionnaire," dated May 16, 2017

May 16, 2017	GOQ Supp QNR 2	Letter from the Department to the GOQ, "Countervailing Duty Investigation of Softwood Lumber Products from Canada: Post-Preliminary Supplemental Questionnaire," dated May 16, 2017
May 17, 2017	Canfor Supp QNR 4 Addendum	Letter from the Department to Canfor, "Certain Softwood Lumber from Canada: Addendum to Supplemental Questionnaire for Canfor Corporation," dated May 17, 2017
May 17, 2017	Tolko Supp QNR 2 Addendum	Letter from the Department to Tolko," Certain Softwood Lumber from Canada: Addendum to Supplemental Questionnaire for Tolko Marketing and Sales Ltd. and Tolko Industries Ltd.," dated May 17, 2017
May 18, 2017	Petitioner Supp QNR 3	Letter from Department, "Supplemental Questionnaire Regarding Scope of Investigation," dated May 18, 2017
May 18, 2017	Petitioner Supp QNR 4	Letter from the Department to Petitioner, "Supplemental Scope Questions," dated May 18, 2017
May 18, 2017	Resolute Supp QNR 8	Letter from the Department to Resolute, "Countervailing Duty Investigation of Softwood Lumber Products from Canada: Post-Preliminary Supplemental Questionnaire," dated May 18, 2017
May 22, 2017	GNS Supp QNR 3 Response	Letter from the GNS, "Certain Softwood Lumber Products from Canada: Response of the Government of Nova Scotia to the Department's Second Supplemental Questionnaire," dated May 22, 2017
May 22, 2017	GNS Supp QNR 3 Response, Errata	Letter from the GNS, "Certain Softwood Lumber Products from Canada: Errata to the May 22, 2017 Response of the Government of Nova Scotia," dated May 22, 2017
May 23, 2017	Resolute NFI Rejection Letter	Letter from the Department to Resolute, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - Rejection of Untimely Filed New Factual Information," dated May 23, 2017.
May 24, 2017	Petitioner Supp QNR 3 Response	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Response to Scope Comments Supplemental Questionnaire," dated May 24, 2017
May 24, 2017	Petitioner Supp QNR 4 Response	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Response to Scope Comments Supplemental Questionnaire," dated May 24, 2017
May 25, 2017	GOC Etal Comments GNS Data 3	Letter from GOC Etal, "Countervailing Duty Investigation of Certain Softwood Lumber Products fromCanada: Comments on Deficiencies in the Government of

		Nova Scotia's Questionnaire Responses," dated May 25, 2017
May 26, 2017	GOC Etal Hearing Request	Letter from GOC and Canadian Provincial Governments, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Request for Hearing," dated May 26, 2017
May 29, 2017	GOO Supp QNR 2 Response	Letter from the GOO, "Countervailing Duty Investigation of Softwood Lumber Products from Canada; Response to the Post-Preliminary Supplemental Questionnaire," dated May 29, 2017
May 30, 2017	Canfor Hearing Request	Letter from Canfor, "Certain Softwood Lumber Products from Canada: Hearing Request," dated May 30, 2017
May 30, 2017	GBC Supp QNR 4 Response	Letter from the GBC, "Certain Softwood Lumber Products from Canada: Government of British Columbia Supplemental Questionnaire Response," dated May 30, 2017
May 30, 2017	GNS Hearing Request	Letter from GNS, "Certain Softwood Lumber Products from Canada: Hearing Request," dated May 30, 2017
May 30, 2017	GOA Supp QNR 2 Response	Letter from GOA, "Certain Softwood Lumber Products from Canada: Response of the Government of Alberta to the Department's May 12, 2017 Supplemental Questionnaire and May 15, 2017 Addendum," dated May 30, 2017
May 30, 2017	JDIL Hearing Request	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Hearing Request," dated May 30, 2017
May 30, 2017	JDIL NFI Rejection Letter	Letter from the Department to JDIL, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - Rejection of Untimely Filed New Factual Information," dated May 30, 2017.
May 30, 2017	Petitioner Hearing Request	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Request for a Hearing," dated May 30, 2017
May 30, 2017	Petitioner Hearing Request	Letter from Petitioner, "Hearing Request," dated May 30, 2017
May 30, 2017	Petitioner Pre-Verification GOO Comments	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments Regarding the Upcoming Verification for the Government of Ontario," dated May 30, 2017
May 30, 2017	Resolute CIFQ, and OFIA Hearing Request	Letter from Resolute, CIFQ, and OFIA, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Resolute's Request for Hearing," dated May 30, 2017

May 30, 2017	RILA Hearing Request	Letter from RILA, “Certain Softwood Lumber Products from Canada: Hearing Request,” dated May 30, 2017
May 30, 2017	Tolko Hearing Request	Letter from Tolko, “Certain Softwood Lumber Products from Canada: Hearing Request,” dated May 30, 2017
May 30, 2017	Tolko Supp QNR 2 Response, Part 1	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Response to the Department’s CVD Supplemental Questionnaire," dated May 30, 2017
May 31, 2017	Canfor Supp QNR 4 Response	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Supplemental Questionnaire Response," dated May 31, 2017
May 31, 2017	GOO Verification Outline	Letter from the Department, "Verification of the Government of Ontario’s Questionnaire Responses submitted in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated May 31, 2017
May 31, 2017	JDIL Rebuttal NFI Submission 2 GNS Data	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Factual Information Submitted to Rebut, Clarify, or Correct Questionnaire Response," dated May 31, 2017
May 31, 2017	West Fraser Supp QNR 3 Response	Letter from West Fraser, "Certain Softwood Lumber Products from Canada: Response to Second Supplemental," dated May 31, 2017
June 2, 2017	GNB Supp QNR 2 Response	Letter from GNB, "Resubmission of the GNB’s Response to the Department’s May 12, 2017 Supplemental Questionnaire," dated June 2, 2017
June 2, 2017	GOQ Supp QNR 2 Response	Letter from GOQ, "Certain Softwood Lumber from Canada: Response of The Government of Québec to the Department’s May 16, 2017 Supplemental Questionnaire," dated June 2, 2017
June 2, 2017	JDIL Supp QNR 1 Response	Letter from JDIL, "Certain Softwood Lumber Products from Canada," dated June 2, 2017
June 2, 2017	Tolko Supp QNR 2 Response, Part 2	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Response to the Department’s Request for Additional Grade Data," dated June 2, 2017
June 5, 2017	Canfor Verification Outline	Letter from Department to Canfor, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada; Verification of Canfor Corporation’s Questionnaire Responses," dated June 5, 2017

