C-122-862
Investigation
Public Document
POI: 01/1/2016 – 12/31/2016
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DATE: August 1, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada

SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers of uncoated groundwood (UGW) paper in Canada, as provided in section 705 of the Act. Below is the complete list of issues in this investigation for which we received comments from interested parties:

General Issues

Comment 1: Whether Commerce Should Adjust Its Calculation of the All-Others Rate to Exclude Rates Based on AFA
Comment 2: Whether Commerce Established the Requisite Level of Industry Support for Initiating This Investigation
Comment 3: Whether Commerce Must Examine the Full Scope of Downstream Effects
Comment 4: Whether Commerce Properly Requested Respondent Interested Parties to Report "Other Assistance"
Comment 5: Whether to Continue to Find Certain Programs Not Used, Not Measurable, or Having No Benefit

Bankruptcy / Change in Ownership Issues

Comment 6: Whether Subsidies Received Prior to 2011 Were Extinguished by Resolute's Emergence from Bankruptcy
Comment 7: Whether Resolute's Acquisition of Fibrek Extinguished Any Prior Fibrek Subsidies

Comment 8: Whether White Birch's Bankruptcy Proceedings Constitute a CIO

Sales Denominator Issues

Comment 9: Whether Commerce Should Revise Kruger's Denominators
Comment 10: Whether Commerce Should Revise Resolute's Denominators
Comment 11: Whether Commerce Should Revise White Birch's Denominators

Unreported Assistance Issues

Comment 12: Whether Electricity Sold by PREI Provides a Countervailable Subsidy to Catalyst
Comment 13: Whether Commerce Should Assign an AFA Rate to Kruger for its Failure to Report Payments Related to the Hydro-Québec Connection of Electricity Sub-Station Program
Comment 14: Whether Commerce Should Assign an AFA Rate for CBPP's Failure to Report Payments Received for Two Studies
Comment 15: Whether Commerce Should Apply AFA to White Birch's Two Undisclosed Tax Credits

General Stumpage and Wood Fiber LTAR Issues

Comment 16: Whether Commerce Must Use In-Jurisdiction Benchmarks to Determine Whether a Benefit Has Been Provided
Comment 17: Whether Commerce Must Conduct a Stumpage Pass-Through Analysis
Comment 18: Whether Woodchips from Sawmills Are Subsidized
Comment 19: Whether Commerce Must Compare Average Benchmark Prices to Average Transaction Prices

Ontario Stumpage Issues

Comment 20: Whether Pulpwood is Subsidized
Comment 21: Whether Ontario's Stumpage Market is Distorted

Québec Stumpage Issues

Comment 22: Whether Québec's Public Stumpage Market Is Distorted
Comment 23: Whether Commerce Erred in Calculating a Benefit for White Birch under the Provision of Stumpage for LTAR Program

Nova Scotia Benchmark Issues

Comment 24: Whether Commerce Should Use a Nova Scotia Benchmark as a Basis of Finding Subsidization of Stumpage in Ontario and Québec
Comment 25: Whether the Nova Scotia Benchmark Should be Adjusted

Log Export Restraint Issues

Comment 26: Whether the Log and Wood Residue Export Restraints Provide a Financial Contribution
Comment 27: Whether the Export Permitting Process Materially Restrains Export Activity
Comment 28: Whether to Apply Adverse Inferences to Catalyst's Log Delivery Costs
Comment 29: Whether Commerce May Use NAWFR Benchmark Information

Comment 30: The Appropriate Benchmark Source for the British Columbia Log and Wood Residue Export Restraints
Comment 31: Whether to Exclude U.S. Exports to the UAE from the Benchmark Data
Comment 32: The Appropriate Freight Amounts to Apply to the Benchmark Values
Comment 33: The Appropriate Freight Amounts to Apply to Catalyst's Purchases of Woodchips, Sawdust, and Hog Fuel
Comment 34: Whether Commerce Should Exclude Logs and Chips Dedicated to the Production of Kraft Pulp
Comment 35: Whether to Account for Negative Transactions in Catalyst's Wood Purchase Database

Purchase of Goods for MTAR Issues

Comment 36: Whether the Purchase of Electricity was a Purchase of a Good or Service
Comment 37: Whether Commerce Erred in Using Sales of Electricity as the Benchmark for Provincial Utility Purchases of Electricity
Comment 38: Whether Purchases of Electricity Were "Market Based"
Comment 39: Whether Commerce Should Use a Different Benchmark for Purchases of Electricity from the IESO
Comment 40: Whether Commerce Used the Wrong Benchmark for Countervailing Hydro-Québec's Purchases of Electricity from KEBLP
Comment 41: Whether the Provincial Utility Purchases of Electricity Are Tied to Sales of Non-Subject Merchandise
Comment 42: Whether Commerce Should Countervail BC Hydro's EPAs
Comment 43: Whether Commerce Used the Wrong Benchmark for Countervailing BC Hydro's Purchases of Electricity
Comment 44: The Appropriate Benefit Calculation for BC Hydro EPAs
Comment 45: Whether BC Hydro's EPAs are *De Facto* Specific
Comment 46: Whether Commerce Should Include all Elements of Kruger's Electric Service Rates in its Benchmark
Comment 47: Whether Hydro-Québec's Purchase of Electricity for MTAR was Specific
Comment 48: Whether the IESO Purchases Electricity
Comment 49: Whether the IESO's Purchase of Electricity for MTAR is Specific
Comment 50: Whether Commerce Should Countervail Tariff 29 and/or Use it as a Benchmark
Comment 51: Whether the Government of Canada's Provision of C$130 Million for Resolute's Expropriated Assets Provides a Benefit

Tax Program Issues

Comment 52: Whether the ACCA for Class 29 Assets Tax Program is Specific
Comment 53: Whether the School Tax Credit for Class 4 Major Industrial Properties Provides a Financial Contribution
Comment 54: Whether the School Tax Credit for Class 4 Major Industrial Properties is Specific
Comment 55: Whether the Coloured Fuel Tax Rate Provides a Financial Contribution
Comment 56: Whether the Coloured Fuel Tax Rate is Specific
Comment 57: Whether Catalyst Benefited from the Coloured Fuel Tax Rate
Comment 58: Whether the Powell River City Tax Exemption Program Provides a Financial Contribution

Comment 59: The Appropriate Benefit Calculation for the Powell River City Tax Exemption Program
Comment 60: Whether Commerce Properly Determined the Amount of the Subsidy Kruger Received from Property Tax Exemptions
Comment 61: Whether the Québec SR&ED Tax Credit[1] is *De Facto* Specific
Comment 62: Whether the Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec is Specific
Comment 63: Whether the Tax Credit for Pre-Competitive Research is Specific
Comment 64: Whether the Credit for Fees and Dues Paid to a Research Consortium is Specific
Comment 65: Whether Québec's Tax Credit for Construction and Repair of Roads and Bridges Provides a Financial Contribution and a Benefit

Grant Program Issues: Electricity

Comment 66: Whether Agreements to Curtail Consumption of Electricity are Grants
Comment 67: Whether the Power Smart Subprograms are *De Jure/De Facto* Specific
Comment 68: The Appropriate Benefit for the Power Smart: Load Curtailment Program
Comment 69: The Correct Calculation for the BC Hydro Power Smart TMP and Incentives Subprograms
Comment 70: Whether Hydro-Québec's IEO Program Is Specific
Comment 71: Whether Hydro-Québec's Industrial Systems Program/Energy Efficiency Program is Countervailable
Comment 72: Whether the Hydro-Québec Special L Rate for Industrial Customers Affected by Budworm Confers a Benefit
Comment 73: Whether the IESO Demand Response Is Specific
Comment 74: Whether the Ontario IEI Program is Specific
Comment 75: Whether the Ontario IEI Program is Tied to Non-Subject Merchandise
Comment 76: Whether Capacity Assistance Payments to CBPP Are Specific
Comment 77: Whether the Capacity Assistance Fees Paid to CBPP Provided a Benefit

Grant Program Issues: Other

Comment 78: Whether the Canada-BC Job Grant Program is Specific
Comment 79: Whether Emploi-Québec Programs are Specific
Comment 80: Whether Emploi-Québec Programs are Recurring
Comment 81: Whether the PCIP Provides a Benefit
Comment 82: Whether the Paix des Braves Program Provides a Countervailable Benefit
Comment 83: Whether the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance Provides a Countervailable Benefit
Comment 84: Whether the FPInnovations Ash Development Project Provides a Countervailable Benefit
Comment 85: Whether the PAREGES Program is Specific and Confers a Benefit
Comment 86: Whether the Ontario Forest Roads Funding Program is Countervailable
Comment 87: Whether the EcoPerformance Program is Specific and Confers a Benefit

Equity Program Issues

[1] Also called the Québec Scientific Research and Development Tax Credit in the *Preliminary Determination*.

Comment 88: Whether Preferred Shares Issued by Kruger Inc./KPPI in 2012 were Debt or Equity
Comment 89: Whether Any Benefit in the 2012 Debt-to-Equity Conversion Is Attributable to Kruger Inc.
Comment 90: How to Determine the Benefit for KPPI's 2012 Loan Forgiveness
Comment 91: Whether IQ's 2015 Investment in KHLP Was Tied to Non-Subject Merchandise
Comment 92: Whether the Equityworthiness Analysis for KHLP in 2015 is Correct
Comment 93: Whether KHLP was Equityworthy

Loan Program Issues

Comment 94: Whether CBPP was Creditworthy
Comment 95: Whether Commerce Erred in Calculating the Benchmark for CBPP's 2014 Loan
Comment 96: Whether Interest Due from the Government of Newfoundland and Labrador Loan to CBPP and Paid in 2017 Provided No Benefit in the POI
Comment 97: Whether Commerce Erred in Its Benefit Calculation for the IQ Loan Guarantee to KEBLP

Company-Specific Issues

Catalyst

Comment 98: How to Treat Catalyst's Unreported Log and Wood Fiber Purchases

Resolute

Comment 99: Whether Commerce Should Use Resolute's Revised SR&ED Tax Credit

White Birch

Comment 100: Whether Commerce Correctly Determined the Dates of Approval for the MFOR Worker Training Grants to White Birch's Stadacona Mill

BACKGROUND

Case History

The mandatory respondents in this investigation are Catalyst, KTR, and Resolute. Commerce also accepted White Birch as a voluntary respondent. In their responses, the companies reported that they had a number of cross-owned affiliates.[2] Therefore, we hereinafter refer to Catalyst Paper Corporation and its cross-owned affiliates as "Catalyst," KTR and its cross-owned affiliates as "Kruger," Resolute FP Canada and its cross-owned affiliates as "Resolute," and White Birch NSULC and its cross-owned affiliates as "White Birch."

On January 16, 2018, Commerce published the *Preliminary Determination* in this investigation and aligned this final CVD determination with the final AD determination, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4)(i).

[2] For further discussion, *see* the "Attribution of Subsidies" section of the *Preliminary Determination* and accompanying PDM.

Between January 2018 and May 2018, Commerce conducted verification of the following parties: Government of British Columbia, Catalyst, White Birch, Government of Canada, Government of Nova Scotia, Government of Newfoundland and Labrador, Government of Québec, Government of Ontario, Kruger, and Resolute, in accordance with section 782(i) of the Act.[3]

On March 12, 2018, Commerce modified the scope of the investigation to exclude certain paper that has undergone a creping process; construction and drawing paper; and directory paper.[4] On June 18, 2018, Commerce issued its Post-Preliminary Analysis in this investigation.[5]

We invited parties to comment on the *Preliminary Determination* and the Post-Preliminary Analysis. On June 25, 2018 and June 26, 2018, various interested parties submitted timely-filed case briefs, and on July 2, 2018, various interested parties submitted timely filed rebuttal briefs.[6] On July 11, 2018, Commerce held a public hearing.

Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

Scope of the Investigation

The product covered by this investigation is certain uncoated groundwood paper from Canada. The final version of the scope appears in Appendix I of the accompanying *Federal Register* notice.

Scope Comments

During the course of this investigation, Commerce received numerous scope comments from interested parties. Based on these comments, we amended the scope of the investigation on March 12, 2018.[7] No interested party raised any issues in their case briefs regarding the scope of this investigation. Therefore, we did not change the scope of this investigation further.

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[3] *See* GBC Verification Report; Catalyst Verification Report; White Birch Verification Report; GNL Verification Report; GOC Verification Report; GNS Verification Report; GOQ Verification Report; Resolute Verification Report; GOO Verification Report; Kruger Verification Report; and GOQ Stumpage Verification Report.

[4] *See* Scope Amendment Memo. *See also Amended Preliminary Determination*.

[5] *See* Post-Preliminary Analysis.

[6] *See* Catalyst's Case Brief; Gannett's Case Brief; GOC and Provincial Governments' Case Brief; Kruger's Case Brief; Petitioner's Case Brief; Resolute's Case Brief; White Birch's Case Brief. *See also* Catalyst's Rebuttal Brief; Gannett's Rebuttal Brief; GNS's Rebuttal Brief; GOC and Provincial Governments' Rebuttal Briefs; Kruger's Rebuttal Brief; Petitioner's Rebuttal Brief; Resolute's Rebuttal Brief; and White Birch's Rebuttal Brief.

[7] *See* Scope Amendment Memo. *See also Amended Preliminary Determination*.

Subsidies Valuation Information

A. Allocation Period

Commerce 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* and the Post-Preliminary Analysis. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination.*

B. Attribution of Subsidies

Commerce 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 Calculation Memoranda for Kruger, Resolute and White Birch.[8]

D. Creditworthiness

Interested parties raised issues in their case briefs regarding the "uncreditworthiness" finding made by Commerce in the *Preliminary Determination*, as well as the interest rate used in our preliminary calculations. For information on the interest rates used in the final determination, *see* the *Preliminary Determination*, the "Analysis of Comments" section below, Kruger Final Creditworthiness Memorandum, and the Final Calculation Memorandum for Kruger.

E. Equityworthiness

Interested parties raised issues in their case briefs regarding the equityworthiness findings made by Commerce in the *Preliminary Determination*. For information on the equityworthiness findings made in the final determination, *see* the *Preliminary Determination*, the "Analysis of Comments" section below, and the Prelim Equityworthiness Memorandum.

[8] *See* Kruger Final Calc Memo, Resolute Final Calc Memo, and White Birch Final Calc Memo.

F. Loan Benchmarks and Interest Rates

Interested parties raised issues in their case briefs regarding the loan benchmarks and interest rates used by Commerce in the *Preliminary Determination* as part of Commerce's creditworthiness analysis. For information on the loan benchmarks and interest rates used in the final determination, *see* the *Preliminary Determination*, the "Analysis of Comments" section below, and the Kruger Final Calc Memo.

Analysis of Programs

A. Programs Determined To Be Countervailable[9]

Provision of Stumpage for LTAR

1. Provision of Stumpage for LTAR – Ontario

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 1.89 percent *ad valorem*

2. Provision of Stumpage for LTAR – Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 2.33 percent *ad valorem*
White Birch: 0.09 percent *ad valorem*

Export Restraints

3. British Columbia Log and Wood Export Restraints

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Catalyst: 1.04 percent *ad valorem*

[9] For additional information on the below subsidy rate calculations, *see* the *Preliminary Determination*, the Post-Preliminary Analysis, Comment 7 below, and the Final Calculation Memoranda, dated concurrently with this memorandum. For Resolute, Kruger, and White Birch, there was a denominator change as the result of verification, which may have, in some instances, resulted in a change to the calculated *ad valorem* subsidy rate, but no other change in the calculation methodology. *See* the Kruger Final Calc Memo, Resolute Final Calc Memo, and White Birch Final Calc Memo for these changes.

Federal Tax Programs

4. Federal ACCA for Class 29 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program for Kruger, as we stated in the *Preliminary Determination*.[10] For this final determination, we are calculating the benefit amount using updated information from Kruger using the "half-year rule."

Kruger: 0.07 percent *ad valorem*
White Birch: 0.08 percent *ad valorem*

5. Federal SR&ED Tax Credit

This program was found to be countervailable in this final determination.

Resolute: 0.01 percent *ad valorem*

British Columbia Tax Programs

6. Powell River City Tax Exemption Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Catalyst: 0.20 percent *ad valorem*

7. School Tax Credit for Class 4 Major Industrial Properties

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Catalyst: 0.11 percent *ad valorem*

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

[10] *See Preliminary Determination* IDM at 49, footnote 267.

Catalyst: 0.03 percent *ad valorem*

Newfoundland and Labrador Tax Programs

9. Newfoundland and Labrador SR&ED Tax Credit

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.01 percent *ad valorem*

10. Waiver of Managed Forest Land Tax

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.33 percent *ad valorem*

11. Property Tax Exemption

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 0.38 percent *ad valorem*

Québec Tax Programs

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 0.18 percent *ad valorem*

13. Québec SR&ED Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.03 percent *ad valorem*
Resolute: 0.06 percent *ad valorem*

14. Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

White Birch: 0.01 percent *ad valorem*

15. Fees and Dues Paid to a Research Consortium

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Resolute: 0.07 percent *ad valorem*

16. Tax Credit for Private Partnership Pre-Competitive Research

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Resolute: 0.01 percent *ad valorem*

17. Training in MFMS

This program was found to be countervailable in this final determination.

Resolute: 0.01 percent *ad valorem*

18. TIPFP Property Tax

This program was found to be countervailable in this final determination.

Resolute: 0.01 percent *ad valorem*

Federal Grant Programs

19. The FPPGTP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Catalyst: 0.19 percent *ad valorem*
Resolute: 0.30 percent *ad valorem*

British Columbia Grants

20. Canada-BC Job Grant Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Catalyst: 0.01 percent *ad valorem*

21. BC Hydro: Power Smart

Interested parties submitted comments in their case and rebuttal briefs regarding these programs, which are addressed below. Commerce has modified its calculation of the subsidy rate for the TMP and Incentives sub-programs from the *Preliminary Determination*.

a. BC Hydro Power Smart: Industrial Energy Managers Program

   Catalyst: 0.02 percent *ad valorem*

b. BC Hydro Power Smart: TMP Program

   Catalyst: 0.14 percent *ad valorem*

c. BC Hydro Power Smart: Load Curtailment

   Catalyst: 0.38 percent *ad valorem*

d. BC Hydro Power Smart: Incentives

   Catalyst: 0.03 percent *ad valorem*

Newfoundland and Labrador Grants

22. LMP

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.08 percent *ad valorem*

23. Maintenance of Competitive Position Grant

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.18 percent *ad valorem*

24. Forest Insect Control and Survey Assistance

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.06 percent *ad valorem*

25. Productive Forest Lands Inventory Program

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.07 percent *ad valorem*

26. Canada-NL Job Grant

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 0.04 percent *ad valorem*

27. Capacity Assistance Agreement with NL Hydro

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 0.35 percent *ad valorem*

28. Silviculture Assistance Program

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 0.36 percent *ad valorem*

Ontario Grants

29. NIER Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 0.45 percent *ad valorem*

30. IESO Demand Response

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 0.11 percent *ad valorem*

31. The Government of Ontario's Provision of IESO

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 0.09 percent *ad valorem*

32. Ontario Forest Roads Funding Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Resolute: 0.51 percent *ad valorem*

33. Ontario FSPF Grants

This program was found to be countervailable in this final determination.

Resolute: 0.08 percent *ad valorem*

Québec Grants

34. Hydro-Québec IEO

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.44 percent *ad valorem*
Resolute: 0.12 percent *ad valorem*
White Birch: 0.50 percent *ad valorem*

35. Debt-to-Equity Conversion for KPPI

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.75 percent *ad valorem*

36. Equity Infusion into KHLP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 1.31 percent *ad valorem*

37. PCIP

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 0.04 percent *ad valorem*

38. Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance – Incentives for Harvesting Areas Infested by Spruce Budworm

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 0.04 percent *ad valorem*

39. Paix des Braves

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Resolute: 0.02 percent *ad valorem*

40. Emploi-Québec Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

White Birch: 0.07 percent *ad valorem*

41. PAREGES Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 0.04 percent *ad valorem*

42. FPInnovations Ash Valuation Development Grants

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 0.12 percent *ad valorem*

43. Hydro-Québec's Industrial Systems Program/Energy Efficiency Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

White Birch: 0.07 percent *ad valorem*
Resolute: 0.01 percent *ad valorem*

44. EcoPerformance – MERN (TEQ)/Energy Efficiency Conversion Projects

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

White Birch: 0.01 percent *ad valorem*

45. Hydro-Québec Special L Rate for Industrial Customers Affected by Spruce Budworm[11]

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Resolute: 0.47 percent *ad valorem*

Loan Programs

46. Newfoundland and Labrador Provision of Loans to CBPP

Interested parties submitted Comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 2.08 percent *ad valorem*

47. IQ Loan Guarantee to KEBPL

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 0.27 percent *ad valorem*

Purchase of Goods for MTAR

British Columbia

48. BC Hydro EPAs

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Catalyst: 1.23 percent *ad valorem*

[11] This program is also known as "Cote-Nord L Rate Program."

Newfoundland and Labrador

49. NL Hydro Cogeneration PPA

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Kruger: 1.59 percent *ad valorem*

Ontario

50. Government of Ontario Purchase of Electricity for MTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the Post-Preliminary Analysis.

Resolute: 1.48 percent *ad valorem*

Québec

51. Government of Québec Purchase of Electricity for MTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Kruger: 0.97 percent *ad valorem*
Resolute: 1.52 percent *ad valorem*

B. Programs Determined Not To Provide Measurable Benefits During the POI

The respondents reported receiving benefits under various programs, some of which were alleged in the Petition and upon which Commerce 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 in the "Attribution of Subsidies"

section above.[12] Consistent with Commerce's practice,[13] we have not included those programs in our final subsidy rate calculations for the respondents. We also determine that it is unnecessary for Commerce 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.

C. Programs Determined Not To Be Used During the POI

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

D. Programs Determined To Be Not Countervailable in this Investigation

Commerce has made no changes in the analysis of the following programs from the *Preliminarily Determination*.[14] We received no comments from interested parties on these programs.

1. Provision of Below-Market Rate Loans from IQ

E. Programs Not Further Examined

Commerce has made no changes in the analysis of the following programs from the *Preliminarily Determination* and the Post-Preliminary Analysis.[15] We received no comments from interested parties on these programs.

1. Consultations for Employment Program
2. Government of Québec's ARTT Program

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, Commerce "discovers a practice which appears to be a countervailable subsidy, but

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[12] For additional information concerning these calculations, *see* Catalyst Final Calc Memo; Resolute Final Calc Memo; Kruger Final Calc Memo; and White Birch Final Calc Memo.

[13] *See*, *e.g.*, *CFS from China* IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE"; *Steel Wheels from China* IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District"; *see also Aluminum Extrusions from China First Review* IDM at "Programs Used By the Alnan Companies"; and *CRS from Russia* IDM at "Tax Deduction for Research and Development Expenses."

[14] *See* PDM at 80.

[15] *Id.* at 80 and Post-Preliminary Analysis at 27.

was not included in the matters alleged in a countervailing duty petition," then Commerce "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 AR. 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 5 for further discussion.

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

ANALYSIS OF COMMENTS

General Issues

Comment 1: Whether Commerce Should Adjust Its Calculation of the All-Others Rate to Exclude Rates Based on AFA

Alberta Newsprint Company's Case Brief

- Commerce should adjust its calculation of the all-others rate to exclude program rates based on AFA because there has been no finding that any of the non-selected exporters or producers subject to the all-others rate have failed to cooperate to the best of their ability.[16]

- Such an adjustment would prevent the application of adverse inferences to the all-others rate.[17]

Petitioner's Rebuttal Brief

- Commerce should not exclude partial AFA findings in calculating the all-others rate, as doing so would be unprecedented and inconsistent with Commerce's longstanding practice.[18]

- The statute makes clear that Commerce is required to calculate the all-others rate by averaging the rates calculated for individually investigated exporters and producers, unless any of those rates are zero, *de minimis*, or determined entirely on the basis of the facts available.[19]

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[16] *See* Alberta Newsprint Company's Case Brief at 1-4.

[17] *Id*.

[18] *See* Petitioner's Rebuttal Brief at 11.

[19] *Id*. (citing section 705(c)(5)(A) of the Act).

Commerce's Position:

Because we have no AFA determinations for purposes of this final determination, we find these arguments to be moot. Therefore, consistent with section 705(c)(5)(A)(i) of the Act, we have calculated the all-others rate based on the rate determined for the individually investigated companies, excluding White Birch's *de minimis* rate.

Comment 2: Whether Commerce Established the Requisite Level of Industry Support for Initiating This Investigation

Gannett's Case Brief

- Commerce failed to establish the requisite level of industry support for initiating this investigation.[20]

Government of Canada's Rebuttal Brief

- The Government of Canada agrees with Gannett that Commerce failed to establish the requisite level of industry support and that Commerce improperly excluded certain parties that opposed the petition from its industry support determination.[21]

Petitioner's Rebuttal Brief

- Commerce may not may not reconsider its industry support finding at this stage of the investigation, pursuant to section 732 of the Act.[22]

Commerce's Position:

Section 702(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

> Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. *After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*[23]

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our

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[20] *See* Gannett's Case Brief at 3-11.

[21] *See* GOC and Provincial Governments' Rebuttal Brief at 10.

[22] *See* Petitioner's Rebuttal Brief at 6.

[23] Section 702(c)(4)(E) of the Act (emphasis added). *See also Plywood from China* IDM at Comment 4.

determination of industry support provided in the Initiation Checklist.[24] We reiterate below our analysis from the Initiation Checklist.

Section 702(c)(4)(A) of the Act states that the administering authority shall determine that a petition has been filed by or on behalf of the industry if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Based on information provided in the petitions, the share of total estimated U.S. production of the domestic like product in calendar year 2016 represented by the petitioner was equal to or more than 25 percent of total domestic production, but less than 50 percent of total production of the domestic like product.[25]

Pursuant to section 702(c)(4)(D)(i) of the Act, if the petition does not establish the support of domestic producers accounting for more than 50 percent of the total production of the domestic like product, Commerce is required to poll the industry or rely on other information to determine industry support. Thus, because at the time of the filing of the petition, we determined that the petition did not establish the support of domestic producers accounting for more than 50 percent of the total production of the domestic like product, we polled the U.S. industry to establish industry support.[26]

As explained in the Initiation Checklist, section 702(c)(4)(B)(i) of the Act instructs Commerce to "disregard the position of domestic producers who oppose the petition if such producers are related to foreign producers, as defined in section 771(4)(B)(ii) of the Act, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order."[27] In addition, section 702(c)(4)(B)(ii) of the Act states that Commerce "may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise."[28] The SAA also explains that Commerce excludes members of the domestic industry related to foreign producers from its industry support analysis in order "to eliminate any conflicts of interest that may distort its consideration of the level of industry support for an antidumping or countervailing duty petition. . . ."[29]

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[24] *See* Initiation Checklist at Attachment II.

[25] *See* Initiation Checklist, Attachment II at 6.

[26] *Id.*

[27] *Id*. (citing 19 CFR 351.203(e)(4)(i)).

[28] *Id*. (citing 19 CFR 351.203(e)(4)(ii)).

[29] *Id*. (citing SAA).

Thus, consistent with section 702(c)(4)(B) of the Act and our practice,[30] we disregarded the opposition to the petition of certain producers.[31] Our analysis of the remaining information demonstrated that: 1) the domestic producers and workers who supported the petition accounted for at least 25 percent of total production of the domestic like product; and 2) domestic producers and workers who supported the petition accounted for more than 50 percent of the total production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. As a result, we found that there was adequate industry support for the petition, within the meaning of section 702(c)(4)(A) of the Act.[32]

Comment 3: Whether Commerce Must Examine the Full Scope of Downstream Effects

Gannett's Case Brief

- Commerce must examine the full scope of downstream effects on the American newspaper industry.[33]

- The cost and burden of duties on newsprint to newspaper publishers will add substantial strain to an industry already facing significant financial pressure from shifting consumer preferences.[34]

- The harm to hundreds of thousands of Americans employed in the U.S. newspaper publishing and commercial printing sector will be far greater than any potential benefit to 260 employees of NORPAC.[35]

Petitioner's Rebuttal Brief

- Gannett's argument that Commerce should consider the projected impact that countervailing duties will have on the newspaper industry is contrary to the statute and should be rejected.[36]

- The CIT has stated that "the ITA's administration of the antidumping law is not to be concerned with the effects on U.S. purchasers, but to investigate and impose duties where illegal dumping occurs."[37]

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[30] *See Liquid Sulfur Dioxide from Canada Initiation*; *see also Nails from China and the UAE Initiations.*

[31] *See* Initiation Checklist, Attachment II at 12-15.

[32] *Id.* at 15-16.

[33] *See* Gannett's Case Brief at 18-23.

[34] *Id*. at 19.

[35] *Id*. at 22-23.

[36] *See* Petitioner's Rebuttal Brief at 9.

[37] *See Mitsubishi*, 700 F. Supp. at 559, *aff'd*, 898 F.2d 1577 (Fed. Cir. 1990).

Commerce's Position:

In this case, Commerce has received numerous comments on behalf of the newsprint industry relating to the potential impact of antidumping and countervailing duties on UGW paper from Canada, should the antidumping and countervailing duty investigations result in orders.[38] Although Commerce is cognizant of the potential impact of antidumping and countervailing duties on downstream users, Commerce is obligated under the statute to investigate and impose duties on imports to counteract dumping and countervailable subsidization, whereas the International Trade Commission (ITC) determines injury or threat of injury related to such imports.[39] Pursuant to our statutory authority, we have considered all relevant record evidence related to dumping and countervailable subsidization in making our determinations, which does not encompass the potential impact that antidumping or countervailing duties may have on the domestic users or purchasers. This is consistent with the decision of the U.S. Court of International Trade (CIT) in *Mitsubishi* that Commerce's "administration of the antidumping law is not to be concerned with effects on U.S. purchasers, but the ITA is required to investigate and impose duties where illegal dumping occurs{,}" and "{t}his action of imposing duties on dumped goods will necessarily affect the interests of purchasers of these goods, whether they be domestic consumers, foreign-owned production operations, or U.S. owned operations."[40] Moreover, to the extent that Gannett raises concerns related to the overall impact on the domestic industry as a whole, it is the ITC that investigates and determines injury or threat of injury to U.S. industries. Therefore, we have not considered the potential downstream effect of duties for purposes of our final determination.

Comment 4: Whether Commerce Properly Requested Respondent Interested Parties to Report "Other Assistance"

Government of Canada and Provincial Governments' Case Brief

- The Act and the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) require "sufficient evidence of . . . a subsidy and, if possible, its amount" to initiate a CVD investigation of any alleged subsidy program.[41]

- The petitioner or, if self-initiating, Commerce bears the burden of alleging the elements of a subsidy program and providing the reasonably available evidence including when adding programs to an ongoing investigation.[42]

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[38] *See* section 777(h) of the Act (allowing for Commerce to provide consumers and industrial users with an opportunity to submit relevant information concerning dumping or countervailable subsidies).

[39] *See* sections 701 and 731 of the Act.

[40] *See Mitsubishi*, 700 F. Supp. at 559, *aff'd*, 898 F.2d 1577 (Fed. Cir. 1990).

[41] *See* GOC and Provincial Governments' Case Brief at 62-63.

[42] *Id.* at 63-64 (citing *Solar World Ams, Inc.* at 1330).

- A CVD investigation or a finding of financial contribution, benefit, or specificity that is not grounded in specific allegations, consultations with the government, and notice of initiation is contrary to U.S. law and the United States' WTO obligations.[43]

- Article 11 of the SCM Agreement requires sufficient evidence of "a" subsidy to initiate an investigation, emphasizing the narrow focus of that investigation, whether initiation happens upon petition of domestic industry or self-initiation, and Article 13 requires consultation with the government before the initiation of any investigation.[44]

- Commerce's "other assistance" approach shifts burden from petitioner to respondent the burden of adding programs not alleged in the petition and the duty to submit evidence of "the many subsidy programs typically alleged in a petition."[45]

- Unlike "countervailable subsidy," which is defined in the statute, Commerce provides no definition for "assistance" nor any guidance.[46] Everything a government does could be construed as "assistance."

- Commerce's approach unfairly penalizes respondents by applying AFA whenever Commerce discovers "assistance" that was not reported without giving respondents an opportunity to demonstrate that it acted to the best of its ability.[47]

- The statute and regulation that authorize Commerce to add programs to an investigation requires that the practice "appears" to be a "countervailable subsidy" with respect to the subject merchandise, while that same provision only required the appearance of a "subsidy" before the 1994 amendments.[48] The legislative history shows that the House Ways and Means Committee expected the section 702(a), of the Act, threshold standards be met.[49]

- Commerce declined to describe separately when and how it would investigate a subsidy discovered during an antidumping investigation because the regulations already "adequately describe the requirements for the initiation and conduct of a countervailing duty investigation."[50]

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[43] *See* GNL's Case Brief at 47.

[44] *Id.* at 48-49.

[45] *Id.* at 47.

[46] *See* GOC and Provincial Governments' Case Brief at 64-65.

[47] *Id.* at 65-66.

[48] *Id.* at 66-67 (citing section 755 of the Act and 19 CFR 351.311).

[49] *Id.*

[50] *Id.* at 67-68 (quoting *1988 CVD Preamble* 53 FR 52306, 52344 (December 27, 1988)).

- The CIT has held that Commerce is not obligated to investigate a practice that "appears to be" or "provide" a countervailable subsidy.[51]

- The "other assistance" question is not a request for specific information but ambiguous, open-ended, and overly broad.[52]

- A CVD investigation or a finding of financial contribution, benefit, or specificity that is not grounded in specific allegations, consultations with the government, and notice of initiation is contrary to U.S. law and the United States' WTO obligations.[53]

- The "other assistance" is not the subject of any allegation in any petition or formal initiation of an investigation and is not defined by Commerce.[54]

- The elements required to initiate an investigation under section 702 of the Act and Commerce's allegation-by-allegation review reflected in the "initiation checklist" demonstrate the limited scope of an investigation.[55]

- Petitioners must support allegations with evidence to raise new subsidy allegations during an investigation.[56]

- Commerce's regulations provide that it will include an investigation of a discovered practice that "appears" to provide a countervailable subsidy if it concludes that "sufficient time remains" before the final determination or, otherwise, it will allow the petitioner to refile with a new allegation or defer consideration of the newly-discovered program until a subsequent administrative review.[57] Commerce will also notify the parties of any discovered practices and whether they will be included.[58]

White Birch's Rebuttal Brief

- "Assistance" cannot include "every interaction between any level of government and a respondent."[59]

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[51] *Id.* at 68 (citing *Allegheny II* at 821).

[52] *Id.* at 69.

[53] *See* GNL's Case Brief at 47

[54] *Id*.

[55] *Id.* at 49-50.

[56] *Id.* at 50 (citing 19 CFR 351.301(c)(2)(iv)(A)).

[57] *Id.* at 50-51 (citing 19 CFR 351.311).

[58] *Id.*

[59] *See* White Birch's Rebuttal Brief at 2-3.

Petitioner's Rebuttal Brief

- The Government of Canada's arguments have no basis in the statute, case law, or Commerce's practice.[60]

- A binational panel affirmed Commerce's authority to ask its "other assistance" question and to resort to facts available to calculate the benefit of undiscovered subsidies due to the respondent's failure to cooperate. Commerce should follow its settled practice.[61]

Kruger's Rebuttal Brief

- Commerce's "other forms of assistance" question is expressly limited to forms of assistance "other" than initiated programs.[62]

Commerce's Position:

We find that the arguments raised herein do not differ substantially from those raised and addressed in the *Lumber V CVD Final Determination*.[63] Therefore, we adopt the position in that recent determination, and find that Commerce's request that governments and respondent interested parties report "other assistance" received by respondents from governments is not inconsistent with domestic law or the United States' international obligations.

To the extent parties make arguments with respect to our use of AFA related to programs not reported in response to the "other assistance" question, we find these arguments moot because we have made no AFA determinations in this final determination.

Comment 5: Whether to Continue to Find Certain Programs Not Used, Not Measurable, or Having No Benefit

Government of Québec's Case Brief

- Commerce should continue to find that a number of forestry,[64] tax,[65] and employment[66] programs were either unused or provided no measurable benefit to the company respondents during the POI. Commerce either verified that the reported figures were correct or otherwise noted no issues with the companies' reporting.

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[60] *See* Petitioner's Rebuttal Brief at 10.

[61] *Id.*

[62] *See* Kruger's Rebuttal Brief at 5.

[63] *See Lumber V CVD Final Determination* at Comment 5.

[64] *Id.* at 98-102.

[65] *Id.* at 126-128.

[66] *Id.* at 126-128.

- Commerce also should continue to find that the Wood Fiber Technology Project for Papier Masson WB LP was not used during the POI. Commerce confirmed non-use during its verification of White Birch's response.[67]

Resolute's Case Brief

- Commerce should not countervail 30 programs which it found conferred no benefit in the *Preliminary Determination* and Post-Preliminary Analysis.[68]

Commerce's Position:

We agree, in part, and continue to find that the majority of the programs referenced above were not used or provided either no benefits or no measurable benefits to the company respondents. *See* Appendix II.

However, as noted in Comments 12 and 13, below, we changed the denominators of our calculations for each of the programs at issue. As a result of these changes, we now find the following programs used by Resolute during the POI to have measurable benefits:

- Federal SR&ED Tax Credit
- Fuel Tax Refunds
- Ontario FSPF Grants
- Rexforêt
- Silviculture Work
- Training in MFMS
- TIPFP Property Tax

Because we did not request additional information related to the specificity or financial contribution related to the Fuel Tax Refunds, Rexforêt,[69] and Silviculture Work programs, there is insufficient information on the administrative record to find these programs countervailable. We intend to examine these programs in the first administrative review of this proceeding, if a CVD order is issued, pursuant to 19 CFR 351.311(c)(2)

With respect to the remaining programs, we used information contained on the record to analyze whether these programs are countervailable for purposes of the final determination. Our analysis is below:

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[67] *Id.* at 103 (citing White Birch Verification Report at 16).

[68] *See* Resolute's Case Brief at 86-87 and 91-92.

[69] With respect to the Rexforêt program, Resolute reported assistance under several programs that potentially fall under the purview of Rexforêt. However, because: 1) both the titles of these programs, as well as the benefits received under them, reported by Resolute do not match the information reported by the Government of Québec for Rexforêt; and 2) we did not request additional information from either party, the record lacks necessary information to make a final determination with respect to Rexforêt.

Federal SR&ED Tax Credit

The Government of Canada provides a tax credit on companies' eligible research and development (R&D) expenditures, such as salary and wages, materials, overhead, and contracts.[70] During the POI, the tax credit was available at a rate of 15 percent of the cost of these expenditures for eligible R&D costs.[71] An enhanced rate of 35 percent was offered to small Canadian-controlled private corporations, though Resolute did not qualify for or receive this rate.[72] There was no application to receive this tax credit; rather it was claimed on Form T661 of the tax payer's federal income tax return.[73] Resolute claimed a tax credit under this program in its 2015 tax year annual returns filed during the POI and used the same amount.[74]

Canada reported that 18,600 firms claimed this tax credit in the 2015 tax year, out of approximately 1,989,000 corporate tax filers.[75] Because the actual recipients, relative to total corporate tax filers, are limited in number on an enterprise basis, we determine that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act. We determine that there is a financial contribution in the form of revenue foregone, within the meaning of section 771(5)(D)(ii) of the Act. The 15 percent standard tax credit received by Resolute conferred a benefit equal to the amount of the tax savings pursuant to 19 CFR 351.509(a)(1). Because this is a recurring subsidy under 19 CFR 351.524(c), for each company, we divided the amount of the tax credit received during the POI by Resolute's total sales during the POI, in accordance with 19 CFR 351.524(a), to arrive at a total countervailable subsidy rate. On this basis, we determine the countervailable subsidy rate to be 0.01 percent *ad valorem* for Resolute.[76]

Ontario FSPF Grants

According to Ontario, the FSPF program was a capital grant program announced in 2005 which stopped accepting applications in October 2008. Administered by the Ministry of Natural Resources, it supported and approved, for eligible companies, capital investment projects in the areas of value-added manufacturing, improved-fiber-use efficiencies, energy conservation, and energy generation.[77] Eligible projects for the FSPF program were restricted to sites in northern or rural southern Ontario.[78] These grants were available for up to 20 percent of eligible capital

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[70] *See* GOC November 9, 2017 IQR at GOC-VI-17.

[71] *Id.*

[72] *Id.*

[73] *See* GOC November 9, 2017 IQR at GOC-VI-22.

[74] *See* Resolute November 10, 2017 IQR at 42.

[75] *See* GOC First Non-Stumpage SQR at GOC-SUPP1-81.

[76] *See* Resolute Final Calc Memo.

[77] *See* GOO November 9, 2017 IQR at 10.

[78] *Id.*

costs of approved projects or up to 30 percent of costs for electricity generation projects;[79] the maximum grant available was C$25 million. Ontario made grant disbursements against these incurred and paid eligible project costs.[80]

We determine that grants from Ontario under the FSPF constitute a financial contribution in the form of a direct transfer of funds from the government within the meaning of section 771(5)(D)(i) of the Act, and bestow a benefit within the meaning of section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that this program is specific under section 771(5A)(D)(iv) of the Act because the grants provided under the program are limited to projects located in a designated geographic region (*i.e.*, northern or rural southern Ontario).

Resolute reported receiving grants under this program for certain projects at various mills.[81] Because Resolute does not receive these benefits on an on-going basis, we are treating these subsidies as a non-recurring grant. Additionally, we conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2) and found that the amount of assistance was greater than 0.5 percent of Resolute's relevant sales in the year of approval. Therefore, for the grant related to the 2007 project at Resolute's Fort Frances mill, we allocated the total benefit over the AUL period using the discount rate discussed above in the "Loan Interest Rate Benchmarks and Discount Rates," to determine the amount attributable to the POI. We then divided the POI benefits by Resolute's pulp and paper sales during the POI. However, as discussed below in Comment 6, we are considering certain payments from this program received prior to December 9, 2010, to be extinguished due to Resolute's bankruptcy and subsequent change-in-ownership. Thus, we are not including those payments in the benefit calculation. On this basis, and consistent with *SC Paper from Canada*, we determine that Resolute received a net countervailable subsidy of 0.08 percent *ad valorem* under this program.[82]

Training in MFMS

The Government of Québec provides a tax credit for eligible training expenditures equal to the total cost of training, which can also include the salary or wages paid during the training period.[83] In order for the training expenditures to qualify, the training must consist of a course related to an activity in the manufacturing, forestry, or mining sector and must be given to an enrolled eligible employee by either an accredited instructor or one at a recognized educational institution.[84] Employees qualify as being eligible if their activities consist primarily of carrying out or supervising duties attributable to an activity in the manufacturing, forestry, or mining

[79] *Id.*

[80] *See* Resolute Verification Report at 39.

[81] *See* Resolute November 10, 2017 IQR at 74-75 and Exhibit RES-NS-22.

[82] *See SC Paper from Canada* IDM at Comment 10, where Commerce found this program to be countervailable.

[83] *See* GOQ January 5, 2018 SQR at GQ-SUPP-175.

[84] *Id.*

sectors.[85] During the POI, the tax credit was available at a rate of 24 percent of the cost of these expenditures. Companies in the manufacturing, forestry, and mining sectors can claim the credit when filing their corporation income tax return (*i.e.*, form CO-17).[86] Resolute reported that it claimed the credit and received a refund in 2016, which was claimed on annual income tax returns made in previous years.[87]

Eligibility for this program is limited by law to the manufacturing, forestry, and mining sectors under the Taxation Act.[88] Accordingly, we determine that this program is *de jure* specific, in accordance with section 771(5A)(D)(i) of the Act. The tax credit and refund received by Resolute conferred a benefit equal to the amount of the tax savings, pursuant to 19 CFR 351.509(a)(1). We determine that there is a financial contribution in the form of revenue foregone, within the meaning of section 771(5)(D)(ii) of the Act. Because this is a recurring subsidy under 19 CFR 351.524(c), we divided the amount of the tax credit and refund received during the POI by Resolute's total sales during the POI, in accordance with 19 CFR 351.524(a), to arrive at a total countervailable subsidy rate. On this basis, we determine the countervailable subsidy rate to be 0.01 percent *ad valorem* for Resolute.[89]

TIPFP Property Tax

Under this program, administered by Revenu Québec, private forest producers are eligible for a refund of 85 percent of the amount of property taxes paid when development expenses incurred for investment in forest management are greater than or equal to the amount of property taxes paid.[90] The property tax refund is a refundable tax credit.[91] Resolute reported that it received a refund in 2016, which was claimed on its 2013 and 2014 annual income tax returns.[92]

Eligibility for this program is limited by law to certified private forest producers under the SFDA.[93] Accordingly, we determine that this program is *de jure* specific, in accordance with section 771(5A)(D)(i) of the Act. The tax refund and credit received by Resolute conferred a benefit equal to the amount of the tax savings, pursuant to 19 CFR 351.509(a)(1). We determine that there is a financial contribution in the form of revenue foregone, within the meaning of section 771(5)(D)(ii) of the Act. Because this program is recurring under 19 CFR 351.524(c)(1), we divided the sum of the tax savings received during the POI by Resolute's total sales during

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[85] *Id.*

[86] *Id.* at GQ-SUPP-169.