June 5, 2017	GOC Rebuttal Information RE Petitioner Scope Filing	Letter from GOC, "Certain Softwood Lumber Products from Canada: Government of Canada's Comments on Petitioner's Response to Scope Comments Supplemental Questionnaire," dated June 5, 2017
June 5, 2017	JDIL Rebuttal NFI Submission 3	Letter from JDIL, "Certain Softwood Lumber Products from Canada: Factual Information Submitted to Rebut Questionnaire Response," dated June 5, 2017
June 5, 2017	Resolute Supp QNR 8 Response	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Response to the Department's Mav 18th Post-Preliminary Supplemental Questionnaire," dated June 5, 2017
June 5, 2017	Tolko Verification Outline	Letter from the Department, "Countervailing Duty Investigation of Certain Softwood Lumber from Canada: Tolko Verification Agenda," dated June 5, 2017
June 5, 2017	West Fraser Verification Outline	Letter from the Department, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada; Verification of West Fraser Mills Ltd.'s Questionnaire Responses," dated June 5, 2017
June 5, 2017	Woodtone Rebuttal Information RE Petitioner Scope Filing	Letter from Woodtone, "Comments on Petitioner's Supplemental Questionnaire Response," dated June 5, 2017
June 6, 2017	JDIL Verification Outline	Letter from the Department, "Countervailing Duty Investigation of Certain Softwood Lumber from Canada; Verification of J.D. Irving, Limited's Questionnaire Responses," dated June 6, 2017
June 6, 2017	Resolute Rebuttal NFI Submission 2	Letter from Resolute, "Countervailing Outv Investigation of Certain Softwood Lumber Products from Canada: Resolute's Supplemental Response Regarding Wood Pellet Sales To Ontario Power Generation," dated June 6, 2017
June 7, 2017	GBC Verification Outline	Letter from the Department, "Verification of Government of British Columbia Questionnaire Responses submitted in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated June 8, 2017
June 8, 2017	GNB Verification Outline	Letter from the Department, "Verification of Government of New Brunswick Questionnaire Responses submitted in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated June 8, 2017

June 8, 2017	GOA Verification Outline	Letter from the Department, "Verification of Government of Alberta Questionnaire Responses submitted in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated June 8, 2017
June 12, 2017	GNS Verification Outline	Letter from the Department, "Verification of Government of Nova Scotia's Questionnaire Responses submitted in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated June 12, 2017
June 12, 2017	GOA Comments GNS Verification	Letter from GOA, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Comments on Verification of Government of Nova Scotia's 2015 Private Stumpage Survey," dated June 12, 2017
June 12, 2017	GOQ Verification Outline	Letter from the Department, "Verification of the Government of Quebec's Questionnaire Responses Submitted in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated June 12, 2017
June 13, 2017	Petitioner Pre-Verification GBC Comments	Letter from Petitioners, "Certain Softwood Lumber Products from Canada: Comments Regarding the Upcoming Verification for the Government of British Columbia," dated May 30, 2017
June 13, 2017	Petitioner Scope Comments 3	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Additional Proposed Scope Exclusions," dated June 13, 2017
June 14, 2017	New Aid Package Memorandum	Memorandum to the File, "Countervailing Duty Investigation of Softwood Lumber Products from Canada," dated June 14, 2017
June 16, 2017	Resolute Verification Outline	Letter from the Department, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada; Verification of Resolute FP Canada Inc.'s Questionnaire Responses," dated June 16, 2017
June 17, 2017	Petitioner Comments GOC Etal QNR Response Aid	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on the Government of Canada's Supplemental Questionnaire Response Regarding Its Aid Package to Softwood Lumber Producers," dated July 17, 2017
June 19, 2017	Twin Rivers Comments on Petition Amendment	Letter from Twin Rivers, "Certain Softwood Lumber Products from Canada: Comments on Proposed Petition Amendment," dated June 19, 2017