[87] *See* Resolute November 10, 2017 IQR at 117.

[88] *Id.* at Exhibit QC-SUPP-PT2-C80-2.

[89] *See* Resolute Final Calc Memo.

[90] *See* GOQ November 9, 2017 IQR at GOQ-RQ-46.

[91] *Id*. at GOQ-RQ-54.

[92] *See* Resolute November 10, 2017 IQR at 102.

[93] *See* GOQ November 9, 2017 IQR at GOQ-RQ-46.

the POI, in accordance with 19 CFR 351.524(a). On this basis, we determine the countervailable subsidy rate to be 0.01 percent *ad valorem* for Resolute.[94]

Bankruptcy / Change in Ownership Issues

Comment 6: Whether Subsidies Received Prior to 2011 Were Extinguished by Resolute's Emergence from Bankruptcy

In 2009, during the AUL period, Resolute's predecessor company, Abitibi-Bowater, declared bankruptcy and took part in a U.S. and Canadian court-ordered restructuring. In December 2010, Abitibi-Bowater emerged from bankruptcy, and, in 2012, Abitibi-Bowater legally changed its name to Resolute FP. In the *Preliminary Determination*, we relied on Resolute's information, as reported.[95]

Resolute's Case Brief

- The bankruptcy proceedings extinguished any non-recurring subsidies received prior to 2011 because the U.S. and Canadian bankruptcy courts sanctioned a plan that resulted in a change of ownership for fair market value which accounted for any prior subsidies.[96]

- Through this process, the company took on an entirely new valuation, as overseen by the courts in both Canada and the United States. The values of any subsidies are subsumed in the newly calculated value of the company as approved by the courts; thus, prior subsidies were extinguished fully by this valuation process.[97]

- Resolute adopted "fresh start" accounting as a result of the bankruptcy, and it would be contrary to FASB standards to compare pre-and post-fresh start balance sheets.[98]

- Commerce has recognized that the forgiveness of loans and other debts through structured bankruptcy proceedings does not constitute a countervailable subsidy.[99]

Commerce's Position:

We agree with Resolute that, with respect to its emergence from bankruptcy, a change-in-ownership took place. Additionally, we agree with Resolute that, upon its emergence as a newly formed entity from bankruptcy proceedings, subsidies received prior to December 9, 2010 were extinguished by this process.

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[94] *See* Resolute Final Calc Memo.

[95] *See Preliminary Determination* at 10-11.

[96] *See* Resolute's Case Brief at 70-72.

[97] *Id.* at 72.

[98] *Id.* at 72-74 (citing FASB ASC 852).

[99] *Id.* at 72 (citing, *e.g.*, *Al Tech*, 661 F.Supp. at 1212).

As discussed in the *Preliminary Determination*,[100] prior to 2010, AbitibiConsolidated Inc. and Bowater Incorporated combined in a merger of equals as each became a wholly-owned subsidiary of Abitibi-Bowater, the predecessor of Resolute.[101] Abitibi-Bowater entered bankruptcy in 2009, and emerged from bankruptcy on December 9, 2010, following reorganization pursuant to 1) creditor protection proceeding under Chapter 11 of the United States Bankruptcy Code; and 2) the Companies' Creditors Arrangement Act (Canada).[102] Pursuant to the FASB ASC 852, Abitibi-Bowater was required to enact "fresh start" accounting.[103] Abitibi-Bowater subsequently elected to apply "fresh start" accounting effective December 31, 2010, to coincide with the timing of the normal December accounting period close. In 2012, Abitibi-Bowater legally changed its name to Resolute.

In examining these types of situations, Commerce operates under a baseline presumption that "non-recurring subsidies can benefit the recipient over a period of time (*i.e.,* allocation period) normally corresponding to the average useful life of the recipient's assets."[104]
The *Final Modification* further states:

> However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a privatization occurred in which the government sold its ownership of all or substantially all of a company or its assets, retaining no control of a company or its assets, and that the sale was an arm's-length transaction for fair market value.[105]

Subsequent to the publication of the *Final Modification,* Commerce has deemed it appropriate to apply this methodology to private transactions, including bankruptcy proceedings, as is the case here.[106]

In its case brief, Resolute states that "U.S. and Canadian bankruptcy courts sanctioned a plan of arrangement that resulted in a change in ownership for fair market value."[107] Resolute further describes this process:

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[100] *See Preliminary Determination* at 10-11.

[101] Resolute FP is the ultimate owner of Resolute FP Canada. *See* Resolute November 10, 2017 IQR at 3.

[102] *Id*. at 6.

[103] In accordance with FASB ASC 852, if a company emerges from bankruptcy and meets certain conditions, that company can enact "fresh start" accounting, which provides newly allocated values of its assets and liabilities going forward. *See* Resolute December 20, 2017 Non-Stumpage SQR at 2-3; and Resolute November 10, 2017 IQR at Exhibit RES-NS-2.

[104] *See Final Modification*, 68 FR at 37127.

[105] *Id.*

[106] *See, e.g., SC Paper from Canada Preliminary Determination* at 17-19 and 18-22; unchanged in *SC Paper from Canada* at 86-88 and 90-93*; Pasta from Italy 8th AR; Certain Passenger Vehicle and Light Truck Tires from China*.

[107] *See* Resolute's Case Brief at 70.

> The Abitibi-Bowater bankruptcy restructuring plan effected a sale of the assets and operations of the company to its unsecured creditors in exchange for an extinguishment of their debt. Upon implementation of the Plan, Abitibi-Bowater's equity was extinguished without consideration paid to the equity holders. Secured debt obligations were paid in full, and unsecured debt obligations were, subject to certain exceptions, converted into equity of the post-emergence organized entity.[108]

In terms of the ownership changes resulting from this process, Commerce verified certain information submitted by Resolute regarding the bankruptcy. Throughout the investigation, Resolute has claimed that upon emergence from bankruptcy, its predecessor Abitibi-Bowater enacted Fresh Start Accounting, whereby it "materially changed the carrying amounts and classifications reported in the consolidated financial statements and resulted in Abitibi-Bowater becoming a new entity for financial reporting purposes."[109] In order to enact fresh start accounting, FASB ASC 852 requires that two conditions be met, one of which being that the holders of existing voting shares prior to the reorganization receive less than 50 percent of the voting shares of the emerging entity.[110] We examined this information at verification and, as a result, in Resolute's Verification Report, we state:

> Company officials also provided two charts, one showing the ownership percentages of Abitibi-Bowater's major shareholders before, and another after, the company's emergence from bankruptcy. We compared these shareholder lists and noted that none of the major shareholders before Abitibi-Bowater's emergence from bankruptcy were shareholders in the successor company. We also tied the largest companies on the new shareholder list to a report from the monitors to Abitibi-Bowater's creditors and noted no discrepancies. Company officials stated that all new company stock was held by companies having unsecured claims against the predecessor company, and the new stock were all common, voting shares.[111]

Exhibits gathered at verification support this finding.[112] Based on the record information described above, we find that the requirements that "ownership of all or substantially all of a company or its assets" were sold, which results in the pre-bankruptcy ownership "retaining no control of the company or its assets" were met in this instance with respect to Abitibi-Bowater.

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[108] *Id.* at 71.

[109] *Id.* at 73.

[110] *See* Resolute November 10, 2017 IQR at 8; Resolute Verification Report at 10 and Verification Exhibit VE-17.

[111] *See* Resolute Verification Report at 10.

[112] *Id.* at Exhibit VE-17.

Therefore, we determine the initial threshold has been met that typically triggers an analysis according to our CIO methodology as adopted in the *Final Modification*.[113]

In light of our finding above, the next step in our analysis is to determine whether the asset sales and restructuring process were at arm's length for fair market value. In analyzing whether a sales transaction between private parties was made at arm's length for fair market value, Commerce will normally examine whether the private seller acted in a manner consistent with the normal sales practice of private commercial sellers in that country. Where an arm's-length sale occurs between private parties, we would normally expect the private seller to act in a manner consistent with the normal sales practices of private commercial sellers in that country.[114] If it is demonstrated that the change in ownership was at arm's length for fair market value, any pre-sale subsidies will be presumed to be extinguished in their entirety, and therefore, not countervailable.[115]

As noted above, Abitibi-Bowater entered bankruptcy proceedings in April of 2009.[116] The bankruptcy and concurrent restructuring process was undertaken through the *CCAA* under the general supervision of the Superior Court of Québec and Chapter 11, overseen by a U.S. bankruptcy court. In accordance with the normal restructuring process of the *CCAA*, which is similar to the bankruptcy process undertaken under Chapter 11 of the U.S. Code, Abitibi-Bowater settled its claims (sold its assets) and extinguished the equity of all previously-held shares.[117] The Superior Court of Québec appointed an independent party, Ernst & Young, as the Monitor to oversee the day-to-day administration of the bankruptcy and restructuring process.[118] Regarding the *CCAA* distribution plan, monitors stated at Commerce's verification that "the plans resulted from negotiations among key stakeholders; they were approved by a majority vote of creditors and, subsequently, by both the Canadian and U.S. Courts in September 2010 and November 2010, respectively."[119]

In connection with this *CCAA* restructuring process, Abitibi-Bowater sold various assets that were no longer required for business operations and settled various disputes.[120] These transactions required prior approval from the Monitor and Superior Court of Québec, resulting in the Monitor periodically submitting reports to the courts regarding these transactions and

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[113] *See Final Modification*, 68 FR 37127.

[114] *See, e.g., Pasta from Italy 8th AR*, 70 FR at 17972.

[115] *Id.* at 17973.

[116] *See* Resolute Verification Report at 7.

[117] *See* Resolute December 20, 2017 Non-Stumpage SQR at Exhibit at RES-BK-2; *see also* Resolute Verification Report at 7-13; and Resolute's Case Brief at 70-74.

[118] *Id.* at 4.

[119] *See* Resolute Verification Report at 8-9.

[120] *See* Resolute December 21, 2017 CIO Appendix at Exhibit RES-BK-6.

business decisions related to the restructuring.[121] Resolute stated that the asset sales were conducted in accordance with market principles.[122] Additionally, Resolute stated that objective analyses were done, and one purpose of the Monitor's reports was to "ensure that thorough analyses of value were undertaken to assure maximization of value to creditors."[123] The preceding statement, and the claim that these sales and the use of the proceeds required approval from the Courts, was verified by Commerce.[124] Based upon the manner in which the company underwent this bankruptcy and restructuring, we determine that these private-to-private party transactions between Abitibi-Bowater and its various creditors overseen by the courts were at arm's-length for fair market value.

Therefore, based on the totality of the evidence noted above, we find that the bankruptcy procedures which took place were done in accordance with standard Canadian bankruptcy procedures. Furthermore, we find that there was change-in-ownership which resulted in the newly formed entity, which remained named Abitibi-Bowater. Due to the findings described above, as described below, we will not attribute certain benefits received from the Ontario Forest Sector Prosperity Fund prior to December 9, 2010 to Abitibi-Bowater as part of this Final Determination, the only potential concurrent subsidy on this record for Resolute.[125]

The *Final Modification* establishes the criteria to be used in determining whether a subsidy provided concurrent with a bankruptcy proceeding is fully extinguished.[126] For purposes of this methodology, Commerce stated that it intends to scrutinize very carefully any instances of concurrent subsidies, and will normally determine that the value of concurrent subsidies is fully reflected in the fair market value price of an arm's length change in ownership/privatization and, therefore, is fully extinguished in any such transaction, if the following criteria are met:

1. The nature and value of the concurrent subsidies were fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders;
2. The concurrent subsidies were bestowed prior to the sale; and
3. There is no evidence otherwise on the record demonstrating that the concurrent subsidies were not fully reflected in the transaction price.[127]

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[121] *Id.; see also* Resolute November 10, 2017 IQR at 7.

[122] *See* Resolute December 21, 2017 CIO Appendix at 11.

[123] *Id.* at 7.

[124] *See* Resolute Verification Report at 13.

[125] As discussed in further detail in Comment 51, Abitibi-Bowater received a settlement payment from the Government of Canada related to a NAFTA Chapter 11 dispute shortly after Abitibi-Bowater emerged from bankruptcy. Because we find that there is no net benefit for this payment, we have not addressed whether it constitutes a countervailable subsidy. Thus, we have not further evaluated whether this constitutes a concurrent subsidy for purposes of this issue.

[126] *See Final Modification*, 68 FR at 37136 footnote 23 ("For the purposes of this final modification, we consider 'concurrent subsidies' to be subsidies given to facilitate, encourage, or that are otherwise bestowed concurrent with a privatization.").

[127] *Id.* 68 FR at 37137.

Abitibi-Bowater received funding from the Ontario Forest Sector Prosperity Fund both prior to and after Resolute's emergence from bankruptcy.[128] With respect to benefits *received* by Resolute during the bankruptcy proceedings from April 2009 through December 9, 2010, we find that, based on the criteria above, these benefits were extinguished. The amount of the grants to be disbursed under the Ontario Forest Sector Prosperity Fund were approved by the Ontario Ministry of Natural Resources before the company went into bankruptcy.[129] Additionally, record evidence indicates that, as part of the bankruptcy and reorganization, a valuation of the emerging entity was conducted by Blackstone.[130] This valuation was part of this restructuring process under the *CCAA*. There is no evidence on the record indicating that these subsidies were not considered or reflected in the new valuation of the company. Thus, we find that these subsidies were extinguished.

Comment 7: Whether Resolute's Acquisition of Fibrek Extinguished Any Prior Subsidies

In 2012, at the time Abitibi-Bowater was undergoing a name change to Resolute, the company (which we refer to herein as Resolute) acquired a controlling interest in Fibrek. Resolute reported that Fibrek received benefits under one program, FPPGTP, prior to its acquisition but during the AUL period. In the *Preliminary Determination*, we found that Resolute's acquisition of Fibrek was not an arm's-length transaction made at fair market value. Thus, we found that Resolute's purchase of Fibrek did not extinguish any subsidies received by it prior to the purchase.[131]

Resolute's Case Brief

- Commerce erred when it preliminarily found that Resolute's purchase was not an arm's-length transaction for fair market value. A NAFTA panel concluded that this purchase was "obviously hostile," a finding that Commerce did not contest in its remand.[132]

- Resolute's takeover of Fibrek was by definition an arm's-length transaction because Resolute purchased 75 percent, and eventually all, of Fibrek's shares, which were traded openly on the Toronto Stock Exchange.[133]

- Commerce erred when it relied on the fact that Resolute and Fibrek had a significant common shareholder, Fairfax. The percentage of shares Resolute required to complete its purchase varied during the life of the offer, but Fairfax by itself could never satisfy any

[128] *See* Resolute's November 10, 2017 IQR at 74-79 and at Exhibit RES-NS-21; and *see* a discussion at Comment 5.

[129] *Id.* at 75.

[130] *See* Resolute Verification Exhibit VE-16.

[131] *See* PDM at 57-60.

[132] *See* Resolute's Case Brief at 74 (citing SC Paper NAFTA Report).

[133] *Id.* at 75-76 (citing Black's Law Dictionary and *Delverde*, 202 F.3d at 1369).

threshold or make any binding decisions for sale of a sufficient number of Fibrek shares. To the extent that Commerce finds Fairfax not unrelated, this cannot affect the unrelated party status of any of the owners of Fibrek shares ultimately sold to Resolute.[134]

- The record shows that Fairfax was kept at arm's length intentionally through the decision-making process, and a member of Resolute's board of directors recused himself from any discussion of the issue. Further, Resolute's purchase of Fairfax's shares in Fibrek at a 39 percent premium, accompanied by a "lock up" agreement, was similar to agreements with the other two large Fibrek shareholders, both unaffiliated with Resolute. [135]

- The market price of Fibrek's shares the day before Resolute's announcement of its takeover bid was C$0.72; thus, Resolute's C$1.00-per-share offer, when viewed in conjunction with Fibrek's concurrent financial performance, was at or above fair market value.[136]

- Commerce erred when it found that a competing bid of C$1.40 per share established the fair market value, because it failed to consider that: 1) Resolute's offer was for cash; and 2) Québec's Bureau de decision prohibited certain elements of the competing bid, finding them outside the norm and an unconscionable transaction. The Bureau de decision's decision was upheld on appeal.[137]

- Resolute's 2012 10-K form submitted to the SEC showed that Resolute paid C$130 million for Fibrek's C$120 million in net assets, and, thus, Resolute paid "the full amount that the company or its assets (including the value of any subsidy benefits) were actually worth."[138]

- Commerce should find, in accordance with section 771(5)(F) of the Act, that Fibrek's change in ownership extinguished any subsidies Fibrek received under the FPPGTP prior to Resolute's acquisition. Because Resolute booked the full value of the payments under the FPPGTP program, including payments to be made after the acquisition, at the time of the transaction, the full value of the project disbursements was an explicit part of the purchase of the company by Resolute at fair market value.[139]

Petitioner's Rebuttal Brief

- In both the original investigation and expedited review of SC paper, Commerce determined that Fibrek's FPPGTP grants were countervailable subsidies, and it performed a detailed analysis in the first review of that order as well as in the *Preliminary Determination*.

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[134] *Id.* at 76.

[135] *Id.* at 77-78.

[136] *Id.* at 79.

[137] *Id.* at 79-80.

[138] *Id.* at 81 (citing *Final Modification*, 68 FR at 37137).

[139] *Id.* at 81 and 87.

Because nothing on this record merits a change in these decisions, Commerce should continue to find that the FPPGTP subsidies benefit Resolute.[140]

Commerce's Position:

We agree with Petitioner that nothing on the record of this investigation merits a change in our finding from the *Preliminary Determination*. Commerce preliminarily determined that Resolute's acquisition of Fibrek was not an arm's-length transaction for fair market value, and thus, any prior subsidies provided to Fibrek were not extinguished. Resolute disputes these findings and claims Commerce erred in several instances.

When determining whether certain subsidies are extinguished due to a change in ownership, Commerce evaluates Resolute's arguments under the standards set forth in the *Final Modification* and *Pasta from Italy 8th AR*.[141] Accordingly, Commerce evaluates the evidence presented to determine whether Resolute has demonstrated that a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, and that the sale was at arm's length and for fair market value.[142] If the evidence does not demonstrate that the change in ownership was at arm's length and for fair market value, the baseline presumption will not be rebutted and we will find that the pre-change-in-ownership benefits were not extinguished.[143]

As set forth in the *Final Modification*, "we will be guided by the SAA's definition of an arm's-length transaction, noted above, as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties."[144] In the *Preliminary Determination*, we found that this was not a transaction between unrelated parties because Fairfax and Steelhead were both common shareholders of Resolute and Fibrek. In addition, we noted that "at the time of the acquisition, a director and board member at Resolute was also serving as vice president and chief legal officer of Fairfax."[145] As explained further below, we continue to find Resolute's arguments that the shares of Fibrek held by Fairfax and Steelhead (the related parties in question), which accounted for 28 percent of total shares sold to Resolute, was not sufficient to satisfy any threshold or make binding decisions in the sale unpersuasive.[146] Resolute also states that Fairfax was intentionally kept at arm's length during the decision-making process, including the recusal of Fairfax's vice president and chief legal officer that also held a board position in Resolute.[147]

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[140] *See* Petitioner's Rebuttal Brief at 104-105.

[141] *See* PDM at 57-58.

[142] *See Final Modification,* 68 FR 37127.

[143] *Id.*

[144] *Id.* This definition is consistent with that presented by Resolute. *See Allegheny Fed. Circuit* at 1349.

[145] *See* PDM at 57-60.

[146] *See* Resolute's Case Brief at 76.

[147] *Id.* at 77.

We do not find these arguments to be convincing for a number of reasons. Although Resolute has overcome the threshold, *i.e.*, demonstrated that there was a transfer of all or substantially all of Fibrek, record evidence demonstrates that this sale was not at arm's length or for fair market value. A description of the takeover process in Resolute's offer letter demonstrates that though the common board director (*i.e.*, Mr. Rivett) recused himself from internal discussions at Resolute, he was still involved in negotiations:

> On May 5, 2011, Mr. Garneau met with Messrs. Watsa and Rivett of Fairfax in Montreal to explore with them on a preliminary basis the feasibility of a transaction in which Resolute would acquire only the shares held by each of Fairfax, Pabrai and Oakmont.[148]
>
> On November 16, 2011, Mr. Garneau met with Messrs. Watsa and Rivett of Fairfax to discuss certain matters with respect to Resolute, including the wood fibre landscape in Québec. At this meeting, the issue of Resolute's interest in Fibrek was discussed. The parties expressed a more active interest in pursuing a potential transaction and discussed the potential involvement of Pabrai and Oakmont. The next day, Mr. Garneau shared his perspective on the forest products business in Québec on a call with Terence M. Kavanagh, President and Director of Oakmont.[149]

These actions demonstrate clear involvement by Mr. Rivett, the common director, in the negotiating process between Resolute and Fairfax regarding the selling of shares and eventual takeover bid of Fibrek – including the involvement of Pabrai and Oakmont, the other two largest shareholders of Fibrek. Additionally, while Resolute notes Mr. Rivett was recused from discussions, the record evidence indicates he was indeed receiving director compensation from Resolute and was, in fact, involved in conversations between Fairfax and Resolute.[150] Therefore, we affirm our preliminary finding that this was not a transaction between unrelated parties. Additionally, while Resolute attempts to discount the effect these related party purchases had on the total process by demonstrating that they did not constitute 50 percent of shares, this argument ignores key context. Fairfax was not just a significant shareholder of Fibrek, but was, in fact, the largest shareholder and discussed entering into lock-up agreements with the two other largest shareholders prior to the offer. Additionally, while Steelhead held just over 3 percent of Fibrek shares, it was a significant shareholder in Resolute and sold its shares to Resolute at a key point in the acquisition process, as described below. These facts demonstrate that this transaction was not negotiated as if the parties were unrelated.[151] Thus, we continue to find that this transaction was not conducted at arm's length.

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[148] *See* Resolute November 10, 2017 IQR at Exhibit RES-FIB-A-3.

[149] *Id.* at 60.

[150] *Id.* at 66.

[151] *See* PDM at 58 ("Most notably, these two companies agreed upon the final share price (C$1.00 per share) between themselves.").

We also disagree with Resolute that our preliminary finding that the price paid does not represent fair-market value was flawed.[152] As an initial matter, we continue to find that the final share price of C$1.00 per share was not fair market value and that Resolute has not demonstrated why the higher bid was not accepted.[153] As stated in our *Preliminary Determination*, one of the factors we review is whether the highest bid price was accepted.[154] Resolute, in stating that the Bureau de decision found "certain elements" of the Mercer bid to be outside the norm, does not dispute the fairness of the C$1.40 per share value of the Mercer bid. Rather, the Bureau de decision clearly states its objections to the issuance of special warrants as a policy matter and the effects this action might have on the markets.[155] Further, the Québec Court of Appeals notes that "it would appear that the TSX (Toronto Stock Exchange) considered the price to be acceptable since, on March 19, 2012, it conditionally authorized the registration of the shares that would result from converting the warrants."[156] Resolute notes that the Bureau de decision "prohibited these elements, but it did not prohibit Mercer's takeover bid," implying that Mercer could have continued its bid process.[157] However, we find this statement to be misleading. As the Québec Court of Appeal states: "as of February 16, 2012, Abitibi-Bowater's bid appeared to have the support of 50.7% of Fibrek shareholders, thereby condemning Mercer's rival bid to failure if it had not had the warrants, its weapon to dilute the shareholders."[158]

This leads us to a discussion of the importance of Steelhead, a related party discussed above, in this transaction. As noted above, Steelhead only possessed 3.3 percent of Fibrek shares and was not among the three largest shareholders that initially signed lock-up agreements. Rather, as stated by the Québec Court of Appeals, "On February 16, 2012, Steelhead, a Fibrek shareholder with 6,479,000 issued and outstanding Fibrek shares at the time, after reviewing Mercer's takeover bid, confirmed that it would tender its shares in favor of Abitibi-Bowater. Steelhead is also a shareholder of Abitibi-Bowater (13.3%)."[159] This lends further evidence to our preliminary finding "that this transaction is not consistent with the practices of a private seller, which would be to maximize the price paid per share."[160] Steelhead had the benefit of reviewing the Mercer bid, which represented a substantial premium to the Abitibi-Bowater bid. Yet, Steelhead (a shareholder in both Resolute and Fibrek), chose the Abitibi-Bowater bid of C$1.00 per share. This particular purchase of shares by Resolute, though constituting just over 3 percent of total Fibrek shares, was critical in the acquisition, as it provided the necessary amount for

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[152] *See* Resolute's Case Brief at 79-81.

[153] *See* PDM at 59-60.

[154] *See Id.* at 59.

[155] *See* Resolute November 10, 2017IQR at Exhibit RES-FIB-A-2.

[156] *Id.* at 16.

[157] *See* Resolute's Case Brief at 80.

[158] *See* Resolute November 10, 2017 IQR at Exhibit RES-FIB-A-2 at 3.

[159] *Id.* at 3.

[160] *See* PDM at 57-60.

Resolute to obtain over half of shares and effectively doomed the Mercer bid.[161] For all the reasons noted above, we continue to find that this transaction was not at arm's-length for fair market value, and did not represent the normal sales practices of a private seller.
Thus, we have made no changes to our preliminary finding regarding the acquisition of Fibrek and continue to attribute all non-recurring subsidies received by Fibrek accordingly.

Comment 8: Whether White Birch's Bankruptcy Proceedings Constitute a CIO

As discussed in our *Preliminary Determination*, White Birch declared bankruptcy in 2010 (during the AUL period), and in connection with the bankruptcy proceeding, the company and its mills were sold at a bankruptcy auction in September 2012. In the *Preliminary Determination*, we determined that all non-recurring subsidies received by White Birch in the period prior to the bankruptcy were expensed prior to the POI. We stated that we intend to "further consider these issues for the final determination."[162] In the Post-Preliminary Analysis, we countervailed certain non-recurring subsidies received prior to the bankruptcy that provided a benefit in the POI.[163] As discussed at Comment 100, this finding is unchanged for purposes of the final determination.

Petitioner's Case Brief

- White Birch's assertion that a CIO took place based on an arm's-length transaction, which extinguished any prior countervailable subsidies, is not persuasive.[164]

- The SAA and statute indicate that Commerce operates under a baseline presumption when a respondent claims a CIO, and an arm's-length transaction does not automatically extinguish prior subsidies.[165]

- White Birch has not proven that the former owner retains no control of the company or its assets, asserting only that "there is no question that the new entities that acquired the assets are not related to the prior entities that owned the assets prior to the sale."[166]

- Commerce should determine that White Birch's bankruptcy proceedings do not constitute a CIO and should attribute to White Birch all subsidies received over the entire AUL period of those assets in the final determination.[167]

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[161] *See* Resolute November 10, 2017, IQR at Exhibit RES-FIB-A-2 at 3.

[162] *See Preliminary Determination* at 10.

[163] *See* Post-Preliminary Analysis at 12-13.

[164] *See* Petitioner's Case Brief at 9-14.

[165] *Id.* at 11.

[166] *Id.* at 13.

[167] *See* Petitioner's Case Brief at 9-14.

White Birch's Rebuttal Brief

- The petitioner ignores the undisputed findings of a U.S. bankruptcy court and a Canadian court that the purchaser is not a successor to the debtor and that the sale was negotiated from an arm's-length position.[168]

- The findings of U.S. and Canadian bankruptcy courts – namely, that the purchaser is not a mere continuation of the debtor, the auction was conducted in a fair and non-collusive manner, the sale agreement was negotiated in good faith from an arm's-length bargaining positions, the "Stalking Horse" bid met the legal criteria, and the price paid by the winning bidder was satisfactory – demonstrate that a CIO took place.[169]

- Even if Commerce finds that a CIO did not take place, Commerce should continue to find that any of the subsidies received during the pre-bankruptcy portion of the AUL period were below the 0.5 percent threshold and thus were expensed prior to the POI.[170]

Commerce's Position:

As the parties correctly note, where there is a CIO, under Commerce's longstanding practice, we apply a rebuttable presumption that any subsidies to a prior entity continue to benefit the new entity.[171] In the course of this investigation, we allowed White Birch the opportunity to rebut the presumption by collecting certain relevant information (including subsidy program usage by White Birch, as appropriate) in our supplemental questionnaire and through our CIO questionnaire appendix.[172] However, we find that the issue is moot because whether our presumption prevailed and subsidies received by the prior entity continued to benefit White Birch, or whether White Birch rebutted the presumption, the amount is such that the overall net subsidy calculated for White Birch continues to be *de minimis*.[173] This is consistent with Commerce's determination not to address CIO issues in similar scenarios.[174]

Sales Denominator Issues

Comment 9: *Whether Commerce Should Revise Kruger's Denominators*

Petitioner's Case Brief

- Commerce should use Kruger Inc.'s consolidated sales value, revised at verification, as the denominator of the benefit calculation for any subsidy programs allocated over total sales of Kruger Inc. and the three paper mills.

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[168] *See* White Birch's Rebuttal Brief at 11-12.

[169] *Id.*

[170] *Id*.

[171] *See SSP from Belgium 9th AR* IDM at "Changes in Ownership."

[172] *See, e.g.*, White Birch December 12, 2017 SQR at Exhibit 21.

[173] *See* White Birch Final Calc Memo.

[174] *See Citric Acid from Thailand* and IDM at Comment 2.

Commerce's Position:

We agree and have made the appropriate corrections for purposes of the final determination.

Comment 10: *Whether Commerce Should Revise Resolute's Denominators*

Petitioner's Case Brief

- Commerce should use Resolute's sales values submitted in its December 4, 2017 NSA Response as the denominator of the benefit calculations for the majority of the subsidy programs used by Resolute.[175]

- With respect to the Ontario NIER Program, Ontario FSPF Grants, and FPPGTP Program, Commerce should use a denominator limited to Resolute's sales of pulp and paper products, consistent with its finding in the *Preliminary Determination* that these subsidy programs are tied to pulp and paper products, as well as its verification findings and past practice.[176] Commerce should confirm that these sales values do not mistakenly include sales of products manufactured in the United States.

Resolute's Case and Rebuttal Briefs

- If Commerce continues to treat electricity sales as a good, it should also include electricity sales in the denominators used for its benefit calculations.[177]

- Commerce's past practice with respect to the Ontario NIER Program, Ontario FSPF Grants, and FPPGTP Program has been to include sales of all of Resolute's products in the denominators.[178] If Commerce limits the denominators of these programs to pulp and paper sales, then, in the interest of consistency, it should similarly find that stumpage related to Resolute's sawmills is limited to pulp and paper. Moreover, because only one Resolute pulp and paper mill purchased stumpage, it should subsequently base the stumpage calculation on that related to pulp and paper only, thereby, excluding stumpage related to Resolute's sawmills).[179]

Commerce's Position:

We agree that it is appropriate to use Resolute's verified total sales values, which include sales of electricity. We have made the appropriate corrections for purposes of the final determination.

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[175] *See* Petitioner's Case Brief at 46-47.

[176] *Id.* at 47-48 (citing *Lumber V CVD Preliminary Determination*, unchanged in *Lumber V CVD Final Determination*).

[177] *See* Resolute's Case Brief at 90-91.

[178] *See* Resolute's Rebuttal Brief at 1-2 (citing SC Paper Final Calc Memo).

[179] *Id.* at 2-3 (citing *Lumber V CVD Final Determination*).

We also agree that it is appropriate to only use Resolute's pulp and paper sales as the denominator for the final calculation of the NIER, FSPF, and FPPGTP programs because we find these grants to be tied to Resolute's pulp and paper operations. Commerce's regulations at section 351.525(b)(5)(i) state 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, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.[180] A subsidy is tied only when the intended use is known to the subsidy provider (in this case, a government authority in Ontario) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.[181] For example, in determining whether a loan is tied to a particular product, Commerce examines the loan approval documents; to determine whether a grant is tied to a particular product, Commerce examines the grant approval documents.

In this case, the NIER program rules explicitly state that facilities designated as sawmills and sawmill production products are ineligible to qualify for program participation.[182] Based on the record evidence, at the time of bestowal, the purpose of this grant was to benefit only pulp and paper mills and their production. Therefore, consistent with our practice and the *CVD Preamble*, we determine that these grants are tied to the production of only pulp and paper products. Therefore, we find it appropriate to base the calculation of this program by dividing the benefit amount over Resolute's pulp and paper sales denominator.

Similarly, with regard to the Ontario FSPF program, the documentation indicates that the grant received was conditional upon the fulfillment of contractual requirements for pulp and paper projects. Specifically, the relevant agreement examined between one of Resolute's predecessor companies (*i.e.*, AbiBow Canada Inc.) related to the construction and installation of a turbine and generator at the Thunder Bay pulp and paper mill.[183] Based on the record evidence, the purpose of this grant program was known and available prior to the approval and bestowal of the benefit. Therefore, consistent with *Lumber V CVD Final Determination*, we determine that these grants are tied to the production of only pulp and paper products.[184] Accordingly, we find it appropriate to base the calculation of this program by dividing the benefit amount over Resolute's pulp and paper sales denominator.

Finally, with respect to the FPPGTP program, in the *Preliminary Determination*, we preliminarily determined that the grants disbursed under this program were tied to the production

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[180] *See CVD Preamble*, 63 FR at 65403.

[181] *Id*.

[182] *See* GOO November 9, 2017 Non-Stumpage IQR at Exhibit ON-NIER-1; *see also* Resolute Verification Report at 2-3, 22; and GOO Verification Report at 15-16.

[183] *See* GOO November 9, 2017 Non-Stumpage IQR at Exhibit ON-FPSF-2; *see also* Resolute Verification Report at 39.

[184] *See Lumber V CVD Preliminary Determination* at 88, unchanged in *Lumber V CVD Final Determination*.

of only pulp and paper products,[185] and we confirmed this finding at the verification of Resolute's questionnaire responses.[186] Further, we disagree with Resolute that Commerce historically has used a denominator of total sales in the benefit calculations for this program. In *SC Paper from Canada* and *Lumber V CVD Preliminary Determination*, we found that the FPPGTP program is tied to pulp and paper and we attributed the benefit to Resolute to Resolute's pulp and paper sales.[187] Because there is no evidence on the record which would warrant a reconsideration of Commerce's previous findings or calling our preliminary determination into question, we continue to find that it is appropriate to attribute any benefits from the FPPGTP grants received by Resolute to Resolute's pulp and paper products.[188]

Comment 11: Whether Commerce Should Revise White Birch's Denominators

Petitioner's Case Brief

- At verification, Commerce discovered that White Birch deducted an amount for freight expenses incurred in the United States when it calculated its FOB sales values. This resulted in reported FOB sales values that were larger than the actual declared FOB entered value reported on U.S. customs entry summaries. The reason for this discrepancy is that the FOB entered values on White Birch's customs entry documents are FOB ex-factory and not FOB at the point of the border crossing, and thus already exclude the entire freight amount (both inside Canada and the United States).[189]

- Commerce's well-established practice is to base denominator values on the FOB (port) value of the merchandise in order to correspond to the basis upon which CBP assesses duties.[190]

- Consistent with its findings at verification and the intent of the *CVD Preamble*, Commerce should adjust the sales denominators for calculating subsidy benefits to White Birch to reflect the entered values, as reported to CBP, rather than the sales values reported by White Birch.[191]

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[185] *See Preliminary Determination* at 55-56.

[186] *See* Resolute Verification Report at 25 (stating that this program was designed to encourage capital investment projects by Canadian pulp and paper mills producing black liquor). Black liquor is a by-product of transforming wood into pulp and paper.

[187] *See Lumber V Preliminary Determination* at 87, unchanged in *Lumber V CVD Final Determination*. Because we found this program to be tied to pulp and paper sales (*i.e.*, non-subject merchandise), Commerce did not perform a corresponding calculation. *See also SC Paper from Canada* IDM at Comment 8.

[188] *See Preliminary Determination* at 55-60.

[189] *See* Petitioner's Case Brief at 14.

[190] *Id*. at 14-15.

[191] *Id*. at 15 (citing *CVD Preamble*, 63 FR at 65399).

White Birch's Rebuttal Brief

- White Birch properly reported its sales values on an FOB port basis, as instructed by the questionnaire, and explained how it calculated these values in its initial questionnaire response.[192]

- White Birch also explained and demonstrated each mill's methodology for identifying and allocating freight expenses by market, and its calculation methodology for allocating the portion of freight on export sales incurred in Canada to determine the FOB port values, in its questionnaire responses.[193]

- White Birch's reporting of its sale denominator is consistent with Commerce's practice in *Lumber V CVD Final Determination* and *Wire Rod from Canada*.[194]

- Commerce verified this information and found no discrepancies.[195]

Commerce's Position:

At White Birch's verification, we observed the following:

> During the sales quantity and value (Q&V) reconciliation, company officials described how they determined the FOB value of sales. Rather than adjust the sales values by the entire amount of freight incurred, to determine the amount of freight expenses that were incurred inside Canada on U.S. exports, each mill applied to the total freight expense for each U.S. customer a ratio based on the distance from the mill to the U.S.-Canada border for each customer and the total distance from the mill to the customer. The freight amounts deducted resulted in reported FOB sales values that are larger than the actual declared FOB entered value on the U.S. customs documentation, which exclude the entire freight as FOB from the factory, not from the U.S. border crossing.[196]

In accordance with 19 CFR 351.525(a), "{n}ormally, the Secretary will determine the sales value of a product on an f.o.b. (port) basis (if the product is exported)…." The *CVD Preamble* states that Commerce's "longstanding practice has been to determine the sales value for products that are exported on an f.o.b. (port) basis in order to correspond to the basis on which the Customs Service assesses duties."[197] Here, as discussed above, we observed at verification that White Birch does not declare the entered value of its merchandise on an FOB (port) basis; rather,

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[192] *See* White Birch's Rebuttal Brief at 7-8.

[193] *Id*. at 8-9.

[194] *Id*. at 7 (citing *Wire Rod from Canada* IDM at Comment 7).

[195] *Id*. at 10.

[196] *See* White Birch Verification Report at 1.

[197] *See CVD Preamble*, 63 FR at 65399 (emphasis added).

the entered value reported on White Birch's U.S. customs documentation is reported on an FOB (factory) basis.

We do not disagree with White Birch that it reported its sales values on an FOB (port) basis, as we requested in our questionnaire instructions. However, relying on White Birch's sales values, as reported, would result in a mismatch between our calculations, and the basis on which CBP assesses duties, in contravention of the *CVD Preamble*. Thus, we find that the more appropriate course of action is to adjust White Birch's sales denominators so that they match the same FOB basis as the entered value reported on White Birch's customs documentations (*i.e.*, exclusive of both U.S. and Canadian freight). Further, the "normally" language in 19 CFR 351.525(a) provides us with discretion to match the FOB basis for White Birch's sales values to the FOB basis as reported for White Birch's entered values. For the purposes of this final determination, we have adjusted White Birch's sales denominators to deduct the entire amount of freight reported, so that the FOB sales values match White Birch's entered values on its customs documentation.

We disagree with White Birch that Commerce's practice supports its position. The issue in *Wire Rod from Canada* related to the respondent's treatment of freight revenue,[198] while in the *Lumber V CVD Final Determination*, Commerce used the FOB consolidated sales values as reported by the respondent company, without any reference to the declared value of those sales.[199] We find that the fact pattern in those cases is dissimilar to the facts of the instant investigation.

Unreported Assistance Issues

Comment 12: Whether Electricity Sold by PREI Provides a Countervailable Subsidy to Catalyst

Petitioner's Case Brief

- At verification, Commerce discovered that Catalyst purchases electricity from PREI, which is directed to sell electricity to Catalyst by Ministerial Order. Based upon the information that came to light at verification, Commerce should determine that the Government of British Columbia provided energy to Catalyst for LTAR, based on AFA. Both the Government of British Columbia and Catalyst failed to act to the best of their abilities when they did not report as "other forms of assistance" the electricity Catalyst receives from PREI as required in a Ministerial Order issued by the Government of British Columbia.[200]

- PREI is entrusted and directed by Ministerial Order to supply electricity to Catalyst, consistent with 771(5)(D)(iii) of the Act, and the provision of electricity by PREI to Catalyst is *de jure* specific in accordance with 771(5A)(D)(i) of the Act, because the Ministerial Order

[198] *See Wire Rod from Canada* IDM at Comment 7.

[199] *See* White Birch December 12, 2017 SQR at Exhibit 45 (submitting Canfor's Preliminary Determination Calculations Memorandum).

[200] *See* Petitioner's Case Brief at 23-27.

is limited to Catalyst. Further, the provision of electricity through PREI confers a benefit on Catalyst within the meaning of 19 CFR 351.511(a)(2).

- Because this program was only discovered at verification, benchmark information is not on the record. However, Commerce does have the invoices for electricity purchased from PREI, as well as the rates Catalyst paid BC Hydro for electricity during the POI. Commerce can determine the existence and amount of a benefit by comparing the prices that Catalyst pays for electricity from PREI and electricity from its other electricity supplier, BC Hydro, despite the fact that BC Hydro is also a government entity.

Catalyst's and the Government of British Columbia's Rebuttal Briefs

- The Ministerial Order and supply of electricity were disclosed in Catalyst's and the Government of British Columbia's responses and no adverse inferences are warranted. Further, PREI's sales of electricity to Catalyst do not provide a financial contribution, do not confer a benefit, and do not constitute a countervailable subsidy.[201]

- Commerce should defer consideration of the PREI electricity sales to Catalyst until an administrative review, per its regulations.

- If Commerce calculates a benefit for the purchases of electricity from PREI, the RS1892 freshet energy rate is the most appropriate rate to use as a benchmark; in the alternative, Catalyst suggests two other methods of deconstructing the RS1823 industrial rate to achieve a benchmark rate for Catalyst's PREI electricity purchases.

Commerce's Position:

At verification, we observed the following:

> In the context of discussing Catalyst's purchases of electricity, company officials stated that Catalyst purchases electricity for its Powell River mill from the private supplier PREI, which is directed to sell electricity to Catalyst by Ministerial Order. Company officials stated that the Ministerial Order is in effect for 20 years from January 30, 2001. During the first 10 years of the Ministerial Order, PREI was directed to supply Catalyst, and Catalyst was directed to purchase all available energy produced by PREI, in priority to purchasing energy from BC Hydro. In the following 10 years of the Ministerial Order, PREI is required to offer electricity for sale to Catalyst, at rates prescribed by the Ministerial Order, prior to offering it for sale to others.[202]

According to Catalyst officials, the Ministerial Order also sets parameters for the pricing.[203] Aside from the above explanation from the Catalyst officials, and Catalyst's reported purchases

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[201] *See* Catalyst's Rebuttal Brief at 5-19 and GBC's Rebuttal Brief at 2-21.

[202] *See* Catalyst Verification Report at 19 (internal footnotes omitted).

[203] *Id.* at 2 and 18-20.

from PREI, we have no further record evidence pertaining to Catalyst's purchases of electricity from PREI, a private company.

We recognize that neither Catalyst nor the Government of British Columbia disclosed these purchases in response to Commerce's "other assistance" question; however, both Catalyst and the Government of British Columbia voluntarily disclosed numerous other forms of assistance in response to Commerce's "other assistance" question.[204] In addition, we also recognize that information pertaining to these purchases was discovered at verification, and thus, given the timing, Commerce was precluded from fully investigating and verifying information pertaining to these purchases. Nonetheless, in light of the circumstances above and the limited record information pertaining to these purchases, we disagree with the petitioner that AFA is warranted in this instance.

Under section 776(a) of the Act, Commerce 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 Commerce, 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), Commerce "may" use an adverse inference in selecting among facts otherwise available if Commerce 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.[205]

Here, due to the extremely complicated nature of the program in question regarding the potential existence of an indirect subsidy, and the lack of sufficient record evidence to make a finding regarding the countervailability of such a complex program, we find that the information at issue is not "necessary" in this proceeding such that the use of facts available is warranted.[206] Further, we are not finding that the Government of British Columbia or Catalyst failed to cooperate by not reporting this program, thereby making AFA unwarranted. Therefore, in light of the above, we find that it would not be appropriate, in this instance, to apply AFA to Catalyst for these purchases, and instead we defer examination to any subsequent review pursuant to 19 CFR 351.311(c)(2), should this case result in a CVD order.

Comment 13: Whether Commerce Should Assign an AFA Rate to Kruger for its Failure to Report Payments Related to the Hydro-Québec Connection of Electricity Sub-Station Program

Petitioner's Case Brief

- Kruger failed to report payments related to the construction of a "switch station" in connection with the purchase of electricity from Hydro-Québec, and, thus, the record is

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[204] *See* Catalyst November 9, 2017 IQR at "Other Assistance Appendix" narrative response, and accompanying Exhibits OA-1 through OA-13. *See also* GBC November 9, 107 IQR at Volume V, "BC SR&ED and Other Assistance."

[205] *See* section 776(b)(1)(A) of the Act.

[206] We reached a similar finding in the *Lumber V CVD Final Determination* at Comment 4.

incomplete. This failure is particularly significant, given that Resolute provided information related to the same types of payments.

- Commerce should find that Kruger received a financial contribution under the program in the form of payments from Hydro-Québec to Kruger, and that this contribution was *de facto* specific because it was made in connection with a PPA and recipients of PPAs are limited in number.