June 20, 2017	GOA Minor Corrections	Letter from GOA, "Certain Softwood Lumber Products from Canada: Minor Corrections Presented at the Government of Alberta's Verification," dated June 20, 2017
June 20, 2017	GOC Etal Supp QNR 4	Letter from the Department, "Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Questions Regarding the Government of Canada's Funding," dated June 19, 2017
June 22, 2017	GOC Etal Comments Objection to Supp QNR 4	Letter from GOC, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Objection to Department's June 20, 2017 Supplemental Questionnaire," dated June 22, 2017
June 23, 2017	ALB Scope Memorandum	Department Memorandum, "Preliminary Decision Memorandum for Exclusion of Certain Softwood Lumber Products Certified by the Atlantic Lumber Board in the Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada," dated June 23, 2017
June 23, 2017	Canfor Revised Stumpage Databases	Letter from Canfor, "Certain Softwood Lumber Products from Canada: Submission of Revised Alberta and British Columbia Stumpage Databases," dated June 23, 2017
June 23, 2017	Canfor Verification Exhibits	Letter from Canfor, "Certain Softwood Lumber Products from Canada Case No. C-122-858: Canfor's Verification Exhibits," dated June 23, 2017
June 23, 2017	Petitioner Comments GOC Aid 1	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Clarification Information Regarding Government of Canada's Aid Package to Softwood Lumber Producers," dated June 23, 2017
June 23, 2017	Preliminary Exclusion Memorandum	Department Memorandum, "Preliminary Decision Memorandum for Exclusion of Certain Softwood Lumber Products Certified By the Atlantic Lumber Board in the Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada," dated June 23, 2017
June 23, 2017	Preliminary Scope Memorandum	Department Memorandum, "Certain Softwood Lumber Products from Canada: Preliminary Scope Decision," dated June 23, 2017
July 4, 2017	SBCA Scope Comments	Letter from SBCA, "June 23, 2017 Memorandum on Preliminary Scope Decisions – Comments from SBCA as Interested Party," dated July 4, 2017

July 5, 2017	Proposed Exclusion Language Call Memo	Department Memorandum, “Telephone Conversation Regarding Proposed Exclusion Language,” dated July 5, 2017.
July 7, 2017	GOC Etal Supp QNR 4 Response	Letter from GOC, "Certain Softwood Lumber from Canada: Response of the Government of Canada to the June 20, 2017 Supplemental Questionnaire," dated July 7, 2017
July 10, 2017	JDIL Minor Corrections Submission	Letter from JDIL, "Softwood Lumber Products from Canada: Excel Files for Minor Corrections," dated July 10, 2017
July 11, 2017	GNS Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - GNS Verification Report," dated July 11, 2017
July 13, 2017	Tolko Revised Data Response	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Submission of Revised Data Incorporating Minor Corrections and Clarifications," dated July 13, 2017.
July 14, 2017	Canfor Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - Canfor Verification Report," dated July 14, 2017
July 14, 2017	GBC Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - GBC Verification Report," dated July 14, 2017
July 14, 2017	GOO Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - GOO Verification Report," dated July 14, 2017
July 14, 2017	GOQ Verification Report	Department Memorandum, "Verification of the Questionnaire Responses of the Government of Quebec," dated July 14, 2017
July 14, 2017	GOQ Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - GOQ Verification Report," dated July 14, 2017
July 14, 2017	Tolko Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - Tolko Verification Report," dated July 14, 2017
July 14, 2017	West Fraser Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - West Fraser Verification Report," dated July 14, 2017

July 17, 2017	GNB Verification Report	Department Memorandum, "Verification of the Questionnaire Responses of the Government of the Province of New Brunswick," dated July 17, 2017
July 17, 2017	GOA Verification Report	Department Memorandum, "Verification of the Questionnaire Responses of the Government of Alberta," dated July 17, 2017
July 17, 2017	GOQ Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - GOQ Verification Report," dated July 14, 2017
July 17, 2017	JDIL Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - JDIL Verification Report," dated July 14, 2017
July 17, 2017	Petitioner Comments GOC Aid 2	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Comments on the Government of Canada's Supplemental Questionnaire Response Regarding Its Aid Package to Softwood Lumber Producers," dated July 17, 2017
July 18, 2017	Resolute Verification Report	Department Memorandum, "Verification of the Questionnaire Responses of Resolute FP Canada Inc.," dated July 18, 2017
July 18, 2017	Resolute Verification Report	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada - Resolute Verification Report," dated July 18, 2017
July 25, 2017	OCFP Case Brief	Letter from OCFP, "Certain Softwood Lumber Products from Canada: Case "Brief of Oregon-Canadian Forest Products Inc.," dated July 25, 2017
July 26, 2017	GTA Data Additional Data	Department Memorandum, "Certain Softwood Lumber Products from Canada: Case "Brief of Oregon-Canadian Forest Products Inc.," dated July 26, 2017
July 27, 2017	Canfor Case Brief	Letter from Canfor, "Certain Softwood Lumber Products from Canada, Case No. C-122-858: Case Brief," dated July 27, 2017
July 27, 2017	Central Canada Alliance Case Brief	Letter from Central Canada Alliance, "Softwood Lumber from Canada: Central Canada's Case Brief," dated July 27, 2017
July 27, 2017	GBC Case Brief	Letter from GBC Etal, Volume 5, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Government Parties' Joint Case Brief - GBC/BCLTC," dated July 27, 2017

July 27, 2017	GBC Case Brief Log Exports	Letter from GBC Etal, Volume 3, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Government Parties' Joint Case Brief - GOC/GBC Log Export Ban," dated July 27, 2017
July 27, 2017	GNB Case Brief	Letter from GNB, "GNB's Case Brief Certain Softwood Lumber Products from Canada," dated July 27, 2017
July 27, 2017	GOA Case Brief	Letter from GOA/ Etal, Volume 4, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Government Parties' Joint Case Brief - GOA/Albert Softwood Lumber Trade Counsel," dated July 27, 2017
July 27, 2017	GOC Case Brief	Letter from GOC Etal, Volume 2, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Government Parties' Joint Case Brief," dated July 27, 2017
July 27, 2017	GOC Etal Common Issues Case Brief	Letter from GOC Etal, Volume 1, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Government Parties' Joint Case Brief - GOC Brief," dated July 27, 2017
July 27, 2017	GOM Case Brief	Letter from GOM, Volume 6, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Government Parties' Joint Case Brief - GOM," dated July 27, 2017
July 27, 2017	GOO Case Brief	Letter from GOO, Volume 7, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Case Brief - GOO," dated July 27, 2017
July 27, 2017	GOQ Case Brief	Letter from GOQ, Volume 8, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Case Brief - GOQ," dated July 27, 2017
July 27, 2017	GOS Case Brief	Letter from GOS, Volume 9, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Case Brief - GOS," dated July 27, 2017
July 27, 2017	JDIL Case Brief	Letter from JDIL, "Softwood Lumber Products from Canada: Case Brief," dated July 27, 2017
July 27, 2017	Petitioner Case Brief	Letter from Petitioner, "Certain Softwood Lumber Products from Canada: Case Brief," dated July 27, 2017

July 27, 2017	Resolute Case Brief	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Case Brief," dated July 27, 2017
July 27, 2017	Tolko Case Brief	Letter from Tolko, "Certain Softwood Lumber Products from Canada: Tolko CVD Affirmative Case Brief," dated July 27, 2017
July 27, 2017	West Fraser Case Brief	Letter from West Fraser, "Certain Softwood Lumber Products from Canada: Case Brief of West Fraser Mills Ltd.," dated July 27, 2017
July 31, 2017	GOC Etal Comments GTA Data	Letter from GOC Etal, "Countervailing Duty and Antidumping Duty Investigations of Certain Softwood Lumber Products from Canada: Factual Information to Rebut, Clarify, or Correct Data Placed on the Record by the Department," dated July 31, 2017
August 4, 2017	Central Canada Alliance Rebuttal Brief	Letter from Central Canada Alliance, "Softwood Lumber from Canada: Central Canada's Case Brief on Critical Circumstances" dated August 4, 2017
August 4, 2017	GBC Rebuttal Brief	Letter from the GOC, Volume 3, "Canadian Parties Joint Rebuttal Brief," dated August 4, 2017
August 4, 2017	GNB Rebuttal Brief	Letter from GNB, "GNB's Rebuttal Brief Certain Softwood Lumber Products from Canada," dated August 4, 2017
August 4, 2017	GNS Rebuttal Brief	Letter from GNS, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated August 4, 2017
August 4, 2017	GOC Etal Common Issues Rebuttal Brief	Letter from the GOC, Volume 1, "Canadian Parties Joint Rebuttal Brief," dated August 4, 2017
August 4, 2017	GOC Rebuttal Brief	Letter from the GOC, Volume 2, "Canadian Parties Joint Rebuttal Brief," dated August 4, 2017
August 4, 2017	GOO Rebuttal Brief	Letter from the GOC, Volume 4, "Canadian Parties Joint Rebuttal Brief," dated August 4, 2017
August 4, 2017	GOQ Rebuttal Brief	Letter from GOQ, Volume 5, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Rebuttal Brief - GOQ," dated August 4, 2017
August 4, 2017	JDIL Rebuttal Brief	Letter from JDIL, "Softwood Lumber Products from Canada: Rebuttal Brief," dated August 4, 2017
August 4, 2017	Resolute Rebuttal Brief	Letter from Resolute, "Softwood Lumber from Canada: Resolute's Rebuttal Brief," dated August 4, 2017

August 4, 2017	GOC Miscellaneous Scope Comments	Letter from GOC, "Antidumping Duty Investigation of Certain Softwood Lumber GOC Miscellaneous Scope Comments Products from Canada: Scope Comments of Government of British Columbia Filed in Countervailing Duty Investigation of Softwood Lumber Products from Canada," dated August 4, 2017
August 4, 2017	West Fraser Rebuttal Brief	Letter from West Fraser, "Certain Softwood Lumber Products from Canada: Rebuttal Brief of West Fraser Mills Ltd.," dated August 4, 2017
August 7, 2017	NBLP Scope Brief	Letter from NBLP, "Certain Softwood Lumber from Canada: NBLP Case Brief on Scope Issues," dated August 7, 2017
August 7, 2017	BarretteWood and EACOM Scope Brief	Letter from BarretteWood, Inc. and EACOM Timber Corporation, "Softwood Lumber from Canada: Case Brief - Scope Issues," dated August 7, 2017
August 7, 2017	Canfor Scope Brief	Letter from Canfor, "Certain Softwood Lumber Products from Canada. Case Nos. A-122-857. C-122-158: Case Brief on Scope-Related Matters," dated August 7, 2017
August 7, 2017	GNB Scope Case Brief	Letter from GNB, "GNB's Scope Case Brief Certain Softwood Lumber Products from Canada," dated August 7, 2017
August 7, 2017	GNS Scope Brief	Letter from GNS, "Certain Softwood Lumber Products from Canada: Case Brief Concerning Product Scope Issues," dated August 7, 2017
August 7, 2017	JDIL Scope Brief	Letter from J.D. Irving, "Softwood Lumber from Canada: Scope Comments," dated August 7, 2017
August 7, 2017	Central Canada Scope Brief	Letter from Central Canada, "Softwood Lumber from Canada: Central Canada's Case Brief On Scope Issues," dated August 7, 2017
August 7, 2017	NAFP Scope Brief	Letter from NAFP, "Certain Softwood Lumber from Canada; Scope Brief of North America Forest Products Ltd.," dated August 7, 2017
August 7, 2017	OCFP Scope Brief	*See* Letter from OCFP, "Certain Softwood Lumber Products from Canada (Case No. A-122-857): Case Brief of Oregon-Canadian Forest Products, Inc. on Scope Issues," dated August 7, 2017
August 7, 2017	Petitioner Rebuttal Brief	Letter from the petitioner, "Certain Softwood Lumber Products from Canada: Rebuttal Brief," dated August 7, 2017
August 7, 2017	RILA Scope Brief	Letter from RILA, "Certain Softwood Lumber Products from Canada: RILA Case Brief on Scope Issues," dated August 7, 2017