- The record lacks information that would allow Commerce to determine the extent of the benefit. Thus, Commerce should find that Kruger and the Government of Québec did not act to the best of their abilities to supply complete information in this investigation, and it should make an adverse inference with respect to the benefit, using Commerce's standard AFA hierarchy. As AFA, Commerce should use 0.44 percent, the rate calculated for Kruger under the "Hydro-Québec Interruptible Electricity Option."[207]

Kruger's Case Brief and Kruger's and the Government of Québec's Rebuttal Briefs

- The payments to Kruger do not constitute an unreported other form of assistance because the cost of the switch station was properly borne by Hydro-Québec as the owner and operator of the transmission grid. Because Hydro-Québec controlled all technical specifications (ensuring that no corners are cut) and reimbursed Kruger only for the actual costs incurred, Hydro-Québec provided no financial assistance to Kruger and Kruger received no benefit.[208]

- The payments are part of the Hydro-Québec electricity purchase programs reported by both Kruger and the Government of Québec. The "other assistance" question only applies to programs not explicitly covered elsewhere in the response. Kruger and the Government of Québec responded fully to all questions posed by Commerce with respect to the electricity purchase programs.[209]

- Kruger disclosed the existence of the reimbursements in its initial questionnaire response, when it provided the "Call for Tenders" related to its PPA. Further, Commerce verified the reimbursement schedule at the Government of Québec, and, thus, the record contains information sufficient to compute the maximum possible reimbursement. This information shows that any benefit would have been expensed in the year of receipt (*i.e.*, prior to the POI).[210]

- The payments to Kruger do not constitute a countervailable subsidy because they constitute general infrastructure.[211]

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[207] *See* Petitioner's Case Brief at 17-22.

[208] *See* Kruger's Case Brief at 123-124; Kruger's Rebuttal Brief at 4-6; and GOQ's Rebuttal Brief at 3-8.

[209] *See* Kruger's Case Brief at 124-125 and Kruger's Rebuttal Brief at 4-6.

[210] *See* Kruger's Case Brief at 125-127 and Kruger's Rebuttal Brief at 4-6.

[211] *See* GOQ's Rebuttal Brief at 8-9.

- Prior to applying AFA, Commerce must have record evidence demonstrating that a respondent failed to provide requested information[212] because Commerce is "only entitled to receive what it actually requests."[213] In this case, AFA is not warranted because Commerce did not request the information at issue.

- Kruger adopts the arguments by the Government of Canada that Commerce's "other assistance" question cannot provide a lawful basis for the use of AFA concerning non-initiated programs.[214]

- Commerce's practice of refusing at verification and after verification to accept any documents or new information concerning payments or programs not previously reported denied Kruger its due process rights, and is inconsistent with the statute and regulations.[215]

- The petitioner's arguments fail to meet the statutory standard for applying AFA.[216]

Commerce's Position:

At verification for the Government of Québec, we observed the following:

> At the start of verification, {Government of Québec} officials stated that the {Government of Québec} had not reported any payments to Kruger related to the construction of a "switch station" in connection with purchase of electricity by the province-owned electricity utility, Hydro-Québec; GOQ officials also stated that the GOQ had not fully reported payments to Resolute under the same program. Because the GOQ did not report these payments in its questionnaire response, we did not accept information at verification related to them.[217]

With respect to the Connection of Electricity Sub-Station to Hydro-Québec program, we further explained:

> GOQ officials stated that Hydro-Québec reimbursed Kruger for the construction of a "switch station" which connected Kruger's cogeneration plant with the electrical grid as part of Hydro-Québec's purchase of electricity, and it also made

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[212] *See* Kruger's Case Brief at 116 (citing *Zhejian DunAn*, 652 F.3d at 1346).

[213] *Id.* at 116-121 (citing *JSW Steel* and *Changzhou Trina Solar Energy*). (citing *JSW Steel* and *Changzhou Trina Solar Energy*).

[214] *Id.* at 116.

[215] *Id.* at 18-120.

[216] *See* Kruger's Rebuttal Brief at 4.

[217] *See* GOQ Verification Report at 2 (internal citations omitted).

> an additional reimbursement to Resolute under this program. Because the GOQ had not previously reported this assistance, we did not accept these corrections.[218]

Thus, because Resolute had previously reported this program, we verified certain information from the Government of Québec with respect to this program, including Resolute's previously reported reimbursement.[219] However, we declined to accept information pertaining to Kruger's and Resolute's unreported reimbursements under the program.[220]

At Kruger's verification, we further observed the following:

> At the start of verification, company officials stated that the Kruger had not reported any payments related to the construction of a "switch station" in connection the purchase of electricity by the province-owned electricity utility, Hydro-Québec; because Kruger did not report these payments in its questionnaire response, we did not accept information at verification related to them.[221]

We recognize that neither Kruger nor the Government of Québec disclosed Kruger's reimbursement related to this program in response to Commerce's "other assistance" question; however, both Kruger and the Government of Québec voluntarily disclosed numerous other forms of assistance in response to Commerce's "other assistance" question.[222] In addition, we also recognize that information pertaining to this reimbursement was discovered at verification, and thus, given the timing, Commerce was precluded from fully investigating and verifying information pertaining to this reimbursement. Nonetheless, this program was under examination by virtue of Resolute's questionnaire response and included in the Post-Preliminary Analysis.[223] Commerce further examined this program at the verifications for Resolute and the Government of Québec. Additionally, in relation to another electricity-related program, Kruger reported certain information related to this program, including the maximum amount it could have received under this program and a contract which identified the year the switch station became operational, which pre-dated the POI and the year of receipt.[224] In light of this information, and on record evidence submitted by Resolute, in relation to the construction of its own "switch

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[218] *Id.* at 4.

[219] *Id.* at 14-15.

[220] *Id.* at 2, 4, and 14-15. With respect to Resolute, because Resolute had previously identified a reimbursement under this program in response to Commerce's "other assistance" question, we ultimately accepted information pertaining to its previously unreported additional reimbursement at its verification. *See* Resolute Verification Report at 17. This information does not change our Post-Preliminary Analysis, which is unchanged in this Final Determination, that Resolute received no measurable benefit under this program. *See* Appendix II.

[221] *See* Kruger Verification Report at 2.

[222] *See* Kruger November 9, 2017, IQR at 158-192 and Exhibit OAT-1 and GOQ November 9, 2017, IQR at GOQ-OTHER-1 to GOQ-OTHER-108.

[223] *See* Post-Preliminary Analysis (identifying this program as providing "no measurable benefit" to Resolute, and as "not used" by Kruger and White Birch).

[224] *See* Kruger November 9, 2017, IQR at Exhibit QMTAR-1 and QMTAR-3.

station,"[225] we find it is reasonable to infer that Kruger was reimbursed for its costs prior to the POI. Thus, we have examined this record information and find that any potential benefit to Kruger under this program was less than 0.005 percent *ad valorem* during the POI, and therefore reliance on AFA is inapplicable. Without determining whether this program provides a financial contribution or is specific, we are not including the assistance that Kruger received under this program in the countervailing duty rate because there is no measurable benefit.

As a result, we find that the parties' remaining arguments on this issue are moot.

Comment 14: Whether Commerce Should Assign an AFA Rate for CBPP's Failure to Report Payments Received for Two Studies

Petitioner's Case Brief

- Kruger failed to report payments associated with two grant-based studies funded by the Government of Newfoundland and Labrador, one related to the use of biomass in heating and boilers and another related to the effect of forest harvesting on certain wildlife habitats. As a result, Commerce should assign an AFA rate for these two grants.

- Commerce should find that Kruger received a financial contribution under the program in the form of direct payments from a government authority. Further, because the record contains no information regarding these programs or their usage, Commerce should find, as AFA, that the programs are specific.[226]

- With respect to the benefit, there are no identical programs in this or other CVD proceedings against Canada. Therefore, Commerce should use, as AFA, the subsidy rate from the Government of Newfoundland and Labrador loan to CBPP, which is the Government of Newfoundland and Labrador program with the highest rate.[227]

Kruger's Case and Rebuttal Briefs

- Commerce requested that Kruger and the Government of Newfoundland and Labrador describe any "forms of assistance" received during the AUL period, without defining the term "assistance." The CIT has held that Commerce must adequately communicate its intent, and respondents are not required to request clarification if it fails to do so.[228]

- Due process requires that Commerce afford Kruger an opportunity to provide evidence that it did not report these programs because it received no "assistance."[229] This requirement is

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[225] See Resolute Verification Report at 4 and 17. This evidence demonstrates that Resolute was reimbursed within a year from the time its switch station became operational.

[226] *See* Petitioner's Case Brief at 22-23.

[227] *Id*. at 23.

[228] *See* Kruger's Case Brief at 117-118 (citing *Prosperity Tieh*, 284 F. Supp. 3d at 1381).

[229] *Id.* at 118 (citing, *e.g.*, *Heckler*, 461 U.S. at 471 footnote 1).

consistent with the directive in 19 CFR 351.311 to either investigate discovered programs or defer the investigation to a subsequent review, notifying parties in either case of the chosen course of action.

- Commerce's practice of refusing to accept documents at verification concerning unreported programs denied Kruger due process, and it left the record barren of evidence that the missing information should have been reported.[230] Commerce further erred when it refused to keep a copy of Kruger's May 5, 2018, letter on the record, contrary to the Act and regulations.[231]

- Prior to applying AFA, Commerce must have record evidence demonstrating that a respondent failed to provide requested information.[232] In this case, AFA is not warranted because: 1) Commerce failed to accept any evidence related to the studies but merely drew conclusions about them in its verification report;[233] 2) Kruger received no assistance from the lynx and hare study, given that Kruger acted only as a corporate sponsor and the study's results could potentially restrict Kruger's operations;[234] and 3) the payment for the biomass study is contained in a verification exhibit, and the amount of this payment conferred no measurable benefit to Kruger.[235]

Government of Newfoundland and Labrador's Case Brief

- The Government of Newfoundland and Labrador made the same arguments as Kruger.[236]

Commerce's Position:

Commerce made the following observations at Kruger's verification:

> Studies Related to Biomass Drying Feasibility and Lynx and Hare Habitat: Company officials stated that, during the AUL period, the GNL reimbursed CBPP for certain costs incurred to perform two studies, one related to the feasibility of drying bark and using it for biomass and another on the ecological effects of paper operations on the habitat of the lynx and the hare. Because neither the GNL nor

[230] *Id.* at 119 (citing *JSW Steel*).

[231] *Id.* at 119 (citing 19 USC 1516a(b)(2)(A) and 19 CFR 351.104(2)(ii)(A)).

[232] *Id.* at 116 (citing *Zhejian DunAn*, 652 F.3d at 1346 and *JSW Steel*).

[233] *Id.* at 123.

[234] *Id.* at 122-123 and Kruger's Rebuttal Brief at 6.

[235] Kruger's Case Brief at 123 (citing Kruger Verification Report at verification exhibit 9) and Kruger's Rebuttal Brief at 6-7.

[236] *See* GNL's Case Brief at 52-58.

> Kruger reported this payments in its submissions, we also did not accept information related to it at verification.[237]

We note that the information pertaining to the amount of reimbursement Kruger received from the Government of Newfoundland and Labrador for the biomass study was collected as part of a verification exhibit related to another program.[238] Aside from this reimbursement amount for the biomass study, and the above observations, we have no further record evidence pertaining to Kruger's reimbursements from the Government of Newfoundland and Labrador related to these two studies.

We recognize that neither Kruger nor the Government of Newfoundland and Labrador disclosed reimbursements related to these studies in response to Commerce's "other assistance" question; however, both Kruger and the Government of Newfoundland and Labrador voluntarily disclosed numerous other forms of assistance in response to Commerce's "other assistance" question.[239] In addition, we also recognize that information pertaining to these reimbursements was discovered at verification, and thus, given the timing, Commerce was precluded from fully investigating and verifying information pertaining to these reimbursements. Nonetheless, we disagree with the petitioner that AFA is warranted for Kruger in this instance. As noted above, under section 776(a) of the Act, Commerce 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 Commerce, 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), Commerce "may" use an adverse inference in selecting among facts otherwise available if Commerce 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.[240]

Under 19 CFR 351.311(b), if Commerce discovers a program that appears to provide a countervailable subsidy with respect to the subject merchandise, Commerce will examine the program if sufficient time remains before the scheduled date for the final determination. Here, because we have the reported actual amount and year of receipt on the record for the reimbursement related to the biomass study, we find that any potential benefit to Kruger under this program was less than 0.005 percent *ad valorem* during the POI, and therefore resort to AFA is inapplicable. Thus, without determining whether this program provides a financial contribution or is specific, we are not including the assistance that Kruger received related to this study in the countervailing duty rate because there is no measurable benefit.

With respect to the reimbursement related to the lynx and hare habitat study, because we lack sufficient record evidence to make a finding regarding the countervailability of this program, we

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[237] *See* Kruger Verification Report at 4.

[238] *See* GNL Verification Report at 18-19.

[239] *See* Kruger November 9, 2017 IQR at 158-192 and Exhibit OAT-1; and GNL November 9, 2017 IQR at 4-19.

[240] *See* section 776(b)(1)(A) of the Act.

find that the information at issue is not "necessary" in this proceeding such that the use of facts available is warranted.[241] Further, we are not finding that the Government of Newfoundland and Labrador or Kruger failed to cooperate by not reporting this program, thereby making AFA unwarranted. Therefore, in light of the above, we find that it would not be appropriate, in this instance, to apply AFA to Kruger for this reimbursement, and instead we defer examination to any subsequent review pursuant to 19 CFR 351.311(c)(2), should this case result in a CVD order.

For these reasons, we find that the parties' remaining arguments are moot.

Comment 15: Whether Commerce Should Apply AFA to White Birch's Two Undisclosed Tax Credits

Petitioner's Case and Rebuttal Briefs

- During a completeness check at verification, Commerce discovered two tax credits from the city of Gatineau, Québec on the Papier Masson mill's tax bill. These tax credits had not previously been reported by the Governments of Canada or Québec, nor by White Birch. Because White Birch did not act to the best of its ability in responding to requests for information during this investigation, Commerce should apply AFA with regard to these unreported tax credits, pursuant to section 776 of the Act.[242] Commerce has not been able to properly investigate these tax credits, the petitioner has not had the opportunity to comment and place any rebuttal factual information on the record, and nothing has been verified with regards to these tax credits. As such, it is not possible to determine from information on the record the true extent to which White Birch may have benefited from these tax credits due to the late timing of this discovery.[243]

- The lack of a fully developed record with regards to these two tax credits is the result of White Birch's failure to cooperate to the best of its ability. Therefore, Commerce should draw adverse inferences where appropriate in selecting from among the facts otherwise, pursuant to section 776 of the Act.[244]

- When selecting a rate to apply as AFA, Commerce should look at the highest non-*de minimis* rate for a similar program in another countervailing duty investigation involving Canada because there are no identical programs either in the instant investigation nor in another investigation on which Commerce can base its AFA rate. In prior determinations, Commerce has concluded that when the program to which the AFA rate will be applied and the similar program in another investigation involving the same country were both tax programs, a sufficient nexus of similarity was established.[245]

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[241] We reached a similar finding in the *Lumber V CVD Final Determination* at Comment 4.

[242] *See* Petitioner's Case Brief at 4-9.

[243] *See* Petitioner's Rebuttal Brief at 116-117.

[244] *Id*. at 117-118.

[245] *See* Petitioner's Case Brief at 4-9 (citing *Özdemir* at 44).

- Commerce should base its AFA rate on the rate determined for a similar countervailable subsidy program benefiting paper producers from Canada, the AITC. In the *SC Paper Expedited Review Final*, Commerce calculated a countervailing duty subsidy rate of 2.00 percent *ad valorem* for respondent company Irving Paper Limited under the AITC program. In that review, Commerce found that the AITC provided a tax credit to businesses in specific regions of Canada, including in Québec. Commerce found that the AITC constituted a financial contribution in the form of revenue foregone, was regionally-specific, and conferred a benefit in the amount of the tax credit used to reduce taxes payable.[246]

White Birch's Case and Rebuttal Briefs

- The two tax credits found at verification were neither "unreported assistance" nor tax credits, but were rather adjustments in tax rates resulting from the City of Gatineau's tax harmonization.[247]

- As Commerce stated in its verification report, the tax bill at issue reflects the City of Gatineau's adjustment (*i.e.*, harmonization) of tax rates of five independent jurisdictions into a single tax jurisdiction. Each of these five municipalities had different amounts of accumulated debt and different tax rates, and it was necessary to enact a harmonization tax arrangement under "Law 170 – Harmonization" for the new city of Gatineau to address the imbalance in the amounts of debt that each of the five former municipalities had contributed to the consolidated debt of the newly formed City of Gatineau. In order to apportion the debt to properties in the municipalities that had contributed to Gatineau's newly consolidated debt, a tax harmonization procedure was established to amortize and repay the accumulated debt acquired with the merger over a 20-year period.[248]

- Commerce's initial questionnaire asked White Birch to report any forms of assistance received from the Government of Québec and any local governments during the POI. White Birch reported provincial and federal tax credits, interruptible electricity, worker training programs, energy programs, land transactions, and other miscellaneous grants. White Birch had no reason to believe it was being asked to report the City of Gatineau's tax harmonization program, which set the tax rates for all residents of Gatineau.[249] While "assistance" is not defined in the statute, that does not mean that it can be defined to include every interaction between any level of government and a respondent, and it cannot extend to the tax harmonization at issue here.[250]

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[246] *Id*. at 8-9.

[247] *See* White Birch's Case Brief at 21.

[248] *Id.*

[249] *Id*.

[250] *See* White Birch's Rebuttal Brief at 2-3.

- Even if Commerce were to determine that this program constitutes assistance, there are no grounds for finding it to be a countervailable program. The tax harmonization is not specific under section 771(5A)(D) of the Act, no benefit was conferred under section 771(5)(E) of the Act, and there was no financial contribution pursuant to section 771(5)(D) of the Act.[251] The only conclusion here is that Gatineau's tax harmonization is not assistance and is not countervailable.[252]

- Commerce's verification report confirms that this harmonization resulted in some taxpayers paying more and some less based on the prior tax rate in the prior jurisdiction in which it resided. Since this tax harmonization is neither "assistance" to White Birch nor a countervailable subsidy, Commerce should not apply AFA.[253]

- If Commerce determines that the tax harmonization constitutes unreported assistance and is countervailable, it should use similar programs found countervailable in the instant investigation as a basis for an AFA rate. The AITC program proposed by the petitioner is inappropriate when the instant investigation provides more suitable alternatives.[254]

- Apart from the fact that the tax harmonization program is not a tax credit resulting in revenue foregone by Gatineau, nor is it specific, the AITC program is substantially different from the tax harmonization at issue here. As described in *SC Paper Expedited Review Final*, the AITC "is a {tax} credit against federal income tax owed and its purpose is to encourage investment in the Atlantic region of Canada." Unlike the AITC, the tax harmonization at issue here involved no required investment, and, thus, it was not an investment tax credit.[255]

- Under the ACCA for Class 29 Assets (*i.e.*, "accelerated depreciation"), a company can apply an accelerated rate of depreciation on a certain class of property, Class 29 assets, which reduces taxes payable as compared to the standard depreciation methodology that would otherwise apply to Class 43 assets (*i.e.*, the applicable classification of such assets without the Class 29 classification). Commerce calculated a subsidy rate for White Birch of 0.08 percent under this program. If Commerce erroneously decides to countervail the tax harmonization at issue here, it should use the 0.08 percent rate calculated in the *Preliminary Determination* for the ACCA program as an appropriate AFA rate.[256]

- Alternatively, the School Tax Credit for Class 4 Major Industrial Properties program in British Columbia involves a reduction of municipal property tax rates. Although described as a tax credit and specific to Class 4 properties, this program provided a benefit in the form

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[251] *Id*. at 23.

[252] *Id*. at 4.

[253] *Id*. at 3.

[254] *Id*. at 4-5.

[255] *Id*.

[256] *Id*. at 6.

of a lower tax rate on Class 4 properties. Commerce preliminarily calculated a subsidy rate for Catalyst of 0.11 percent under this program.[257]

Commerce's Position:

At verification, we observed the following while examining White Birch's land sale and exchange with the City of Gatineau (Québec):

> With regards to Gatineau, we noted two tax credits on one property tax bill, pertaining to "Law 170 – Harmonization." Because these tax credits were not previously reported by White Birch or the Governments of Canada or Québec, we did not take a copy of the Papier Masson property tax bill. Company officials explained that, in 2002, Gatineau had five different cities, each with their own mayor. At that time, it was decided to merge the cities together, to create a new city called Gatineau. Now there is only one city and one mayor. Company officials stated that each of the five previous cities had different amounts of debt and different tax rates; therefore, a harmonization tax was enacted to balance the budgets and the outstanding debt between the five former municipalities. The "Law 170 – Harmonization" on the municipal tax bill provides either a credit or a debit on landholders' tax bills to harmonize the taxes paid. Company officials stated that, since 2002, in accordance with Bill 170 on municipal mergers, the municipality has applied the principle of tax harmonization, which involves amortizing the gap between the tax burden on December 31, 2001 and the one established for the first year of the merger (*i.e.*, 2002) over a maximum 20-year period. Company officials stated that, in the case of Papier Masson, this appears as a credit on its tax bill, but in other cases, this could appear as a debit on the tax bill (*i.e.*, increasing the amount of taxes owed).[258]

Aside from the above explanation from White Birch officials, and certain of White Birch's property tax bills (which itemize two credits related to "Law 170 – Harmonization"), we have no further record evidence pertaining to these tax credits.

We recognize that neither White Birch nor the Government of Québec disclosed these tax credits in response to Commerce's "other assistance" question; however, both White Birch and the Government of Québec voluntarily disclosed numerous other forms of assistance in response to Commerce's "other assistance" question.[259] Additionally, we also recognize that information pertaining to these tax credits was discovered at verification, and thus, given the timing, Commerce was precluded from fully investigating and verifying information pertaining to these tax credits. Nonetheless, based on our assessment of the explanation provided by White Birch at verification, this does not lead us to believe that these tax credits appear to provide a

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[257] *Id*.

[258] *See* White Birch Verification Report at 17.

[259] *See*, *e.g.*, White Birch November 9, 2017 IQR at 41-48 and GOQ November 9, 2017 IQR at GOQ-Other-3 through GOQ-Other-14; White Birch December 12, 2017 SQR at 4; and White Birch December 18, 2017 SQR at Exhibit 49.

countervailable subsidy with respect to the subject merchandise, pursuant to 19 CFR 351.311(b). Thus, we disagree with the petitioner that AFA is warranted for White Birch in this instance.

For these reasons, we find that the parties' remaining arguments are moot.

General Stumpage and Wood Fiber LTAR Issues

Comment 16: Whether Commerce Must Use In-Jurisdiction Benchmarks to Determine Whether a Benefit Has Been Provided

In the *Preliminary Determination*, Commerce found that private stumpage prices in the provinces of Ontario and Québec were not appropriate to serve as Tier-one Benchmarks to measure whether the Government of Ontario and/or the Government of Québec sell Crown-origin standing timber for LTAR.[260] As a result, Commerce instead relied on private stumpage benchmark prices in Nova Scotia to serve as a Tier-one Benchmark in Québec and Ontario, as was the case in *Lumber IV CVD Final Determination* and *Lumber V CVD Final Determination*.

Government of Canada and Provincial Governments' Case Brief

- Section 771(5)(E) of the Act requires that the adequacy of remuneration be determined "in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review."[261]

- Given that "prevailing market conditions" vary significantly between the provincial jurisdictions subject to the investigation, adequacy of remuneration for a good provided in an intrinsically local market in a particular province must be assessed against a benchmark reflecting the prevailing market conditions for the good within that province.[262]

Petitioner's Rebuttal Brief

- Commerce's regulations define a Tier-one benchmark as "a market-determined price for the good or service resulting from actual transactions in the country in question."[263]

- Commerce has repeatedly explained that the Tier-one benchmarks for stumpage may come from different provinces within Canada because such data is properly considered to be from "the country in question," even through Commerce may investigate provincial-level subsidy programs.[264]

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[260] *See* the *Preliminary Determination* at 30.

[261] *See* section 771(5)(E) of the Act.

[262] *See* GOC and Provincial Governments' Case Brief at 8.

[263] *See* 19 CFR 351.511(a)(1).

[264] *See* the Petitioner's Rebuttal Brief at 15.

Commerce's Position:

Consistent with our findings in previous Canadian cases involving timber products, including the *Lumber V CVD Final Determination,* 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).[265] Section 771(5)(E)(iv) of the Act expressly provides that Commerce 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 . . ." Commerce has previously found the inclusion of "political subdivision" within the definition of the term "country" ensures that Commerce may investigate subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute.[266] 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 Commerce "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 Commerce'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. 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 Government of Canada notes that in *SC Paper from Canada*, Commerce 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 the Government of Nova Scotia sold electricity for LTAR.[267] The Government of Canada argues that Commerce's findings in *SC Paper from Canada* should lead Commerce 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 Commerce's findings in *SC Paper from Canada* preclude Commerce from using stumpage prices for private-origin standing timber in

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[265] *See, e.g., Lumber V CVD Final Determination* IDM at Comment 39.

[266] *See Lumber IV CVD Final Results of 1st AR* IDM at Comment 35; and *Lumber V CVD Final Determination* IDM at Comment 39.

[267] *See SC Paper from Canada* IDM at A.12-Tier 1 Benchmarks Section, and Comment 12.

Nova Scotia as a Tier-one benchmark when measuring whether the Governments of Ontario and Québec sold Crown-origin standing timber for LTAR. Commerce'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*, Commerce 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.[268] 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. We note that in *Lumber V CVD Final Determination*, Commerce found instances where a respondent's New Brunswick-based sawmill purchased standing timber in Nova Scotia, while another respondent's Québec-based sawmills purchased standing timber in Ontario.[269] While this fact pattern did not occur here, it is not the result of regulatory restrictions.

Therefore, we continue to find that stumpage prices for private-origin standing timber in Nova Scotia constitute prices from within the "country" of provision for purposes of the final determination.

Comment 17: Whether Commerce Must Conduct a Stumpage Pass-Through Analysis

Government of Canada and Provincial Governments' Case Brief

- Consistent with prior CAFC and WTO decisions, Commerce must conduct a pass-through analysis prior to attributing subsidies determined with respect to an input to a downstream product produced by an unaffiliated company. Absent this analysis, Commerce should omit from its benefit calculation any transactions between unrelated producers of the input product and producers of the subject merchandise, consistent with its practice.[270]

[268] *See SC Paper from Canada* IDM at A.12-Tier 1 Benchmarks Section.

[269] *See Lumber V CVD Final Determination* IDM at Comment 39.

[270] *See* GOC and Provincial Governments' Case Brief at 51–53 (citing, *e.g.*, *Delverde,* 202 F.3d at 1367, *WTO Appellate Body Decision - Lumber from Canada* at para. 163, and *OCTG Inv from Argentina*, 49 FR at 28290).

Government of Ontario's Case Brief

- The Government of Ontario makes the same arguments as the Government of Canada,[271] and also adds that: 1) Commerce verified in this investigation that 25 percent of Crown timber harvested in 2015-2016 was sold at arm's-length prices prior to being processed;[272] 2) Commerce also verified in a prior proceeding that Resolute's sawmill by-products were acquired by Resolute's paper mills at arm's-length prices;[273] and 3) Commerce failed to determine whether the benefits on the arm's-length purchases were passed through to Resolute's paper mills.[274]

- Under section 771(5)(E) of the Act, a benefit shall normally be treated as conferred where there is a benefit to the actual recipient, not a downstream party. Commerce articulated a methodology for conducting a pass-through analysis in *Lumber IV CVD Prelim Results of 2nd AR*, although it was unable to implement it due to the absence of company-specific data; that limitation is not applicable here.[275]

Petitioner's Rebuttal Brief

- The Government of Canada's arguments are without merit and Commerce should reject them. The CAFC has held that WTO decisions are not binding on the United States, and Commerce rejected a nearly identical argument in *Lumber V CVD Final Determination*.[276]

- *Delverde* and *Allegheny Fed. Circuit* addressed the issue of "pass through" in the context of a change in ownership, which is not at issue here.[277]

- 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 . . . ."[278]

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[271] *See* GOO's Case Brief at 35-37 (citing, *e.g.*, *Delverde,* 202 F.3d at 1367, *WTO Appellate Body Decision - Lumber from Canada* at para. 163, and *OCTG Inv from Argentina*, 49 FR at 28290).

[272] *Id.* at 35-36 (citing a submitted study referenced in the GOO Verification Report at 10-11).

[273] *Id.* at 36.

[274] *Id.*

[275] *Id.* (citing *Lumber IV CVD Prelim Results of 2nd AR*, 70 FR at 33092-093).

[276] *See* Petitioner's Rebuttal Brief at 21-22 (citing *Corus Staal*, 395 F.3d at 1348 and *Lumber V CVD Final Determination* at Comment 14).

[277] *See* Petitioner's Rebuttal Brief at 22.

[278] *See* section 771(5)(C) of the Act (emphasis added).

Commerce's Position:

The Governments of Canada and Ontario argue that Commerce must conduct a pass-through analysis and omit from its benefit calculation stumpage supplied by unaffiliated third parties for LTAR. However, because neither Resolute or White Birch reported stumpage purchases from unrelated parties, this issue is moot.

Comment 18: Whether Woodchips from Sawmills Are Subsidized

Resolute's Case Brief

- Commerce may only examine woodchips, not lumber or bark (*i.e.*, biomass) in its stumpage benefit analysis. In order to calculate a woodchips-only stumpage benefit, Commerce should exclude any benefit attributable to biomass stumpage because 1) it is not an input for subject merchandise production; and 2) Commerce is already investigating Resolute's sale of biomass cogenerated electricity and basing it on another benchmark. If Commerce countervails biomass stumpage and biomass cogenerated electricity, it would result in an improper double-counting of alleged subsidies.[279]

- In order for Commerce to find that subsidies related to stumpage traveled downstream with the woodchips and into UGW paper production, Commerce would need to perform an upstream subsidy analysis; however, Commerce conducted no such analysis.[280] Therefore, Commerce cannot link stumpage subsidies provided to the production of woodchips from other companies – whether unaffiliated or separately incorporated affiliates (including Resolute's purchases of chips in Ontario from incorporated affiliate Resolute Growth), and attribute them to subject merchandise. Rather, Commerce's benefit analysis must be limited to woodchips Resolute used in UGW paper production.[281]

- In Ontario, Resolute purchases woodchips (*i.e.*, as a by-product of sawing operations) for use in its pulp and paper mill from an affiliated sawmill, Resolute Growth. According to 19 CFR 351.523(a)(1), Commerce cannot attribute alleged stumpage subsidies when purchased from an affiliate, because they are different companies.[282] In Québec, Resolute's UGW paper mills do not have the rights to cut standing timber and, thus, roughly 66 percent of the woodchips that Resolute used in UGW paper production originated from its own affiliated sawmills.[283] In both instances, Commerce verified that the internal prices paid by Resolute for these woodchips are market-determined prices based on Resolute's negotiated prices with its unaffiliated suppliers. Moreover, in *Lumber V CVD Final Determination*, Commerce

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[279] *See* Resolute's Case Brief at 21-22 (citing to section 702 of the Act).

[280] *Id*. at 22-26.

[281] *Id*. (citing to Resolute's Factual Information Submission at Attachment 3).

[282] *Id*.

[283] *Id*.

found that Resolute's paper mills paid market prices or higher for chips from Resolute's sawmills.[284]

- Woodchips resulting from sawing operations in Resolute's sawmills do not also carry the stumpage benefit already attributed to lumber products. Should Commerce continue to countervail stumpage related to these woodchip by-products, it should appropriately limit the stumpage benefits. Resolute proposes to calculate the revenues of woodchip sales as a ratio of total lumber and lumber by-product sales. In this manner, Commerce would correctly limit the benefit amount originating from the sawmills that could flow through woodchips to the production of UGW paper.[285]

White Birch's Case Brief

- Commerce improperly attributed a benefit for the production of lumber (non-subject merchandise) to White Birch, a producer of UGW paper. In so doing, Commerce has countervailed the same stumpage purchases which were already countervailed in the CVD proceeding involving softwood lumber and, thus, double-counted White Birch's calculated stumpage benefit.[286]

- Scierie Leduc harvested standing timber during the first quarter of the POI to make lumber. A small portion of the lumber by-products were sold to Stadacona to produce subject merchandise. To the extent that any of White Birch's mills received a benefit under this program, it must be limited to the lumber by-products that were actually used in the production of subject merchandise.[287]

- In the *Lumber V CVD Final Determination*, Commerce calculated subsidy benefits using a sales denominator that included both lumber and by-products. By limiting the denominator in that investigation to lumber and lumber by-products, Commerce recognized that any benefit received under the stumpage program was limited to logs used to produce lumber plus any by-products.[288]

- In the alternative, if Commerce does not limit the stumpage benefit calculation to only lumber byproducts from Scierie Leduc, it must use the sales denominator that includes sales of paper and lumber because the numerator includes purchases of stumpage that are used to produce lumber.[289]

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[284] *See* Resolute's Case Brief at 25 (citing Resolute's Factual Information Submission at Attachment 1).

[285] *Id*. at 27-30.

[286] *Id*. at 30-31.

[287] *Id.* at 30-31.

[288] *Id*. at 33.

[289] *Id*. at 34.

Government of Ontario's Case Brief

- Here, because Commerce is countervailing timber processed by sawmills and the woodchips sourced from the same timber, it is impermissibly countervailing the same alleged subsidy twice, as seen in the duties in place with respect to softwood lumber from Canada. Should Commerce continue to countervail this timber, it would be "remedy-ing" an alleged subsidy in excess of the amount actually received.[290] Further, Commerce's actions conflict with its previous determination not to "countervail inputs supplied to a respondent by a cross-owned affiliate if the inputs were already countervailed as a subsidy to the cross-owned affiliate itself."[291]

- According to the CIT, trade duties are remedial, not punitive.[292] Commerce must revise its methodology to avoid any double-counting, an action that is precluded under U.S. law.[293]

Petitioner's Rebuttal Brief

- White Birch, Resolute, and the Government of Ontario argue that Commerce should exclude stumpage used in the production of softwood lumber in sawmills. If realized, this action would force Commerce's hand to "tie" subsides in the instant proceeding; rather, than allocating the total input subsides received by each respondent over their respective total sales, in accordance with law.[294] None of these parties provided evidence demonstrating that a specific portion of the log and wood product subsidies should be directed to a corresponding portion of each respondent's production. Should Commerce make any adjustments to the stumpage calculation, it should make changes to that used in *Lumber V CVD Final Determination,* not here.[295]

Commerce's Position:

We disagree with Resolute and the Government of Ontario that there is a double-counting of subsidies with respect to saw logs. Commerce's practice is to not trace subsidies through the production process. Commerce's regulations state that "if a subsidy is tied to production of an input product, then {Commerce} will attribute the subsidy to both the input and downstream products produced by a corporation."[296] By way of comparison, Commerce, in the *Lumber V CVD Final Determination*, calculated stumpage for respondent JDIL in this manner. There, the saw logs used for the input of softwood lumber were appropriately attributed to the subject

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[290] *See* GOO's Case Brief at 37-38 (citing to *Wheatland Tube*).

[291] *Id.* (citing to *Stainless Steel Sheet and Strip from China*).

[292] *Id.* at 38 (citing to *Guangdong Wireking*).

[293] *Id.* at 40 (citing to *Wheatland Tube*).

[294] *See* Petitioner's Rebuttal Brief at 17-19 (citing *Lumber V CVD Preliminary Determination* PDM at 51; *Kitchen Racks from China* IDM at Comment 10; *PC Strand from China* at 75 FR 28557; and *Maverick Tube Remand Redetermination* at 22-23).

[295] *Id.* at 19.

[296] *See* 19 CFR 351.525(5)(ii).

merchandise as well as the resulting downstream lumber by-products and co-products (*e.g.*, woodchips).[297] Similarly, in Resolute's and White Birch's stumpage calculations here, we are using all of the respondents' stumpage purchases, as part of the input to UGW paper, and attributing total stumpage purchases to total sales, which includes sales of pulp, paper, lumber, and lumber coproducts.[298] Inherent in these separate calculations is Commerce's consistent practice of not tracing the subsidies through a company's production process. Thus, in order to appropriately account for the benefit associated with the sawlog-based chips, Commerce must attribute the stumpage benefit to all sales of products for which those chips are used as inputs, in accordance with its regulations and past practice.

In this case, consistent with 19 CFR 351.511, we computed stumpage benefits for hardwood, pulpwood, and woodchips, as appropriate, and divided this total benefit by the respondents' total sales during the POI. Because this calculation completely captures the benefits attributable to subject merchandise, we disagree that it would be appropriate to modify it for purposes of the final determination.

We disagree with the respondent parties that our calculations result in double-counting of any subsidies already countervailed in the softwood lumber case. Significantly, in both this case and in the lumber investigation, the universe of products in the numerator of the subsidy benefit calculation is consistent with the universe of sales to which the benefits applied.[299] Thus, the subsidy rate and resulting countervailing duty in softwood lumber are appropriately being applied to imports of softwood lumber into the United States and, separately, the subsidy rate and resulting countervailing duty in UGW paper are appropriately being applied to UGW paper entered into the United States.

White Birch's citation to *Lumber V CVD Final Determination* is out of context. There, Commerce limited stumpage data to only include purchases that related to softwood lumber production and, similarly, limited the denominator to total POI softwood lumber sales and total softwood co-product sales (*i.e.*, products produced by sawmills), resulting in an apples-to-apples comparison. Even though this analysis resulted in a calculation limited to stumpage inputs used in the production of subject merchandise (and, by extension, a corresponding denominator limited to sales of lumber products and co-products), Commerce is not precluded to only examine programs tied specifically to subject merchandise. For example, Commerce found numerous other programs in *Lumber V CVD Final Determination* to be untied and countervailable over the respondents' total sales.[300]

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[297] *See Lumber V CVD Preliminary Determination* PDM at 51.

[298] We note that in the *Preliminary Determination* we inadvertently used a denominator for White Birch's stumpage benefit calculation that was exclusive of sales of lumber; we have corrected White Birch's denominator for stumpage for this final determination to use the same total sales denominator that we are using for White Birch's other programs. *See* Comment 11 for further discussion of the correct denominator for White Birch.

[299] *See* Resolute Final Calc Memo and White Birch Final Calc Memo.

[300] *See e.g., Lumber V CVD Final Determination* IDM at Comments 60 and 65.

The *CVD Preamble* references the intent of Commerce to attribute subsidies to the sales for which costs are reduced (or revenues increased).[301] Based on this statement, Commerce provides examples of how this would apply to different types of subsidies (*e.g.*, export, etc.) and also describes the rationale behind its attribution under 19 CFR 351.525(b)(6)(iv).[302] This rationale states that, for situations where there is an input producer whose production is dedicated almost exclusively to the production of higher value-added product, Commerce believes that "the purpose of a subsidy provided to the input producer is to benefit the production of both input and downstream products…" and "(b)(6)(iv) requires Commerce to attribute the subsidies received by the input producer to the combined sales of the input and downstream products (excluding the sales between the corporations)."[303] Thus, based on the above discussion regarding Commerce's established practice that it does not trace subsidized inputs through a company's production process, Commerce appropriately followed its practice with regard of the attribution of subsidies to subject merchandise in both *Lumber V CVD Final Determination* and in the instant proceeding. In this light, the Government of Ontario's suggestion that Commerce's actions here run counter to its own statement that it "would not countervail inputs … already countervailed as a subsidy to the cross-owned affiliate itself" to be misplaced.

Moreover, at issue is the element of bestowal. Commerce's regulations at 19 CFR 351.525(b)(5)(i) state 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, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.[304] A subsidy is tied only when the intended use is known to the subsidy giver (in this case, Ontario and Québec) and so acknowledged prior to or concurrent with the bestowal of the subsidy.[305] When the saw log is cut in the forest, it has the potential to be used as an input for a myriad of products outside of lumber production (*e.g.*, chips, pulp, paper, hog fuel, sawdust, shavings, etc.). There is no record evidence showing that at the time of bestowal of Resolute's and White Birch's stumpage, the subsidy was tied to only lumber production or only to pulp and paper products. Therefore, we find it appropriate to not exclude Resolute's lumber sales from the denominator, just as we found it appropriate to not exclude JDIL's sale of wood by-products and co-products from its stumpage denominator in *Lumber V CVD Final Determination*.[306]

With regard to Resolute's claim of double-counting of subsidies with respect to biomass, Commerce also disagrees. Resolute's suggestion that biomass would be double-counted if Commerce countervails both stumpage and its sales of biomass-generated electricity is incorrect; in fact, Commerce has found the Governments of Ontario and Québec have subsidized both the stumpage, from which the biomass is produced (as an LTAR), and the electricity produced by

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[301] *See CVD Preamble*, 63 FR at 65400.

[302] *Id.* at 65401.

[303] *Id.* at 65401.

[304] *Id.* at 65403.

[305] *Id*.

[306] *See Lumber V CVD Preliminary Determination* PDM at 51.

burning that biomass (as an MTAR). These are two separate and distinct calculations and do not result in double-counting; merely the governments have chosen to subsidize both the input and the output, in separate transactions, and thus Resolute has benefited twice.

With regard to Resolute's argument to conduct an upstream subsidy to analyze the sale of woodchip transactions between Resolute's cross-owned companies, we disagree. The petitioner alleged, in the Petition, and Commerce initiated an investigation with regards to the provision of stumpage in the provinces of Alberta, British Columbia, New Brunswick, Ontario, and Québec. Because Commerce was investigating stumpage provided to Resolute in this investigation, no further upstream subsidy allegation is needed, as Resolute purchased stumpage, and wood residue from its stumpage purchases flowed into its pulp and paper production and into its biomass electricity generation.[307] We did not include Resolute's purchases of wood residue from third parties in our calculations, only Resolute's purchases of stumpage; thus, no upstream subsidy analysis is required.

We also disagree with Resolute that Commerce cannot attribute stumpage subsidies from affiliated companies to its pulp and paper production. Section 351.525(b)(6) of Commerce's regulations provides that Commerce may, in fact, attribute subsidies between cross-owned affiliates. In this case, Resolute's sawmills purchase the stumpage, harvest the trees, and direct the wood residue and by-products/co-products to Resolute's pulp and paper mills. In the *Preliminary Determination*, we found Resolute's pulp and paper operations and sawmills to be cross-owned and we determined to use the total sales of Resolute's operations for the stumpage subsidies.[308] There is no new evidence to cause us to change this determination. Further, we disagree with Resolute's argument that its transfer prices between the affiliated sawmills and Resolute's pulp and paper plants represent market prices. Although Resolute may have based its intercompany woodchip transfer prices on prices it actually paid to unaffiliated parties, the prices paid for chips by its pulp and paper mills still represent intercompany transactions and given that they are intercompany transactions, the real effect of the prices is lost when the company's costs and revenues are considered on the whole. Thus, because they are intercompany transactions, and not transactions between unaffiliated parties, it is possible that one part of Resolute can pass the subsidy or the benefit from the stumpage through to the other part of Resolute.

We disagree with Resolute and White Birch that we should revise the stumpage benefit calculation to limit the benefit to just the woodchips as a percentage of total saw mill revenue, as Resolute has proposed,[309] or to only the lumber by-products actually used in the production of subject merchandise, as White Birch has proposed.[310] As explained above, stumpage is related to trees; trees are an input to woodchips and pulp, which are used to make paper. Trees are also an input into sawdust and hog fuel, which Resolute burns to make steam and electricity. A tree can, at the time it is cut, be used for any number of purposes, including both lumber and paper.

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[307] *See* Initiation Checklist at 48-51.

[308] *See* PDM at 15-16.

[309] *See* Resolute's Case Brief at 30.

[310] *See* White Birch's Case Brief at 30-31.

Just because Resolute and White Birch choose to send certain trees to their sawmills, versus to their pulp mills does not negate their choices or the fact that they received the stumpage subsidy on all of their purchases of stumpage (*i.e.*, for all of the trees in the stand, regardless of quality or species). Indeed, during market swings (*e.g.*, low demand for saw logs but high demand for pulp logs and chips), low grade saw logs are sent to pulp mills.[311]

The cases cited by the Government of Ontario are inapposite. As we have explained above, we are not double-counting subsidies and our calculation is valid; it is not punitive. In particular, in the case of *Stainless Steel Sheet and Strip from China*, Commerce determined to exclude subsidies provided to an affiliate who was also determined to be an authority and providing an input for LTAR.[312] We do not face similar facts here. Commerce has made no such "authority" determination with regards to any of Resolute's sawmills. Rather, Commerce has, correctly, collected the entirety of Resolute's stumpage purchases during the POI, conducted a benefit analysis, and used the resulting sum total benefit as the numerator over Resolute's total company sales, exclusive of intercompany transactions and freight, plus Resolute's electricity sales, as the appropriate denominator for the benefit calculation for Resolute's purchases of stumpage for LTAR from Ontario and Québec. There is no mismatch between the numerator and denominator and there can be no double-counting because any duties paid, as a result of Resolute's subsidy calculation with regards to UGW paper will be limited strictly to imports of UGW paper from Resolute into the United States.