August 7, 2017	Woodtone Scope Brief	Letter from Woodtone, "Certain Softwood Lumber from Canada; Scope Brief of W.I. Woodtone, Inc. U.S. Origin Wood Subject to Minor Processing," dated August 7, 2017
August 7, 2017	Woodtone/Maibec Scope Brief	Letter from Woodone and Maibec, "Certain Softwood Lumber from Canada; Scope Brief of Woodtone and Maibec," dated August 7, 2017
August 7, 2017	Canadian Parties Joint Scope Brief	Letter from GOC, "Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada: Canadian Parties' Joint Case Brief on Scope," dated August 7, 2017
August 11, 2017	Update to HTS Numbers Memorandum	Department Memorandum, "Softwood Lumber from Canada: HTS Numbers," dated August 11, 2017
August 14, 2017	Central Canada Scope Rebuttal	Letter from Central Canada, "Softwood Lumber from Canada: Central Canada's Rebuttal Brief On Scope Issues," dated August 14, 2017
August 14, 2017	IKEA Scope Rebuttal	Letter from IKEA, "Certain Softwood Lumber Products from Canada: IKEA Rebuttal Brief on Scope Issues," dated August 14, 2017
August 14, 2017	Petitioner Scope Rebuttal	Letter from the petitioner, "Certain Softwood Lumber Products from Canada: Scope Rebuttal Comments," dated August 14, 2017
August 14, 2017	RILA Scope Rebuttal	Letter from RILA, "Certain Softwood Lumber Products from Canada: RILA's Letter in lieu of Rebuttal Case Brief on Scope Issues," dated August 14, 2017
August 24, 2017	Hearing Transcript Day 2	Department Memorandum, "Hearing Transcript on CVD Issues," dated August 24, 2017
August 25, 2017	UFP Scope Rebuttal	Letter from UFP, "Certain Softwood Lumber Products from Canada: Refiling of Rebuttal Comments on Scope Bed Frame/Box Spring Components and Kits Submitted by UFP Western Division, Inc. and UFP Eastern Division Inc. (A-122-857; C-122-858)," dated August 25, 2017 (refiling UFP's August 14, 2017 scope comments at the direction of the Department)
August 29, 2017	Hearing Transcript Day 1	Department Memorandum, "Hearing Transcript on Scope Related Issues Only," dated August 29, 2017
September 7, 2017	GOC Etal Hearing Transcript Comments	Letter from GOC Etal, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Corrections to Hearing Transcripts," dated September 7, 2017

Dated concurrently with this memo	Alberta Final Market Memorandum	Department Memorandum, “Final Countervailing Duty Determination on Certain Softwood Lumber Products from Canada: Alberta Stumpage Market Analysis,” dated concurrently with this memo.
Dated concurrently with this memo	Canfor Final Calculation Memorandum	Department Memorandum, “Final Determination Calculations for Canfor,” dated concurrently with this memo
Dated concurrently with this memo	Final Stumpage Benchmark Calculation Memorandum	Department Memorandum, "Final Stumpage Benchmark Calculation Memorandum," dated concurrently with this memo
Dated concurrently with this memo	JDIL Final Calculation Memorandum	Department’s Memorandum, "Final Determination Calculations for J.D. Irving Limited," dated concurrently with this memo
Dated concurrently with this memo	Nova Scotia Benchmark Calculation Memorandum	Department Memorandum, "Nova Scotia Benchmark Calculation Memorandum for the Final Determination," dated concurrently with this memo
Dated concurrently with this memo	Québec Final Market Memorandum	Department Memorandum, "Québec Market Analysis Memorandum for Final Determination," dated concurrently with this memo
Dated concurrently with this memo	Resolute Final Calculation Memorandum	Department Memorandum, "Final Determination Calculations for Resolute FP Canada Inc.," dated concurrently with this memo
Dated concurrently with this memo	Tolko Final Calculation Memorandum	Department Memorandum, "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada for Tolko Marketing & Sales Ltd.," dated concurrently with this memo
Dated concurrently with this memo	West Fraser Final Calculation Memorandum	Department Memorandum, "Final Determination Calculations for West Fraser Mills, Ltd.," dated concurrently with this memo

APPENDIX II

Canfor

Programs Determined Not To Provide Countervailable Benefits to Canfor During the POI

Count	Title
1	Alberta Political Tax Contribution Credit
2	Alberta Tax-Exempt Fuel Program for Marked Fuel
3	BC Hydro Power Smart - Energy Studies and Audits Program
4	British Columbia Political Tax Contribution Credit
5	British Columbia Training Tax Credit
6	Forestry Innovation Investment Program
7	Fort St. John and BCTS Refunds
8	Greenhouse Carbon Tax Relief
9	Other Miscellaneous Payments from Alberta
10	Other Miscellaneous Payments from British Columbia
11	Property Tax Program for Private Forest Land
12	Revitalization Property Tax Exemption - Houston
13	Scientific Research and Experimental Development Tax Credit (British Columbia)
14	Unidentifiable Payments from the Federal Government
15	British Columbia Log Export Restraints