Comment 19: Whether Commerce Must Compare Average Benchmark Prices to Average Transaction Prices

Government of Canada's and Provincial Governments' Case Brief

- Both Commerce's regulations and the Act direct Commerce to determine whether the respondent companies received "a benefit" from the government's provision of "goods or services" for LTAR.[313] Commerce's preferred methodology for calculating the benefit is unlawful for three reasons. First, by disregarding the instances in which the government price is higher than the average benchmark price, Commerce's methodology violates the statutory and regulatory requirement to calculate a single benefit from the provision of the goods, which necessarily entails considering the entirety of the remuneration paid for the entirety of the goods received. Second, Commerce's preference for comparing individual transactions to an average benchmark violates Commerce's regulation, which requires a symmetrical comparison. Third, Commerce's methodology results in an unfair and distortive comparison.[314]

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[311] *See e.g., SC Paper Expedited Review Final* IDM at Comment 18 (where Catalyst "purchased close to 90 percent pulp logs due to lower pricing for pulp logs, but would purchase higher-grade logs when there was less availability and Catalyst needed logs to produce chips").

[312] *See Stainless Steel Sheet and Strip from China* IDM at Comment 9.

[313] *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

[314] *See* GOC and Provincial Governments' Case Brief at 53-56.

Petitioner's Rebuttal Brief

- The Government of Canada's arguments on this point were previously raised and rejected by Commerce in *Lumber V CVD Final Determination.* Commerce should again reject these arguments.[315]

Commerce's Position:

The Government of Canada has not provided a basis for us to depart from the methodology used in the *Preliminary Determination* to calculate the respondents' benefit from the provision of goods for LTAR, as either a factual or legal matter. We agree with the petitioner that the Government of Canada has raised these arguments in the *Lumber V CVD Final Determination* and, consistent with that case, we do not find the arguments persuasive.

As the Government of Canada recognizes, Commerce's preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible.[316] Commerce's regulations, at 19 CFR 351.511(a)(2), set forth the basis for identifying benchmarks to determine whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. This hierarchy reflects a logical preference for achieving the objectives of the statute. The most direct means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country or outside the country (the latter transaction would be in the form of an import). This preference is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.
In doing so, Commerce considered the transaction specific data collected and reported by the respondents, and the level of detail of such data within the context of the LTAR programs. Where a comparison of individual transactions to monthly average benchmark prices was not possible, we developed appropriate approach that best adheres to our hierarchy.[317]

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 Government of Canada is seeking is essentially a credit

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[315] *See* Petitioner's Rebuttal Brief at 81.

[316] GOC and Provincial Governments' Case Brief at 53-54; *see also SC Paper from Canada – Expedited Review Final* IDM at Comment 25; *see also OCTG from China Review* IDM at Comment 7; and *Sinks from China* IDM at Comment 21.

[317] For example, for the Québec stumpage program, we conducted calculations on the basis that is as close to a transaction-specific analysis as possible, given the available record evidence.

towards transactions that did not provide a benefit; this is an impermissible offset, contrary to the Act, and inconsistent with Commerce's practice.[318]

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.[319] Both Congress and the courts have confirmed that these are the only offsets Commerce is permitted to make under the statute.[320] Offsetting the benefit calculated with a "negative" benefit is not among the enumerated permissible offsets.

Furthermore, the *CVD 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 revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit is concerned.[321]

Therefore, if Commerce determines that a province has sold logs or wood residue for LTAR, a benefit exists we will not "reduce" the amount of that benefit by those purported "negative" benefits. Thus, we have made no modifications to the final determination calculations regarding alleged "negative" benefits. Moreover, we have not compared average benchmark prices to average transaction prices.

The Government of Canada has provided no basis for deviating from Commerce's methodological choices here. The Government of Canada argues that to determine the overall benefit conferred under section 771(5)(E) of the Act, Commerce must calculate a "singular benefit from the provision of goods, {and} it must consider the entire remuneration paid for the entirety of the goods received."[322] Specifically, the Government of Canada argues that by "disregarding all comparisons that result in a negative benefit, {Commerce} fails to calculate a benefit amount that reflects the entirety of the remuneration paid for the entirety of the goods

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[318] *See Lumber IV CVD Final Results of 2nd AR* IDM at Comment 43; *see also, e.g., Lumber NSR* IDM at Comment 6; *Drill Pipe from China* IDM at Comment 3; *OCTG from China* IDM at Comment 14; and *SC Paper Expedited Review Final* IDM at Comment 26.

[319] *See* section 771(6) of the Act; *see also*, *e.g.*, *Lumber IV CVD Final Results of 2nd AR* IDM at Comment 43.

[320] *See S. Rep. No. 96-249 (1979)* at 186 ("{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) of the Act contains "an exclusive list of offsets that may be deducted from the amount of a gross subsidy.").

[321] *See CVD Preamble*, 63 FR at 65361.

[322] *See* GOC and Provincial Governments' Case Brief at Vol. I, 55.

received."[323] Commerce 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.[324]

Additionally, there is nothing in Commerce's regulations that specifically requires that the market-determined "price" or "world price" be based on an average. Further, the Government of Canada 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.

Ontario Stumpage Issues

Comment 20: Whether Pulpwood is Subsidized

Government of Ontario's Case Brief

- The Petition relied on Commerce's findings in *Lumber V CVD Final Determination* to allege an Ontario stumpage subsidy related to UGW paper production. Notwithstanding, Commerce's preliminary analysis incorrectly relied on *Lumber V CVD Final Determination* to erroneously presume that there is one unified timber market in Ontario. To the contrary, there are key differences between the market for timber to sawmills and the market for timber to pulp and paper mills that Commerce failed to consider. First, inputs for the production of pulp and paper come from sawmill by-products (*e.g.*, woodchips) and pulpwood, a lower value timber based on its physical characteristics, which is supplied directly to the pulp and paper mills directly from the forest.[325] Further, most Ontario pulp and paper mills consume both pulpwood and sawmill by-products in the manufacturing of UGW paper; however, UGW paper is produced exclusively from SPF timber, with most the fiber comprised of spruce (*i.e.*, around 95 percent).

- Pulpwood, like saw logs, is an intermediate product used to produce paper; therefore, the value of the pulpwood is determined by the value of the downstream product (*i.e.*, paper).[326]

- Ontario's share of the North American market for pulp products is 2-3 percent, where the demand for paper is driven by the United States. Ontario pulp and paper producers, as well

[323] *Id*.

[324] *See*, *e.g.*, *Lumber V CVD Final Determination* at Comment 15; *see also CVD Preamble*, 63 FR at 65361.

[325] *See* GOO's Case Brief at 43 (citing to Dr. Hendricks Addendum).

[326] *See* GOO's Case Brief at 42 (citing to *CCP HQP from Indonesia*, where we acknowledged Commerce's characterization of pulpwood in this manner).

as the producers of inputs related to pulp and paper production,[327] are price takers. These producers are unable to dictate price or distort the North American market.[328]

- Commerce should rely on the MNP Survey's data on the Ontario pulpwood market that shows 1) that the market for pulpwood and sawmill chips is competitive; and 2) that the transaction prices for private timber in the MNP Survey are a measure of the residual value of SPF timber.[329]

- Ontario commissioned a private survey which collected and analyzed data pertaining to the Ontario private timber market. Specifically, it collected data from 27 active loggers during the 2016-2017 fiscal year, resulting in an SPF average price of $5.09 per m^3. In comparison, the Ontario Crown pulpwood was subject to a stumpage fee of $8.59 per m^3, far exceeding the weighted-average price for private timber sold to pulp and paper mills.[330] In addition, the stumpage fee is only considered as part of the cost paid to harvest Crown timber; therefore, Commerce should make adjustments to reflect the total true cost borne by harvesters (*i.e.*, road construction, maintenance, and other costs), as verified. Taking this record into account, and adjusting the price for Crown softwood timber to reflect the true cost, Commerce should find that the price of Crown softwood timber sold to and processed by pulp mills is substantially greater than the average price of private market SPF timber destined to those same mills.[331]

Commerce's Position:

As fully discussed in Comment 23, 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 24. Additionally, 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 16. As such, and for the reasons enumerated, we continue to calculate benefits from stumpage as we did in the *Preliminary Determination* and disagree with the Government of Ontario that a separate analysis specifically for pulpwood must be conducted.

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[327] *Id.* at 42, where both Ontario and the Dr. Hendricks Addendum state that pulpwood is generally harvested by independent loggers for either their own mills or per a contract with larger mills.

[328] *Id.* at 42 (citing to Dr. Hendricks Addendum).

[329] *Id.* at 43 (citing to Dr. Hendricks Addendum).

[330] *Id.* at 44 (citing to MNP Survey).

[331] *Id.* at 44.

Comment 21: Whether Ontario's Stumpage Market is Distorted

Government of Canada and Provincial Governments' Case Brief

- The provinces submitted valid Tier-one benchmarks in their jurisdictions which should be used to determine whether stumpage confers a benefit to the paper producers.[332] The CIT, NAFTA panels, WTO panels, and Commerce have recognized government involvement in a market, on its own, is not sufficient to establish that the market is distorted.[333] However, instead of following this practice, Commerce preliminarily relied on government "majority" or "substantial portion" for rejecting Tier-one benchmarks in each of the provinces.[334] A finding of distortion cannot rest on government predominance in the market.

Government of Ontario's Case Brief

- The Government of Ontario provided extensive evidence establishing the viability and vitality of Ontario's private market and documenting market-determined prices for actual private market transactions in Ontario. Commerce should use this Tier-one benchmark information in its Ontario stumpage LTAR analysis because failure to do so would be unlawful and inconsistent with record evidence.[335]

- In particular, Commerce has on the record both the MNP 2015/2016 Report and MNP 2016/2017 Report, which are detailed studies of Ontario's private timber market covering the period April 1, 2014, through March 31, 2017. Commerce also has all of MNP's survey responses. Commerce verified the findings and methodology in these reports and found no discrepancies in the conduct of the surveys or the reports' conclusions.[336]

- Commerce also has on the record economic analyses of the Ontario timber market by Dr. Hendricks, an expert on Industrial Organization. In the Dr. Hendricks Report, Dr. Hendricks concluded that the Crown stumpage rate for softwood timber cannot affect the private price for softwood timber, and the private market prices for SPF timber are valid benchmarks for Crown stumpage for SPF timber. Commerce failed to acknowledge this analysis in the *Preliminary Determination*.[337]

- Dr. Hendricks analyzed the market for pulpwood and woodchips and found his conclusions for softwood timber were equally applicable to the market for wood fiber inputs consumed in

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[332] *See* GOC and Provincial Governments' Case Brief at 14.

[333] *Id.* at 10–16.

[334] *Id*.

[335] *See* GOO's Case Brief at 11-12 (citing KPMG Report, MNP 2015/2016 Survey, Dr. Hendricks Report, MNP 2016/2017 Survey, and Dr. Hendricks Addendum).

[336] *Id.* at 13.

[337] *Id.* at 13-14 (citing Dr. Hendricks Report).

UGW paper production. Commerce also failed to acknowledge this analysis in the *Preliminary Determination*.[338]

- Commerce's preliminary findings are contradicted by two key facts: 1) the residual value of timber from lumber production exceeds the residual value of timber harvested for pulp and paper production, although the stumpage rates are the same; and 2) private stumpage prices for non-SPF timber far exceed the Crown stumpage rates.[339]

- Commerce erred when it found that the relatively small size of the Ontario private market resulted in private prices which largely tracked the stumpage prices on Crown lands. Not only is the volume of private timber in Ontario substantial in its own right, but it is larger than the volume of private timber in Nova Scotia used as the benchmark. Further, the Hendricks Addendum contains the only economic analysis related to this question on the record, and this analysis concludes that the Government of Ontario is not a dominant player in the downstream markets for pulp or paper, with Crown timber supply in these markets too small to materially affect prices. Indeed, private timber prices sometimes exceeded Crown prices, even when sawmills were not operating at full capacity.[340]

- While the *CVD Preamble* indicates that a significant government presence may distort the market, Commerce must find evidence of actual distortion has occurred by reason of that presence before rejecting a Tier-one benchmark. Commerce has made no such finding here.[341]

- Commerce erred in concluding the level of concentration of Crown harvesters in Ontario affects the private market for timber. The critical issue is not one of concentration of harvesters but rather of the number of mills needed to ensure that the private market is competitive. Although the Dr. Hendricks Report found that only two mills in sufficient proximity to timber sellers are necessary, there are 77 medium and large sawmills and six pulp and paper mills that consume wood fiber.[342]

- Commerce's analysis of "allocated volumes" in Ontario mischaracterizes the operation of the Crown stumpage system. Allocation "overhang" is irrelevant, and Ontario imposes limits on harvest areas for ten-year periods, not on annual harvest volumes. Further, it is inappropriate to compare estimated AWS volumes with volumes of Crown timber consumed by tenure-holding sawmills; the KPMG Report shows that third-party timber accounted for approximately 25 percent of the total timber consumed by the largest sawmills.[343]

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[338] *Id.* at 14-16 (citing Dr. Hendricks Addendum at 2).

[339] *Id.* at 14-15 (citing Dr. Hendricks Addendum at 13-14).

[340] *Id.* at 16-19 (citing Dr. Hendricks Addendum at 12).

[341] *Id.* at 20-21 (citing, *e.g.*, *CVD Preamble*, 63 FR at 65378 and *Borusan*, 61 F. Supp. 3d at 1325).

[342] *Id.* at 22-24 (citing Dr. Hendricks Report at 1 and Dr. Hendricks Addendum at 5 and 15).

[343] *Id.* at 24-25 (citing KPMG Report at Schedule 3).

- Commerce's finding that the ability of license holders to purchase excess timber distorts the private market is in conflict with Commerce's (equally incorrect, but opposite) finding in *Lumber IV CVD Final Results of 1st AR* that the failure of license holders to harvest their allocated volumes distorted the private market. In any event, harvesters are able to harvest more timber than they actually did harvest, and their decision not to harvest had more to do with economics than government intervention.[344]

- For the benchmark, Commerce should compare the Crown stumpage fees to the prices of private market timber contained in the MNP 2016/2017 Survey. To ensure that this comparison is on an apples-to-apples basis, Commerce should adjust the Crown softwood timber prices to reflect the cost of obligations on harvesters on Crown land. For specific arguments related to these adjustments, *see* Comment 25.

Petitioner's Rebuttal Brief

- Commerce's policy is to reject potential Tier-one benchmarks where there is reason to conclude that the government's involvement constitutes a majority in the market, which distorts the price.[345]

- While Commerce does not presume that any specific percentage of government market share leads to a conclusion that private prices may be distorted, the government's majority share in the market is relevant evidence of the extent of government influence over the market. Therefore, the Government of Ontario's reliance on *Borusan* is misplaced.[346]

Commerce's Position:

The Government of Ontario submitted comments regarding the validity of private timber prices in Ontario as a benchmark for Ontario Crown stumpage rates. The Government of Ontario also submitted the Dr. Hendricks Addendum, which concludes that, although Ontario may own most of the trees in the province, it is a not a "dominant price setter"; rather, the private timber market prices for SPF timber are set by the market, with Crown timber prices not influencing private timber prices. The Dr. Hendricks Addendum further concludes, in support of the government of Ontario's argument, that the MNP Survey, which examines private timber prices in Ontario, can serve as a Tier-one benchmark.[347]

The Dr. Hendricks Addendum expands upon a previously conducted study (*i.e.*, the Dr. Hendricks Report) that analyzed data on private timber transactions in the MNP 2015/2016 Survey and, based on evidence that private stumpage prices are driven by prices for lumber end-

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[344] *Id.* at 26-27 (citing Dr. Hendricks Report at para. 71 and Dr. Hendricks Addendum at 11).

[345] *See* Petitioner's Rebuttal Brief at 12-13 (citing *CVD Preamble*, 63 FR at 65377).

[346] *Id.* at 13 (citing *Maverick Tube Remand Redetermination* at 13).

[347] *See* Dr. Hendricks Report and MNP Survey.

products, market participants are well-informed, and private timber owners have multiple buyers; the Dr. Hendricks Report concluded that the MNP 2016/2016 Survey data is "consistent with private timber prices being the outcome of a competitive process."[348] Taken together, both reports concluded that transaction prices in the Ontario private timber market are a valid benchmark for evaluating stumpage on Crown land in Ontario and that SPF timber delivered to sawmills and pulp mills is not subsidized.[349] While we acknowledge that parties have presented some new arguments, the vast majority were argued and addressed in the *Lumber V CVD Final.* In total, as we did in the *Lumber V CVD Final Determination*, we find these arguments unpersuasive and insufficient to alter our findings on this matter.[350] 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, Commerce first examined whether stumpage prices for timber from private land in Ontario are market-determined. According to information from the Government of Ontario, for FY 2015-2016, Crown-origin timber accounted for 93.3 percent of the harvest volume in Ontario, while the harvest volume of non-Crown-origin timber accounted for the remaining 6.7 percent.[351] 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."[352] 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 Government of Ontario, the stumpage charge for Crown-origin timber is composed of four components. The first is a minimum charge, which is administratively set by the Government of Ontario and is intended to provide a secure level of revenue for the Government of Ontario, regardless of market conditions.[353] This charge was administratively set at C$2.84/$m^3$ in FY 1997-1998, and has been inflated annually by Canada's IPI.[354] The second

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[348] *See* Dr. Hendricks Report at 39-42.

[349] *See* Dr. Hendricks Addendum at 11.

[350] *See Lumber V CVD Final Determination* IDM at Comment 31.

[351] *See* GOO November 13, 2017 Stumpage IQR 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, Ontario at Attachments 1-3.

[352] *See CVD Preamble*, 63 FR at 65377

[353] *See* GOO Verification Report at 9. *See also* GOO November 13, 2017 Stumpage IQR at ON-80–81.

[354] *See* GOO November 13, 2017 Stumpage IQR at Exhibit ON-STATS-3.

component, the RV charge, is calculated monthly and is assessed on the difference between the price of a basket of end-products (*e.g.*, paper, etc.) and a measure of the cost of producing and delivering those end-products.[355] During the POI, prices for the paper sector were low enough such that the RV charge was C$0.00.[356] 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.[357] 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.[358]

Similar to our findings in *Lumber V CVD Final Determination*, of the three stumpage components that the Government of Ontario 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.[359]

We next examined the supply of standing timber in Ontario from the Crown and private sources. The Government of Ontario 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.[360] 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.[361] 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 Government of Ontario does not regulate the transfer or sale of timber between sawmills or to third parties.[362] 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.[363] Consistent with *Lumber V CVD Final Determination*, we continue to find that the ability to harvest at levels greater than the short-term targets set in the AWS and the option to transfer timber between mills expands the

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[355] *Id.*; *see also* GOO Verification Report at 9-10.

[356] *See* GOO Verification Report at 10.

[357] *Id.* at 10; *see also* GOO November 13, 2017 Stumpage IQR at ON-84-89.

[358] *Id*.

[359] *See* GOO Verification Report at 9-10.

[360] *See* GOO November 13, 2017 at ON-93–95. *See also* GOO Verification Report at 4.

[361] *See* GOO Verification Report at 4.

[362] *Id.* at 14.

[363] *Id.* at 14; *see also* Market Memorandum, Ontario at Attachment 4.

market for Crown timber, which has the effect of depressing demand—and, therefore, prices—in the private market.

The Government of Ontario cites to the Dr. Hendricks Addendum, which first represents that the value of timber is the revenue obtained from the end-products produced from the timber, less certain production costs, and concludes that the timber market in Ontario is driven by the demand in the United States.[364] Because the U.S. market share of Ontario's mills producing UGW paper and those producing pulp is too small, these mills are price-takers because their respective share is equally too small to materially affect the price of newsprint and pulp, respectively. Taken together, the Government of Ontario argues that the Dr. Hendricks Addendum shows that these market characteristics demonstrate that the Ontario stumpage market for pulpwood is not distorted; rather the market for pulpwood and sawmill chips is competitive and that the transaction prices for private timber are a measure of the RV of SPF timber. The Dr. Hendricks Addendum further opines that the private transaction prices for SPF timber, as represented in the MNP Survey, are a measure of the RV of SPF timber, a conclusion that is contrary to the petitioner's claim that Ontario is subsidizing Crown timber by setting a stumpage price below the residual value of timber (and, thus, results in market-based prices for private timber). Regardless, the Dr. Hendricks Addendum acknowledges, yet ignores, the fact that there is one dominant price setter, the Government of Ontario, in the Ontario timber market. The Crown supplied 93.3 percent of the market during the POI, and, as noted above, set administered prices that do not fully consider market conditions.

Both the Dr. Hendricks Report and Dr. Hendricks Addendum focus on the connection between the Crown and the private timber markets, and they conclude that conditions in the Crown market do not influence conditions in the private market. We examined data from the Government of Ontario's eFAR system covering 2015 in the *Lumber V CVD Final Determination* and in the instant proceeding,[365] which indicate that the universe of firms consuming timber from private sources in Ontario is heavily concentrated and is dominated by tenure holders.[366] In both instances, the Government of Ontario's data reveals that tenure holders consume a significant volume of private timber in Ontario.[367] We continue to find 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 both reports suggest.

Furthermore, while the Dr. Hendricks Report assumed that stumpage prices in southern Ontario would be higher than prices in northern Ontario (*i.e.*, uneconomical) because the distance between the timber and sawmills is greater in the north than in the south (thereby depressing

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[364] *See* Dr. Hendricks Addendum at 9 and 11.

[365] *See Lumber V CVD Preliminary Determination* at 94 and GOO Verification Report at 5-8 and 13.

[366] *See* Market Memorandum, Ontario at Attachments 2 and 3. We note that the Ontario data analyzed in the instant proceeding covered FY2015-2016. *Id*.

[367] *Id*.

northern prices), the MNP 2015/2016 Survey, on which the Dr. Hendricks Report relies, found that SPF stumpage prices in 2015-2016 were in fact lower in the south than in the north.[368] 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 2015/2016 Survey upon which that report purportedly relied. In examining the results of the MNP 2016/2017 Survey, we note that the pricing behavior relative to the northern and southern region of Ontario also reflects the same fact pattern.[369]

As an additional note, we also find the Government of Ontario's statement that "these volumes of Ontario private timber are substantially larger than the volume of *Nova Scotia private timber* relied on by Commerce as its benchmark" to be highly misleading.[370] In the *Preliminary Determination*, we clearly relied upon the *relative* size of the private market for stumpage in Ontario, which was only 6.7 percent, to find that the volume of Crown-origin standing timber constituted a "significant portion of the good sold."[371] Therefore, the Government of Ontario's use of gross volumes in Nova Scotia as evidence is inappropriate.

Finally, the MNP 2015/2016 Survey and MNP 2016/2017 Survey are each based on a small number of survey respondents, as pointed out both in *Lumber V CVD Final Determination* and by the surveyors' own admission.[372] The SPF private timber price for FY 2015-2016 provided in the MNP 2015/2016 Survey is based on responses from 18 SPF sawmills and pulp mills, and the FY 2016-2017 SPF price is based on responses from 16 SPF sawmills and pulp mills.[373] The MNP 2015/2016 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."[374] The MNP 2016/2017 Survey suffers from the same deficiency too, stating that "one of the most noticeable observations of the private timber market is the continuation of a relatively low number of survey responses."[375] The small number of respondents reporting private timber purchases continues to call into question the representativeness of those responses, and provides further evidence that there is diminished demand for private timber in Ontario.

In consideration of the Government of Ontario's argument for Commerce to rely on Ontario log prices to define the benchmark, 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

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[368] *See* Dr. Hendricks Report at 13 and 38; *see also* MNP 2015/2016 Survey at 7.

[369] *See* MNP 2016/2017 Survey at 5.

[370] *See* GOO's Case Brief at 17-18.

[371] *See Preliminary Determination* at 31.

[372] While we agree that we examined these reports at verification, we disagree that our verification report draws any conclusions with respect to the reports' reliability in the larger context of market distortion in Ontario.

[373] *See* MNP 2015/2016 Survey at 7; and MNP 2016/2017 Survey at 5.

[374] *See* MNP 2015/2016 Survey at 4.

[375] *See* MNP 2016/2017 Survey at 3.

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 proposed 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, as previously determined in *Lumber V CVD Final Determination*, these 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 Commerce 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).

Thus, Commerce 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.

Québec Stumpage Issues

Comment 22: Whether Québec's Public Stumpage Market Is Distorted

Government of Canada and Provincial Governments' Case Brief

- The provinces submitted valid Tier-one benchmarks in their jurisdictions which should be used to determine whether stumpage confers a benefit to the paper producers.[376] The CIT, NAFTA panels, WTO panels, and Commerce have recognized government involvement in a market, on its own, is not sufficient to establish that the market is distorted.[377] However, instead of following this practice, Commerce preliminarily relied on government "majority" or "substantial portion" for rejecting Tier-one benchmarks in each of the provinces.[378] A finding of distortion cannot rest on government predominance in the market.

Government of Québec's Case Brief

- Commerce's preliminary finding of market distortion rests on flawed premises that are not supported by the verified record.[379] This finding follows the reasoning in *Lumber V CVD Final Determination*, and Commerce should reconsider that reasoning here.[380] In addition, Commerce should consider the following arguments not addressed in *Lumber V CVD Final Determination*.

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[376] *See* GOC and Provincial Governments' Case Brief at 14.

[377] *Id.* at 10-16.

[378] *Id*.

[379] *See* GOQ's Stumpage Case Brief at 8; s*ee also* PDM at 32-34.

[380] *See* GOQ's Stumpage Case Brief at 8-30.

- Commerce found in *Lumber V CVD Final Determination* that Québec's auction prices largely tracked those from the standing Crown timber sales. However, the verified record shows just the opposite -- that pricing from Québec's public stumpage auctions drive stumpage rates for standing timber covered by TSGs.[381]

- The BMMB analyzes auction sales information to determine the relationship between the sales price and characteristics of the stand, and it uses the results to establish the corresponding stumpage MVST. Therefore, Commerce's finding that the prices resulting from public stumpage auctions is determined by stumpage rates charged to TSG holders is incorrect and illogical.[382]

- Commerce verified that winning bids can be significantly above the estimated price, contradicting Commerce's conclusion that TSG stumpage rates have a constraining effect on auction prices.[383]

- The maximum allowable volume of Crown timber that may be harvested annually is derived from the AAC, which is set with a focus on biological and botanical considerations, as well as the sustainability of the forest.[384] It is impossible for the Government of Québec to accommodate mills' residual need when the permitted public volume cannot exceed the AAC.

- Commerce incorrectly analyzed public auction data by focusing on processing data of TSG-holding corporations, rather than the products they purchased. The processing data excludes information related to independent parties (*e.g.*, harvesters, etc.) that participate in the public auctions but do not operate mills. These entities could have submitted winning bids and subsequently sold the logs to a TSG-holding entity.

- When sawmills report processing timber from a public auction, the timber is not necessarily obtained from a winning bid. If a harvester harvests timber won at an auction and then sells the resulting logs to a TSG-holding entity that won no auctions, it is unreasonable to conclude that the TSG-holding purchaser dominates the auctions.[385]

- Commerce incorrectly assumes that TSG-holding sawmill that win bids processed all the harvested timber themselves, without considering whether the TSG-holding sawmill sold the unprocessed timber to other mills without a TSG. Commerce should examine the plethora of

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[381] *Id.* at 8.

[382] *Id.* at 38-41.

[383] *Id.* at 38-41.

[384] *Id.* at 9.

[385] *Id.* at 22.

data and analysis contained on the record that the Québec public auctions are suitable for use as a Tier-one benchmark.[386]

- The bid evaluation process is objective and observed by independent auditors. The only qualifications in place relate to protecting Québec against non-payment and ensuring compliance with environmental requirements.[387]

- The number of participating bidders has steadily increased, with most of the growth coming from "independent bidders" (*i.e.*, action participants that do not own and are not affiliated with a saw mill). The market presence of the non-sawmill bidders show that Québec's auctions are open, transparent, and competitive. In FY 2015-2016 and 2016-2017, only 37.5 and 46.4 percent of the auction winners were TSG-holding sawmills, respectively.[388]

- Auction blocks selected by the BMMB are representative of the Crown timber offered under TSGs. The BMMB ensures that the auction blocks available are indicative of stands province-wide and provide a representative sample of market price signals that can be used to determine the stumpage rates for the TSG-holders. The TSG-holding mills have no control or influence over which volumes and blocks are selected to be offered at auction.[389]

- The auction prices are market-based. The BMMB incorporates a pricing structure designed to accommodate the bidding intensity and adjusts based on bidder numbers and price points (*i.e.*, a reserve price and an estimated price).[390]

- While approximately 25 percent of the blocks in any given auction do not sell, the BMMB does not "dump" unsold auction blocks at a decreased price.[391] In FY 2015-2016 and 2016-2017, approximately 85 and 94 percent of the total volume offered at auction was sold, respectively, including volumes that may not have sold initially but were later reauctioned.[392]

White Birch's Case Brief

- Commerce erred by not using prices from the BMMB auctions as a Tier-one benchmark.[393]

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[386] *Id.* at 21-25.

[387] *Id.* at 31.

[388] *Id.* at 33-34 (citing Marshall Report at 38-39).

[389] *Id.* at 36-37.

[390] *Id.* at 36-37.

[391] *Id.* at 38 (citing Marshall Report at 44).

[392] *Id.* at 37-38.

[393] *See* White Birch's Case Brief at 30.

Petitioner's Rebuttal Brief

- Commerce's policy is to reject potential Tier-one benchmarks where there is reason to conclude that the government's involvement constitutes a majority in the market, which distorts the price.[394] While Commerce does not presume that any specific percentage of government market share leads to a conclusion that private prices may be distorted, the government's majority share in the market is relevant evidence of the extent of government influence over the market.[395]

- Commerce conducted a thorough analysis of the market share, as well as the rate of distortion in the Québec stumpage market.

Commerce's Position:

For the reasons detailed below, we continue to find that Québec'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 Québec cannot be used as a Tier-one benchmark.

Before addressing the arguments made by the Government of Québec 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 LTAR. Under the regulation, we prefer to measure the adequacy of remuneration using in-country prices as a benchmark, referred to as 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, Commerce will not use the prices within that market.[396] 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, Commerce must determine whether that market is distorted due to the presence of the government.[397] 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 above in the previous comment, 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

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[394] *See* Petitioner's Rebuttal Brief at 13-14.

[395] *Id*.

[396] *See*, *e.g.*, *CVD Preamble*, 63 FR at 65377.

[397] 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.

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 Government of Québec 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, and not disclosing information on the identities and bids of unsuccessful bidders).[398] 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.

We disagree with Government of Québec and White Birch that the timber market in the province is not distorted. 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 Government of Québec, 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.[399] 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,[400] and not, as preliminarily stated, that sawmills must consume 25 percent of their total mill needs with Crown timber sourced from the auctions.[401] Notwithstanding the clarifications obtained at verification as well as noting that Québec's auction market is monitored by an independent third-party and that TSG-holding entities have no influence over the selection of auction blocks, we find that 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.

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[398] *See* PDM at 32.

[399] *Id.* at 32-34.

[400] *See* GOQ Verification Report II at 3.

[401] *See* PDM at 33.

The Government of Québec is the largest provider of stumpage with 72.4 percent of the stumpage harvest for FY 2015-2016 sourced from Crown land.[402] Of that amount, 57.4 percent was sourced *via* administered TSGs and 15 percent from the auctions.[403] The remaining volumes were sourced from the private forest (15.9 percent) and log imports from the United States and other Canadian Provinces (11.7 percent).[404]

Given that, under a TSG, a sawmill can source up to 75 percent of its supply need at a government-set price,[405] 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 74 percent of TSG-holders purchased all of their allocated Crown timber in FY 2015-2016.[406] These data indicate that sawmills consider their TSGs to be their primary source of wood and not a source for their residual needs, as claimed by the Government of Québec and stipulated under Article 91 of the SFDA.[407] 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 20.7 percent of their Crown supply from the auction.[408]

The Government of Québec reported TSG-allocated Crown and standing timber consumption volumes on a sawmill-specific basis.[409] Data in the Government of Québec's response allowed us to aggregate the sawmill data based on the sawmills' corporate addresses.[410] 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.[411] An analysis of the aggregated data indicates that the consumption of TSG-allocated Crown timber is concentrated

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[402] *See* Québec Final Market Memorandum at Table 5.1. The Crown-origin standing timber's share of the harvest volume increases to 82 percent when examining standing timber that originated in the province. *Id*. at Table 5.2.

[403] *Id.* at Table 5.1.

[404] *Id*.

[405] *See* GOQ Verification Report II at 4-5.

[406] *See* GOQ November 13, 2017 Stumpage IQR at Exhibit QC-STUMP-11 (Table 16). 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.

[407] *See* GOQ November 13, 2017 Stumpage IQR at QC-S-32–QC-S-33 and Exhibits QC-STUMP-25 and 26, which contain the *SFDA* for FYs 2015-2016 and 2016-2017.

[408] *See* Québec Final Market Memorandum at Table 17.3.

[409] *See* GOQ November 13, 2017 Stumpage IQR at Exhibit QC-STUMP-11 (Table 16).

[410] *See* Québec Final Market Memorandum at Table 17.1.

[411] We determine our finding in this regard is warranted given that the GOQ tracks the corporate addresses of TSG holding sawmills. *Id*. at Table 17. 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 10.

among a small number of corporations.[412] 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.[413] Sorting the Government of Québec's reported log processing data in descending order by volume reveals that, for FY 2015-2016, the 10 largest TSG-holding corporations accounted for 71.2 percent of logs acquired *via* supply guarantees.[414]

The Government of Québec argues that, for the 10 largest sawmills collectively, TSG volumes satisfied less than 75 percent of their total mill need.[415] However, the Government of Québec'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.[416] 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.[417] Operating permits are also static, with the MFFP revisiting permits every five years.[418] The Government of Québec also reported 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 purchase in a given year.[419] 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 shows that the 10 largest TSG-holding corporations accounted for 71.2 percent of the softwood saw log auction volume acquired during FY 2015-2016.[420] 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

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[412] *See* Québec Final Market Memorandum at Table 17.2.

[413] *Id.*

[414] *Id*.

[415] *See* GOQ's Stumpage Case Brief at 12.

[416] *Id*.; *see also* GOQ November 13, 2017 Stumpage IQR at Exhibits QC-STUMP-1 and 11.

[417] *See* GOQ Verification Report II at 7.

[418] *Id*. at 8-9

[419] GOQ November 13, 2017 Stumpage IQR at QC-S-99 – QC-S-100.

[420] *See* Québec Final Market Memorandum at Table 17.2.

government-set price. In *Lumber V CVD Final Determination*, Commerce verified that the first 100,000 m^3 of a mill's residual need is exempt from the MFFP's 25 percent auction ratio.[421] As a result, we note that certain mills are sourcing more than 75 percent of their supply needs *via* TSGs.[422] Thus, the Government of Québec's argument that the AAC does not accommodate mills' residual need through TSGs is contradicted by record evidence. 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,[423] we conclude that the non-sawmills must be selling the timber they purchase at the auctions to the TSG-holding sawmills. Regardless of whether the number of independent bidders has steadily increased, as the Government of Québec argues, this does not negate the fact that limiting the auctions to Québec-milled timber severely restrains the overall number of bidders. The Government of Québec has not established that these bidders are not influenced by this limitation, and therefore, we disagree with Government of Québec and find that an increase in the number of participating bidders does not demonstrate that the auctions are "open, transparent, and competitive." 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.[424] Likewise, the non-sawmills can research the published winning auction prices of TSG-holding corporations[425] 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, as we preliminarily stated regarding unsold timber,[426] we continue to find that 28.8 percent of unsold volume of timber offered at auction 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 among 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.[427]

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[421] *See Lumber V CVD Final Determination* at comment 35.

[422] *Id.*

[423] *Id*. at 9.

[424] *Id.* at 11.

[425] *Id.* at Exhibit 7; *see also* GOQ November 13, 2017 Stumpage IQR at QC-S-3.

[426] *See* PDM at 34.

[427] *See* GOQ Verification Report II at 12.

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 686,530 m^3 of TSG-allocated Crown timber, which amounted to 7.7 percent of the volume of saw logs sold *via* auctions.[428] 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.[429] Given that just 14.8 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.[430] In *Lumber V CVD Final Determination*, Commerce 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.[431] Commerce further verified that the remaining timber was left standing.[432] We continue to find that 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), Commerce will only use actual sales prices from competitively-run government auctions as a Tier-one benchmark. Commerce verified that timber purchased at the auctions must be milled within Québec.[433] This is a substantial restriction that further supports our finding 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 the number of 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 Government of Québec created a government-run auction based upon a government-implemented policy to ensure that the timber is milled within the province. Therefore, even if the Québec stumpage market were not distorted, the Québec auction prices would not meet the regulatory criteria as an appropriate benchmark as set forth under 19 CFR 351.511(a)(2)(i).

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[428] *See* PDM at 34.

[429] *Id*.

[430] *See* GOQ Verification Report II at Exhibit 7.

[431] *See Lumber V CVD Final Determination* at 102.

[432] *Id*.

[433] *Id*. at 9.

The Government of Québec, the Government of Canada, and the Government of Ontario 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 this current investigation or any of the previous CVD proceedings involving softwood lumber, 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.[434] Because these reports were prepared for the express purpose of submission in the previous softwood lumber investigation, we find that the reports are at "risk of litigation-inspired fabrication or exaggeration,"[435] which diminishes their weight.

The reports put on the record by the respondents 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 Commerce 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.[436]

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 Government of Québec auction does not meet the regulatory requirements of an open, competitively-run auction because the Government of Québec 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-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, Commerce

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[434] *See Sandt Tech.*, 264 F.3d at 1350-51; *see also Transweb*, 812 F.3d at 1301-02.

[435] *See Sandt Tech.*, 264 F.3d at 1350-51.

[436] *See CVD Preamble*, 63 FR at 65377.

verified that harvested timber from the auction must be processed in Québec;[437] this restriction necessarily limits bidders.

We disagree with the Government of Québec that the *Policy Bulletin*[438] introduced Commerce'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 Commerce. Commerce'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 Commerce'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).

We recognize that parties have made certain arguments regarding the nature and specific details of the public auction system. However, given the evidence presented above, we find that these specific arguments are not sufficiently persuasive to rebut our finding that the public auctions are unusable as a Tier-one benchmark. Thus, 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 affect 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.

We disagree with the Government of Québec that the record evidence demonstrates conclusively that the pricing arising from the public stumpage auctions drive stumpage rates for standing timber covered by TSGs. Furthermore, even assuming the Government of Québec is correct, *arguendo*, having taking into account our finding that auction prices are not market-based as detailed above, such an argument would fundamentally undermine the Government of Québec's argument that Québec's TSG pricing is market-based and that Québec's market provides usable Tier-one benchmark data. TSG prices driven by auction prices that are not market-based would in turn be *not market-based*, resulting in prices that are not suitable as a Tier-one benchmark under 19 CFR 351.511(a)(2)(i).

[437] *See* GOQ Verification Report II at 9.

[438] *See Policy Bulletin*.

Comment 23: Whether Commerce Erred in Calculating a Benefit for White Birch under the Provision of Stumpage for LTAR Program

White Birch's Case Brief

- Commerce failed to recognize that this program no longer exists with respect to White Birch, as White Birch's sawmill division, Scierie Leduc, stopped harvesting standing timber at the end of the first quarter of 2016 and subsequently renounced all its rights to harvest standing timber in Québec. Thus, pursuant to 19 CFR 351.526, Commerce should not calculate any benefit with respect to this program for White Birch.[439]

Petitioner's Rebuttal Brief

- Nothing on the record of the investigation indicates that the Québec stumpage program has been terminated, and White Birch has not met the standard set out by 19 CFR 351.526 demonstrating a program-wide change. In particular, 19 CFR 351.526(b) defines a program-wide change as one that "is not limited to an individual firm," and is effectuated by "a statute, regulation, or decree."[440]

Commerce's Position:

We agree with petitioner that White Birch has not met the standard set out by 19 CFR 351.526 for demonstrating a program-wide change under the stumpage for LTAR program. Record evidence demonstrates that White Birch's sawmill, Scierie Leduc, harvested standing timber and received benefits from the stumpage for LTAR program during the POI.[441] As 19 CFR 351.526(b)(1) clearly states, a program-wide change "{i}s not limited to an individual firm or firms." Moreover, 19 CFR 351.526(b)(2) states that a program-wide change is effectuated by an official act, such as a statue, regulation, or decree. The fact that White Birch's sawmill, Scierie Leduc, stopped harvesting standing timber at the end of the first quarter of 2016 and subsequently renounced all its rights to harvest standing timber in Québec does not meet the clear standard for finding a program-wide change under Commerce's regulations. Therefore, we find no merit in White Birch's argument that, pursuant to 19 CFR 351.526, Commerce should not calculate any benefit with respect to the stumpage for LTAR program for White Birch.

<u>Nova Scotia Benchmark Issues</u>

Comment 24: Whether Commerce Should Use a Nova Scotia Benchmark as a Basis of Finding Subsidization of Stumpage in Ontario and Québec

Government of Canada and Provincial Governments' Case Brief:

- Commerce should not use Nova Scotia data as a Tier-one benchmark for stumpage because its use in this case is inconsistent with the statute, regulations and practice for the following

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[439] *Id*. at 30.

[440] *See* Petitioner's Rebuttal Brief at 23-24.

[441] *See* White Birch November 13, 2017 Stumpage IQR at 10. *See also* White Birch Verification Report at 13-15.

reasons: 1) the NS Survey was designed to capture prices of timber (*i.e.*, softwood saw logs and softwood studwood) used for lumber products, and, thus, it does not contain data on standing timber used in the production of paper or other products; and 2) Commerce's imputed benchmark for biomass and pulpwood is not based on actual transactions and market-determined prices (and, by extension, Commerce's assumption of a consistent ratio between prices for biomass and pulpwood to softwood saw logs/studwood goes against record evidence).[442]

- There is no record evidence showing that Nova Scotia uses the actual prices contained in the survey to set Crown stumpage rates for softwood saw logs and studwood, but instead appears to use average prices covering only one quarter of the survey period. Further, the average and actual prices are not subject to the same statistical controls. Therefore, there is no reason to believe that the average prices are representative of prices paid for private saw log and studwood stumpage throughout the POI and across Nova Scotia, much less be relied upon for other provinces.[443]

- Similarly, Commerce's pulpwood and woodchip benchmarks constructed from the Nova Scotia saw log and studwood prices are not Tier-one benchmarks because they are not based on transactional, market-determined prices.[444]

- Standing timber in Nova Scotia is not available for the respondents to purchase in either Ontario or Québec, and, thus, the Nova Scotia benchmark fails to meet an essential requirement for a Tier-one benchmark.[445] Further, the NS Survey is not reflective of prevailing market conditions (*e.g.*, fragmented land ownership, high-rate of non-industrial private ownership, and a significant decline in timber availability) in Ontario or Québec, as Nova Scotia is an outlier among Canadian provinces with respect to factors of geography and forest composition.[446]

- The predominant softwood timber species, the size and corresponding DBH of these species, growing conditions, and mill distance and infrastructure development in Nova Scotia differ from those in Ontario and Québec.[447]

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[442] *See* GOC and Provincial Governments' Case Brief at 18-22 (citing 19 CFR 351.511(a)(2)(iv); *SC Paper from Canada* IDM at 42; and *Aluminum Extrusions from China First Review* IDM at 26-27).

[443] *See* GOC and Provincial Governments' Case Brief at 20–21.

[444] *Id.* at 22–24.

[445] *Id.* at 25–26 (citing *NAFTA August 13, 2003 Panel Decision* at 29; *SC Paper from Canada Preliminary Determination* PDM at 39; 19 CFR 351.511(a)(2)(ii); and *CVD Preamble*, 63 FR at 65377). For further discussion, *see* Comment 16, above.

[446] *Id.* at 29–40 (citing *Lumber I* at 48 FR at 24168; Asker Report at 44-55 and Attachment 30; Hendricks Report; Miller Report at 14, 22-24, and 29-31; and Golding Report 4-5). For further discussion, *see* Comment 16, above.

[447] *Id.* at 32-38.

- The exclusion of pulpwood from the NS Survey and its numerous flaws related to design, administration, analysis, presentation, methodological choices, and assumptions render it inaccurate and unreliable as a benchmark for this investigation.[448] Moreover, there is no established definition for pulpwood or other timber products for which survey respondents reported prices, other than "use."

- The NS Survey's definition of "transaction" is inconsistent, rendering the data inaccurate and unreliable as a benchmark for this investigation.[449] Private stumpage in Nova Scotia can be purchased as either "piece rate" or "lump sum"; however, because the NS Survey does not identify the nature of these transactions, the survey prices are artificially inflated. In "lump sum" transactions, a single agreed-upon price is in place for all economically harvestable timber on the woodlot, not just prices for softwood saw logs and studwood, which conflicts with the stated objective of the survey. In addition, the lump sum prices may include brokerage fees or other payments to the landowner/logging contractors, further skewing results into the realm of unreliability.[450]

- Commerce should reject this benchmark based on the same reasoning used to reject a benchmark for log prices reported in a study contained in *Lumber V CVD Final Determination* (*i.e.*, the data and search parameters underlying the prices reported were not on the record of the investigation and were otherwise unverifiable).[451]

Government of Ontario's Case Brief:

- The Government of Ontario makes the same arguments, as well as the following additional arguments:[452]

- Commerce's construction of pulpwood and woodchip benchmarks based on Nova Scotia saw logs is in violation of the NAFTA panel, which states that Commerce "violates the statute" when it artificially constructs and invents markets or product categories.[453]

- In *CFS Paper from Indonesia*, Commerce declined to rely on certain benchmark data from a different country because it failed to differentiate between pulpwood and saw logs, stating that it was "inappropriate" to measure the adequacy of remuneration for stumpage in Indonesia.[454]

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[448] *Id.* at 42–44.

[449] *Id.* at 44–48.

[450] *Id.* at 45 (citing Miller Report at 12-13).

[451] *Id.* at 49–50 (citing *Lumber V CVD Final Determination IDM* at 61-62).

[452] *See* GOO's Case Brief at 28-47.

[453] *Id.* at 46 (citing *NAFTA June 7, 2004 Panel Decision* at 19).

[454] *Id.* at 28 (citing *CFS Paper from Indonesia* at 72 FR 60642).

- Nova Scotia timber and timber markets are not comparable to Ontario timber or timber markets.[455]

- Should Commerce decide not to use Ontario's private stumpage prices as the benchmark, then it should rely on log prices in the KPMG Report that reflect Ontario-specific "prevailing market conditions," as it did in *Lumber IV Remand*. The log prices contained in the KPMG Report are 1) arm's length, third party transactions; 2) unaffected by any alleged subsidies to Crown stumpage; 3) cover over 95 percent of the softwood timber harvested on Crown land; and 4) were never challenged by the petitioner to suggest that these log prices are distorted.[456] Based on the data, the transaction prices of SPF Crown timber was higher than that for private lands during FY 2015-2016, confirming there is no subsidy being provided to harvesters of Crown stumpage.[457]

- Commerce also relied on log prices, as opposed to standing timber, when investigating paper products. Previously, Commerce has held that standing timber is not tradable; however, logs harvested from standing timber can be traded.[458]

Government of Québec's Case Brief:

- The Government of Québec makes the some of the same arguments, as well as the following additional arguments:[459]

- Commerce's reliance on the Nova Scotia benchmark is flawed, unfair, and is inferior to the Québec's public auction benchmark for stumpage of timber harvested in Québec.[460]

- The NS Survey, upon which the Nova Scotia benchmark is based, excludes pulpwood data, a primary input to the production of UGW paper. The omission of pulpwood volumes and prices artificially inflates and distorts Nova Scotia's stumpage price.[461]

- The sample size, volume data, and transaction size of the NS Survey are too small to be representative for comparisons to stumpage in Québec. Specifically, the Nova Scotia total 2016 provincial softwood harvest volume is seven times larger than that represented in the NS Survey, while the 2016 Québec provincial softwood harvest volume is twice as large as Nova Scotia's and 13 times larger than the volume represented in the NS Survey results.

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[455] *Id*. at 48–51 (citing Golding Report).

[456] *Id.* at 31-34.

[457] *Id.* at 33-35.

[458] *Id.* at 32-33 (citing *CUP from Indonesia*).

[459] *Id.* at 45-52.

[460] *See* GOQ's Stumpage Case Brief at 45–46 (citing section 771(5)(E) of the Act; *Lumber III CVD Final Determination*, 57 FR at 22621; and *Lumber I*, at 48 FR at 24168).

[461] *See* GOQ's Case Brief at 46–48.

Moreover, the average transaction amounts in Nova Scotia cover 73.55 m^3 while that in Québec covers 26,710 m^3.[462]

Resolute's Case Brief:

- Resolute makes some of the same arguments, and it also argues that Commerce did not diligently analyze or explain why it rejected the empirical data contained in the Marshall Report. This report shows that Québec's auction system produces valid, undistorted market prices.[463]

White Birch's Case Brief

- White Birch makes the same arguments as the Government of Québec with respect to the use of BMMB prices as a Tier-one benchmark.[464]

Petitioner's Rebuttal Brief

- Commerce should continue to use the NS Survey as a Tier-one benchmark. The NS Survey provides usable data for saw log stumpage that can reasonably be adjusted, consistent with Commerce precedent, to serve as a benchmark for stumpage related to pulp logs and woodchips.[465]

- The Government of Ontario's use of *CFS Paper from Indonesia* is inappropriate because, in that case, Commerce, in an attempt to value only pulp logs, could not rely on a respondent-provided benchmark that did not differentiate between saw logs and pulp logs.[466]

- The NS Survey was successfully verified, thus supporting the underlying data that is the basis for the stumpage benchmark.[467]

Commerce's Position:

Having determined that stumpage prices for private-origin standing timber in Nova Scotia constitute prices from within the "country" of provision (*see* Comment 16), Commerce examined whether such prices are comparable as discussed under 19 CFR 351.511(a)(2)(i). As discussed further 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 is 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.

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[462] *See* GOQ's Case Brief at 48-49.

[463] *See* Resolute's Case Brief at 10-11.

[464] *See* White Birch's Case Brief at 30.

[465] *See* Petitioner's Rebuttal Brief at 15-16 (citing *Lumber IV CVD Final Results of 1st AR* IDM at 98).

[466] *Id.* at 16-17 (citing *CFS Paper from Indonesia* IDM at Comment 11).

[467] *Id.* at 19-21.

As found in *Lumber V CVD Final Determination* and discussed in the *Preliminary Determination*, and in response to other comments in this final determination, Commerce finds that there are no private market prices in Ontario or Québec that could serve as Tier-one benchmarks.[468] Thus Commerce continues to find that the stumpage prices from private-origin standing timber in Nova Scotia are the most appropriate benchmark to measure whether the provincial governments of Ontario and Québec provided stumpage for LTAR, consistent with our determination in *Lumber V CVD Final Determination*.[469] As explained in *Lumber V CVD Final Determination*, 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.[470] Further, as discussed 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 whether the Governments of Ontario and Québec sold Crown-origin standing timber for LTAR.

Under 19 CFR 351.511(a)(2)(i), in choosing such in-country prices, Commerce will consider factors affecting comparability. However, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[471] In the *Preliminary Determination*, we stated that prices for standing timber in Nova Scotia reflected in the NS Survey are comparable to the Crown-origin standing timber in Québec and Ontario, consistent with our findings in *Lumber IV CVD Final Determination* and *Lumber V CVD Final Determination*.[472] The Government of Canada argues that various species differ between the provinces to such an extent that the NS Survey is not suitably comparable as a Tier-one benchmark.[473] For example, the Government of Ontario contends that the fact that Ontario forests do not include red spruce (which grows in Nova Scotia) and Nova Scotia forests do not include Larch/Tamarack (which grows in Ontario) 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 Ontario.[474] 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, Québec, and Ontario is harvested from similar forests and covers the same core species group (SPF). Accordingly, we find that the

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[468] *See Preliminary Determination* PDM at 30-34. *See also Lumber V CVD Final Determination* IDM at Comment 40.

[469] *See Lumber V CVD Final Determination* IDM at Comment 40.

[470] *Id.*; *see also Lumber IV CVD Final Determination* IDM at the "Benchmark Standard: 'In-Country' v. 'Market-Based'" section.

[471] *See*, *e.g.*, *HRS from India 2007 AR* IDM at Comment 12, stating that "{t}here is no requirement that the benchmark used in Commerce's LTAR analysis be identical to the good sold by the foreign government. *See also* section 771(5)(E)(iv) of the Act 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 an LTAR analysis."

[472] *See Preliminary Determination* PDM at 37-38.

[473] *See* GOC and Provincial Governments' Case Brief at 34-35.

[474] *See* GOO's Case Brief at 30-31.

transactions for private-origin standing timber in Nova Scotia are comparable to the other two provinces, and suitable for use as a benchmark.

In support of their arguments, the Canadian Parties cite to the Miller Report that concludes that species present in Québec or Ontario 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.[475] However, as we explained in *Lumber V CVD Final Determination*, 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.[476] 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 Québec and Ontario.[477] The respondent firms' actual transactions, as verified by Commerce, support our finding that SPF species continue to be the dominant species that grow in all the provinces east of British Columbia.[478] Further, as found in *Lumber V CVD Final Determination*, 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 Governments of Ontario and Québec treat SPF timber as a single category for data collection and pricing purposes. In particular, these provincial governments charge a single, "basket" price for Crown-origin standing timber that falls within the SPF species category.[479] In Québec, the provincial government even adds larch into the SPF basket it uses to price Crown-origin standing timber, while in Ontario, the provincial government adds tamarack into its SPF basket.[480] 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 differences such as these 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

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[475] *See* GOC and Provincial Governments' Case Brief at I-34-35 (citing Miller Report).

[476] *See Lumber V CVD Final Determination* at Comment 40.

[477] *See Preliminary Determination* IDM at 37. *See also Lumber V CVD Final Determination* at Comment 40.

[478] *See* Resolute November 13, 2017 Stumpage IQR at Exhibits RES-STUMP-ON-1 and RES-STUMP-QC-16; and White Birch November 13, 2017 Stumpage IQR at Exhibits STUMP-2 and STUMP-4. *See also* GOQ November 13, 2017 Stumpage IQR at QC-S-15 and QC-S-54 and Exhibit QC-STUMP-006; and GOO November 9, 2017 Stumpage IQR at ON-17.

[479] *See* GOQ November 13, 2017 Stumpage IQR at QC-S-15 and Exhibit QC-STUMP-006; and GOO November 9, 2017 Stumpage IQR at ON-17 and Exhibit ON-PRIV-2 at 8 and 16. *See also Lumber V CVD Final Determination* IDM at 111.

[480] *See* GOQ November 13, 2017 Stumpage IQR at QC-S-15; and GOO November 9, 2017 Stumpage IQR at ON-17 and Exhibit ON-PRIV-2 at 8 and 16. *See also Lumber V CVD Final Determination* IDM at Comment 40.

to standing timber in Ontario and Québec, and is therefore inappropriate as a benchmark.[481] 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.[482] We disagree. In *Lumber V CVD Final Determination*, Commerce verified that, in the calculation of DBH for the NS Survey, the Government of Nova Scotia 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 or technically harvestable have been included in the NS Survey continues to be unfounded.[483] Furthermore, even if there is some small variation in the relative average diameter of trees harvested in Nova Scotia, Ontario, and Québec, the Canadian Parties have not cited evidence that this differential renders the timber insufficiently comparable. As previously stated, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[484]

We also disagree with Resolute that there are fundamental differences between the Acadian forest (which encompasses Nova Scotia) and the boreal forest (which encompasses Québec and Ontario).[485] As discussed in the *Preliminary Determination*,[486] 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 Ontario and Québec. While Nova Scotia is not located in the same forest as Québec and Ontario, 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.[487] 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. As support for their claim, parties cite to the Golding Report. 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.[488] Because this report was prepared for the express purpose of submission in the previous softwood lumber investigation, we find that the report is at "risk of litigation-inspired fabrication or

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[481] *See* GOC and Provincial Governments' Case Brief at 36-38.

[482] *Id.*

[483] *See Lumber V CVD Final Determination* IDM at Comment 40.

[484] *See, e.g., HRS from India 2007 AR* IDM at Comment 12.

[485] *See* GOC and Provincial Governments' Case Brief at 35-36; and GOO's Case Brief at 49-51 (citing Golding Report). *See also* Resolute's Case Brief at 9-10.

[486] *See* PDM at 37-38.

[487] *See Lumber V CVD Preliminary Determination* at 45-46, unchanged in *Lumber V CVD Final Determination*.

[488] *See Sandt Tech.*, 264 F.3d at 1350-51; *see also Transweb*, 812 F.3d at 1301-02.

exaggeration,"[489] which diminishes its weight. Additionally, the findings of the report are far from conclusive. While the report does state that the two regions are distinct due to various differences in forest makeup, the only mention of value in the entire report is a statement that "timber harvested for sawmills in Nova Scotia and Ontario *may* differ significantly in size and other metrics, and correspondingly in value."[490] The report does not expand on or otherwise detail the extent to which tree size, species, or "other metrics" may affect prices. Other than argue that the two forests are different in a variety of environmental metrics, the report does not otherwise demonstrate why prices of standing timber in Nova Scotia are substantially different so as to "preclude comparability" as the Government of Ontario claims.

The Canadian Parties also cite the Asker Report as support for their argument 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. 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.[491] As we found in *Lumber V CVD Final Determination*, 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 and Ontario are based on two assumptions and estimated data from a single logger in Nova Scotia.[492] Thus, we continue to 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 Report, 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.[493] 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.

We disagree with the Government of Québec's claims that the NS Survey is skewed due to a small sample size and low response rate. As found in *Lumber V CVD Final Determination*, the NS Survey "included approximately 36% of private softwood sawable volume purchased in

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[489] *See Sandt Tech.*, 264 F.3d at 1350-51.

[490] *See* GOO January 2, 2018 FIR at Exhibit ON-NSR-1

[491] *See* GOC and Provincial Governments' Case Brief at 38-39 (citing Asker Report and Miller Report); and GOO's Case Brief at 51 (citing Miller Report and Hendricks Report).

[492] *See Lumber V CVD Final Determination* at Comment 40.

[493] *See*, *e.g.*, the KPMG Report at Schedule 2.

Nova Scotia" during the survey period,[494] which we find constitutes a 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.[495]

We also disagree with the Government of Canada's claims that the NS Survey is rendered inaccurate because it neither identifies or controls for whether transactions were made on a "piece rate"- or "lump sum"-transaction. According to the Government of Canada, the inclusion of lump sum transactions would render the NS Survey incomplete because it would fail to isolate prices paid to secure and exercise the right to harvest the saw logs. 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 saw log 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. Further, 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.

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 saw logs,"[496] and the source documents on which the NS Survey is based indicate stumpage prices paid for saw logs and studwood.[497] Further, we continue to note, as we did in *Lumber V CVD Final Determination*, that Deloitte conducted on-site verifications to ensure that the survey respondents submitted accurate information that adhered to the survey instructions.[498]

Further, the Canadian Parties argue that pulp logs comprise a significant portion of the timber harvest in Nova Scotia and, thus, the failure to capture pulp log prices constitutes a major flaw in the NS Survey. We disagree. 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, Commerce instructed the respondent firms to report the volume and value of all timber

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[494] *See Lumber V CVD Final Determination* at Comment 41.

[495] *Id.*

[496] *Id.*

[497] *Id.*

[498] *Id.*

subject to stumpage (which includes saw logs, pulp logs, wood chips, and biomass) that their respective mills purchased from the Crown during the POI.[499] Here, because we continue to find that the Ontario and Québec stumpage markets are distorted, *see* comment 21 and 22, Commerce cannot rely on benchmarks that do not originate from markets found distorted; therefore, we cannot rely on prices from Ontario or Québec. The NS Survey comprises pricing data that does not originate from a market found distorted. Upon examination of the record, no other parties provided suitable data originating from non-distorted markets from which Commerce could consider a viable benchmark. We note that the Canadian Parties submitted reports and surveys in an effort to demonstrate the contrary, i.e., that Nova Scotia's market is distorted. However, we find such information unpersuasive as explained above. With respect to the NS Survey, Commerce reiterates that it diligently verified its merits over the course of a prior proceeding[500] as well as in the instant investigation.[501] Therefore, we continue to rely on the NS Survey as a basis for an appropriate benchmark for each relevant input.

For the *Preliminary Determination*, we recognized that the average SPF saw log price contained in the NS Survey is based on the prices paid for standing timber identified as SPF saw logs, which is a log type that is processed by sawmills, and, as such, reflects the same log type that was included in the stumpage data reported to Commerce by the respondent firms.[502] Further, we understood that the NS Survey did not contain benchmark information related to respondents' purchases of biomass, pulpwood, and wood chips. As a result, we inferred that Resolute and White Birch received stumpage benefits related to biomass, hardwood, pulpwood, and wood chips at the same level at which they received benefits on softwood.[503] Specifically, we developed benchmarks for these products by calculating a ratio of the respondents' reported prices for the purchases of SPF softwood saw logs to their prices for the purchase of each input and applied those product-specific ratios to the benchmark for SPF softwood saw logs. We further stated that we would revisit this methodology, as necessary, for the final determination.[504] However, as mentioned above, Commerce continues to rely on this methodology and the constructed benchmarks calculated for biomass, pulpwood, and wood chips. We recognize that reliance on this methodology is not perfect; however, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[505] A benchmark, by nature, is not an exact match to the subsidy being evaluated. Although Commerce's general preference,

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[499] *See* Initial Questionnaire.

[500] *See, e.g.*, *Lumber V CVD Final Determination* at Comment 33.

[501] *See* GNS Verification Report at 7-13.

[502] *See* GNS December 21, 2017 SQR at Exhibit NS-STUMP-1, which indicates that the NS Survey only solicited information on log types that are processed by sawmills (*e.g.*, saw logs, studwood, and lathwood). We note that, in order to account for certain species reported by the respondents, the benchmarks derived from the NS Survey were based on the untrimmed SPF softwood saw log price as well as that for red pine, and the average of all non-softwood prices for cedar.

[503] White Birch did not purchase biomass or wood chips from the Crown. See White Birch November 13, 2017 Stumpage IQR at Exhibit STUMP-2.

[504] *See Preliminary Determination* PDM at 40.

[505] *See HRS from India 2007 AR* IDM at Comment 12.

when available, is to use actual transaction prices in the country in question when selecting benchmarks,[506] on this record, we continue to rely on the average price of saw logs as contained in the NS Survey for Resolute's and White Birch's reported stumpage purchases.

As further argued by the Government of Ontario, Commerce, in *CFS Paper from Indonesia*, decided to not rely on a certain benchmark because it failed to differentiate between pulpwood and saw logs,[507] in an effort to demonstrate the standalone impact of pulpwood prices. However, the facts present here are distinct, and does not involve an issue of bundled input prices that require product separation; nor is this example appropriate because in *CFS Paper from Indonesia*, Commerce's objective was to specifically identify a benchmark for pulpwood, itself, where one did not exist on a Tier-one basis. Instead, here, the SPF saw log price data included in the NS Survey are, in fact, prices of SPF saw logs. Therefore, we find the Government of Ontario's argument inapposite. Because here we are relying on the NS Survey prices for the purposes of constructing input-specific benchmarks not limited to pulpwood, we find this issue dissimilar to our differentiation between pulp logs and saw logs in *CFS Paper from Indonesia*.

Notwithstanding Canadian Parties' arguments that the NS Survey is not based on prevailing market conditions, they assert that, Commerce cannot rely on the data contained in the NS Survey because it does not capture inputs used for paper products and only covers one quarter of the POI. In *SC Paper Expedited Review Final*, Commerce expressed a preference for the monthly export data, stating that "{w}hile it would have been {Commerce's} preference to construct a monthly benchmark for wood chips using U.S. export data, the data submitted on the record only contains annual volumes and values."[508] By the same token, here, we would have preferred to compare actual transactions in the country in question.[509] But because no other parties submitted suitable data from a non-distorted market, preventing us from making such a comparison, we continue to rely on the NS Survey as a reasonable benchmark. Similarly, despite the fact that the data only correspond with one quarter of the POI, we continue to rely on this survey for lack of a superior data source on this record.

Given this fact pattern and, pursuant to 19 CFR 351.511(a)(2)(i), we continue to determine that available prices stemming from purchases of private stumpage in Nova Scotia satisfied the regulatory requirements for use as a Tier-one benchmark to measure the adequacy of remuneration for Crown stumpage in Ontario and Québec. As discussed in Comments 21-22, we continue to find that the Ontario and Québec markets for stumpage are distorted and, as explained above, that the NS Survey prices are the appropriate Tier-one benchmark for Crown stumpage in the provinces.

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[506] *See, e.g.*, *Lumber V CVD Final Determination* IDM at Comment 20. *See also* 19 CFR 351.511(a)(2)(1) ("The Secretary will normally seek to measure the adequacy of remuneration by comparing… actual transactions… or… actual sales.")

[507] *See* Resolute's Case Brief at 9-10.

[508] *See SC Paper Expedited Review Final* IDM at Comment 19.

[509] *See* 19 CFR 351.511(a)(2)(i).

We recognize that parties have made certain other arguments regarding the nature and specific details of the stumpage market in Nova Scotia and the pricing and product information included in the NS Survey. However, given the evidence presented above, we find that these specific arguments are not sufficiently persuasive to rebut our previous finding that the private markets in Ontario and Québec are distorted and thus, the stumpage prices related to the private market itself and the public auction, respectively, are unusable as a Tier-one benchmark.

Comment 25: Whether the Nova Scotia Benchmark Should be Adjusted

Resolute's Case Brief:

- Should Commerce rely on the Nova Scotia benchmark for the final determination, it must account for additional costs, charges, and in-kind obligations for the right to harvest timber in Ontario and Québec.[510]

- For comparisons to Ontario stumpage, the Nova Scotia benchmark should be adjusted to account for the following in-kind payments: 1) roads; 2) forest management planning; 3) forest fire protection; and 4) First Nations relations.[511]

- For comparisons to Québec stumpage, the Nova Scotia benchmark should be adjusted to account for the following in-kind payments: 1) royalties paid to the provincial government; 2) fire and insect protection; 3) First Nations fees; 4) road construction and maintenance; 5) scaling compliance costs; 6) ten percent of partial-cut costs; and 7) forest camp expenses.[512]

Government of Ontario's Case Brief:

- If Commerce continues to rely on the Nova Scotia benchmark, it must account for the in-kind cost obligations for the right to harvest timber in Ontario, such as payments to the Crown for road construction and maintenance, forest management planning, forest protection, and First Nations relations.[513]

- Should Commerce rely on the NS Survey, it needs to account for obligatory costs incurred by Ontario harvesters (*i.e.*, C$1.85/m^3), as verified by Commerce, to which private timber harvesters in Nova Scotia are not subject.[514] Commerce included these charges in *Lumber IV Prelim Determination* and should do the same, here.[515]

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[510] *See* Resolute's Case Brief at 11-21.

[511] *Id.* at 11-15.

[512] *Id.* at 15-21.

[513] *See* GOO's Case Brief at 52-54 (citing, *e.g.*, *Lumber IV CVD Final Determination*).

[514] *Id.* at 53 (citing KPMG Report at Schedule 1).

[515] *Id.* at 52 (citing *Lumber IV Prelim Determination* at 66 FR 43205-43207; *Lumber IV CVD Preliminary Results of 1st AR* at 69 FR 33221, and PDM at 19, 106-108; *Lumber IV CVD Prelim Results of 2nd AR* at 70 FR 33107-33108, and PDM at 106-107; and *Lumber IV CVD Preliminary Results of 3rd AR* at 71 FR 33951).

- Because harvesters of Crown softwood timber incur costs related to 1) road construction and maintenance; 2) forest management planning; 3) forest protection; 4) First Nations and Metis relations; and 5) certain other activities, that are not accounted for in the stumpage price, Commerce should add an additional C$1.85 per m^3, as determined by the KPMG Report, an independent accounting retained by the government of Ontario to research industry harvesting costs.[516]

- Road construction and maintenance costs, in addition to the adherence of certain environmental and maintenance guidelines, represent the most significant costs imposed onto harvesters on Crown land. Additional upfront costs are imposed onto all harvesters of Crown softwood timber since they must complete extensive documentation requirements in order to begin operations.[517]

Government of Québec's Case Brief:
- Should Commerce rely on the NS Survey as the benchmark, it must adjust it downward to account for the substantially higher harvest costs related to 1) annual royalties; 2) road building; 3) forest protection; and 4) planning (*i.e.*, C$2.36 m^3, C$3.47 m^3, C$1.03 m^3, and C$1.17 m^3, respectively). Before enacting this proposal however, Commerce must first find that the Québec stumpage market is distorted based on a rational connection between the facts found and the choice made, because circumstantial supposition will not suffice.[518]

Petitioner's Rebuttal Brief:
- As in *Lumber V CVD Final Determination*, Commerce should reject the Canadian Parties' claims to adjust the Nova Scotia Benchmark for in-kind expenses incurred in Ontario and Québec as there is no evidence on the record that such expenses are included in the Nova Scotia benchmark. Accordingly, there is no need to adjust the benchmark in order to make the comparison between the benchmark and the respondents' purchase prices on the same cost basis.[519]

Commerce's Position:

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, unchanged from the *Preliminary Determination*. Under section 771(5)(E)(iv) of the Act, Commerce 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, Commerce examined the record regarding 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

[516] *See* GOO's Case Brief at 29 (citing the KPMG Report).

[517] *Id.* at 30-31.

[518] *Id.* at 49-52 (citing *Motor Vehicle Mfrs.*; and *Maverick Tube CAFC*).

[519] *See* Petitioner's Rebuttal Brief at 22-23 (citing *Lumber V CVD Final Determination* at Comment 43).

timber. As discussed below, and as previously found in *Lumber V CVD Final Determination*, we continue to 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.

As previously argued in *Lumber V CVD Final Determination,* the respondents here continue to argue that Commerce 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.

With regard to the respondents' proposal that Commerce 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 Government of Nova Scotia charges registered buyers C$3.00/$m^3$ to cover the cost of silviculture, or, in the alternative, that registered buyers may elect to perform their own silviculture activities rather than pay the fee.[520] 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. As previously found in *Lumber V CVD Final Determination*, we continue to 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.

As determined in *Lumber V CVD Final Determination*, we have not included the fee in our calculation of the Nova Scotia benchmark. We continue to 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 Government of Ontario in the form of the forest

[520] *See* GNS Verification Report at 9-10. *See also Lumber V CVD Final Determination* at Comment 43.

renewal charge, this fee is set based on forecasted, not actual, silviculture costs.[521] In *Lumber V CVD Final Determination*, Commerce found that the Government of Ontario's total receipts of funds for silviculture in FY 2015-16 (the same period under consideration here) and noted in the verification report that the total reimbursements exceeded revenue during that period.[522] Furthermore, under the Government of Québec'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.[523] While the Government of Québec 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.[524] Thus, we have insufficient evidence to determine whether the Government of Québec 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 adjust the Nova Scotia benchmark by the per-unit amounts related to these respective costs, as proposed by the Canadian Parties. 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 royalty fees), which Resolute and the Government of Québec argue we should adjust for in the benefit calculation. We note that in *Lumber V CVD Final Determination*, certain parties acknowledged that these costs were not included in the Nova Scotia benchmark.[525] As discussed above, and as we found in *Lumber V CVD Final Determination*, here 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.[526] 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, and as we found in *Lumber V CVD 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.[527]

Certain Canadian parties argue that, because harvesting of Crown timber by tenure and TSG-holders is a condition of sale, that requires the fulfillment of certain obligations. To support this argument, the parties rely on *Lumber IV CVD Final Determination* and section 771(5)(E) of the

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[521] *See* GOO's November 13, 2017 Stumpage IQR at 79.

[522] *See Lumber V CVD Final Determination* at Comment 43.

[523] *See* GOQ's November 13, 2017 Stumpage IQR at 141-144.

[524] *Id.*

[525] *See Lumber V CVD Final Determination* at Comment 43.

[526] *Id.*

[527] *Id.*

Act, arguing that in measuring the benefit that each respondent received from its purchase of standing timber, Commerce must include all costs incurred by the respondent, including legally-obligated costs associated with long-term tenure rights (*e.g.*, First Nations fees) in exchange for its right to harvest Crown timber. However, we continue to find that these costs are associated with long-term tenure rights (*i.e.*, not 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, and there is no evidence on the record that these costs are taken into account by provincial governments when setting stumpage prices, as previously found in *Lumber V CVD Final Determination*.[528] The parties rely on section 771(5)(E) of the Act; however, that section does not require that Commerce include all costs that a purchaser bears in relation to the purchase of a good when measuring the adequacy of remuneration for that purchase in its benchmark comparison. As discussed above, our benchmark excludes these long-term tenure costs, and as further discussed above, including these costs would distort the calculation of benefit by adjusting the benchmark without similar adjusting for the respondents' respective stumpage costs.

In sum, we continue to find that all of the adjustments requested by the Canadian Parties fall into the categories described above, and, thus, we are not including their proposed adjustments to the Nova Scotia benchmark. Thus, 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 and White Birch's purchases of standing Crown timber in Québec, we compared the stumpage paid by these companies to the MFFP, without adjustments, to the Nova Scotia benchmark.

Log Export Restraint Issues

Comment 26: Whether the Log and Wood Residue Export Restraints Provide a Financial Contribution

Government of British Columbia's and Government of Canada's Case Brief

- The export permitting processes do not constitute a financial contribution as a matter of law. There is no evidence that government action "entrusted or directed" private suppliers to provide wood chips or pulp logs to Catalyst and there is no link between government action and the conduct of a private party.[529]

- WTO Panels have repeatedly rejected the theory of entrustment and direction taken by Commerce in the *Preliminary Determination*, finding that "export restraint" does not constitute a financial contribution, because the government does not explicitly entrust a

[528] *Id.*

[529] *See* GBC/GOC's Log Export Case Brief at 3-11 (citing *DRAMS from Korea* IDM at Comment 1, pages 47-48).

private entity to provide goods, nor is there a clear linkage between the government action and the private action.[530]

- In the *Preliminary Determination*, Commerce failed to explain how the provision of wood residues and pulp logs is a practice that would "normally be vested in the government."[531] Further, the *Preliminary Determination* is inconsistent with past cases, because Commerce applied an effects-based analysis that conflicts with the type of long-term historical pricing analysis used in other cases.[532]

Catalyst's Case Brief

- Commerce must find that the British Columbia log and wood residue export permitting process is not countervailable because it does not provide a financial contribution under the statute.[533]

- Commerce bases its conclusion on the nature of the Government of Canada's and Government of British Columbia's actions, which is insufficient to demonstrate that government action "entrusted or directed" private suppliers to provide wood chips or pulp logs under the statute.[534]

- The WTO Appellate Body has explained that "entrustment or direction" cannot be inadvertent or a by-product of governmental regulation. Therefore, absent evidence that the Government of British Columbia or the Government of Canada have affirmatively given responsibility to or exercised authority over timber harvesters, there is nothing to establish "entrustment or direction" in this case.[535]

- In other proceedings, where Commerce has found export restraints to be countervailable, it provided evidence of a complete ban on exportation or clear link between the export restraints and the impact on local and world market prices, not present in this case.[536]

- The measures do not meaningfully restrain the exportation of logs, especially since British Columbia exported such products during the POI.[537]

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[530] *Id*. at 11-13 (citing *China GOES Panel Report*; *U.S. Export Restraints Panel Report*; and *U.S. CVD Measures on Certain Products from China Panel Report*).

[531] *Id*. at 4 and 14-15.

[532] *Id*. at 14 (citing *Leather from Argentina*).

[533] *See* Catalyst's Case Brief at 29-31.

[534] *Id.* at 29.

[535] *Id.* at 30 (citing *U.S. CVD Measures on Certain Products from China Panel Report* at para. 7.404 and *U.S. CVD Investigation of DRAMS from Korea Panel Report*, at para. 114).

[536] *Id*.

[537] *Id.* at 31.

- Commerce has provided no evidence linking the export permitting process and log/wood residue prices on the record, nor shown the divergence of British Columbia's prices to world market prices for logs and wood residue.[538]

Petitioner's Rebuttal Brief

- Commerce should continue to find that British Columbia's log and wood residue export restraints program provides a financial contribution for the final determination because the British Columbia ban on exports of logs and other wood products entrusts and/or directs private log and wood residue suppliers to provide these goods to users such as Catalyst.[539]

- Commerce should ignore Catalyst and the Government of British Columbia's argument that the "entrust and direct" standard has not been met. The standard set out in 771(5)(B)(iii) of the Act, as upheld by the CIT, is intentionally broad and does not require Commerce to provide conclusive evidence of entrustment or direction, so long as the cumulated evidence can reasonably demonstrate a link between government action and the conduct of a private party. Further, through the SAA, Congress has directed Commerce to interpret the countervailing duty statute broadly as to close any loopholes which might enable governments to provide indirect subsidies.[540]

- In *RZBC Group,* the CIT upheld Commerce's authority to countervail indirect subsidies in cases where indirect subsidies are conveyed by an intermediary, rather than directly by the government.[541]

- In recent cases, Commerce has held that the program in question falls squarely within the entrustment and/or direction standard laid out in the law, consistent with the SAA, and upheld by Commerce and the CIT. Neither Catalyst nor the Government of British Columbia provide any new evidence to re-visit the decision made at the *Preliminary Determination* or in past proceedings.[542]

Commerce's Position:

In the *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination*, Commerce investigated export restraints of logs in British Columbia and found that the export permitting process restrains exports and provided a countervailable benefit to the respondents. In the *Preliminary Determination*, consistent with those cases, we preliminarily found that record evidence with respect to British Columbia restraints on exports of logs and wood residue

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[538] *Id*. (citing *OCTG from China* and *CFS Paper from Indonesia*).

[539] *See* Petitioner's Rebuttal Brief at 63.

[540] *Id.* at 63-65 (citing *Hynix Semiconductor*).

[541] *Id.* at 66-67 (citing *RZBC Group*).

[542] *Id.* at 63 (citing *Softwood Lumber Final IDM* at comment 44).

demonstrates that there is a financial contribution by means of entrustment or direction, pursuant to section 771(5)(B)(iii) of the Act, because the evidence establishes that the nature of the governments' actions is to require that harvesters of British Columbia timber supply that timber to British Columbia consumers.[543] After consideration of the arguments from all parties, we find no reason to deviate from our finding in the *Preliminary Determination*.

As detailed in the *Preliminary Determination*, logs harvested in British Columbia fall under either provincial or Federal jurisdiction. Under both jurisdictions, there are laws and regulations requiring an exporter to obtain an exemption and an export permit in order to export logs outside of British Columbia. Additionally, exporters of wood residue (wood chips, slabs, edgings, shavings, sawdust, and hog fuel) must obtain an export exemption from the Government of British Columbia (all wood residue in British Columbia is under provincial jurisdiction) before export. In the *Preliminary Determination*, we noted that British Columbia's *Forest Act* explicitly states that logs cannot be exported unless the logs or wood residue are determined to be surplus to the requirements of timber processing facilities in British Columbia.[544] Although the federal *Export and Import Permits Act* does not reference the required finding of surplus for logs harvested on Crown lands under federal jurisdiction, for most such logs, the process for seeking export is identical in that it requires a determination that the logs are surplus to the requirements of British Columbia mill operators using the same listing required for provincial-jurisdiction logs to obtain an export permit.[545] Therefore, under the British Columbia and federal export permit processes, logs must first be offered to consumers in British Columbia, and may only be exported if there are no customers in British Columbia that want to purchase the logs. Thus, the nature of the actions undertaken by the Governments of British Columbia and Canada require harvesters of British Columbia timber to sell to, and satisfy the demands of, British Columbia consumers, with only surplus logs available for export. Further, with respect to wood residue, applications to export wood residue are reviewed by the CEAC, which makes a surplus determination.[546] These requirements establish entrustment or direction of private log and wood residue suppliers by both the Governments of British Columbia and Canada within the meaning of section 771(5)(B)(iii) of the Act, and the provision of a financial contribution in the form of the provision of logs and wood residue, in accordance with section 771(5)(D)(iii) of the Act.

We disagree with the respondent parties that we have not met the statutory requirement to find that the Governments of British Columbia and Canada entrusted or directed private suppliers to provide logs and wood residue to domestic purchasers, including Catalyst. The SAA provides explicit guidance regarding circumstances in which Commerce will find that a private party has been entrusted or directed and therefore provided a financial contribution within the meaning of section 771(5)(B)(iii) of the Act. The SAA states:

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[543] *See* PDM at 44.

[544] *Id.* at 42, citing GBC November 13, 2017 Log Export IQR at Exhibits LEP-10 (effective after April 2014) and LEP-11 (effective before April 2014).

[545] *See* GBC November 13, 2017 Log Export IQR at 8, 28, and Exhibit LEP-4. Even logs under provincial jurisdiction in British Columbia that receive a provincial exemption to export under a Ministerial Order or an OIC must also obtain an export permit under the federal *Export and Import Permits Act*.

[546] *See* GBC Verification Report at 9.

> In the past, the {Commerce} . . . 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.* 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.[547]

As such, 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 shall be interpreted broadly.[548]

As described in our *Preliminary Determination*, Catalyst made purchases of logs and wood residue in British Columbia during the POI, all of which are subject to the Governments of British Columbia's and Canada's log export restraint as described above.[549] These limitations result in the third-party timber harvesters and processors providing logs and wood residue to British Columbia processors of logs at the entrustment or direction of the Governments of British Columbia and Canada. We find that this provision of logs and wood residue falls within the definition of a financial contribution under section 771(5)(D)(iii) of the Act because the provision of logs and wood residue is the provision of a good or service, other than general infrastructure.

While the provision of logs and wood residue is the provision of a good or service, the 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 and wood residue to Catalyst to potentially give rise to a countervailable subsidy to Catalyst, Commerce 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 the respondent, Catalyst, and whether the provision of this financial contribution (*i.e.*, provision of logs and wood residue) would normally be vested in the government and the practice does not

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[547] *See* SAA at 926 (emphasis added).

[548] *Id*.

[549] *See* PDM at 45.

differ in substance from practices normally followed by governments. Again, the determination of whether a financial contribution has been provided (*i.e.*, the provision of logs and wood residue to Catalyst) is separate from the determination of whether that financial contribution has conferred a benefit to Catalyst under section 771(5)(E) of the Act (*i.e.,* whether the price of log and wood residue for Catalyst under the export restrictions is for LTAR).

To analyze whether the timber harvesters have been entrusted or directed to provide a financial contribution to Catalyst within the meaning of section 771(5)(D)(iii) of the Act, we first reviewed the laws and regulations that govern the provision of logs and wood residue within British Columbia. As stated above, the vast majority of the timber harvested and all of the wood residue produced in British Columbia falls under provincial jurisdiction and is governed by the *Forest Act*.[550] The provisions establishing the current regime were first enacted in 1906, and are now contained in Part 10 of the *Forest Act*, which has remained substantively unchanged since its enactment in 1978.[551] The *Forest Act* provides three criteria by which timber (*i.e.*, logs) and wood residues from lands under provincial jurisdiction may be approved for export: 1) the timber or wood residue will be surplus to requirements of timber processing facilities in British Columbia; 2) the timber or wood residue cannot be processed economically in the vicinity of the land from which it is cut or produced, and cannot be transported economically to a processing facility located elsewhere in British Columbia; or 3) the exemption would prevent the waste, or improve the utilization, of timber cut from Crown land.[552]

Exceptions to the export ban and authorization to export are granted by the Government of British Columbia either through a Ministerial Order or through an OIC. These exceptions are subject to an evaluation that the logs or wood residue are surplus to the requirements of timber processing facilities in British Columbia (*i.e.,* the logs and wood residue must be deemed to be surplus to processing facilities, including paper manufacturers like Catalyst, in British Columbia before they will be granted an exemption allowing exportation). The purpose of this evaluation is to ensure that there is an adequate domestic supply of logs or wood residue to satisfy the needs of domestic lumber and paper mills before an export exemption is granted. Parties seeking an exception to export logs and wood chips under a Ministerial Order must subject the logs or chips to a direct "surplus test." Under this test, a company submits an application to the Government of British Columbia and the logs or wood residue covered by the application are listed in a weekly advertising list compiled by the government to publicize to British Columbia mill operators the availability of the logs or wood residue.[553]

Additionally, exports of logs under provincial jurisdiction in British Columbia are subject to in-lieu of manufacturing fees.[554] These fees range from a set fee of C$1 per cubic meter to between

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[550] *See* GBC November 13, 2017 Log Export IQR at LEP-9 through LEP-12.

[551] *Id.*

[552] *Id.*

[553] *Id.* at 21.

[554] *See* GBC Verification Report at 10.

five and 15 percent of the price of that log on the Vancouver Log Market (varying by grade species, and harvest area).[555] Exports of logs from certain coastal areas are subject to an additional multiplication factor of the fee.[556] The fees vary based on the location, species and grade of the log.[557] Wood residue exports are not subject to the weekly advertising process, nor are they subject to in-lieu of manufacturing fees. Instead, applications to export wood residue will be reviewed by CEAC, which makes a surplus determination.[558]

Logs harvested under both provincial and federal jurisdictions in British Columbia, and all exports of logs throughout Canada, require an export permit under the federal *Export and Import Permits Act* because logs and pulp logs of all species are included on the Export Control List; pulpwood is also listed on the Export Control List.[559] We find that the log export restrictions are not a mere policy pronouncement or exhortation; log suppliers are required to comply with the export restrictions under penalty of law.[560]

The Government of Canada thereby entrusts and directs these suppliers by imposing its legal authority to criminally prosecute any supplier who exports logs from Canada unless granted an export permit within the meaning of section 771(5)(B)(iii) of the Act. The Government of Canada also requires that any application for export that contains logs that originate in British Columbia include an export exemption granted by the Government of British Columbia; therefore, the Government of British Columbia also entrusts and directs suppliers in British Columbia within the meaning of section 771(5)(B)(iii) of the Act. The result is that log suppliers in British Columbia are limited to selling in the British Columbia market as directed by the government unless granted an exemption.

The legal requirements that logs and wood residue remain in British Columbia, combined with the burdensome process for obtaining an exception from those requirements to export and the fees charged by the Government of British Columbia upon export, result in a policy where the Government of British Columbia has entrusted or directed timber harvesters to provide logs and wood residue to producers in British Columbia. The respondent parties have provided information on the record that shows that the vast majority of applications for an exemption to export are approved.[561] In their estimation, this demonstrates that approval is routine and can be anticipated, and therefore, the export process does not hinder exports. However, Commerce

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[555] *Id.; see also* GBC November 13, 2017 Log Export IQR at 36 to 37.

[556] *See* GBC November 13, 2017 Log Export IQR at 37 to 40.

[557] Additionally, at the SC Paper verification, GBC officials explained that the province began applying the multiplication factor in 2013 for exports from certain regions of the BC coast in reaction to higher demand for BC logs from China. *See* GBC December 20, 2017 SQR at Exhibit BC-SUPP1-7 (GBC SC Paper Verification Report) at 9.

[558] *See* GBC Verification Report at 9.

[559] *Id*. at 8.

[560] *See* GBC November 13, 2017 Log Export IQR at Exhibits LEP-5 and LEP-6.

[561] *See* GBC/GOC's Log Export Case Brief at 20.

disagrees with the contention that these exempted exports demonstrate that there is no entrustment and direction. The burdensome export exemption process discourages timber harvesters from considering the opportunities that may exist in the export market and suppresses their applications for export exemptions if they have uncertainty that their volumes are likely not to be found to be surplus to the requirements of mills in British Columbia. Moreover, this process restricts the ability of timber harvesters to enter into long-term supply contracts with foreign purchasers. The cumulative impact of these legal restrictions on the export of timber has resulted in only a small volume of the log harvest in British Columbia being exported during the POI. Specifically, log exports represented 9.5 percent of the total harvest in British Columbia during 2016 and woodchip exports represented 0.7 percent of the total harvest in British Columbia in 2016.[562] Further, the *Export and Import Permits Act* makes clear that the purpose of restricting exports of logs is to promote further manufacturing in Canada of a natural resource.[563]

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.[564] It is clear from the history of the timber market and the ownership of timber land by the Crown in British Columbia that the provision of logs and wood residue, 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.

Moreover, we disagree with the respondent parties that certain WTO reports are relevant in this investigation. Findings of WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[565] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of Commerce's discretion in applying the statute.[566] Moreover, it is the Act and Commerce's regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports "do not have any power to change U.S. law or to order such

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[562] *See* GBC November 13, 2017 Log Export IQR at LEP 4 and LEP-31. The Government of British Columbia reported that the total harvest of logs in 2016 amounted to 66.07 million cubic meters of logs, and that less than 10 percent of that total, 6.28 cubic meters of logs was exported from Canada during 2016. Further, the Government of British Columbia reported a total of 190,847 BDUs of chip exports in 2016; using the provided conversion factor of 0.39 BDUs of chips per one cubic meter of logs, this amounts to 489,351 cubic meters of logs, or less than one percent of the total 2016 harvest.

[563] *Id*. at Exhibit LEP-5 at Article 3(1)(b) ("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").

[564] *See* GBC November 13, 2017 Log Export IQR at LEP-7.

[565] *See Corus Staal BV v. United States*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).

[566] *See also* 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

a change."[567] Commerce has conducted this investigation in accordance with the Act and Commerce's regulations, and our CVD laws are consistent with our WTO obligations.

Additionally, we disagree with the respondent parties that absent evidence that the Government of British Columbia or the Government of Canada have affirmatively given responsibility to or exercised authority over timber harvesters, there is nothing to establish "entrustment or direction" in this case. The respondent parties' reliance on *DRAMS from Korea* is misplaced. *DRAMS from Korea* does not stand for the proposition that Commerce 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, Commerce 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." 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 and wood residue restrictions at issue in this investigation.[568] Parties cite to several other cases in arguing that we should not find entrustment and direction here, but we do not these other citations to be persuasive. Our record here is clear, and we have made our determination, in this case, based upon the record before us and U.S. law.