Programs Determined Not To Be Used by Canfor During the POI

Count	Title
1	Alberta's Tax Rebates for Clear Fuel
2	Apprenticeship Job Creation Tax Credit
3	BC Hydro Electricity Purchase Agreements
4	BC Hydro: Load Curtailment Program
5	Credits for the Construction and Major Repair of Access Roads and Bridges in Forest Areas
6	Export Development Canada: Export Guarantee Program
7	Federal Forestry Industry Transformation Program
8	Forest Industry Grants under the Forest Sector Prosperity Fund
9	Forest Innovation Program
10	Manitoba Stumpage
11	Motor Fuel Tax Refund for Off-Highway Purposes
12	New Brunswick License Management Fees
13	New Brunswick LIREPP
14	New Brunswick Provision of Silviculture Grants
15	New Brunswick Stumpage
16	Northern Industrial Electricity Rate Program
17	Ontario Stumpage

18	Property Tax Refund for Forest Producers on Private Woodlots in Québec
19	Purchase of Electricity for MTAR under PAE 2011-01
20	Québec Stumpage
21	Revitalization Property Tax Exemption - Mackenzie
22	Sales of Electricity to Alberta Energy Systems Operator
23	Saskatchewan Stumpage
24	Scientific Research and Experimental Development Tax Credit (Alberta)
25	Special Stumpage Arrangements Related to Non-Subject Merchandise
26	Sustainable Development Technology Canada
27	Tax Credits for Investments Relating to Manufacturing and Processing Equipment
28	Western Economic Diversification Canada - Western Development Program
29	Western Economic Diversification Canada - Western Innovation Initiative
30	WorkSafe BC - Experience Rating System

JDIL

Programs Determined Not To Provide Countervailable Benefits to Irving During the POI

Count	Title
1	Apprenticeship Job Creation Tax Credit
2	Atlantic Canada Opportunities Agency – Business Development Program
3	Canada Summer Jobs Program
4	Efficiency New Brunswick Industrial Program
5	Efficiency Nova Scotia
6	High Energy Use Tax Rebate Grant
7	National Research Council Industrial Research Assistance Program
8	New Brunswick Climate Action Fund Grant
9	New Brunswick Forestry Industry Remission Program
10	Northern New Brunswick Economic Development and Innovation Fund
11	Nova Scotia Manufacturing and Processing Investment Credit
12	PNB Forest Workforce Training
13	Province of New Brunswick Financial Assistance to Industry Program Loan

Programs Determined Not To Be Used by Irving During the POI

Count	Title
1	Federal Forestry Industry Transformation Program
2	Sustainable Development Technology Canada
3	Forest Innovation Program
4	Export Development Corporation: Export Guarantee Program
5	Western Economic Diversification Canada - Western Development Program
6	Western Economic Diversification Canada - Western Innovation Initiative
7	Alberta Stumpage
8	Alberta Tax-Exempt Fuel Program for Marked Fuel
9	Alberta's Tax Rebates for Clear Fuel
10	BC Stumpage
11	Log Export Restraints
12	BC Hydro Power Smart Load Displacement Program
13	BC Hydro Electricity Purchase Agreements
14	Motor Fuel Tax refund for Off-Highway Purposes
15	Manitoba Stumpage
16	Ontario Stumpage
17	Northern Industrial Electricity Rate Program
18	Forest Industry Grants under the Forest Sector Prosperity Fund
19	Québec Stumpage
20	Purchase of Electricity for MTAR under PAE 2011-01
21	Property Tax Refund for Forest Producers on Private Woodlands in Québec
22	Tax Credits for Investments Relating to Manufacturing and Processing Equipment
23	Credits for the Constructions and Major Repair of Access Roads and Bridges in Forest

	Areas
24	Saskatchewan Stumpage

Resolute

Programs Determined Not To Provide Countervailable Benefits to Resolute During the POI

Count	Title
1	Aboriginal Programs
2	Cooperative Education Tax Credit
3	ecoEnergy Renewable Power
4	ecoPerformance
5	Forest Innovation Program
6	Formabois
7	Innovation and Development for the Region of Manicouagan
8	MFFP Educational Grant
9	OERD Programs
10	Québec Financial Aid for the Development of Private Woodlots
11	Refund of Fuel Tax Paid on Fuel Used for Certain Purposes
12	Rexforet - Silviculture Works: Forest Camps
13	Rexforet - Silviculture Works: Road Maintenance
14	Tax Credits for Investments Relating to Manufacturing and Processing Equipment
15	Workforce Skills Development and Recognition Fund
16	Tax Incentives for Private Forest Producers – Property Tax Refund for Forest Producers on Private Woodlands in Québec

Programs Determined Not To Be Used by Resolute During the POI

Count	Title
1	Alberta Tax Rebates for Clear Fuel
2	Alberta Tax-Exempt Fuel Program for Market Fuel
3	Apprenticeship Job Creation Tax Credit
4	BC Hydro's Electricity Purchase Agreements
5	BC Hydro's Power Smart Load Displacement Program
6	BC Log Export Restraints
7	BC Motor Fuel Tax Refund for Off-Highway Purposes
8	ecoEnergy Efficiency for Industry Program
9	Export Development Canada: Export Guarantee Program
10	Federal Logging Tax Credit
11	Federal Research Consortium
12	Grants Under the Federal Forestry Industry Transformation Program
13	IESO Industrial Electricity Incentives
14	New Brunswick License Management Fees
15	New Brunswick Provision of Silviculture Grants
16	New Brunswick's LIREPP
17	Ontario Loan Guarantees under the Forest Sector Loan Guarantee Program
18	Ontario Scientific Research and Development Tax Credit