Parties also argue that, in prior proceedings where Commerce has found export restraints to be countervailable under the statute, there has been evidence of either a complete ban on exportation or a clear link between the export restraints and the divergence of local and world market prices. In *Lumber V CVD Final Determination* we found that domestic prices in British Columbia are consistently lower than the same type of log in the United States.[569] Further, in the instant case, historical pricing data from the Vancouver Log Market shows domestic prices from 2001 through 2016 which are consistently below the average export prices, by an average of 24 percent over that period.[570] The export prices can serve as a reasonable proxy for world market prices. Thus, the record evidence demonstrates the significant difference between prices for logs outside of British Columbia and inside of British Columbia, due to the export restraints and in-lieu of manufacturing fee charged (indeed, one of the reasons for the Vancouver Log Market price index is to determine the appropriate fee(s) to be added in-lieu of manufacturing for any logs which are exported).[571]

For the reasons discussed above, we continue to find that the Governments of British Columbia and Canada direct timber harvesters by law to provide logs and wood residue to mill operators in

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[567] *See* SAA at 659.

[568] *Id.* at 926.

[569] *See Lumber V CVD Final Determination* IDM at Comment 44 ("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.").

[570] *See* GBC November 13, 2017 Log Export IQR at Exhibit LEP-59. Over the period from 2001 through 2016, domestic values per cubic meter averaged just 76 percent of export values per cubic meter, according to the Historical Average chart from the Vancouver Log Market, as provided by the Government of British Columbia.

[571] *See* GBC Verification Report at 10-11

British Columbia, including Catalyst. Therefore, the provision of logs and wood residue by timber harvesters satisfies the standard for entrustment or direction under section 771(5)(D)(iii) of the Act. As a result, we determine that Catalyst has received a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act.

Comment 27: Whether the Export Permitting Process Materially Restrains Export Activity

Government of British Columbia's and Government of Canada's Case Brief

- Commerce mischaracterized the operation of the EPPs to support its preliminary finding that the EPPs discourage export activity. Commerce failed to consider record evidence demonstrating that 1) there is a limited export market for the types of wood fiber purchased by Catalyst because the high weight-to-value ratios disincentivize transportation to export markets; 2) the approval process is fast-moving and almost always results in export authorization; and 3) a substantial volume of logs was exported from British Columbia during the POI.[572]

- Out of the several thousand log export applications (pulp and otherwise) during the POI, only a small number were met with offers from domestic buyers that could have resulted in export denial. Large volumes of (mostly higher-quality) logs were exported from British Columbia during the POI, equivalent to roughly one-third of the entire coastal BC harvest.[573]

- EPPs are largely irrelevant to Catalyst and its operations because there is no significant export market for the types of wood fiber used by Catalyst in the production of subject merchandise (*i.e.*, woodchips and pulp logs). A proper analysis of the EPPs requires consideration of the types of wood fiber subject to potential exportation.[574]

- The types of wood fiber primarily at issue here (*i.e.*, woodchips and pulp logs) are relatively heavy in relation to their value, and it is often not economically viable to transport these products to export markets. Accordingly, there is little international trade or demand for these products.[575]

- In its *Preliminary Determination*, Commerce failed to take these factors, which are critical to understanding why the EPPs under investigation are largely irrelevant to Catalyst's fiber purchases during the POI, into account.[576]

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[572] *See* GBC/GOC's Log Export Case Brief at 2 and 19.

[573] *Id.* at 2.

[574] *Id.* at 18.

[575] *Id*.

[576] *Id*. at 19.

- Moreover, Commerce mischaracterized the EPPs based on facts from *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination*. Commerce must base its final determination on the record of this proceeding, which contains different evidence regarding the countervailability of this program.[577]

- For instance, Commerce has ignored the difference between the export approval processes for logs and wood residue and has overstated the length of the approval process. There is no federal approval process for exporting wood residue; therefore, the applicable procedure refers to only applies to logs, not to wood residue. Moreover, the cited approval timeframes are taken from the record of other cases and are not indicative of the faster timeframes for approval in the instant case.[578]

- For these reasons, the record does not support Commerce's preliminary finding of meaningful impediments to exportation of the types of wood fiber purchased by Catalyst.

Petitioner's Rebuttal Brief

- The record demonstrates that the log export permitting process does, in fact, restrain exports. The respondent parties do not cite any new record information to lead Commerce to reverse its prior findings in *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination* regarding this program. For this final determination, Commerce should affirm its *Preliminary Determination* that the requirements imposed by the Governments of British Columbia and Canada establish entrustment or direction of private log and wood residue suppliers by both governments within the meaning of section 771(5)(B)(iii) of the Act and the provision of a financial contribution in the form of the provision of logs and wood residue, in accordance with section 771(5)(D)(iii) of the Act.[579]

Commerce's Position:

We disagree with respondent parties and, consistent with our findings in *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination*,[580] we continue to find that the log export permitting process restrains exports from British Columbia. 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.[581] We continue to find that these obstacles, when considered in their totality, restrain log exports from the province.

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[577] *Id*. at 23.

[578] *Id*. at 23-25.

[579] *See* Petitioner's Rebuttal Brief at 66.

[580] *See SC Paper Expedited Review Final* IDM at Comments 11 through 15 and *Lumber V CVD Final Determination* IDM at Comment 44.

[581] *See* PDM at 41-44.

In their case briefs, the Governments of British Columbia and Canada argue that their log export processes do not actually restrain exports because: 1) there is a limited export market for the types of wood fiber purchased by Catalyst because the high weight-to-value ratios disincentivize transportation to export markets; 2) the approval process is fast-moving and almost always results in export authorization; and 3) a substantial volume of logs was exported from British Columbia during the POI. However, we find these arguments to be unconvincing.

As we explained in our *Preliminary Determination,* logs harvested in British Columbia fall under either provincial or Federal jurisdiction.[582] Under both jurisdictions, there are laws and regulations requiring an exporter to obtain an exemption and an export permit in order to export logs outside of British Columbia.[583] Additionally, exporters of wood residue (woodchips, slabs, edgings, shavings, sawdust, and hog fuel) must obtain an export exemption from the Government of British Columbia; all wood residue in British Columbia is under provincial jurisdiction before export.[584]

As we further enumerated in our *Preliminary Determination*, exports of both logs and wood residue under provincial jurisdiction are regulated under the BC *Forest Act*.[585] The *Forest Act* states that timber and wood residue harvested from land under provincial jurisdiction "must be (a) used in British Columbia, or (b) manufactured in British Columbia into wood products to the extent of manufacture specified by the regulation."[586] As stipulated in Part 10 of the *Forest Act*, there are three criteria for exporting logs or wood residue from provincial jurisdiction; however, the primary criterion applied during the POI was that the logs or wood residue are surplus to domestic manufacturers.[587]

The Government of British Columbia maintains that there is no restraint on the export of logs or wood fiber from the province. Rather there is a process that potential exporters must follow to be authorized to export, and most applications to export logs and wood fiber from both federal (logs only) and provincial jurisdiction were granted. To the contrary, under the British Columbia and federal export permit processes, logs and wood residue must first be offered to consumers in British Columbia, and may only be exported if there are no customers in British Columbia that want to purchase the logs and wood residue (*i.e.*, if they are deemed surplus to the needs of the

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[582] *Id.* at 41-44.

[583] *See* GBC Verification Report at 9.

[584] *See* GBC November 13, 2017 Log Export IQR at 7 to 10.

[585] *Id.* at 41-44.

[586] *See* GBC November 13, 2017 Log Export IQR at Exhibits LEP-10 (effective after April 2014) and LEP-11 (effective before April 2014), at Section 127.

[587] *Id.* at 19-24 and GBC December 20, 2017 SQR at Exhibit BC-SUPP1-7 at 5 to 6. We agree with the Governments of British Columbia and Canada that there is no federal approval process for exporting wood residue; only for exporting logs.

Province).[588] Thus, the nature of the actions undertaken by the Government of British Columbia and the Government of Canada require harvesters of British Columbia timber and purveyors of wood residue in the province to sell to and satisfy the demands of British Columbia consumers first, with only surplus logs and wood residue available for export. Further, the lengthy and burdensome export exemption process discourages 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 as to whether their logs and wood residue may be found to be surplus to the requirements of mills in British Columbia.[589] Moreover, this process restricts the ability of log and wood residue suppliers to enter into long-term supply contracts with foreign purchasers.

Additionally, exports of logs under provincial jurisdiction in British Columbia are subject to in-lieu of manufacturing fees.[590] These fees range from a set fee of C$1 per cubic meter to between five and 15 percent of the price of that log on the Vancouver Log Market (varying by grade species, and harvest area).[591] Exports of logs from certain coastal areas are subject to an additional multiplication factor of the fee.[592] The fees vary based on the location, species and grade of the log.[593]

We find the respondent parties' argument that there is a limited export market for the types of wood fiber purchased by Catalyst (*i.e.*, woodchips and pulp logs) because the high weight-to-value ratios disincentivize transportation to export markets to be contrary to record evidence. The record shows that there is a robust market for export of woodchips—from the U.S. PNW. U.S. PNW woodchip exports during 2016, as reported by the U.S. Census Bureau, show exports of woodchips from Oregon and Washington as 2.31 million BDTs, valued at $144 million U.S. dollars.[594] To the contrary, British Columbia, with a land area more than double that of Oregon

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[588] *See* GBC Verification Report at 9 ("applications to export wood residue will be reviewed by {CEAC}, which will make a surplus determination"; and "{i}f there is no offer for purchase of these logs... they are deemed surplus to the needs of the Province, and they are recommended to receive an export permit").

[589] *See* PDM at 41-42. *See also* GBC November 13, 2017 Log Export IQR at Exhibit LEP-28 and GBC Verification Exhibit 1.

[590] *See* GBC Verification Report at 10.

[591] *Id.; see also* GBC November 13, 2017 Log Export IQR at 36 to 37.

[592] *See* GBC November 13, 2017 Log Export IQR at 37 to 40.

[593] Additionally, at the SC Paper verification, GBC officials explained that the province began applying the multiplication factor in 2013 for exports from certain regions of the British Columbia coast in reaction to higher demand for British Columbia logs from China. *See* GBC December 20, 2017 SQR at Exhibit BC-SUPP1-7 (GBC SC Paper Verification Report) at 9.

[594] *See* Petitioner December 20, 2017 RFI at Exhibit 1; total exports under HTSUS 4401.21.0000, "Wood in Chips or particles, Coniferous," By U.S. Customs District, 2016, for the districts of Columbia-Snake (Oregon), and Seattle (Washington). The total reported exports from Washington and Oregon, in 2016, were 2,306,763 metric tons (one metric ton is equivalent to one BDT), valued at $144,155,498 U.S. dollars.

and Washington, exported woodchips in 2016 amounting to only 0.21 million BDTs,[595] or only nine percent of Oregon and Washington's chip exports from over 200 percent of the land area. Thus, record evidence shows that there is both a significant export market for chips and that, U.S. exports, unencumbered by the same export restraints, are far more robust than the similarly-positioned British Columbia exports for the same product. Further, if the U.S. exports to Canada are excluded from the data, the difference is even more striking. Contrary to the Government of British Columbia's claims, freight does not appear to be an impediment to exports of woodchips, because, in 2016, the U.S. states of Washington and Oregon alone sent 1.44 million metric tons, valued at $93.8 million U.S. dollars to destinations as far away as China, Japan, New Zealand, Belgium, and the UAE.[596]

Regarding the respondent parties' argument that the approval process moves quickly and almost always results in export authorization, 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 other impediments described above and in our *Preliminary Determination*, hinders the free export of logs and discourages sellers from considering all market options and seeking the highest price for their logs.

We also remain unpersuaded by respondent parties' arguments that virtually all log export requests are approved and that substantial quantities of logs are exported from British Columbia. We find that none of these statements, even though they may be true, demonstrate that exports are not restrained. Specifically, the claim that some volume of logs was exported does not demonstrate that the process does not restrain exports. There is no way to account for how many more logs would be exported in the absence of this process. Additionally, the rate of approval says nothing about how many additional export requests would have been submitted were it not for the burdensome process described above.

The parties' arguments regarding the approval timeframes referenced in the *Preliminary Determination* are not persuasive. As an initial matter, we agree with the Government of British Columbia and Government of Canada that the timeframes cited in the *Preliminary Determination* reference to verification exhibits pertaining to *SC Paper Expedited Review Final*.[597] As we also noted in the *Preliminary Determination*, the Government of British Columbia did change the advertising publication from a bi-weekly to weekly publication beginning in April 2016.[598] However, we disagree that the timing during 2016 differed significantly from the 2014 period applicable to *SC Paper Expedited Review Final*. While the

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[595] *See* GBC November 13, 2017 Log Export IQR at LEP-4; 190,547 BDU of chip exports in 2016. According to the Government of British Columbia, the reported BDUs are converted to BDTs with a conversion of 0.9186 BDU/BDT).

[596] *See* Petitioner December 20, 2017 RFI at Exhibit 1; total exports of coniferous woodchips from the U.S. PNW of 1,440,166 metric tons, valued at $93,850,778 U.S. dollars to non-Canadian destinations.

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

[598] *Id.*, citing to GBC November 13, 2017 Log Export IQR at 21.

Government of British Columbia did not provide a maximum time period for export permitting approval, the provided timeframes show that the granting of export permits is not merely proforma but does take time and that a significant number of export permits require more than two weeks. In some cases, they require more than four weeks, or more than six weeks in others, to complete the process.[599]

Moreover, we disagree with the respondent parties that the facts in this proceeding are significantly different than in *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination*. Government of British Columbia officials stated at verification that

> the only significant changes in the log and wood residue export restrictions since the *SC Paper Expedited Review Final* and the *Lumber V CVD Final Determination*, aside from the annual fluctuation in harvest volumes, export volumes and prices, were 1) the increase in frequency for the advertising schedule from once every two weeks to once a week and 2) a new {OIC} covering the Meager Creek region.[600]

Therefore, for all these reasons, we continue to find that the Governments of British Columbia and Canada impose restraints on exports of logs and wood residue from British Columbia and, per Comment 26, that these prohibitions on exports provide a countervailable subsidy to Catalyst.

Comment 28: Whether to Apply Adverse Inferences to Catalyst's Log Delivery Costs

Catalyst's and the Government of British Columbia's Case Brief

- Commerce's justification for applying adverse inferences and undervaluing Catalyst's delivered logs when calculating Catalyst's subsidy rate lacks merit. Because Commerce did not meet the statutory pre-requisites for AFA, Commerce should use Catalyst's reported log delivery information for the final determination.[601]

Petitioner's Rebuttal Brief

- Commerce should continue to apply AFA to Catalyst's freight for its log purchases. However, in the event that Commerce reverses its preliminary determination, Commerce should only include the freight reported from Catalyst's log suppliers to Catalyst's chipping facilities, in accordance with Commerce's determination in *SC Paper Expedited Review Final*.[602]

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[599] *See* GBC November 13, 2017 Log Export IQR at LEP 28 and GBC Verification Exhibits 1 and 7.

[600] *See* GBC Verification Report at 8. *See also* GBC December 20, 2017 SQR at BC-SUPP1-10.

[601] *See* Catalyst's Case Brief at 19-28 and GBC's Case Brief at 55-57.

[602] *See* Petitioner's Rebuttal Brief at 60-63.

Commerce's Position:

For the *Preliminary Determination*, we determined that Catalyst failed to provide the required information for its log delivery costs on a transaction-specific basis, and we used an adverse inference in selecting from among the facts otherwise available by not making an adjustment to the reported log delivery freight for Catalyst's log purchases as part of our preliminary calculations.[603] For this final determination, we have re-evaluated our preliminary finding, and, in light of procedures performed at verification, precedent in *SC Paper Expedited Review Final*, and the extreme burden of attempting to manually pull and report individual freight for all 1,136 log purchases during the POI, we have determined to rely on Catalyst's reported average log delivery costs for this final determination (though not the further costs to deliver the chips after the logs leave the chipping facility; *see* Comment 32).

Catalyst and the Government of British Columbia assert that, because we accepted the same average freight reporting method in the *SC Paper Expedited Review Final*, we should do so here. We agree. The facts before us in this case are nearly identical to those in *SC Paper Expedited Review Final*, and in that case, we accepted Catalyst's reported log freight.[604] Further, at verification, we reviewed Catalyst's log and wood residue purchase procedures with company officials, and confirmed that Catalyst's reporting was in accordance with its books and records and was a reasonably accurate method:

> Company officials also explained that, in addition to chips, CPC purchases logs and pools them before chipping them and sending them to the mill (except for at Port Alberni, which has its own chipping facility). Company officials stated that the primary purpose of purchasing logs is to be able to guarantee a steady supply of chips to the mills, since the logs can be held for longer durations before chipping, and because the chip supplies can be inconsistent over time, despite the fact that the mills need a steady supply of chips. Company officials stated that CPC physically pools its logs at various points and that logs are pooled in Logic (the log accounting software) prior to being chipped…[605]

> Company officials stated that CPC does not track freight for each purchase of logs, chips, sawdust, or hog fuel. In the case of logs, company officials stated that the logs are delivered first to a chip plant (except in the case of Port Alberni) and then to the mill; total freight is tabulated and included in the cost of the whole log chips which are delivered. Similarly, for chips, sawdust, and hog fuel, CPC tracks total freight costs booked on a monthly basis, which is then intercompany-charged to the mills. Company officials explained that freight for logs and wood residue into inventory is held in inventory, until it is pooled and released as an average available cost (*i.e.*, average delivered cost) to the mills.[606]

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[603] *See Preliminary Determination* PDM at 23-25 and 47 (citing section 776 of the Act).

[604] *See SC Paper Expedited Review Prelim* PDM at 32, unchanged in *SC Paper Expedited Review Final*.

[605] *See* Catalyst Verification Report at 13.

[606] *Id.* at 16.

Thus, for this final determination, taking into account 1) observations at verification with regards to how Catalyst pools and distributes delivery costs in its normal course of business; 2) the reported difficulty of reporting individual transaction-level freight amounts for all 1,136 reported log purchases; 3) the fact that Commerce accepted Catalyst's identical average log freight reporting in *SC Paper Expedited Review Final*; and 4) the fact that Commerce also accepted Catalyst's total average freight reporting for its purchases of woodchips, sawdust, and hog fuel, we find that reliance on facts otherwise available pursuant to section 776 of the Act, for this final determination, is not warranted with respect to Catalyst's freight on its log purchases. Instead, we have relied upon the average freight reported by Catalyst for its log freight purchases during the POI.[607]

Comment 29: Whether Commerce May Use NAWFR Benchmark Information

Catalyst's and the Governments of Canada and British Columbia's Case and Rebuttal Briefs; and Gannett's Case Brief

- Commerce should not use the petitioner's benchmark information from NAWFR because it was initially submitted as a bracketed, proprietary filing and it deprived the respondent parties from being able to view the information. Further, Commerce wrongly accepted a refiled public version of the NAWFR data after the deadline for submission of new factual information had passed and, as a result, unfairly deprived these parties the opportunity to provide rebuttal comments on the newly-public data.[608]

Petitioner's Case and Rebuttal Briefs

- Commerce's regulations and recent case precedent (including in this case) establish that Commerce can use BPI as benchmarks for inputs provided for LTAR. Further, the petitioner withdrew its claim for proprietary treatment for certain of the NAWFR data.[609]

- Catalyst did not cite to a single case where Commerce agreed that benchmark information to value adequacy of remuneration must be public; Catalyst itself argued for BPI freight data; and the petitioner clearly identified the source of the data in its benchmark submission, and the data was available by subscription.[610]

Commerce's Position:

For this final determination, we find the NAWFR benchmark information, submitted by the petitioner, to be a permissible source for benchmark data. We disagree that the respondents or

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[607] *See* Catalyst December 20, 2017 SQR at 19 and Exhibit WOOD-3 Revised. *See also* Catalyst Final Calc Memo at Attachments 11 and 12. Note that, for the transactions for which Catalyst provided actual freight amounts in its December 20, 2017 SQR response, we have used the freight amounts provided.

[608] *See* Catalyst's Case Brief at 35-36; GBC/GOC's Log Export Case Brief at 34-36; Gannett's Case Brief at 12-18; Catalyst's Rebuttal Brief at 24-26; and GBC's Rebuttal Brief at 24-26.

[609] *See* Petitioner's Case Brief at 29-31.

[610] *See* Petitioner's Rebuttal Brief at 82-83.

Gannett was unfairly deprived of the opportunity to provide rebuttal comments to the petitioner's submission of the NAWFR data. For the same reasons explained in our memorandum rejecting the petitioner's new factual information filing, but allowing the petitioner to re-file a public version of the benchmark data, we do not believe that any party was denied due process in this proceeding:

> We base {our decision to permit re-filing} on the following: 1) the petitioner clearly stated the source and dates of the factual information in its initial submission and the information was readily available to any party with a subscription to the service from which the information was collected; and 2) counsel to all affected parties had complete access to the information under Administrative Protective Order and had ample opportunity to submit rebuttal factual information pursuant to 19 CFR 351.301(c)(3)(iv). Further, we note that making the information public … eases the burden on Commerce, and upon all interested parties, when citing to the specific factual information in the case briefs and final issues and decision memorandum.[611]

As explained in Commerce's May 10, 2018 Letter to Petitioner, in the petitioner's initial submission of factual information to value adequacy of remuneration under 19 CFR 351.511(a)(2), the petitioner clearly provided information regarding the source of its benchmark data and how to acquire such benchmark data through the subscription service.[612] We note that Commerce frequently uses subscription services (*e.g.*, GTA data) to value factors of production in NME cases and use as reliable source for benchmarks in adequacy of remuneration programs in CVD cases.[613] Further, Catalyst, the Governments of Canada and British Columbia, and Gannett all have experienced counsel with APO access who did have complete access to the benchmark data submitted under APO by the petitioner. Thus, no parties' due process was impinged by submission of the BPI benchmark data, or by the later withdrawal, in part, by the petitioner of the claim for proprietary status of the data.[614]

We also disagree that Commerce requires that information used to measure the adequacy of remuneration under 19 CFR 351.511(a)(2) be public. Nowhere in 19 CFR 351.511(a)(2) does the regulation state such a requirement, or even a preference, for public data. Rather, 19 CFR 351.511(a)(2) states a preference for "prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions." In many cases, these prices are non-public prices which parties place on

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[611] *See* Commerce's May 10, 2018 Letter to Petitioner.

[612] *See* Petitioner December 11, 2017 Benchmark Submission at Exhibit 2.

[613] *See* Catalyst's Rebuttal Brief at 37, where Catalyst advocates that Commerce use monthly GTA data to measure adequacy of remuneration for woodchips (Catalyst refers to the data as being from "GTIS," but we note that GTIS's GTA product has been acquired by IHS Markit and the data source is actually IHS' GTA). *See also*, *e.g.*, *Aluminum Foil from China* IDM at Comment 1 and *Citric Acid from China 2011* IDM at Comment 13.

[614] We further note that the petitioner's withdrawal of claim for proprietary status, in part, was with permission of the copyright holder for the data and that this data source was not the petitioner's own information, but rather, a service that it subscribed to.

the record; the petitioner cited to numerous cases in its case brief where Commerce has used proprietary information to measure adequacy of remuneration in recent determinations.[615] No party cited to any CVD case precedent where Commerce required, or expressed a preference for, public information to measure adequacy of remuneration under 19 CFR 351.511. Further, in the instant proceeding, Commerce has used proprietary information from Catalyst, as Catalyst itself has requested,[616] to value barge freight as part of the benchmark calculation.

Gannett's citation to *Aluminum Foil from China* is inapposite, as that case is an AD NME case and the comment addresses public information in the context of surrogate values in an NME case.[617] In a CVD case, as explained above, Commerce's regulations do not express a preference for public benchmark data to measure the adequacy of remuneration under 19 CFR 351.511(a)(2). Thus, we find that the NAWFR data, whether public or proprietary, may be evaluated as a source of benchmark data for the British Columbia log and wood residue export restraint program.

Comment 30: The Appropriate Benchmark Source for the British Columbia Log and Wood Residue Export Restraints

a) Whether to Use a Tier-one Benchmark

For the *Preliminary Determination*, we used Oregon and Washington price data as a benchmark for logs, and U.S. export data from Oregon and Washington, as a benchmark for chips; we then created benchmarks for sawdust and hog fuel, based upon a ratio of the chips benchmark.

Catalyst's and the Governments of Canada and British Columbia's Case Briefs

- Commerce should not use out-of-country benchmarks, because Catalyst's purchases were arms-length transactions with unaffiliated parties and because Commerce has not demonstrated that the market for logs and woodchips in BC is distorted or that prices differ markedly from world market prices.[618]

Petitioner's Rebuttal Brief

- Commerce should continue to use Tier-two benchmarks to measure adequacy of remuneration for Catalyst's log and wood residue purchases, consistent with the *Preliminary*

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[615] *See* Petitioner's Case Brief at 29-31. *See also*, *e.g.*, *Honey from Argentina Preliminary Determination*, 66 FR at 14531 ("the Secretary will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles. Based on our analysis of the proprietary data provided by the GOA…"), unchanged in *Honey from Argentina Final Determination*.

[616] *See* Catalyst's Rebuttal Brief at 72.

[617] *See Aluminum Foil from China* IDM at Comment 2. Moreover, we note that Commerce, in its position in *Aluminum Foil from China* does not outright reject the use of non-public information, even in the context of an AD case; Commerce merely expresses a "preference" for publicly available information to value factors of production.

[618] *See* Catalyst's Case Brief at 32-33; and GBC/GOC's Log Export Case Brief at 26-28.

Determination, *Lumber V CVD Final Determination*, and *SC Paper Expedited Review Final*.[619]

b) Whether to Use NAWFR Data for Benchmark Purposes

Petitioner's Case Brief

- Commerce should use record information from NAWFR to construct benchmarks to measure the benefit to Catalyst from the BC log and wood export restraint program.[620]

Catalyst's Rebuttal Brief

- Commerce should not use the NAWFR data because the high-, low- and average-price ranges are too wide to be a reliable indicator of market behavior. Further, if Commerce does use the NAWFR data, it should make adjustments to the data, and should use various conversion factors.[621]

c) Benchmark Source and Calculation for Woodchips

In the *Preliminary Determination*, we used annual U.S. export data for woodchips during 2016 from the U.S. PNW as the benchmark for Catalyst's woodchip purchases.

Petitioner's Case Brief

- Nearly all (96.5 percent) of U.S. woodchip exports in 2016 were from a single port at Coos Bay, on the southern coast of Oregon, which calls into question the U.S export data.[622]

Catalyst's Case and Rebuttal Briefs

- The fact that U.S. PNW export data is heavily weighted towards Coos Bay does not make it unrepresentative of chip prices from throughout the PNW; moreover, Commerce considered and rejected similar arguments in *SC Paper Expedited Review Final*. Further, the chip export prices from Seattle, WA are even lower than those out of Coos Bay, OR, which undermines the petitioner's argument.

- The chip export price data is for HTS code 4401.21.00.00, pertaining to "Wood in chips or particles: Coniferous," which is precisely the type of chips used by Catalyst. Furthermore, Commerce routinely uses export data for purposes of constructing Tier-two benchmarks, including in *SC Paper Expedited Review Final*.[623]

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[619] *See* Petitioner's Rebuttal Brief at 67-68.

[620] *See* Petitioner's Case Brief at 29-36 and Exhibit 1.

[621] *See* Catalyst's Rebuttal Brief at 26-56.

[622] *See* Petitioner's Case Brief at 33-35.

[623] *See* Catalyst's Rebuttal Brief at 60-64.

- Commerce should use the U.S. woodchip export data from GTA on a monthly basis. If Commerce does not use the monthly data, Commerce should at least average together the monthly rates from GTA and the annual rates from the ITC dataweb.[624]

d) Benchmark Source and Calculation for Sawdust and Hog Fuel

In the *Preliminary Determination*, we constructed a benchmark for sawdust and hog fuel, based upon a ratio of Catalyst's purchase prices, applied to the benchmark for woodchips.

Petitioner's Case Brief

- If Commerce continues to use the ratio analysis, it should calculate the ratios based on Catalyst's reported ex-works values (rather than delivered values/volumes), and then add the benchmark freight and handling amounts.[625]

Catalyst's Case and Rebuttal Briefs

- Commerce should not alter its ratio calculation. Further, Commerce cannot use the single sawdust transaction from Everett, WA, to evaluate the validity of its calculated benchmarks for sawdust and hog fuel, because: 1) it is too small a quantity; 2) Commerce determined that the British Columbia market for logs and wood residue is distorted and import data are not reliable; 3) Commerce developed the ratio methodology in *SC Paper Expedited Review Final* and did not use Washington sawdust imports to assess the validity of the benchmark; and 4) the petitioner's approach would lead to an absurd result.[626]

- If Commerce uses the monthly GTA woodchip export data, it should derive and use the same monthly ratio benchmarks for hog fuel and sawdust.[627]

e) The Appropriate Conversion Factor for the PNW Log Benchmark

Catalyst's and the Governments of Canada and British Columbia's Case Briefs

- Commerce should not use the outdated (1998) USDA conversion factor for MBF to cubic meters, which Catalyst argues is more applicable to lumber (in addition to being outdated); rather, it should use the nine short tons per MBF specified in the Washington benchmark source.[628]

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[624] *See* Catalyst's Case Brief at 50-54 and Catalyst's Rebuttal Brief at 36-37 and 60-64.

[625] *See* Petitioner's Case Brief at 32.

[626] *See* Catalyst's Rebuttal Brief at 68-71.

[627] *See* Catalyst's Case Brief at 50-55.

[628] *Id.* at 39-43 (Catalyst provided what it believes is the proper conversion formula to convert the short tons to kilogram and the densities for Douglas fir and western hemlock of 753 kg/m^3 and 816 kg/m^3, respectively); GBC/GOC's Log Export Case Brief at 30-32.

Petitioner's Rebuttal Brief

- The primary reason for the increase in the conversion ratio was the rapid decrease in the availability and harvest of old growth trees. However, by 1996, the availability of old growth trees had nearly disappeared; thus, the USDA report provides no basis to believe that the 1998 6.76 m^3/MBF conversion factor would have continued to change appreciably, as Catalyst and the Government of British Columbia claim.[629]

- Catalyst and the Government of British Columbia misleadingly point to the nine tons/MBF which is in the Washington data only, not in the Oregon data; moreover, given price differences between the Washington and Oregon data, it is likely that a different conversion factor is used in Oregon to report pulp log prices (though no information for the appropriate conversion is on the record).[630]

- Due to conversion issues, Commerce should not use the Washington and Oregon data for pulp logs but should instead rely on the NAWFR data. However, if Commerce does use pulp log data from Washington and Oregon, it should only use the Washington state data, which provides a clear basis to convert from MBF to green ton.[631]

f) Whether to Adjust the Log Benchmark to Account for Saw Logs in the Sorts

Petitioner's Case Brief

- Catalyst purchased log sorts which included both low-grade saw logs and pulp logs; therefore, it is inappropriate to compare the saw logs in these sorts to a pulp grade benchmark price, because their scaled grade is that of a saw log. Based upon sample purchase invoices on the record, Commerce can calculate the percentage of Catalyst's log purchases which were of low-grade saw logs. Thus, for the final determination, Commerce should calculate a weighted-average log benchmark incorporating Washington and Oregon 4S logs, with the remaining pulp log grade benchmark from the NAWFR.[632]

Catalyst's Case and Rebuttal Briefs

- Catalyst only purchased pulp log sorts during the POI, and it does not track the actual grade of the logs it purchases. Further, logs which meet the objective letter grade criteria may be unsuitable for lumber for other reasons, such as rot. The petitioner's calculation of the percent of low-grade saw logs purchased is speculative, as it is based upon invoices covering a small fraction of Catalyst's total POI log purchases.[633]

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[629] *See* Petitioner's Rebuttal Brief at 72-75.

[630] *Id.* at 72-75.

[631] *Id.* at 72-75.

[632] *See* Petitioner's Case Brief at 36-39.

[633] *See* Catalyst's Rebuttal Brief at 64-68.

- If Commerce does decide to average saw and pulp log prices, it should correct the selected saw log prices for Oregon to use the grades immediately above utility grade—*i.e.*, grade SC for Douglas fir, and grade 3S for hemlock, rather than the grade 4S Douglas fir and hemlock prices used at the *Preliminary Determination*.[634]

Petitioner's Rebuttal Brief

- Given the range of logs Catalyst purchased (*i.e.*, H, I, and J, which correspond to 2 Saw, 3 Saw, and 4 Saw), Commerce should continue to use the 4S grade logs as the benchmark price in this case as well. In *SC Paper Expedited Review Final*, Commerce addressed these arguments and used 4S grade logs as the benchmark for chip and saw logs.[635]

Commerce's Position:

Catalyst purchased four products in British Columbia during the POI for which we must measure the adequacy of remuneration: logs, woodchips, sawdust and hog fuel.[636] Consistent with the *Preliminary Determination*, we continue to find that all purchases of logs and wood residue in British Columbia are subject to the Government of British Columbia's and the Government of Canada's log export restraint, as described above. Because we find the provincial and federal governments have distorted the British Columbia market for logs and wood residue by restricting the export of those products, we continue to find that we cannot use Tier-one prices as a benchmark to measure the adequacy of remuneration.[637] Prices of British Columbia-sourced logs and wood residue, as well as the imported prices of woodchips and sawdust provided by Catalyst, cannot be used to measure the adequacy of remuneration because these prices would not constitute usable market-determined prices stemming from actual transactions for use as a Tier-one benchmark under 19 CFR 351.511(a)(2). Because we cannot use prices within British Columbia, including import prices, as a benchmark, we have resorted to the next alternative in the hierarchy under 19 CFR 351.511(a)(2), which is a Tier-two world market price.[638]

We find that the application of a Tier-two benchmark methodology in calculating a benefit for this program is consistent with our 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

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[634] *See* Catalyst's Case Brief at 37-39 and Catalyst's Rebuttal Brief at 68.

[635] *See* Petitioner's Rebuttal Brief at 75-76.

[636] *See* Catalyst November 13, 2017 Log Export IQR at 7 to 8 and Exhibit WOOD-2.

[637] *See CVD Preamble*, 63 FR at 65377.

[638] *Id.*

(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.[639]

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."[640] However, Commerce does not apply a *per se* rule that a government's majority market share equates to government distortion.[641] Rather, Commerce will consider all relevant factors or measures that may distort a market.[642] The majority of British Columbia's forests exist on Crown land and the majority of the wood harvested in British Columbia was harvested on Crown land.[643] Further, the prices for stumpage rights on these Crown lands are set by the government.[644] In addition, as discussed in Comments 26 and 27, above, the government also restricts the export of logs and wood residue from British Columbia.[645]

The government's overwhelming share of the harvest in British Columbia, combined with the record evidence, indicates that the government's long-maintained export restrictions on log and wood residue have resulted in suppressed prices and distortion of the market in British Columbia. 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, which influences the overall supply of logs available to domestic users, and, in turn creates downward pressure on the log prices in the province. Because the market in British Columbia is distorted, it is not possible for Commerce to use a Tier-one benchmark based on Catalyst's (or any other) purchases in British Columbia. Therefore, in the absence of useable Tier-one benchmarks on the record, we continue to rely on Tier-two benchmarks for this final determination.

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[639] *Id.*

[640] *Id.*

[641] *See, e.g., CRS from Russia* IDM at 52-56; *see also Lumber IV CVD Final Results of 1st AR* IDM at 94-96*; and see Borusan*, 61 F. Supp. 3d at 1331 (remanding for further explanation a finding of government distortion where Commerce relied on the government's market share without explaining why a substantial share of the market was necessarily substantively distortive).

[642] *See, e.g., Aluminum Extrusions from China First Review* IDM at 27.

[643] *See* GBC November 9, 2017 IQR at Exhibit BC-HCH-63, "Wood Based Biomass in British Columbia and its Potential for New Electricity Generation," at Appendix 1, "Theoretical Biomass IPP Business Case," at 11. *See also* GBC November 13, 2017 Log Export IQR at LEP-12 (the Government of British Columbia provided data showing that 89 percent of the 2016 harvest was from Crown land).

[644] *See* GBC November 13, 2017 Log Export IQR at "Provision of Stumpage for LTAR," pages 1-2.

[645] *See* Comment 12 for a detailed discussion of these export restraints.

Additionally, in *Lumber V CVD Final Determination,* we found that the stumpage market in British Columbia is distorted,[646] such that the demand and value of logs in the British Columbia market is linked with demand and value of stumpage in British Columbia, as supply and value of the logs available in the market are derived from the stumpage market in the province. Thus, consistent with *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination,* we continue to find that prices of British Columbia-sourced logs as well as the prices of imported logs cannot be used as Tier-one benchmarks to measure the adequacy of remuneration.[647] Therefore, we have used a Tier-two benchmark, consisting of U.S. PNW log and woodchip prices, which could be reasonably available to purchasers in British Columbia (and in fact, Catalyst did purchase both woodchips and sawdust from Washington state during the POI).[648]

For the *Preliminary Determination*, consistent with *SC Paper Expedited Review Final*, we used Oregon and Washington price data as a benchmark for logs, and U.S. export data from Oregon and Washington, as a benchmark for chips; we then created benchmarks for sawdust and hog fuel, based upon a ratio of the chips benchmark. Parties raised various arguments; based upon the parties' arguments, we have made adjustments to our benchmarks for logs, woodchips, sawdust and hog fuel.

As an initial matter, the petitioner asserts that we should use NAWFR data as the primary benchmark data source for woodchips, sawdust, hog fuel, and pulp logs. The NAWFR data source provides quarterly data relevant to wood fiber producers and consumers across the United States and Canada. While we find the NAWFR data may be an appropriate benchmark data source, we also find that there are numerous complexities and unanswered questions with regards to the data. In particular, both the petitioner and Catalyst made numerous, and contradictory, arguments about the correct calculation methodologies using NAWFR data; in light of this, we find that there is too little time left in this investigation to properly evaluate the data and potentially incorporate it into our benchmark analysis. Thus, due to the complexity of the data and the lack of time for full deliberation, we are deferring consideration of the NAWFR data to any first administrative review and will, at that time, further explore respondents' arguments regarding the discrepancies and divergence in the benchmark data. For these final results, we continue to rely upon our preliminary calculations, with slight modifications, as discussed below. These calculations follow the same rigorously evaluated methodology that we used in *SC Paper Expedited Review Final.*

The petitioner argues that the U.S. woodchip export data is overly representative of exports from Coos Bay; as such, the petitioner argues that Commerce should use the NAWFR data. As we explained above, we are deferring consideration of the NAWFR data until any administrative review, when we will have more time to evaluate the data. Further, we disagree with the petitioner that the woodchip export data are distorted or somehow unrepresentative. When faced with similar arguments regarding the same U.S. export data in *SC Paper Expedited Review*

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[646] *See Lumber V CVD Final Determination* at Comment 18.

[647] *Id.* at Comment 47 and *SC Paper Expedited Review Final* at Comment 13.

[648] *See*, *e.g.*, Verification Report at 3.

Final, we found the whole of the Washington and Oregon export data, on a weighted-average basis, to provide the most accurate benchmark source.[649] We are not persuaded by any arguments to depart from that conclusion here.

Catalyst argues that, with regards to woodchip exports, Commerce should use the monthly export data supplied by the petitioner to construct the woodchip benchmark, and the ratio-derived benchmarks for sawdust and hog fuel. Catalyst asserts that, in *SC Paper Expedited Review Final*, Commerce expressed a preference for the monthly export data, stating that "{w}hile it would have been {Commerce's} preference to construct a monthly benchmark for woodchips using U.S. export data, the data submitted on the record only contains annual volumes and values."[650] In this investigation, we have U.S. export data on a monthly basis; therefore, consistent with *SC Paper Expedited Review Final*, we have used the monthly U.S. export data for our final calculations.[651] We disagree with the petitioner that we are precluded from using the export data merely because they were submitted in a rebuttal submission. The regulations only restrict the use of rebuttal factual information to value surrogate values in NME cases, not information submitted to measure the adequacy of remuneration under 19 CFR 351.511.

The petitioner argues that Commerce should adjust the calculation of the benchmark used for sawdust and hog fuel. For the *Preliminary Determination*, consistent with *SC Paper Expedited Review Final*, Commerce calculated a ratio of the woodchip benchmark to apply to Catalyst's sawdust and hog fuel purchases to evaluate the adequacy of remuneration. We agree with Catalyst that the petitioner's proposed comparison, in this case, is an inappropriate means of validating the calculated benchmark and could lead to absurd results.[652] Thus, consistent with *SC Paper Expedited Review Final*, we continue to calculate a ratio of the woodchip benchmark to apply to Catalyst's sawdust and hog fuel purchases.[653] Further, because we have calculated the woodchip benchmark on a monthly basis, we have applied the same monthly basis calculation to the ratios derived as benchmarks for Catalyst's sawdust and hog fuel purchases.

We also disagree with the petitioner that there are any fatal conversion issues with the Washington and Oregon data that make it unusable. We agree with Catalyst and the Government of British Columbia that the correct conversion factor for pulp logs in the Washington state data is nine tons per MBF.[654] However, we disagree with Catalyst and the Government of British Columbia that this same conversion factor is relevant to the Oregon data. Unlike the Washington state data, the Oregon data source does not provide a separate conversion factor for the utility logs (*i.e.*, pulp logs) in the data. To the contrary, the Oregon data source explains that:

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[649] *See SC Paper Expedited Review Final* IDM at Comment 19.

[650] *Id*.

[651] *See* Petitioner December 20, 2017 RFI at Exhibit 1.

[652] *See* Catalyst's Rebuttal Brief at 70.

[653] *See SC Paper Expedited Review Final* IDM at Comments 16 and 22.

[654] *See* Catalyst December 11, 2017 Benchmark Submission at Exhibit BENCH-4.

> Logs and lumber are usually measured in board feet. A board foot represents a solid piece of wood 12 inches wide, 12 inches long, and 1 inch thick. Sometimes we measure logs by weight, expressed by ton (2,000 pounds). Weight measurement is usually used when the logs are small, and low quality, when you don´t want to measure and grade each piece. The U.S. Forest Service (USFS) and Bureau of Land Management (BLM) sometimes use cubic foot measurement. A cubic foot is a solid piece of wood 1 foot wide, 1 foot thick, and 1 foot long. Here at Oregon Department of Forestry (ODF), we usually use board feet expressed as per thousand board (MBF). This is the timber industry standard for measuring logs and lumber.[655]

Further, we disagree with Catalyst and the Government of British Columbia that the 6.76 conversion factor from the USDA is not applicable here.[656] As explained above, the Oregon data uses the MBF grade for all of its log data; and the USDA data provides a conversion factor for board foot scaled logs to cubic meters as of 1998.[657] We also disagree with Catalyst and the Government of British Columbia that the USDA report is outdated and irrelevant. As the report explains, the change in the recovery ratio, over time, was due to "diminishing old growth, large diameter trees," but that by 1996, "the share of old growth… had nearly disappeared."[658] Thus, there is no record evidence that demonstrates any appreciable change in the recovery ratio from 1998 to 2016, and therefore the ratio is still valid.

We disagree with the petitioner that we need to further adjust the log benchmark for this final determination to account for saw logs in Catalyst's purchases of pulp logs. Catalyst only purchased logs that were in pulp sorts during the POI.[659] Although Catalyst's pulp sorts did contain some low-grade saw logs, the sorts were categorized and sold as pulp sorts; we confirmed this at verification:

> company officials stated that log prices are based upon the sort and that Catalyst only buys pulp sorts. We noted that the invoices for Catalyst's log purchases were for pulp sorts only, regardless of individual log classifications in the sorts. Company officials stated that the classifications are statutorily mandated, but that not all logs that fit the statutory classification are suitable for the uses which may be indicated by their individual classification, and are therefore placed in pulp sorts. Company officials further stated that logs go through multiple pooling and sorting processes before they are purchased by Catalyst, as the harvesters and

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[655] *Id.* at Exhibit BENCH-5.

[656] *Id.* at Exhibit BENCH-7.

[657] We note that the proximity of Oregon to Washington makes the Washington conversion factor an appropriate surrogate in the Oregon data.

[658] *See* Catalyst December 11, 2017 Benchmark Submission at Exhibit BENCH-7 (*Conversion of Board Foot Scaled Logs to Cubic Meters in Washington State, 19701998*, June 2002, at "Abstract" and 3).

[659] *See* Catalyst's Case Brief at 65; *see also* Catalyst November 13, 2017 Log Export IQR at 16; and *see* Catalyst December 20, 2017 SQR at 8.

> resellers of logs attempt to maximize value for each log harvested. In our review of Catalyst's log purchases, we noted that the unit purchase price for all logs on each invoice was the same, regardless of the individual log categories which make up the invoice.[660]

Further, as Catalyst points out, for reasons such as rot, low grade saw logs may be put into pulp sorts and sold as pulp logs.[661] Thus, the record does not provide support for the petitioner's contention that we should further adjust for Catalyst's purchases of pulp sort logs where they may contain saw logs, and we have not further adjusted the benchmark for this final determination. Additionally, Catalyst provides comments regarding further adjustments to the saw log prices. We note that 1) our construction of the saw log benchmark was consistent with *SC Paper Expedited Review Final*; and 2) we have not, in fact, used the saw log benchmark in the final results of this investigation.[662] Therefore, we are not addressing comments pertaining to the correction calculation of the saw log benchmark.

Comment 31: Whether to Exclude U.S. Exports to the UAE from the Benchmark Data

Catalyst's Case Brief

- In calculating the woodchip benchmark, Commerce should exclude U.S. exports of woodchips to the UAE because the data are aberrational, given that the price of the UAE exports is 615 percent of the next highest export value. Commerce has, in the past, excluded aberrational data from the benchmark; failure to do so here would inappropriately overstate the benchmark value.[663]

Commerce's Position:

We disagree with Catalyst and have not excluded the exports to the UAE from the U.S. export data in calculating the woodchip benchmark. As noted in prior CVD investigations,[664] low

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[660] *See* Catalyst Verification Report at 8 and verification exhibit 20.

[661] *See* Catalyst's Case Brief at 65 (citing GBC November 13, 2017 Log Export IQR at Exhibit LEP-3 (Bustard/Thompson Report), at 6: "{s}ome J grade and I grade logs may also be contained in a pulp log sort," for example, because of "a high % of rot.")

[662] *See SC Paper Expedited Review Final* IDM at Comment 18 ("{A}t verification, Catalyst officials stated that species and grade/quality are the most important factors in its price negotiations with its log suppliers. Catalyst officials went on to explain that the company "purchased close to 90 percent pulp logs due to lower pricing for pulp logs, but would purchase higher-grade logs when there was less availability and Catalyst needed logs to produce chips" (citations omitted)). Unlike in *SC Paper Expedited Review Final*, where Catalyst did purchase some saw logs, in 2016, all of Catalyst's log purchases were of pulp logs. Thus, our facts in the instant investigation our different from *SC Paper Expedited Review Final*, and we need not address the proper construction of the saw log benchmark.

[663] *See* Catalyst's Case Brief at 54-56.

[664] *See Magnesia Carbon Bricks from China* IDM at Comment 7 ("{B}eyond mere assertion, RHI has offered no evidence to establish that there was aberrational data included in the DBM and FM benchmarks. Thus, we will not exclude exports of low volume/high value DBM or FM data for this final determination.").

quantities and high prices do not demonstrate that the data set is aberrational. Thus, for the final determination, we continue to find the inclusion of the UAE price in the overall benchmark for woodchips to be appropriate.

Catalyst cites to both *Iron Mechanical Transfer Drive Components from China* and *Aluminum Extrusions from China 2014 Final* as support. We find the facts in those cases to be distinguishable from the facts before us here. In the *Aluminum Extrusions from China 2014 Prelim*, we found the Estonia export volume and value for three months of the POR to be aberrational.[665] Similarly, in *Iron Mechanical Transfer Drive Components from China*, we found that the ocean freight benchmark data submitted showed certain ocean freight data from Long Beach to Qingdao for a four-month period drastically altered the monthly averages and therefore we determined those particular ocean freight rates were distortive in nature.[666] Thus, in the limited instances Catalyst cites where Commerce has excluded benchmark data as being aberrational, we note that these are related to an aberration in the data over the whole time period; the export data to the UAE, in this case, does not have such seasonal or time-sensitive variance issues and there is no reason to disregard the data, when compared with the other export data from the United States to the UAE, of woodchips.[667]

Comment 32: The Appropriate Freight Amounts to Apply to the Benchmark Values

a) Whether to Add Freight for the Log and Wood Residue Benchmarks

In the *Preliminary Determination*, we adjusted the benchmark prices to be on a delivered basis.

Catalyst's and the Governments of Canada's and British Columbia's Case Briefs

- Commerce should not add freight for delivery to the Washington and Oregon log benchmarks, because: 1) there is no way to back out delivery costs to the U.S. PNW included in these benchmarks; and 2) southern British Columbia, where Catalyst's mills are located, is reasonably close to Washington and Oregon, such that the delivery costs included in the price data can serve as a surrogate for the delivery costs to Catalyst's mill.

- If Commerce continues to add delivery charges to the benchmark, Commerce should also add the average log delivery costs, including pooling and transport, to its reported cost of logs, from the supplier, to Catalyst's factory gate.[668]

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[665] *See Aluminum Extrusions from China 2014 Prelim* PDM at 56 and 63, unchanged in *Aluminum Extrusions from China 2014 Final*.

[666] *See Iron Mechanical Transfer Drive Components from China* IDM at Comment 7.

[667] *See* Petitioner December 20, 2017 RFI at Exhibits 1 and 2.

[668] *See* GBC/GOC's Log Export Case Brief at 28-30 and Catalyst's Case Brief at 43-50.

Petitioner's Rebuttal Case Brief

- As in the *Preliminary Determination*, and consistent with *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination*, Commerce should continue to add a transport cost for barging logs and wood residue from the U.S. PNW to British Columbia, consistent with 19 CFR 351.511(a)(2)(iv). The benchmarks represent the prices of these items at mills in the U.S. PNW, not in British Columbia.[669]

- Catalyst provides no support for its contention that U.S. inland transportation costs are identical to the total transportation costs of wood shipped directly to British Columbia. Further, Catalyst's own freight reporting indicates that, when Catalyst purchases wood products from the U.S. PNW, these wood products are first shipped to an intermediate location. Further, Catalyst reported mutually-exclusive rates for 1) U.S inland transport, 2) barge loading, and 3) barge transportation costs.[670]

b) Whether to Further Adjust the Freight Rates for the Log and Wood Residue Benchmarks

In the *Preliminary Determination*, we used Catalyst's actual freight rates that it paid from Everett WA, to its mills in British Columbia, to value international freight for the benchmark calculation.

Petitioner's Case Brief

- Commerce should either: 1) average the barge freight quotes the petitioner presented with the rate presented by Catalyst; or 2) account for the much longer distances between Everett, WA and Coos Bay, OR and Catalyst's other facilities using either (a) the barge freight the petitioner supplied or (b) a ratio computed from distances provided by the petitioner.[671]

- Whether the barges could deliver to Catalyst's mills is irrelevant because the Courts have made it clear that such a level of precision is not required; moreover, the barge freight quotes supplied are conservative, because the specialized equipment Catalyst requires for deliveries would likely cost more, not less. [672]

- In addition to barge freight, Commerce should continue to include an amount for U.S. handling expenses for chips as it did in the *Preliminary Determination*, and consistent with *SC Paper Expedited Review Final*. Commerce should add the same handling cost to the benchmark for logs, sawdust, and hog fuel.[673]

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[669] *See* Petitioner's Rebuttal Brief at 68-72.

[670] *Id*.

[671] *See* Petitioner's Case Brief at 40-43.

[672] *Id.* at 41 (citing *Beijing Tianhai*).

[673] *Id.* at 43-44.

Catalyst's Rebuttal Brief

- The petitioner's barge rates are unusable for the following reasons: 1) they are from December 7, 2017 and, thus, are not applicable to the 2016 POI; 2) they are quotes or estimates, not actual barge rates; and 3) the type of barge in the quotes could not deliver to any of Catalyst's mills or transport logs.[674]

- In *SC Paper Expedited Review Final*, when faced with a similar argument, Commerce stated that the "regulations do not require that a Tier-two benchmark be representative of a respondent's exact circumstances" and Commerce found Catalyst's actual transportation costs from Everett, WA to be "representative of transportation costs from the PNW to British Columbia and would be available to purchasers in British Columbia."[675] Further, as a profit-maximizing British Columbia firm importing wood products from the U.S. PNW, it would be illogical for Catalyst to transport wood products between anything other than the shortest possible distance. For the foregoing reasons, Commerce should rely upon Catalyst's actual barge freight experience and not make further adjustments to it.

- The benchmark log prices are already delivered prices, and with regards to the sawdust and hog fuel benchmarks, these were derived from ratios applied to delivered chip prices, so do not require further handling.[676]

Commerce's Position:

Because Commerce determines that it is appropriate to use a Tier-two benchmark (*see* above discussion at Comment 30), we must adjust the benchmark as required by law.[677] 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 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, Commerce must determine the adequacy of remuneration in relation to prevailing market conditions, including transportation. Thus, Commerce's standard practice is to include in international freight charges in the benchmark, in order to reflect the delivered price of an

[674] *See* Catalyst's Rebuttal Brief at 71-75.

[675] *Id.* at 74 (citing *SC Paper Expedited Review Final* IDM at Comment 20).

[676] *Id.* at 76-77.

[677] *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" (citing section 771(5)(E) of the Act and 19 CFR 351.511(a)(2)(iv)) (other internal citations omitted)).

imported good, as was done for log prices in *SC Paper Expedited Review Final,*[678] *CFS Paper from Indonesia,*[679] and *Lumber V CVD Final Determination*.[680]

We find it is appropriate to continue to rely on the international freight costs for shipping logs and wood residue from the U.S. PNW to Catalyst's mill in British Columbia when making an adjustment for delivery charges pursuant to 19 CFR 351.511(a)(2)(iv). Commerce's general preference, when available, is to use actual transaction prices in constructing benchmarks, rather than offer prices or estimates.[681] The petitioner's freight quotes do not represent actual transaction costs; thus, we find the barge freight actually paid by Catalyst during the POI to provide a better indicator of actual market freight rates between the PNW and British Columbia.[682] Further, we disagree with the petitioner that we should use a distance multiplier ratio to adjust the freight reported by Catalyst upwards. The CIT has held that such extreme levels of precision in constructing a benchmark are not necessary;[683] here, we find that using the international barge freight reported by Catalyst (*i.e.*, freight that Catalyst actually paid) is sufficient for the purposes of constructing the benchmark, and we need not attempt to account for all possibilities.[684] Contrary to the petitioner's argument, Commerce's regulations do not require that a Tier-two benchmark be representative of the respondent's exact circumstances.[685]

Catalyst, the Government of Canada, and the Government of British Columbia argue that, should Commerce continue to apply a cross-border benchmark, it should compare the U.S. log prices on a delivered basis in the United States with the respondents' all-in delivered log costs, and assume that the delivery cost in the U.S. PNW is similar to the delivery cost for those same products to British Columbia. We disagree. Use of 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." Additionally, the statute requires, in assessing the adequacy of remuneration, that

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[678] *See SC Paper Expedited Review Final* IDM at Comments 17 and 20.

[679] *See CFS from Indonesia* IDM at Comment 12.

[680] *See Lumber V CVD Final Determination* IDM at Comment 47.

[681] *See, e.g.*, *Lumber V CVD Final Determination* IDM at Comment 20. *See also* 19 CFR 351.511(a)(2)(1) ("The Secretary will normally seek to measure the adequacy of remuneration by comparing… actual transactions… or… actual sales.")

[682] *See* Catalyst December 20, 2017 SQR at Exhibit WOOD-5 (Revised)

[683] *See*, *e.g.*, *Beijing Tianhai* at 1374 ("{w}hen constructing a tier-two benchmark, the reference to 'a firm' does not mean the respondent. Rather, it refers to a hypothetical firm . . . . This is why {Commerce} is directed, when calculating tier-two benchmarks, to determine 'price{s that} would be available to purchasers in the country in question'").

[684] *See*, *e.g.*, *SC Paper Expedited Review Final* IDM at Comment 20; the petitioner made similar arguments in that case, and we similarly declined to make the requested adjustments to the international freight in the benchmark.

[685] *See, e.g., Beijing Tianhai* at 1374 ("Indeed, the Federal Circuit has upheld {Commerce's} practice of ignoring a particular respondent's conditions of purchase when calculating tier-two benchmark prices, and found that adding these charges to a benchmark price, even where the respondent did not incur these costs, 'is consistent with the relevant statute and regulation.'" (citing *Essar Steel Ltd.* at 1274)).

"transportation" be taken into account.[686] The Courts have held that "{b}oth the statute and the regulation, however, *require* that these costs {(freight and import costs)} be added to the benchmark prices."[687] Further, this determination with regard to the addition of international delivery costs is consistent with Commerce's determinations in *SC Paper Expedited Review Final* and in *Lumber V CVD Final Determination*.[688]

Further, we have not adjusted Catalyst's log freight by adding additional freight between the place where Catalyst chose to have its logs delivered (*i.e.*, a chipping facility) and its factory gate. When faced with the same arguments from Catalyst in *SC Paper Expedited Review Final*, we explained that:

> the log portion of the export ban calculation is measuring the difference between the delivered price for a log purchased by Catalyst in BC and the Tier-two benchmark for a delivered log. Catalyst is asking {Commerce} to include additional transportation costs in the calculation to move a further processed input (woodchips generated from its log purchases) from an unaffiliated processing facility to the company's mills. It is Catalyst's decision to determine where the logs it purchases are delivered (and converted into woodchips), and the calculation reflects this business practice.[689]

The facts before us are the same; Catalyst has its *logs* delivered to an unaffiliated chipping site, and then it pays additional freight costs to have the *chips* delivered to its factory gate.[690] In contrast, the LTAR analysis in this case involves Catalyst's *log* purchases and the benchmark price is for delivered *logs* (not chips). Thus, in order to effectuate an apples-to-apples comparison of delivered prices for *logs*, we have only included the freight for the delivery of Catalyst's log purchases, exclusive of additional freight to deliver the further-processed woodchips to Catalyst's factory gate.

Finally, we have not added additional handling costs to Catalyst's log, sawdust, and hog fuel freight, as the petitioner argues we should.[691] As Catalyst points out, the ratios for hog fuel and

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[686] *See* section 771(5)(E) of the Act.

[687] *See, e.g.*, *Beijing Tianhai* at 1374, citing *Essar Steel Ltd.* at 1274.

[688] *See SC Paper Expedited Review Final* at Comment 17 and 20; and *Lumber CVD Final Determination* at Comment 47.

[689] *See SC Paper Expedited Review Final* IDM at Comment 17.

[690] *See* Catalyst December 20, 2017 SQR at 4-6.

[691] We have, however, averaged the additional barge freight rate for sawdust from Washington state, which Catalyst reported as a minor correction at verification, to calculate a revised log freight benchmark. Further, we have recalculated the benchmark log and woodchip freight rates on a monthly basis using the monthly exchange rates. *See* Catalyst Verification Report at 3 and verification exhibit 1. *See also* Catalyst Final Calc Memo at Attachments 11, 13, and 15.

sawdust already contain the handling costs from the woodchips.[692] Finally, with respect to logs, there is no evidence, from the description of the woodchip handling cost, that this cost is applicable to logs.[693]

Comment 33: The Appropriate Freight Amounts to Apply to Catalyst's Purchases of Woodchips, Sawdust, and Hog Fuel

Petitioner's Case Brief

- Rather than the average transport costs used in the *Preliminary Determination* for Catalyst's woodchips, sawdust, and hog fuel, Commerce should use mill- and species-specific reported transport costs for woodchips and mill-specific reported transport costs for sawdust and hog fuel. This will lead to the most specific matching on a transaction-by-transaction basis. Further, where Catalyst's reporting does not provide a clear basis to attribute freight for some purchases, Commerce should use the lowest of the available rates.[694]

Catalyst's Rebuttal Brief

- The individual mills do not purchase the wood products at issue directly; rather, Catalyst Paper Corporation purchases all wood products at the company-wide level and distributes them to the individual mills. Thus, company-wide average delivery charges are the most appropriate. Further, there is no justification for Commerce to follow the petitioner's approach for purchases where the name of the processing mill is not identified as a Catalyst mill; this argument effectively applies an adverse inference where there is no basis for one.[695]

Commerce's Position:

We agree with Catalyst and have not made further adjustments to Catalyst's reported freight. For its woodchips, sawdust, and hog fuel, Catalyst provided POI-average delivery costs, by product type.[696] Consistent with *SC Paper Expedited Review Final*, we used these reported costs to place all of Catalyst's purchases of woodchips, sawdust, and hog fuel in British Columbia on a delivered basis.[697] Further, we agree that the use of the mill- and species-specific freight proposed by the petitioner would not make our calculations more accurate because the databases do not contain the destination mill for every purchase. We also agree that the petitioner's suggested method of applying the lowest available rate for purchases where the destination mill

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[692] *See* Catalyst Final Calc Memo at Attachments 13 and 15. For woodchips, we have not averaged the sawdust freight with the woodchip freight used at the *Preliminary Determination* because the woodchip freight applies specifically to the woodchips, including the appropriate handling costs for woodchips. Further, because the sawdust and hog fuel benchmarks are derived from the delivered woodchip benchmark, we have not applied the sawdust freight rate to any portion of the final calculations other than the log benchmark freight calculation.

[693] *See* Catalyst December 20, 2017 SQR at 35-36 and Exhibit WOOD-38.

[694] *See* Petitioner's Case Brief at 44-46.

[695] *See* Catalyst's Rebuttal Brief at 77-81.

[696] *See* Catalyst December 20, 2017 SQR at Exhibit WOOD-4 (Revised).

[697] *See SC Paper Expedited Review Final* IDM at Comment 21.

is unclear would apply an adverse inference to Catalyst's freight; this is not warranted, in light of the fact that Catalyst was given no chance to add such a column to its database or to provide further explanation.

Comment 34: Whether Commerce Should Exclude Logs and Chips Dedicated to the Production of Kraft Pulp

Catalyst's and the Government of British Columbia's Case Brief

- Commerce's should exclude Catalyst's purchases of pulp logs and woodchips of species that were used to produce Kraft pulp because these purchases are tied to the production of non-subject merchandise. Failure to do so would inappropriately overstate any benefit associated with the subject merchandise in this proceeding.[698]

Petitioner's Rebuttal Brief

- Commerce's practice is not to tie input subsides to specific products, absent record evidence that a government intended to benefit a specific product at the time of bestowal of the subsidy. No party to this investigation has presented any evidence that either the Government of British Columbia or the entrusted and directed log suppliers intended for a specific portion of the log and wood product subsidies to be directed to a certain portion of Catalyst's production. Accordingly, Commerce should reject this argument and continue to find that all subsidies from the log export restraint program benefit Catalyst's total sales.[699]

Commerce's Position:

We disagree with Catalyst and the Government of British Columbia and continue to include all of Catalyst's purchases of logs and wood residue in our benefit calculation for the log and wood residue export restraint program. Under 19 CFR 351.525(b)(5) of Commerce's regulations, and in accordance with Commerce's established practice,[700] the provision of an input for LTAR 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, the input may only be used for a certain subset of a company's production.

We continue to find that it is appropriate to attribute the benefit received by Catalyst for all of its log and wood residue purchases 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 Commerce's regulations states that "{i}f a subsidy is tied to the production or sales of a particular product, {Commerce} will attribute the subsidy only to that product." Consistent with the *CVD Preamble*,[701] we have generally stated that we

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[698] *See* Catalyst's Case Brief at 60-64 and GBC/GOC's Log Export Case Brief at 32-33.

[699] *See* Petitioner's Rebuttal Brief at 76-77.

[700] *See*, *e.g., Maverick Tube Remand Redetermination* at 19-24 and 34-42; our remand redetermination was upheld by the CIT and the CAFC. *See Maverick Tube CIT* and *Maverick Tube CAFC*.

[701] *See CVD Preamble*, 63 FR at 65402-65403 ("We have generally stated that we will not trace the use of subsidies through a firm's books and records. Rather we analyze the purpose of the subsidy based on information available at

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.[702] For example, to determine whether a grant is tied to a particular product, we examine the grant approval documents.[703] There is no record evidence that at the time of bestowal of the subsidy under this program is tied to production or sales of any particular product.

We note that Catalyst is not arguing that the wood residue inputs purchased could not be used to produce UGW paper, but that Catalyst chose to not actually use those inputs to produce UGW paper during the POI.[704] In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense, not with what the company does with the subsidy, absent specific record evidence of a tie to production or sales of any particular product at the time of bestowal.[705] Therefore, in accordance with our regulations, we do not consider the manner in which Catalyst used its inputs as a factor that is germane to Commerce's subsidy analysis and, thus, we have for purposes of this final determination continued to subject all of Catalyst's log and wood residue purchases to our LTAR subsidy analysis.

The *CVD Preamble's* guidance on tying states, "{o}ur tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal."[706] The rest of the attribution provisions specify the treatment for scenarios where a subsidy is "tied" in some way to a subset of the company's production or sales and, thus, attributable only to that particular subset. In practice, Commerce has looked for this evidence in such documentation as an executed contract or agreement with express language specifying, *e.g.*, the purposes to which the subsidy is intended to be used.[707] This evidence will necessarily come from a point in time prior to, or at the latest concurrent with, the delivery of the subsidy. The "tie" to a product is made at that point; in making this determination, Commerce does not examine the subsequent application of the subsidy. Commerce's practice of finding subsidies to be untied is meant to balance the fact that money is fungible with the congressional intent to

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the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince").

[702] *See, e.g.*, *Washers from Korea* IDM at Comment 7, pages 41-42; *see also Refrigerators from Korea Final* IDM at Comment 3, page 41.

[703] *See CVD Preamble*, 63 FR at 65402-65403.

[704] *See* Catalyst's Case Brief at 60-62.

[705] *See, e.g.*, *Circular Welded Austenitic Stainless Pressure Pipe from China Prelim* at "Provision of Stainless Steel Coil for LTAR," unchanged in *Circular Welded Austenitic Stainless Pressure Pipe from China Final*.

[706] *See CVD Preamble*, 63 FR at 65403.

[707] *See, e.g.*, *Washers from Korea* IDM at 17 ("Based on the Samsung verification report … and an examination of the application and approval documents provided by Samsung, we find that one project for which Samsung received benefits during the POI … relates broadly to numerous types of products, including subject merchandise … {and therefore} the grants provided for that project are not tied to any particular merchandise, subject or non-subject.").

attribute subsidies to the products directly benefiting from the subsidy.[708] Accordingly, Commerce's inquiry properly focuses on whether a government's intent is to subsidize certain activities, whether through explicit criteria for receiving the subsidy, or through the receipt of documentation that informs it of the subsidized activities.[709] Absent record evidence of "tying" at the time of bestowal, Commerce's practice has been to treat the subsidy as "untied" and attribute the subsidy to the company's overall production pursuant to 19 CFR 351.525(b)(3).[710]

Thus, in arguing that certain log and wood residue purchased for and shipped to its non-UGW paper mills is "tied to the non-subject product at the time of bestowal," Catalyst substitutes its own definition of what constitutes "tying" under Commerce's practice. The investigation record lacks any evidence that the sale was accompanied by an express condition limiting use of the log and wood residue; similarly, the record lacks any evidence of an express intention by the Government of British Columbia, or the entrusted and directed private providers, to provide a financial contribution to specific downstream products through provision of certain species of logs and wood residue, used in the production of pulp and paper and a range of other downstream products. Absent such evidence, the shipment of the goods to those plants is simply a logistical detail that did not constitute positive evidence indicative of the subsidy provider's intent to limit the use of the subsidy in some way. Thus, the shipment particulars did not *per se* "tie" the subsidy at the time of bestowal to the company's production at that particular plant, regardless of what that plant produces, *i.e.*, Commerce would neither "tie" the subsidy to the subject merchandise if the plant produced only subject merchandise nor to non-subject merchandise if that is what the plant produced.[711]

Moreover, Commerce's attribution regulations at 19 CFR 351.525(b)(5) and (b)(6) do not provide exceptions for the attribution of subsidies between a corporation's separate facilities. In fact, in *Washers from Korea*, Commerce faced a similar argument that it should have tied the benefit from a subsidy program to specific facilities.[712] Commerce rejected that argument and stated the following:

> {T}his claim is not supported by the tax return provided on the record by Samsung, which does not evince that the tax credits provided under the RSTA were tied to any specific facility. In addition, the tax credit reduces Samsung's overall tax liability which benefits all of its domestic production and sales. While Samsung may maintain underlying documentation, these documents do not form the basis for bestowal and are not included in the annual tax returns that the company files with the Korean tax

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[708] *See CVD Preamble*, 63 FR at 65403.

[709] *Id.*, at 65402 (explaining that "a grant is 'tied' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy").

[710] *See, e.g.*, *PC Strand from China* IDM at Comment 17.

[711] *See Maverick Tube Remand Redetermination* at 39 (and upheld by the CIT and CAFC).

[712] *See Washers from Korea* IDM at Comment 7.

authority. As such, there is no basis to find that the benefits are tied to any specific facility or operating division at the point of bestowal.[713]

Consistent with the fact pattern in *Washers from Korea*,[714] the record reflects no evidence that the government expressly limited the subsidy at issue for exclusive use by certain of Catalyst's mills or to production of certain merchandise at the time of bestowal.

Catalyst cites to *Aluminum Extrusions from China 2015 Review Prelim*, *Biodiesel from Argentina Prelim*, and *CORE from Korea 2010 Review Final* for support for its argument that Commerce should consider the subsidies for logs and wood residue used to produce Kraft pulp to be tied to the production of non-subject merchandise. However, all of these case citations are inapposite. For the reasons stated above, we have determined that Catalyst's benefit from logs and wood residue for LTAR is untied and have used total purchases and total sales as the denominator. Catalyst cites to *Aluminum Extrusions from China 2015* and *Biodiesel from Argentina Prelim* to explain our practice regarding our methodology for tying certain subsidies, but makes no argument analogizing to the findings in either case. In particular, we note that in *CORE from Korea 2010 Review Final*, the untied subsidies were for grants and loans and were not input subsidies; in that case, Commerce found the documentation providing the subsidy to limit the subsidy benefit specifically to production of non-subject merchandise, and therefore we found the subsidies, in that case, to be tied to non-subject merchandise.[715] In the instant case, as explained above, we find that the subsidy program at question is an input subsidy and, consistent with Commerce's practice for input subsidies, is untied.

Comment 35: Whether to Account for Negative Transactions in Catalyst's Wood Purchase Database

Catalyst's and the Government of British Columbia's Case Brief

- Commerce cannot apply a transaction-by-transaction benefit calculation methodology with zeroing to Catalyst's wood purchases database because the database is extracted straight from Catalyst's accounting system and includes negative values which represent corrections and reversals; thus, the calculation method used in the *Preliminary Determination* overstated the benefit. As it did for stumpage programs in *Lumber V CVD Final Determination*, Commerce should aggregate Catalyst's wood purchases by species and on a monthly basis before performing the benefit calculation.[716]

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[713] *Id*.

[714] *See also Refrigerators from Korea Final* IDM at Comment 3, page 41 ("{a} subsidy is tied when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy").

[715] *See CORE from Korea 2010 Review Final* IDM at 17-18 and Comments 1, 4 and 5.

[716] *See* Catalyst's Case Brief at 65-66 and GBC/GOC's Log Export Case Brief at 33-34.

Government of Canada and Provincial Governments' Case Brief

- There is no basis for Commerce to disregard negative values when those negatives are merely reflections of adjustments and corrections contained in a respondent's accounting system.[717]

Petitioner's Rebuttal Brief

- Commerce should continue to calculate benefits on a transaction-specific basis, rather than allow Catalyst to gain the benefit of an illegal offset to transactions with subsidy benefits from those transactions where no benefit exists. Further, if Commerce believes it should make adjustments for the negative transactions where a specific corresponding invoice cannot be identified, Commerce should sum the total entries with negative values and volumes, by species, and allocate the total adjustment amounts back to all positive transactions and continue to calculate a benefit on a transaction-specific basis.[718]

Commerce's Position:

Consistent with our practice, we have continued to calculate transaction-specific benefits for Catalyst's purchases of logs and wood residue under the log export restraint program.[719] However, for the final determination, Commerce verified certain transactions where Catalyst's log and wood residue purchases databases had exact matches for positive/negative value and volume, by species.[720] For these transactions which have correlating debits/credits we will remove both the positive and negative transaction from the database. In the case of negative transactions without identical matches, we have not considered these benefits,[721] because Catalyst provided no way to accurately match them to the associated positive transactions.[722]

We disagree that this situation is similar to the aggregated calculations performed in *Lumber V CVD Final Determination.*[723] In that case, we performed the calculation on a monthly basis for Alberta, British Columbia, and Québec because we determined that the provinces made

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[717] *See* GOC's and Provincial Governments' Case Brief at 56-57.

[718] *See* Petitioner's Rebuttal Brief at 71-81.

[719] *See, e.g., Lumber V CVD Final Determination* IDM at Comments 13 and 15; *see also SC Paper Expedited Review Final* IDM at Comment 25; *see also OCTG from China Review* IDM at Comment 7; and *see Sinks from China* IDM at Comment 21.

[720] *See* Catalyst Verification Report at 15 ("{C}ompany officials stated that there was a correction… that was originally included in the volume but determined, upon inspection, not to be delivered. Further, regarding control numbers 726 and 727, directly above in the log database, we noted that the transaction was included for the incorrect seller, and thus, the transaction was reversed. The dollar and volume amounts for control numbers 726 and 727 are exactly the same as for control number 728.").

[721] We note that these negative transactions may correspond to positive transactions outside the POI or they may, in fact, be adjustments to other purchases in the database.

[722] *See* Catalyst Final Calc Memo at Attachments 12, 14, 16, and 17.

[723] *See Lumber V CVD Preliminary Determination* PDM at 55-57, unchanged in *Lumber V CVD Final Determination* IDM at Comments 13 and 15.

retroactive adjustments on a rolling basis.[724] Here, Catalyst has made corrections to individual purchases; these corrections and reversals are not the result of a government system-wide mandated program, as in the cases of British Columbia, Alberta, and Québec stumpage. Rather, Catalyst has merely stated that its response to Commerce's questionnaire contained a complete extract of its purchases, which also included certain negative entries.[725] Based upon Catalyst's response, and our observations for selected transactions at verification,[726] we have sufficient information to determine that negative transactions which pair completely with a positive transaction that can be removed without granting impermissible offsets. For the remaining negative entries, we have insufficient information regarding their purpose, including whether they correct or offset another reported transaction. Therefore, for the final determination, we have determined to leave those entries in the database, and to zero out any resulting negative benefits, in accordance with our practice.[727]

Further, as discussed at greater length in Comment 19, 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 Catalyst is seeking for unpaired negative transactions is essentially a credit for transactions that did not provide a benefit – such an adjustment would be an impermissible offset, contrary to the Act, and inconsistent with Commerce's practice.[728]

Purchase of Goods for MTAR Issues

Comment 36: Whether the Purchase of Electricity was a Purchase of a Good or Service

In the *Preliminary Determination* and the Post-Preliminary Analysis, Commerce preliminarily determined that Catalyst, Kruger, and Resolute received countervailable subsidies for the purchase of electricity for MTAR from the governments of British Columbia, Newfoundland and Labrador, Ontario, and Québec.

Government of Newfoundland and Labrador's Case Brief

- Commerce erred as a matter of law by treating purchases of electricity as a good rather than a non-countervailable purchase of a service. The Act limits Commerce to countervailing only the purchase of goods, not services. While the Act does not define a "good," the dictionary definition is an "economic asset taking a tangible physical form, such as houses or clothes.

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[724] *Id*. We also performed our stumpage calculations for Québec using monthly average prices in this investigation for the same reason. However, we used transaction-specific prices in our stumpage calculations for Ontario because the data provided for stumpage purchase from that province did not have the same limitations.

[725] *See* Catalyst Verification Report at 15.

[726] *See* Catalyst's Case Brief at 65.

[727] *See, e.g.*, *Lumber V CVD Final Determination* IDM at Comment 15.

[728] *See Lumber IV CVD Final Results of 2nd AR* IDM at Comment 43; *see also e.g., Lumber NSR* IDM at Comment 6; *see also Drill Pipe from China* IDM at Comment 3; *OCTG from China* IDM at Comment 14; *SC Paper Expedited Review Final* IDM at Comment 26; and *Lumber V CVD Final Determination* IDM at Comment 15.

These are contrasted with services such as transport, which cannot be stored, or insurance, which has no physical embodiment." Electricity is not a tangible object and, therefore, falls under the definition of a "service."[729]

Government of British Columbia's Case Brief

- The Government of British Columbia makes the same arguments as the Government of Newfoundland and Labrador, as well as the following additional arguments: 1) under the *Chevron* framework, Commerce must determine whether "goods" and "services" have unambiguous meanings; 2) electricity is not a tangible object, as it contains only intangible flow of electrons which cannot be stored in the same form in which they were produced or physically transported by land, sea, or air; and 3) the HTSUS does not include electricity as a good. [730]

Government of Québec's Case Brief

- The Government of Québec makes the same arguments as the Government of Newfoundland and Labrador, as well as the following additional arguments: 1) the *CVD Preamble* states that "if governmental purchases of services were intended to be treated similarly to the governmental purchase of goods, the statute and the SCM Agreement would specifically mention services as they do with the government provision of goods and services"; and 2) the Supreme Court recently referred to the generation of energy as a service in *FERC*.[731] The Government of Québec makes the same arguments as the Government of Newfoundland and Labrador, as well as the following additional arguments: 1) the *CVD Preamble* states that "if governmental purchases of services were intended to be treated similarly to the governmental purchase of goods, the statute and the SCM Agreement would specifically mention services as they do with the government provision of goods and services"; and 2) the Supreme Court recently referred to the generation of energy as a service in *FERC v. Electric Power Supply Association*.[732]

Kruger's Case Brief

- Kruger makes the same arguments as the Governments of British Columbia and Newfoundland and Labrador, as well as the following additional arguments: It is appropriate to consult dictionaries to determine the established meaning of words and Commerce did so in *Lumber V CVD Final Determination*.[733]

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[729] *See* GNL's Case Brief at 26-28 (citing Oxford Dictionary of Economics).

[730] *See* GBC's Case Brief at 16-18 (citing *Chevron*).

[731] *See* GOQ's Case Brief at 44-45 (citing *CVD Preamble*, 63 FR at 65379 and *FERC v. Electric Power Supply Association*).

[732] *Id.* at 44-45 (citing *CVD Preamble*, 63 FR at 65379 and *FERC v. Electric Power Supply Association*).

[733] *See* Kruger's Case Brief at 94-97 (citing *Lumber V Sales Final* IDM at footnote 272).

Resolute's Case Brief

- Resolute makes many of the same arguments as the Governments of British Columbia, Newfoundland and Labrador and Québec, as well as the following additional argument: Previous cases where Commerce treated electricity as a good are factually dissimilar because those cases involve sales of electricity for LTAR rather than sales of electricity to a government. Further, those cases merely provide *dicta* that does not align with the Act or the facts. Finally, Commerce verified that Resolute treats electricity sales as an offset to cost of manufacturing.[734]

Petitioner's Rebuttal Brief

- Commerce has consistently found that the provision of electricity is the provision of a good. Commerce has already considered and rejected these same arguments in the *Lumber V CVD Final Determination*.[735]

- The argument that Commerce should adopt the practice of classifying electricity as a service, consistent with the FERC's treatment, ignores basic administrative law principles, Commerce's administrative expertise, and the distinct statutes administered by the FERC and Commerce.

Commerce's Position:

We disagree with the respondents that sale of electricity is a service. Commerce has consistently found the provision of electricity to be the provision of a good.[736] Most recently, in *Lumber V CVD Final Determination*, Commerce stated that purchases of electricity from a government-owned entity was the purchase of a good.[737] In this case, the respondents raise many of the same arguments addressed in *Lumber V CVD Final Determination* and cases involving other products.[738] There is no new information on the record which would cause us to reconsider those determinations here. Accordingly, we continue to find that the purchase of electricity by the government-owned utilities/power authorities constitutes a financial contribution under section 771(5)(E)(iv) of the Act.

With respect to the specific arguments raised by the respondent parties, we disagree with the respondents that the dictionary definition of "good" provided in their case briefs applies to electricity. Much like air (another thing that appears intangible but is not), it can be touched, transported (via transmission lines), and stored (inside batteries); it can even be seen in the form

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[734] *See* Resolute's Case Brief at 44-47 and 52-53 (citing *Hot-Rolled Steel from Thailand* and *Rebar from Turkey*). In its case brief, Resolute also claims that, unlike batteries, generators, or even transmission lines (which are goods), the electricity they produce or convey is a service.

[735] *See* Petitioner's Case Brief at 27-29 (citing *Lumber V CVD Final Determination* IDM at Comments 48 and 49).

[736] *See*, *e.g.*, *Hot-Rolled Steel from Thailand IDM* at Comment 10; *and Rebar Bar from Turkey* IDM at 25.

[737] *See Lumber V Final Determination* IDM at Comment 48.

[738] *See*, *e.g.*, *Hot-Rolled Steel from Thailand* and *Rebar from Turkey*.

of lightening. While Commerce has used dictionary definitions to support our approach to an issue, a dictionary definition does not supersede Commerce's consistent application of the Act;[739] and, in any event, the dictionary definition proffered by the respondent parties supports Commerce's treatment here. As stated above, Commerce has repeatedly found that the provision of electricity is the provision of a good.

We also disagree that the case precedent cited by Resolute is on point. While we recognize that the LTAR and MTAR analysis differs in that both goods and services sold for LTAR can be countervailed, in both *Hot-Rolled Steel from Thailand* and *Rebar from Turkey*, for example, we clearly stated that electricity was a good.[740] Further, in cases looking at electricity sold for MTAR, Commerce has also found electricity to be a good.[741]

Finally, we agree with the petitioner that Commerce is not bound by the interpretations of different statutes made by other agencies,[742] and, thus, the FERC's interpretation of its own statute is not relevant here.

Accordingly, we continue to find that the purchase of electricity by the government-owned BC Hydro, NL Hydro, IESO, and Hydro-Québec is the purchase of a good that constitutes a financial contribution under section 771(5)(D)(iv) of the Act and a benefit under section 771(5)(E)(iv).

Comment 37: Whether Commerce Erred in Using Sales of Electricity as the Benchmark for Provincial Utility Purchases of Electricity

In the *Preliminary Determination* and the Post-Preliminary Analysis, Commerce used tariff rates for electricity sold to each respondent during the POI as the benchmark to determine whether that respondent sold electricity to government-owned utilities/power authorities for MTAR.[743]

Government of Canada and Provincial Governments' Case Brief

- Using the electricity rates charged to the respondents as benchmarks fails to adequately measure whether the respondents sold electricity to the utilities for MTAR. The benchmark prices largely reflect the cost of cheap hydroelectric capacity generated by fully-depreciated

[739] *See Chevron*, which holds that "if 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."

[740] *See, e.g.*, *Hot-Rolled Steel from Thailand* at Comment 10 (stating "electricity at issue here is not a service, as respondents argue, but a good"); and *Rebar from Turkey* at 25 (stating "Cebi Enerji produces and sells a good (*i.e.*, electricity)").

[741] *See, e.g.*, *Lumber V CVD Final Determination* at Comment 48.

[742] *See Epic* at 1639 ("{a}nd on no account might we agree that Congress implicitly delegated to an agency authority to address the meaning of a second statute it does not administer.")

[743] Specifically, we used Catalyst's electricity tariff rates as the benchmark for its sales of electricity, Kruger's electricity tariff rates for its sales of electricity, and etc.

equipment, whereas the price charged by the respondents for energy is based on costlier-to-produce green energy from renewable sources.[744]

- Section 771(5)(E) of the Act requires Commerce to determine adequacy of remuneration in relation to the "prevailing market conditions" for the purchased goods. In making this assessment, Commerce must take into account the different nature, cost, and pricing structure of the electricity generated, as well as the needs of the provinces to promote green energy sources, the length of the energy contacts, and the fact that utilities blend the cost of electricity acquired from all sources when setting their tariff rates.[745]

- The WTO's recent decision in *Canada Feed-In Tariff Program* should inform Commerce's decision on this issue. In that decision, the Appellate Body rejected a comparison of an "all-sources electricity sold to consumers" benchmark to the price of electricity purchased by a utility from renewable sources, reasoning that "the competitive wholesale electricity market is not an appropriate benchmark, given that government intervention is required to achieve certain policy goals."[746]

Government of British Columbia's Case Brief

- The Government of British Columbia makes the following additional arguments: 1) in selling electricity, BC Hydro does not distinguish between electricity supply sources or the ownership of those resources; and 2) Commerce failed to follow the plain meaning of 19 CFR 351.503(b) because, instead of measuring the benefit to the recipient, the benchmark measured the cost to the government.[747]

Government of Newfoundland and Labrador's Case Brief

- The Government of Newfoundland and Labrador makes the following additional arguments: 1) the purchase of electricity from NL Hydro in the POI is not comparable to sales based on a cogeneration agreement executed in 2000 under different market circumstances; and 2) purchases of electricity by NL Hydro cannot be excessive since NL Hydro could not effect full cost recovery without breaking its mandate to charge retail prices that are just and reasonable.[748]

Government of Ontario's Case Brief

- The Government of Ontario makes the following additional arguments: 1) the volume of electricity Resolute is supplying IESO justifies commercially-reasonable price discrimination; and 2) Commerce should entertain various arguments related to the tier

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[744] *See* GOC and the Provincial Governments' Case Brief at 82.

[745] *Id.* at 82-84.

[746] *Id.* at 84-85.

[747] *See* GBC's Case Brief at 21-33 (citing *Microsoft*, 817 F.3d at 1315).

[748] *See* GNL's Case Brief at 39-43.

system, including using the tiered benchmark system related to purchases for LTAR under 19 CFR 351.511.[749]

Government of Québec's Case Brief

- The Government of Québec makes the following additional arguments: 1) Commerce should use benchmarking studies on the record that show that purchases under the PPAs are based on prevailing market conditions; 2) under the CIT's definition of "comparability" in *Borusan*, the Industrial L electricity rate is not comparable to biomass electricity prices; and 3) Commerce should use data from an export report as the benchmark.[750]

Catalyst's Case Brief

- Catalyst makes the following additional arguments: 1) the WTO Appellate Body held in *Canada Renewable Energy Generation Sector* that the appropriate benchmarks for renewable energy are the markets for renewable energy, defined by the government's choice of the energy supply-mix; 2) Commerce should use various alternative benchmarks; and 3) Article 14(d) of the SCM Agreement states that the adequacy of remuneration shall be determined in relation to prevailing market conditions, meaning Commerce's benchmark must be fundamentally comparable with the price being evaluated and a price from a market at a different commercial level is not comparable.[751]

Kruger's Case Brief

- Kruger makes the following additional argument: KEBLP's bids specifically required it to provide new and incremental energy sources, which required that KEBLP build new generation facilities.[752]

Resolute's Case Brief

- Resolute makes some of the same arguments.[753]

Petitioner's Rebuttal Brief

- Commerce did not apply 19 CFR 351.511 to these subsidies and therefore the respondents' arguments fail by relating the regulation governing LTAR subsidies to the MTAR subsidies.[754]

- Commerce appropriately used the Industrial L rate as a benchmark for Hydro-Québec's purchases of electricity under the benefit-to-the-recipient standard.

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[749] *See* GOO's Case Brief at 79-86.

[750] *Id.* at 47-57 (citing *Canada Feed-In Tariff Program* at para. 5.219, *Borusan*, 61 F. Supp. 3 at 1341, and *CVD Preamble* 63 FR at 65378).

[751] *See* Catalyst's Case Brief at 105-115 (citing *Canada Renewable Energy Generation Sector* at paras. 5.190 & 5.199, and the SCM Agreement).

[752] *See* Kruger's Case Brief at 98-103.

[753] *See* Resolute's Case Brief at 49-56.

[754] *See* Petitioner's Rebuttal Brief at 31-36.

- Given that the UGW producers provide such a small percentage of Hydro-Québec's electricity sources, it is not reasonable for the Government of Québec to claim that it buys electricity from Resolute and Kruger to ensure an adequate supply of electricity and develop potential for renewable energy.

Commerce's Position:

Interested parties have submitted numerous comments with respect to the appropriate benchmark to measure whether the purchase of electricity by the government utilities/power authorities are 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 Commerce'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."[755] 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.[756]

In this discussion in the *CVD Preamble*, Commerce referred only to "procurement subsidies"; in other words, there is nothing in the *CVD Preamble* to suggest that Commerce specifically contemplated the scenario presented here, where the government is both procuring *and* providing a good. Here, the respondents are both purchasers of electricity, as well as the entities providing electricity or setting and approving the prices at which electricity is provided to the respondent companies. Therefore, not only is the regulation for purchase of a good held in 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 Commerce 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."[757] We have adopted this definition in our regulations because it captures an underlying

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[755] *See CVD Preamble*, 63 FR at 65379.

[756] *Id.*

[757] *See* 19 CFR 351.503(b).

theme behind the definition of benefit contained in section 771(5)(E) of the Act.[758] 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." In other words, 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."[759]

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, Commerce 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.

We disagree that our approach is not in accordance with Article 14(d) of the SCM agreement. As we stated above, the adequacy of remuneration definition does not necessarily contemplate the factual situation on our record. In this unique situation where the government-owned utilities/power authorities are both selling and purchasing electricity, we base our finding of purchases for MTAR on the benefit-to-the-recipient standard.

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. The respondent parties all argue that the government utilities'/power authority's published electricity sales prices are not an appropriate source for measuring the adequacy of remuneration for their purchases of electricity.

We disagree that we should not calculate the benefit conferred on the respondents by comparing sales to the utilities/power authorities under the relevant electricity purchase agreements to the electricity tariffs that the government-owned utilities/power authorities charged these same respondents. During the POI, three respondents all sold electricity to their respective government-owned utilities/power authorities under energy contracts. In addition, during the POI, the three respondents also purchased electricity from those same government-owned utilities/power authorities. We find that this benchmark best reflects the "benefit-to-the-

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[758] *See CVD Preamble*, 63 FR at 65359. In promulgating this provision, Commerce 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 it otherwise would pay in the absence of the government program, *or receives more revenues than it otherwise would earn*." *Id.* (emphasis added).

[759] *See* SAA at 927.