19	Provision of Stumpage for LTAR by GOBC, GOA, GOS, GOM, and GNB
20	Québec Logging Tax Credit
21	Regional Tax Credit Program for Job Creation in Québec
22	Research Consortium Tax Credit
23	Scientific Research and Experimental Development Program (Québec)
24	Scientific Research and Experimental Development Program (Federal)
25	Sustainable Development Technology Canada
26	Tax Holiday for Large Investment Projects
27	Tax Incentives for Private Forest Producers – Deduction of Taxable Income for Forest Producers on Private Woodlands in Québec
28	Western Economic Diversification: Western Diversification Program
29	Western Economic Diversification: Western Innovation Initiative

Tolko

Programs Determined Not To Provide Countervailable Benefits to Tolko During the POI

Count	Title
1	Alberta - Stumpage Overpayment Adjustment
2	Alberta - Bioenergy Commercialization and Market Development (BCMDP)
3	Alberta - Softwood Lumber Surge Export Tax Recapture
5	BC - Arrangement with Select Seed
6	BC - Employer Innovation Fund
7	BC - Greenhouse Carbon Tax Relief
8	BC - Managed Forest Lands
9	BC - Operational Tree Improvement
10	BC - Partial Recovery of Canadian Standards Association Qualification Expenses
11	BC - Payments for Aerial Inventory Photography (LIDAR)
12	BC - Payments for Fire Suppression Services
13	BC - Payments for Road Maintenance Activities
14	BC - Pitch Moth Pest Removal
15	BC - Port Authority Cost Reduction
16	BC - WCB Wage Loss Reimbursement
17	BC Hydro Power Smart: Energy Studies
18	BC Motor Fuel Refund for Off-Highway Purposes
19	BC Training Tax Credit
20	BCTS Security Deposit Refunds for Unsuccessful BCTS Bids
21	British Columbia Timber Sales (BCTS) Standing Timber Inventory
22	Canada BC Job
23	Federal Forestry Industry Transformation Program (IFIT)
24	Forest Genetics Alberta
25	Forest Innovation Program
26	GOC- NRCAN Energy Efficiency for Industry
27	Manitoba - Aerial Herbicide Spraying
28	Manitoba - Annual Fee for Usage (Grass River Bridge)
29	Manitoba - Asbestos Removal
30	Manitoba - Assistance Related to Winter Road Maintenance and Bridge Use
31	Manitoba - Hand Planting of Overwinter Seedlings
32	Manitoba - Herbicide Treatment
33	Manitoba - Payments Pursuant to Cost Sharing Arrangement
34	Manitoba - Planting and Landscaping
35	Manitoba - Settlement for Phase-Out of Commercial Logging in the Grass River Provincial Park
36	Manitoba - Silviculture Project
37	Manitoba - Satellite Imagery Cost Sharing
38	Manitoba Land Settlement for Removal of Commercial Logging Areas
39	Manitoba Paid Work Experience Tax Credit
40	Manitoba- PCB removal at Tolko's Kraft Paper Mill

41	Manitoba Pulp Seedling Rebate
42	Miscellaneous Payments from GBC

Programs Determined Not To Be Used by Tolko During the POI

Count	Title
1	Accelerated Capital Cost Allowance for Class 29 Assets
2	Alberta - Property Tax Assessment Adjustment
3	Alberta's Tax Rebates for Clear Fuel
4	Apprenticeship Job Creation Tax Credit
5	BC Hydro Power Smart: Load Curtailment
6	Blowdown Salvage Stumpage Credits - Saskatchewan
7	Export Development Canada: Export Guarantee Program
8	Forestry Industry Grants Under the Ontario Forest Sector Prosperity Fund
9	GNB - Provision of Stumpage for LTAR
10	GOM - Provision of Stumpage for LTAR
11	GOO - Provision of Stumpage for LTAR
12	GOQ - Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas
13	GOQ - Tax Credits for Investments Relating to Manufacturing and Processing Equipment
14	GOQ - Tax Holiday for Large Investment Projects
15	GOQ -Provision of Stumpage for LTAR
16	GOQ Purchase of Electricity for MTAR under PAE 2011-01
17	GOS - Provision of Stumpage for LTAR
18	MB Hydro Load Displacement Credit
19	New Brunswick License Management Fees
20	New Brunswick Provision of Silviculture Grants
21	New Brunswick's LIREPP
22	Ontario Loan Guarantees Under the Forest Sector Loan Guarantee Program
23	Ontario's Northern Industrial Electricity Rate Program
24	Québec Financial Aid for the Development of Private Woodlots
25	Regional Tax Credit Program for Job Creation in Québec
26	Scientific Research & Experimental Development Tax Incentive Program - British Columbia
27	Scientific Research & Experimental Development Tax Incentive Program - Federal
28	Scientific Research & Experimental Development Tax Incentive Program - Saskatchewan
29	Sustainable Development Technology Canada (SDTC)
30	Tax Incentives for Private Forest Producers - Deduction of Taxable Income for Forest Producers on Private Woodlands in Québec
31	Tax Incentives for Private Forest Producers - Property Tax Refund for Forest Producers on Private Woodlands in Québec
32	Western Economic Diversification - Western Development Program (WDP)
33	Western Economic Diversification - Western Innovation Initiative (WINN)

West Fraser

Programs Determined Not To Provide Countervailable Benefits to West Fraser During the POI

Count	Title
1	Alberta Climate Change and Emissions Management Corporation
2	Alberta Innovates - Residual Biomass Estimate
3	Alberta Innovates - Training Grant
4	Alberta Innovates Biosolutions R&D Grant
5	BC Hydro Power Smart Load Displacement Program
6	BC Hydro Power Smart: Industrial Energy Manager Program
7	BC Hydro Power Smart: Energy Studies and Audits Program
8	BC Hydro Power Smart: Industrial Projects Incentives Program
9	BC Hydro Load Curtailment Program
10	Biorefining Commercialization and Market Development Program
11	British Columbia Training Tax Credit
12	Canada Alberta Job Grant
13	ecoENERGY Efficiency for Industry Program
14	Ecotrust Canada Eco-Energy Program
15	Federal Forestry Industry Transformation Program
16	Forest Resources and Planning Act Section 108 Payments
17	Miscellaneous Payments from the Ministry of Jobs, Tourism and Skills Training
18	Miscellaneous Payments: Wage Reimbursement - Quesnel
19	Miscellaneous Payments: Employee Training - Quesnel
20	Mountain Caribou Recovery Implementation Plan
21	Political Contribution Tax Credit
22	Property Taxation of Private Forest Land
23	Pulp and Paper Green Transformation Program
24	Revitalization Property Tax Exemption - Chetwynd
25	Sustainable Development Technology Canada
26	Water and Sewage Treatment Payments - Quesnel
27	Western Economic Diversification - Western Development Program
28	Western Economic Diversification - Community Adjustment Fund

Programs Determined Not To Be Used by West Fraser During the POI

Count	Title
1	Alberta's Tax Rebates for Clear Fuel
2	British Columbia Motor Fuel Tax Refund for Off-Highway Purposes
3	Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas
4	Export Development Canada: Export Guarantee Program
5	Forest Innovation Program
6	Forestry Industry Grants under the Ontario Forest Sector Prosperity Fund (FSPF)

7	GOQ Purchase of Electricity for More Than Adequate Remuneration (MTAR) under PAE 2011-01
8	Grants Under the Federal Forestry Industry Transformation Program
9	New Brunswick License Management Fees
10	New Brunswick Provision of Silviculture Grants
11	New Brunswick's Large Industrial Renewable Energy Purchases Program (LIREPP)
12	Ontario Loan Guarantees under the Forest Sector Loan Guarantee Program (FSLGP)
13	Ontario's Northern Industrial Electricity Rate Program
14	Provision of Stumpage for LTAR by Government of Saskatchewan, Government of Manitoba, Government of New Brunswick, Government of Ontario, and Government of Quebec
15	Quebec Financial Aid for the Development of Private Woodlots
16	Regional Tax Credit Program for Job Creation in Quebec
17	Sustainable Development Technology Canada
18	Tax Credits for Investments Relating to Manufacturing and Processing Equipment
19	Tax Holiday for Large Investment Projects
20	Tax Incentives for Private Forest Producers – Deduction of Taxable Income for Forest Producers on Private Woodlands in Quebec
21	Tax Incentives for Private Forest Producers – Property Tax Refund for Forest Producers on Private Woodlands in Quebec
22	Western Economic Diversification - Western Innovation Initiative (WINN)

Programs Deferred Until a Subsequent Administrative Review

Federal Programs

Count	Title
1	Logging Income Tax Credit
2	EDC's Account Performance Security Guarantee

Alberta Programs

Count	Title
1	FRIAA – Community Reforestation Program
2	FRIAA[1610]
3	Foothills Research Institute
4	Emissions Performance Credits and Emissions Offset Credits
5	Property Tax Abatements – Alberta Municipalities
6	Alberta Property Tax – Economic Obsolescence Allowance
7	Environmental Penalty Refund
8	Workers Compensation Board[1611]
9	Water and Sewage Treatment Payments – Hinton

British Columbia Programs

Count	Title
1	LBIP: Current Reforestation Program
2	LBIP[1612]
3	Miscellaneous Payments from the Ministry of Forests, Land & Natural Resources Operations
4	WorkSafeBC Certificate of Recognition
5	Mountain Caribou Recovery Implementation Plan
6	BC Hydro Power Smart: Incentives Study
7	BCAA Property Tax Reductions Ministry of Forests, Lands and Natural Resource Operations BC Timber Sales payments to Tolko
8	Logging Income Tax Credit
9	Northern Development Initiative Trust Training Rebate Program Capital Investment and Training Rebate Program
10	Forest Resources and Planning Act Section 108 Payments

[1610] Including: Incidental Conifer Program, Fire Hazard Reduction and Forest Health Program, Fire Smart Program, Community Adjustment Fund Enhanced Community Reforestation Program, Community Reforestation Program, Forest Resource Improvement Program, Wildfire Reclamation Program, Mountain Pine Beetle Program, Mountain Pine Beetle Forest Rehabilitation Program, Forestry Worker Employment Program, FRIAA – FRIP – High Prairie Hybrid Poplar Plantation, Spruce Budworm Dues Repayment.

[1611] Including: Certificate of Recognition, and Surplus Distribution.

[1612] Including: Forest Health Program, Resource Inventory Program, Recreation Management Program, Habitat Restoration Program, Timber Supply Mitigation Program, Fish Passage Program, Wildlife Habitat Program, Miscellaneous Payments.

11	Tenure Takeback Program

Manitoba Program

Count	Title
1	MB Hydro Power Smart Program

Nova Scotia Program

Count	Title
1	GNS Transactions with Resolute

Ontario Program

Count	Title
1	IESO Demand Response

Québec Programs

Count	Title
1	Industrial Systems Program, Energy Efficiency Program – Hydro-Québec
2	Interruptible Electricity Option – Hydro-Québec
3	Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes
4	Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance
5	Research Consortium Tax Credit