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). 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 the utilities/power authorities charge the respondents for electricity as MTAR benchmarks, consistent with our practice.[760]

In this investigation, BC Hydro sells electricity to Catalyst, NL Hydro sells electricity to Kruger, the IESO sells electricity to Resolute, and Hydro-Québec sells electricity to Kruger and Resolute. As such, in the final determination, to determine whether the respondents received benefits under these programs, we compared the prices that utilities/power authorities charged the three respondents for electricity to the rates that they paid the respondents when they purchased electricity under the relevant agreements. Based upon this comparison, we find that the respective government authorities purchased electricity from the respondents for MTAR during the POI.

The respondents argue that the prices at which the government utilities/power authorities purchase electricity under the various contracts with them are consistent with "market principles." To the extent respondents raise new arguments, we do not find these new arguments persuasive. As a Tier-three benchmark, the respondents have proposed a number of different benchmarks which they argue would more accurately reflect those market principles. 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 the proposed 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 benchmarks do not capture this difference.

Moreover, we disagree with the respondents that the purchases of electricity are not comparable to the sales of electricity because the contracts for the sales were made some time before the POI or that, as the Government of Ontario argues, the volume supplied justifies commercially-reasonable price discrimination. First, the Government of Ontario argues that in assessing the price under a Tier-three benchmark, Commerce should consider that the volume of electricity Resolute supplies to the IESO justifies a level of price discrimination. As we have repeatedly stated both in *Lumber V* and the instant determination, in cases when an entity is both the purchaser and provider of a good, we find that the tiered analysis used for LTAR benchmarking purposes is not the most appropriate. Thus, the Government of Ontario's argument is moot. Second, the date on which the contracts were signed are irrelevant to our analysis. As a matter of fact, electricity was sold in the POI and therefore the appropriate benchmark is the price for which electricity was purchased by Catalyst, Kruger, and Resolute in the POI. Additionally, the contracts include provisions warranting adjustments to the contract prices based on inflation.

[760] *See Lumber V CVD Final Determination* IDM at Comment 51.

Certain respondent parties argue that Commerce cannot compare an "all-sources" electricity benchmark to the price of biomass-generated electricity and that, where a government has defined an energy supply-mix, the benchmark must be within the terms and conditions that would be available under market-based conditions.[761] To the extent that we may find this particular WTO finding persuasive, as a general matter, WTO findings are not self-executing under U.S. law and can only be implemented through the statutory procedure for such implementation.[762] Nevertheless, we find respondents' arguments unpersuasive because our determination to use the respondents' purchases of electricity as the benchmark rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR.[763]

Moreover, the respondents failed to provide any evidence that the provision of electricity by the government utilities/power authorities is differentiated based upon the manner in which the electricity is generated. 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. The Government of Québec itself reported that, when explaining how electricity rates are set, "there is no distinction between sources of electricity generated."[764] This statement is corroborated by the tariff schedules provided by the Government of Québec, which indicate that there is no distinction. This evidence indicates that electricity is electricity regardless of the source from which it was generated.[765] Therefore, we find no merit to the argument that a rate for electricity which might be generated from hydro-power or biomass cannot be used as a benchmark.

We further disagree with the respondents that using sales of electricity is a measure of the cost to the government, rather than the benefit to these respondents. As we explained above, the cost to the respondents is the cost at which they purchase electricity. It is therefore the most appropriate benchmark in determining the benefit to the recipient. Whether this also measures the cost to the government utility is immaterial to our analysis.

We disagree with some respondent parties that any requirement that the respondents build new or expanded facilities should be taken into consideration. As explained above, we have determined whether, and the amount, of benefit conferred to the respondents under the benefit-to-the recipient standard. This standard requires that we calculate the benefit by comparing the price at which the government purchased electricity to the price at which the government sold electricity; the reason for any government pricing difference is not part of this analysis.

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[761] *See Canada Feed-In Tariff Program* and *Canada Renewable Energy Generation Sector*.

[762] *See*, *e.g.*, SAA at 659 ("WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."); *see also Corus Staal*, 395 F.3d at 1349.

[763] *See* section 771(5)(E) of the Act.

[764] *See* GOQ November 9, 2017, IQR at GOQ-BIO-44.

[765] *See CRS from Korea* IDM at Comment 2.

Catalyst, Kruger, and Resolute purchased electricity from the government-owned utilities/power authorities at the tariff rate in effect during the POI. Those same respondents sold electricity back to the government-owned utilities/power authorities. Thus, the benefit to the respondents is the difference between these two prices. We, therefore, continue to determine that the appropriate benchmark rate to calculate the benefit they receive from the sale of electricity is the tariff rate. However, we are adjusting certain of these rates for the final determination, as discussed in Comments 39 and 46.

Comment 38: Whether Purchases of Electricity Were "Market Based"

Government of Canada and Provincial Governments' Case Brief

- Commerce should follow the WTO's Appellate Body determination in *Feed-In Tariff Program* and find the provincial utility prices paid for green power purchased from the respondents under the purchase agreements were consistent with market principles.[766]

Government of British Columbia's Case Brief

- Commerce erred in concluding that BC Hydro regulated tariff schedule rates are appropriate benchmarks in the absence of record evidence showing that they are not market-based prices. The absence of evidence does not equate to the affirmative evidence needed to support a factual finding. In this case, the regulated tariff rates are not set by market forces but instead are determined administratively.[767]

- Commerce's finding that electricity rates in British Columbia are market-based should be rejected as speculation not borne out by the record. Commerce's comparisons only show the extent to which it was more expensive for BC Hydro to purchase incremental power. [768]

Government of Newfoundland and Labrador's Case Brief

- Commerce's use of NL Hydro's regulated tariff schedule rates implicitly means that Commerce found NL Hydro's price-setting philosophy to be based on market principles. All evidence points to the fact that NL Hydro's costs, including fees paid to CBPP for electricity generation and capacity assistance, are also market-based.[769]

- The Electrical Power Control Act and the Hydro Act mandate that the rates charged by NL Hydro be reasonable and not unjustly discriminatory, and NL Hydro must develop and purchase power on an economic and efficient basis. Therefore, both the prices that NL Hydro charges for electricity and the prices that it pays to purchase electricity must be just and reasonable, as a matter of law.[770]

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[766] *See* GOG and Provincial Governments' Case Brief at 84-85 (citing *Feed-In Tariff Program*).

[767] *See* GBC's Case Brief at 23-24 (citing *Microsoft*).

[768] *Id.* at 21-33 (citing *Microsoft*, 817 F.3d at 1315).

[769] *See* GNL's Case Brief at 4-5, 34-38 (citing *CVD Preamble* 63 FR at 65378).

[770] *See* GNL's Case Brief at 36-37.

- Under NL Hydro's capacity assistance program, the prices that NL Hydro pays CBPP for each kW of electricity purchased is materially lower than both NL Hydro's own average marginal capacity costs and the comparable cost of operating gas turbines in the province. If that marginal cost is efficient and economic (*i.e.*, market-based), then the fixed capacity fee must likewise be market-based. Given these facts, Commerce must conclude that fees paid to CBPP under its capacity assistance agreements were market-based and confer no benefit.[771]

- Similarly, NL Hydro's electricity cogeneration agreement with CBPP had highly market-oriented pricing. The fact that NL Hydro's rational projections of its costs in 2000 differed from the costs it actually realized in 2016 has no bearing on whether the contract was market-based. Commerce made no finding that the NL Hydro wholesale electricity market, which includes NL Hydro's purchases from independent producers, is distorted. Therefore, under the legal framework under which NL Hydro operates and sells electricity, Commerce should find all the prices NL Hydro paid CBPP for cogenerated electricity were market based.[772]

Government of Ontario's Case Brief

- The contract between IESO and Resolute is consistent with standard pricing mechanisms and market principles.[773]

Government of Québec's and Kruger's Case Briefs

- The PPA prices were set through competitive bidding and are market-based, and Commerce found no evidence to the contrary. Therefore, Commerce should determine that the competitively-bid prices received by the respondents reflect prevailing market conditions and, therefore, do not confer a benefit [774]

Resolute's Case Brief

- Commerce should take into account the fact that the price Resolute is paid for biomass power results from an open, competitive bid process and the price of energy that Resolute buys fluctuates based on supply and demand.[775]

Commerce's Position:

We disagree that the sale of electricity from government-owned utilities/power authorities is inappropriate as a benchmark. While Commerce stated in our *Preliminary Determination* and Post-Preliminary Analysis that there is no evidence on the record to suggest electricity prices

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[771] *Id.* at 37-38.

[772] *Id.* at 41-43.

[773] *See* GOO's Case Brief at 79-86.

[774] *See* GOQ's Case Brief at 49-50 and Kruger's Case Brief at 99, 103, and 106.

[775] *See* Resolute's Case Brief at 49-56.

paid by consumers are not market-based, that statement is immaterial to our use of those rates as benchmarks to determine whether sales of electricity by the respondents are for MTAR. As the SAA explains, 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.[776] Under that provision, a benefit is normally treated as conferred where there is a benefit to the recipient.[777] In this investigation, the respondents are not merely selling electricity to government utilities/authorities; they are also purchasing electricity from these same entities. 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 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.[778] Because of this, the Government of British Columbia's reliance on *Microsoft* is misplaced.

We find the Government of Newfoundland and Labrador's argument that it could not have paid MTAR for electricity purchases from Kruger because it was required to only charge "fair and reasonable" prices for electricity unpersuasive. Commerce agrees that the record contains no information that would indicate the NL Hydro's sales of electricity are not market-based (*i.e.*, fair and reasonable), but that does not preclude NL Hydro from buying cogenerated electricity from some sources for MTAR. As we explained in Comment 37, we evaluate benefit using the benefit-to-the-recipient standard, and under that standard, we find that the governments' purchases of electricity during the POI were for MTAR.

We similarly find the Government of Ontario's, Government of Québec's, Resolute's, and Kruger's arguments to this effect unpersuasive.

With respect to NL Hydro's Capacity Assistance agreement with CBPP, we also disagree that the agreement itself constitutes evidence of market-based pricing, such that it would impact our benefit determination. In the *Preliminary Determination*, we treated NL Hydro's payments to CBPP under this agreement as a grant, and we continue to find it appropriate to treat the fixed portion as a grant in the final determination. Therefore, the mere presence of an agreement and assertions that it constitutes market-based pricing are irrelevant.[779] After considering the arguments on the variable portion, however, we now find that it is more appropriate to evaluate these payments under an MTAR framework. For further discussion, *see* Comment 37. Thus, the argument that the agreement is market-based and therefore provides no benefit is equally irrelevant to the variable portion because Commerce will calculate the benefit to the recipient in accordance with other electricity for MTAR programs, whereby we calculate the difference between the amount the government bought the good in question versus the price it sold that same good.

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[776] *See* SAA at 927.

[777] *See* section 771(5)(E) of the Act.

[778] *Id.*

[779] *See* 19 CFR 351.504(a) ("In the case of a grant, a benefit exists in the amount of the grant.").

Comment 39: Whether Commerce Should Use a Different Benchmark for Purchases of Electricity from the IESO

Government of Ontario's Case Brief

- The petitioner's prior claim that Commerce should use the HOEP as a benchmark reflects a fundamental misunderstanding of that rate. The HOEP is not the price at which any consumer purchases electricity, but rather only one component of the total purchase price of electricity charged by the IESO. In particular, the HOEP is an index representing only the marginal cost of electricity generation, whereas the IESO's electricity bills contain seven other charges, including two charges related to delivery.[780]

- Because the HOEP does not represent actual transaction charges, it does not meet the basic requirements of a Tier-one benchmark, and Commerce may not use it as such.[781]

Resolute's Case Brief

- The pricing models for the energy that Resolute buys and the energy it generates are different, and, as a result, the prices are not comparable. The CHP contract was designed to recognize this difference.[782]

- The IESO adds a charge to the HOEP to cover infrastructure and operating costs, called the "Global Adjustment" charge. If Commerce continues to use the IESO's energy consumption prices as its MTAR benchmark, it should include the appropriate Global Adjustment rate included in Resolute's Thunder Bay generation contract.[783]

Commerce's Position:

Because Commerce has determined the standard for evaluating sales of electricity for MTAR is the benefit-to-the-recipient standard, it is not necessary for us to determine the appropriate benchmark using an LTAR "tiered" approach. As discussed in Comment 37, we find the most appropriate benchmark for sales of electricity for MTAR to be the price at which the government-owned utilities/power authorities sell electricity to Resolute. Therefore, we agree with the respondents that Commerce should continue to use the rate at which Resolute purchased electricity from IESO as the benchmark under our benefit-to-the-recipient standard.

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[780] *See* GOO's Case Brief at 80-81.

[781] *Id.* at 81.

[782] *See* Resolute's Case Brief at 55.

[783] *Id.* at 55-56.

Comment 40: Whether Commerce Used the Wrong Benchmark for Countervailing Hydro-Québec's Purchases of Electricity from KEBLP

Kruger's Case Brief

- KEBLP does not buy electricity from Hydro-Québec. As a result, Commerce's comparison of its sale of electricity to Hydro-Québec with a separate company's purchase of electricity is arbitrary and irrational.[784]

Commerce's Position:

We disagree. We used the electricity rate charged to one of Kruger's cross-owned affiliates as the benchmark in our MTAR analysis.[785] Kruger did not suggest an alternative benchmark for purchases of electricity by Kruger, but rather argued that Commerce cannot find KEBLP's electricity sales countervailable. In the absence of better data, we find our benchmark selection appropriate. For further discussion of the countervailability of KEBLP's electricity sales, *see* Kruger Final Calculation Memorandum.[786]

Comment 41: Whether the Provincial Utility Purchases of Electricity Are Tied to Sales of Non-Subject Merchandise

Governments of British Columbia's and Québec's Case Briefs

- Sale of energy from Catalyst to BC Hydro cannot be attributed to the production or sale of UGW paper or the production of an input for UGW paper, under 19 CFR 351.525(b)(5)(i) and (ii). Commerce applies its attribution regulation "based on the information available at the time of the bestowal," and finds a subsidy tied "when the intended use is known to the subsidy provider … and so acknowledged prior to, or concurrent with, the bestowal of the subsidy."[787]

- It would be impossible for Catalyst to sell electricity to BC Hydro and use that same electricity as an input into subject merchandise. Therefore, the exception for subsidies tied to the production of an input product does not apply.

- When a company sells electricity to the government, those sales are, by definition, tied to the "sale of a particular product" (*i.e.*, electricity) and, therefore, Commerce should conclude the sales were not tied to the production of subject merchandise.

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[784] *See* Kruger's Case Brief at 98-103.

[785] *Id.* at 98-103.

[786] Kruger claimed BPI treatment for the name of the cross-owned affiliate, and we accepted the claim in this segment of the proceeding; however, if a CVD order is issued in this proceeding, we intend to evaluate any similar claim closely in any subsequent administrative review in which Kruger participates. For an identity of this affiliate, as well as the factors that went into Commerce's selection of its electricity prices as the appropriate benchmark, *see* Kruger Final Calc Memorandum.

[787] *See* GBC's Case Brief at 14-16 (citing *Lumber V CVD Final Determination*).

Government of Newfoundland and Labrador's Case Brief

- The Government of Newfoundland and Labrador makes the same arguments as the Government of British Columbia, as well as the following additional argument: the agreements between NL Hydro and Kruger clearly provide that CBPP is paid to provide access to generation capacity and to deliver electricity to NL Hydro. Thus, the payments for cogeneration and capacity assistance tie only to electricity and, thus, must only be attributed to electricity, which is not the product under consideration.[788]

Government of Québec's Case Brief

- The Government of Québec makes the same arguments as the Government of British Columbia.[789]

Kruger's Case Brief

- Kruger makes the following additional argument: Kruger's energy sales agreements do not provide for any payments tied to the production of electricity, only the sales of electricity.[790]

Resolute's Case Brief

- Resolute makes the following additional arguments: 1) where Commerce determines that electricity is being sold for MTAR, the alleged subsidy must be attributed to the purchase of that good; thus, any overpayment for electricity would have to be tied to the production of electricity sold because the overpayment would have been intended at the time of bestowal for the production of electricity; and 2) the IESO contracts for the purchase of electricity, not the purchase of subject merchandise, so the perceived subsidy on electricity must be allocated entirely to electricity.[791]

Commerce's Position:

We disagree that, because Catalyst, Kruger, and Resolute sell electricity to provincial government authorities, Commerce cannot investigate any subsidies related to the sale of electricity. If as the respondent parties argue, 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, Commerce 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;*[792] *Cold-Rolled Carbon Steel Flat-Rolled Products from Korea;*[793] *Certain Textile*

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[788] *See* GNL's Case Brief at 28-30.

[789] *See* GOQ's Case Brief at 46-47.

[790] *See* Kruger's Case Brief at 93-94.

[791] *See* Resolute's Case Brief at 48-49 (citing *Borusan*).

[792] *See Fresh Cut Flowers from Mexico*, 49 FR at 15009.

[793] *See Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 FR at 47292.

Mill Products and Apparel from Singapore;[794] *Carbon Steel Wire Rod from Saudi Arabia;*[795] *Steel Wire Nails from New Zealand;*[796] *Ball Bearings from Thailand;*[797] *Magnesium from Canada;*[798] *Extruded Rubber Thread from Malaysia;*[799] *Certain Steel Products from Korea;*[800] *Oil Country Tubular Goods from Argentina;*[801] *Steel Wire Rod from Trinidad and Tobago;*[802] *Steel Wire Rod from Venezuela;*[803] *Cut-to-Length Carbon-Quality Steel Plate from Indonesia;*[804] *Low Enriched Uranium from France;*[805] *Hot-Rolled Steel from Thailand;*[806] *Kitchen Racks from China;*[807] *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman;*[808] *Shrimp from Ecuador;*[809] *Melamine from Trinidad and Tobago;*[810] *Welded Line Pipe from the Republic of Korea;*[811] *Chlorinated Isocyanurates from the People's Republic of China*;[812] and *Cut-To-Length Plate from Korea*.[813]

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[794] *See Certain Textile Mill Products and Apparel from Singapore*, 50 FR at 9842.

[795] *See Carbon Steel Wire Rod from Saudi Arabia*, 51 FR at 4211.

[796] *See Steel Wire Nails from New Zealand*, 52 FR at 37198.

[797] *See Ball Bearings from Thailand*, 54 FR at 19133.

[798] *See Magnesium from Canada*, 57 FR at 30949.

[799] *See Extruded Rubber Thread from Malaysia*, 57 FR at 38474.

[800] *See Certain Steel Products from Korea*, 58 FR at 37350.

[801] *See OCTG from Argentina*, 62 FR at 32309.

[802] *See Steel Wire Rod from Trinidad and Tobago*, 62 FR at 55006.

[803] *See Steel Wire Rod from Venezuela*, 62 FR at 55021.

[804] *See Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR at 73162.

[805] *See Low Enriched Uranium from France* IDM at "Purchase at Prices that Constitutes 'More Than Adequate Remuneration'" which refers to the electricity company EDF, wholly-owned subsidiary of the Government of France.

[806] *See Hot-Rolled Steel from Thailand* IDM at "Provision of Electricity for Less than Adequate Remuneration."

[807] *See Kitchen Racks from China* IDM at "Government Provisions of Electricity for Less than Adequate Remuneration."

[808] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman* IDM at "Provision of Electricity for LTAR."

[809] *See Shrimp from Ecuador* IDM at Comment 3.

[810] *See Melamine from Trinidad and Tobago Final* IDM at "Provision of Electricity for LTAR."

[811] *See Welded Line Pipe from the Republic of Korea* IDM at "Korea Electric Power Corporation (KEPCO's) Provision of Electricity for LTAR."

[812] *See Chlorinated Isocyanurates from the People's Republic of China* IDM at "Electricity for LTAR."

[813] *See Cut-To-Length Plate from Korea* IDM at "Provision of Electricity for LTAR."

As explained in the *Lumber V CVD Final Determination*, Commerce has consistently attributed the benefits from electricity subsidies to all products.[814] Furthermore, the attribution of MTAR benefits over sales of all products consistent with precedent.[815]

Moreover, section 701(a) of the Act requires Commerce to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of the subject merchandise. Electricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the UGW paper producer. Under the CVD regulations, if subsidies allegedly tied to a particular product are, in fact, provided to the overall operations of a company, Commerce will attribute the subsidy to sales of all products produced by the company.[816] Because electricity is required to operate the production facilities of Catalyst, Kruger, and Resolute, the benefit from the investigated program is attributed to all products produced by Catalyst, Kruger, and Resolute under 19 CFR 351.525(a).

Section 771(5)(D) 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 we interpreted the attribution rules as suggested by respondent parties, Commerce would effectively negate the language of the statute with respect to the provision of a good.[817]

Comment 42: Whether Commerce Should Countervail BC Hydro's EPAs

Catalyst's Case Brief

- Commerce's finding that BC Hydro's EPA with Catalyst confers a countervailable subsidy is inconsistent with its determinations in *SC Paper Expedited Review* to neither investigate Catalyst's sales of electricity for MTAR under the identical program nor countervail BC Hydro's EPA as "other assistance." Given that the program is identical, Commerce should again find that BC Hydro's EPA with Catalyst provides no countervailable subsidy.[818]

- A different conclusion would be arbitrary and capricious because agencies have a responsibility to administer their statutorily accorded powers fairly and rationally, which includes not treating similar situations in dissimilar ways.[819]

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[814] *See Lumber V CVD Final Determination* IDM at 161.

[815] *Id.*

[816] *See CVD Preamble*, 63 FR at 65400.

[817] *See Lumber V CVD Final Determination* IDM at 161-162.

[818] *See* Catalyst's Case Brief at 104.

[819] *Id.* at 104-105 (citing *Anderson*, 462 F. Supp. 2d at 1339).

Commerce's Position:

We disagree with Catalyst. Commerce examined BC Hydro's EPA program in the *Lumber V CVD Final Determination*, which was issued after the *SC Paper Expedited Review*, and found it countervailable for respondents in that case.[820] Consistent with that determination, we continue to find that it is appropriate to investigate the same program here with respect to Catalyst.

Comment 43: Whether Commerce Used the Wrong Benchmark for Countervailing BC Hydro's Purchases of Electricity

Catalyst's Case Brief

- The record shows that electricity is priced differently depending on the generation method and that BC Hydro itself charges different rates for the transmission of electricity corresponding with the method used to produce that electricity. Therefore, the appropriate alternative benchmark for this program is BC Hydro's RS1880 rate because this rate: 1) is a higher rate charged to customers that have their own generating facilities when those generating facilities are taken offline (*e.g.*, for repairs); and 2) is the only rate that approaches a price for the type of biomass electricity that Catalyst sold to BC Hydro under its EPA.[821]

Commerce's Position:

Catalyst purchases electricity for its pulp and paper mills at the RS1823, RS1880, and RS1892 rates.[822] We disagree with Catalyst that we should use only the highest of these rates, the RS1880 rate, as the benchmark for its purchases of electricity.

Catalyst produces electricity at its pulp and paper mills and sells it to BC Hydro at prices established by Catalyst's EPA with BC Hydro.[823] To best capture the difference between the price at which the government *sold* electricity (*i.e.*, the RS1823, RS1880, and RS1892 rates) and the price at which it *purchased* electricity (*i.e.*, the EPA contract price), we have weight-averaged the industrial rates charged by BC Hydro, by month; the benefit to Catalyst is the difference between those prices. To use only the highest industrial rate, as proposed by Catalyst, would not capture the "benefit-to-the-recipient," per the standard set forth under section 771(5)(E) of the Act, which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice."[824] For further discussion of the benefit-to-the-recipient standard as it relates to Catalyst's EPAs, *see* Comment 37.

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[820] *See Lumber V CVD Final Determination* IDM at 18.

[821] *See* Catalyst's Case Brief at 109-110, 114-115.

[822] *See* Catalyst December 12, 2017 SQR at 11-13 and Exhibit EPA-23.

[823] *See* Catalyst November 9, 2017 IQR at Appendix IV.C.9.

[824] *See* SAA at 927.

Comment 44: The Appropriate Benefit Calculation for BC Hydro EPAs

Catalyst's Case Brief:

- Commerce erred in the preliminary determination by calculating the benefit for Catalyst's EPA based on the number of payments Catalyst received from BC Hydro during the POI. This methodology improperly overstated the benefit to Catalyst.[825]

- Commerce applied the general "benefit-to-the-recipient" standard for calculating the benefit Catalyst received from this alleged program. Under this standard, the appropriate method for calculating the benefit is to aggregate the benefit from a representative 12-month period corresponding with the POI, rather than from the dates Catalyst received the payments during the POI.[826]

- To correct this error, Commerce should calculate the benefit by summing the monthly benefits based on either the month of sale, or the date of invoice, to aggregate the benefit based on a 12-month period.[827]

Commerce's Position:

We disagree with Catalyst that Commerce should calculate benefit using a "representative" 12-month period. Under 19 CFR 351.524(a), Commerce allocates a benefit "to the year in which the benefit is received." Therefore, Commerce will allocate any payment received by Catalyst under this program to the year in which that payment was actually received. During the POI, Catalyst reported all payments received under the EPA.[828] Accordingly, we summed these payments to calculate the benefit during the POI. Had Catalyst received fewer payments during the POI, we would have relied on the sum of those payments to calculate this benefit. Through this methodology, we capture the benefit actually conveyed to Catalyst during the relevant POI, rather than a hypothetical benefit based on a "representative" 12-month period.

Comment 45: Whether BC Hydro's EPAs are *De Facto* Specific

Government of British Columbia's Case Brief

- The BC Hydro EPAs are not *de facto* specific, because there is a broad and varied level of participation in the EPA program which includes various industries and power sources. Further, Commerce's preliminary analysis does not reveal the standard used to determine that

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[825] *See* Catalyst's Case Brief at 115-117 (citing PDM at 78). Catalyst requested proprietary treatment for the number of payments Catalyst received during 2016.

[826] *Id.* at 116-117 (citing 19 CFR 351.503(b) and *Lumber V CVD Final Determination* IDM at Comment 51).

[827] *Id.* at 117 (citing Catalyst Prelim Calc Memo at Attachment 7a, and Catalyst Verification Report at Exhibit VE-15).

[828] *See* Catalyst December 12, 2017 SQR at Exhibit EPA-23

135 EPAs is a sufficiently small number, or how the length of time has contributed to "widespread use" of EPAs, for *de facto* specificity purposes.[829]

Commerce's Position:

In the *Preliminary Determination*, we found that BC Hydro had only 135 active EPAs with independent power producers.[830] As a result, we found that the subsidy recipients were limited in number, and, therefore, the subsidy was *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.[831]

The Government of British Columbia asserts that the 135 EPAs are spread among a diverse base of power generation resources, and thus there was no predominant user of the EPAs. We disagree that the diversity or variety of users is relevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act.[832] Rather, the statute states that a "subsidy may be specific as a matter of fact" where "{t}he *actual recipients* of the subsidy, whether considered on an enterprise or industry basis, are limited in number" (emphasis added).[833] The fact that there is a diversity of power providers, other than just pulp and paper mills, does not negate the fact that there are only 135 actual recipients with EPAs under this program.[834] Further, predominant use is addressed by section 771(5A)(D)(iii)(II) of the Act, and is not the basis upon which Commerce reached its specificity determination with respect to this program.

The Government of British Columbia also questions the standard that Commerce uses to determine if a subsidy is *de facto* limited in number under 771(5A)(D)(iii)(I) of the Act. 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."[835] The SAA further states that the test was "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 CVD law."[836] BC Hydro itself has 1.96 million customers, but it has EPAs with only 135 providers.[837] Catalyst is both a customer of BC Hydro, and a provider of electricity to BC Hydro under an EPA. Within this frame of reference, we determine that the EPA program, which is limited to only 135 power providers in British

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[829] *See* GBC's Case Brief at 18-21.

[830] *See* PDM at 78.

[831] *See Preliminary Determination* PDM at 77-78.

[832] *See*, *e.g.*, *Lumber V CVD Final Determination* IDM at Comment 50.

[833] *See* section 771(5A)(D)(iii)(I) of the Act.

[834] *See* GBC November 9, 2017 IQR at BC Volume II, 32-33.

[835] *See* SAA at 929.

[836] *Id.*

[837] *See* GBC November 9, 2017 IQR at BC Volume II, 29.

Columbia, is specific under section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy are limited in number.

We also disagree that the length of time the program was in operation implies that the program is not *de facto* specific. The SAA contemplates that it would be unreasonable for Commerce to conclude that new or recently-introduced subsidy programs will spread throughout the economy in question instantaneously.[838] However, in this instance, as the Government of British Columbia admits, EPAs have existed in some form in the province since the mid-1980s[839] and yet there are only 135 providers. Given there has been ample time for the program to spread through the economy, and the SAA's statement that these "additional criteria serve to inform the application of, rather than supersede or substitute for, the enumerated specificity factors,"[840] we continue to find that the program is specific under section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy are limited in number.

Comment 46: Whether Commerce Should Include all Elements of Kruger's Electric Service Rates in its Benchmark

Kruger's Case Brief

- In computing the monthly price for which KPPI purchased electricity from Hydro- Québec, Commerce neglected to include all components of the rate KPPI paid, including demand and other charges.[841]

- Commerce should re-compute Kruger's purchased electricity benchmark by including the fixed demand charge paid by KPPI, which Kruger reported as a "power premium" charge, in the numerator each month, less amounts Kruger received for a supply credit and an adjustment for transformation losses.[842]

Commerce's Position: We agree with Kruger and have adjusted the calculation of the benchmark accordingly.

Comment 47: Whether Hydro-Québec's Purchase of Electricity for MTAR was Specific

Government of Québec's Case Brief

- Although the record shows that Hydro-Québec had signed 75 PPAs covering various renewable-energy sources of power, Commerce improperly focused only on 18 executed PPAs with 16 producers. Further, companies other than those involved in UGW paper industry regularly enter into contracts with Hydro-Québec for the purchase of electricity.

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[838] *See* SAA at 931-932.

[839] *See* GOO's Case Brief at 20-21.

[840] *See* SAA at 931-932.

[841] Kruger's Case Brief at 106-107.

[842] *Id.* at 107.

- When viewing the recipients of PPAs as a whole, the Act's specificity requirements are not met. Therefore, Commerce's preliminary determination that the program is *de facto* specific is unsupported by substantial evidence and not in accordance with the law.[843]

Resolute's Case Brief

- Resolute makes the same arguments, as well as the following additional arguments: 1) Hydro-Québec does not target any industry when developing renewable sources of energy, and forestry biomass congregation represents less than six percent of the renewably-sourced power; and 2) Commerce's preliminary specificity finding is impermissibly inconsistent with its benefit analysis.[844]

Petitioner's Rebuttal Brief

- Commerce verified that in the POI there were 18 executed agreements related to energy generated from forestry biomass, signed with 16 producers in the forestry industry. However, there were actually 15 active PPAs, including agreements with Fibrek, KEBLP, and Resolute.[845]

- The respondents misunderstand the premise of *de facto* specificity analysis. While the agreements were theoretically available to wide range of industries, they were in fact used by a limited number of enterprises, industries, or groups, which supports Commerce's analysis.

Commerce's Position:

Section 771(5A)(D)(iii) of the Act directs Commerce to determine whether a subsidy is *de facto* specific by examining the enterprises or industries which received assistance under the program being investigated. The Government of Québec provided the number of producers that had PPAs in each year from 2013 through 2016;[846] these data indicate that, for each year, the number of producers participating in the program was limited, with just 14 producers participating in 2013, 17 producers in 2014, 21 producers in 2015, and 19 active producers in 2016.[847] For 2016, 15 of the 19 firms were forestry biomass producers. 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 the actual recipients of the subsidy are limited in number.

We disagree that the focus of our specificity analysis should be the diversity of Hydro-Québec's sources of electricity (*e.g.*, wind power, hydro-electricity, etc.). The program under investigation here involves the Call for Tenders A/O 2003-01, Call for Tenders A/O 2009-01, and the PAE

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[843] *See* GOQ's Case Brief at 57-58.

[844] *See* Resolute's Case Brief at 56-59 (citing *Motor Vehicle Mfrs.* (stating that an agency must examine relevant information and make rational connections between the facts and the decision)).

[845] *See* Petitioner's Rebuttal Brief at 44.

[846] *See* GOQ December 22, 2017 SQR at GQ-SUPP-10.

[847] *Id*. and GOQ Verification Report at 7.

2011-01 contracts, the three calls under which Kruger and Resolute had their generation contracts. However, even if we were to look at all long-term non-heritage supply contracts, we would still find the program to be *de facto* specific, as there are only 75 signed generation contracts for a multitude of Call for Tenders in the entire province.

We disagree with Resolute's argument that our determinations regarding specificity and benefit are inconsistent. Here, we are investigating whether the particular program (*i.e.,* the Calls for Tender) is specific and as we have explained in Comment 37, our practice is to use the benefit-to-the-recipient standard in determining the benefit for sales of electricity for MTAR programs. Our finding that there exist only a limited number of actual recipients of this program in no way calls into question the finding that Resolute benefitted from the program under the benefit-to-the-recipient standard.

Comment 48: Whether the IESO Purchases Electricity

Government of Ontario's Case Brief

- The Government of Ontario does not operate a program to purchase electricity for MTAR from Resolute. Rather, it has a commercial agreement (known as a "CHP") with Resolute to procure electricity generation resources from its Thunder Bay Condensing Turbine; under this agreement, the IESO operates as a settlement agent which connects buyers and sellers of electricity in the Ontario electricity market. Thus, there is no legal basis for countervailing this agreement.[848]

- When faced with similar facts, Commerce has found that the respondent did not sell electricity to the government and consequently could not have received a benefit from the price paid for electricity.[849]

- Like in *Rebar from Turkey*, the IESO performs functions similar to the Market Operator in Turkey, including: 1) operating the power system in real time; 2) overseeing Ontario's electricity market; and 3) managing consumption data for residential and small business smart meters.[850]

- Commerce verified that the IESO does not purchase electricity.[851]

[848] *See* GOO's Case Brief at 75-76.

[849] *Id.* at 76-77 (citing *Rebar from Turkey Prelim* PDM at 17, unchanged in *Rebar from Turkey*).

[850] *Id.* at 77.

[851] *Id.* at 76-77 (citing GOO Verification Report at 17).

Petitioner's Rebuttal Brief

- Commerce correctly found the IESO to be a governmental authority and even if the IESO serves as a "settlement agent," it is directly involved in the program, administers the electricity market and infrastructure in Ontario, and is responsible for settling payments.[852]

- In *CTL Plate from Korea Final*, Commerce rejected the notion that an intermediate role of a participant expunged a countervailable subsidy.[853]

Commerce's Position:

Resolute reported that its Thunder Bay pulp and paper mill sold biomass-cogenerated electricity to the Ontario power grid through an open bid procurement process, conducted by the Ontario Power Authority, now the IESO, and that process was only available to producers of biomass.[854] Likewise, Resolute reported that the same Thunder Bay pulp and paper mill purchased electricity from the Ontario power grid through the IESO. Consistent with the *Preliminary Determination*, we continue to find that the IESO is an independent not-for-profit statutory corporation established and authorized under Ontario law to administer the Ontario electricity market. Therefore, we find that the IESO is an "authority" within the meaning of section 771(5)(B) of the Act.

We disagree with the Government of Ontario that the IESO operated solely as a settlement agent and that, as a result, the IESO did not purchase electricity from Resolute. While IESO officials discussed IESO's role at verification,[855] to the contrary, evidence on the record demonstrates that the IESO signed contracts with Resolute for the supply of electricity to the Ontario grid.[856] Further, the prices in these contracts were not determined by electricity "market participants," but rather were based on a formula agreed upon between the IESO and Resolute, as discussed below.

At the verification of Resolute, we discussed Resolute's sale of electricity to the IESO. Our verification report states:

> We discussed with company officials Resolute's sale of electricity to the Government of Ontario. Company officials stated that Resolute made these sales under the IESO's Combined Heat and Power III (CHP III) program, which was put in place to supply the Ontario electricity grid with power generated from renewable energy sources. According to company officials, the IESO established

[852] *See* Petitioner's Rebuttal Brief at 34-35.

[853] *Id.* at 35-36 (citing *CTL Plate from Korea* IDM at 21).

[854] *See* Resolute November 10, 2017 IQR at 89-90; and Resolute December 1, 2017 NSA QR at 21.

[855] *See* GOO's Verification Report at 17.

[856] *See* Resolute December 1, 2017 NSA QR at Exhibits RES-IESO-3 and RES-IESO-4.

> the CHP III program to fulfill a provincial policy directive to reduce carbon emissions by phasing out electricity generated from coal.
>
> Company officials stated that the IESO accepted CHP III bids based on an auction system, and it accepted the lowest-cost offers. Further, company officials stated that there was no "clearing price" established by the IESO on which to evaluate bid prices; rather, each applicant proposed its own contract price which, if approved, is in effect only for that applicant.[857]

We then discussed with Resolute officials the mechanism by which Resolute established the accepted contract price:

> Company officials stated that Resolute submitted an application to provide biomass-generated power on behalf of the Thunder Bay pulp and paper mill under this program, at an initial price of C$[ ] per MWh. According to company officials, Resolute set its bid price by reference to its costs (including the variable and fixed costs required to generate biomass-based power), various risk factors, and the overall market dynamics. With respect to the latter factor, company officials stated that, during the application process, Resolute took into account publicly-available tariff rates, such as the "feed-in" tariff rate in place in Ontario which paid an eligible biomass-based power producer a guaranteed amount of C$[ ] MWh. Company officials stated that the IESO ultimately accepted Resolute's bid, and the resulting PPA became effective in March 2011, with a term of ten years.
>
> According to company officials, Resolute's PPA provides that the initial contract price will be adjusted monthly to account for changes in two indexes (*i.e.*, transportation and consumer price inflation, which represent 10 and 20 percent of the contract price, respectively). Company officials stated Resolute receives payment for the monthly production sent to the grid, capped at the contract specifications. Company officials stated that the IESO meters its electricity purchases onsite and sends statements documenting its purchases to Resolute; as payment, Resolute receives credits from the IESO and records them as separate entries into its books and records.[858]

As can be seen from this description, Resolute submitted a bid to sell electricity to the Ontario grid at a bid price set relative to its *own* costs. The IESO accepted the bid and paid Resolute for the electricity supplied each month at the price in the contract between the IESO and Resolute.

We disagree that the circumstances in this case are similar to those in *Rebar from Turkey*. Unlike in this case, in *Rebar from Turkey*, the electricity price was not set by contract between the settlement agent and the generator:

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[857] *See* Resolute Verification Report at 33 (emphasis added).

[858] *Id.* at 33-34 (Public Version, footnotes omitted and emphasis added).

> The GOT and Habas reported that power producers and suppliers sell electricity to unidentified third parties through the EXIST marketplace's day-ahead market, intra-day market, and balancing power market, with the Market Operator handling the financial settlement (*e.g.*, managing of payments, invoicing, etc.) of all transactions. . . The EXIST marketplace operates the Market Management System (MMS), an online software system used by market participants (*i.e.*, sellers and buyers) to place offers and bids for the quantity of electricity they wish to sell or buy on an hourly basis in all three markets. The MMS generates hourly "equilibrium" (*i.e.*, market) prices, which are applicable to all purchases/sales made within that hour, based on competitive bidding among the parties. The GOT reported that there are no floor or ceiling prices on the EXIST marketplace. At the end of each month, the Market Operator issues a settlement notice to each market participant, which indicates the total amount of electricity that each seller should invoice and the total payment due from each buyer.[859]

Unlike here, the settlement agent in *Rebar from Turkey* merely issued invoices based on the already agreed upon price between market participants.[860] Based on the foregoing, we continue to find that the IESO purchased electricity during the POI, and the IESO is providing a financial contribution to Resolute in the form of a purchase of goods under section 771(5)(D)(iv) of the Act by virtue of IESO's purchase of electricity.

Comment 49: Whether the IESO's Purchase of Electricity for MTAR is Specific

Government of Ontario's Case Brief

- Record evidence demonstrates that the IESO CHP agreements are neither *de jure* nor *de facto* specific.[861]

- The program was not *de jure* specific because the CHP III RFP was open to all parties interested in developing new biomass CHP generation capacity in the Ontario electric market, provided they met other eligibly requirements related to ensuring a reliable supply of electricity set forth in the RFP. Eligibility was not limited to a particular industry and administration of the procurement process was subjected to a review to ensure it was conducted in a fair and impartial manner.[862]

- The program was not *de facto* specific because the IESO was party to 27 contracts for procurement of CHP during the POI, for a total of 589.2 mW of capacity. These contracts target greenhouse operations, agri-food and district energy, as the IESO has conducted

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[859] *See Rebar from Turkey Prelim* PDM at 18 (emphasis added).

[860] *Id.*

[861] *See* GOO's Case Brief at 77.

[862] *Id.* at 78.

procurement for CHP projects presenting a wide range of technologies, applications, industries, and geographic locations.[863]

Resolute's Case Brief

- Resolute's electricity sales to the IESO are not specific because Resolute is one of the IESO's 16 CHP contracts. In its Post-Preliminary Analysis, Commerce concluded that CHP contracts are specific. Then, Commerce determined the benefit for Resolute's CHP contract by measuring it against a benchmark of electricity prices based on a wide range of sources of electricity. If Commerce were finding specificity by restricting itself to a small number of forest biomass cogeneration producers, to be consistent it would have to measure the benefit of CHP contracts against a benchmark similarly restricted to forest biomass cogeneration.[864]

Commerce's Position:

In our Post-Preliminary Analysis, we preliminarily determined that contracts for the sale of electricity to the IESO are *de facto* specific within the meaning of section 775(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy are limited in number. After consideration of the respondent parties' arguments, we are not persuaded to change our specificity determination for this final determination. The fact that multiple industries were eligible and participated in this program during the POI does not negate the fact that the actual recipients of the subsidy are limited in number. As verified at the Government of Ontario, only three companies, including Resolute, received contracts to supply electricity under the CHP III RFP for this program, and only 13 more had agreements in place from RFPs issued in prior years.[865] Therefore, we continue to find the IESO's purchase of electricity 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.

We disagree with Resolute's argument that our determinations regarding specificity and benefit are inconsistent. As we have explained in Comment 37, our practice is to use the benefit-to-the-recipient standard in determining the benefit for sales of electricity for MTAR programs. Our finding that there exist only a limited number of actual recipients of this program in no way calls into question the finding that Resolute benefitted from the program under the benefit-to-the-recipient standard.

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[863] *Id.*

[864] *See* Resolute's Case Brief at 56-59.

[865] *See* GOO Verification Report at 17. We note that the Government of Ontario and Resolute provided different numbers as to the number of CHP contracts, 27 and 16, respectively. However, as we determined at verification, there were only 13 CHP III contracts in place during the POI and that is the number we used when determining whether this program was specific. As we said in Comment 48, we look at the participants in the program under investigation, in this case CHP III contracts. However, even if we looked at the 27 total CHP contracts, we would still find the program to be *de facto* specific, as there are only 27 CHP contracts in the entire province.

Comment 50: Whether Commerce Should Countervail Tariff 29 and/or Use it as a Benchmark

Petitioner's Case Brief

- Commerce discovered at verification that Resolute's Gatineau mill paid an additional "pricing component" when it purchased electricity. Commerce should investigate Resolute's purchases under this program as purchases for LTAR.[866]

- Commerce has previously established that Hydro-Québec is an authority and found that the provision of electricity for LTAR constitutes a financial contribution within the meaning of section 771(5)(D)(iv) of the Act. Further, the Tariff 29 electricity rate is specific under section 771(A)(D)(iii)(I) of the Act because it is limited to Resolute. Finally, a benefit exists within the meaning of section 771(5)(E)(iv) of the Act, as can be seen from information taken at verification.[867]

- Alternatively, Commerce should either use the Tariff 29 information alone, or average it with Hydro-Québec's Special L rate, when determining the benchmark for the Government of Québec's purchase of electricity for MTAR. The Government of Québec mistakenly informed Commerce in its second NSA response that Commerce had found Tariff 29 not to be a countervailable subsidy; however, there is no support for this statement in either this case or the recent CVD investigation involving softwood lumber from Canada.[868]

Resolute's Case and Rebuttal Briefs

- The Agreement governing Tariff 29 confers no countervailable benefit to Resolute because it is the result of an arm's-length transaction between two private entities, Gatineau Power Company and the CIP. Under the Act, a private party does not confer countervailable benefits on another private party.[869]

- Commerce examined Resolute's contractual agreements for this electricity rate during the verification in the CVD investigation on softwood lumber and neither the petitioner nor Commerce suggested that Tariff 29 was a subsidy.[870]

Commerce's Position:

The petitioner raises for the first time in its case brief that Commerce should countervail certain "pricing components" related to "Tariff 29" for Resolute's Gatineau mill. We requested no information on this rate during the course of the investigation, and the only information available

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[866] *See* Petitioner's Case Brief at 48-49.

[867] *Id.* at 49-50.

[868] *Id.* at 50-51 (citing GOQ January 29, 2018 NSA Response).

[869] *See* Resolute's Rebuttal Brief at 3-4 (citing section 771(5)(B)(iii) of the Act).

[870] *Id.* at 4.

with respect to it is contained in verification reports. Therefore, we disagree with the petitioner that we should attempt to investigate whether this rate is countervailable at this time.

Furthermore, because we lack the necessary record evidence, at this time we cannot opine on whether the petitioner's request that we use the Tariff 29 rate as a benchmark to determine whether the Government of Québec purchased electricity for MTAR is appropriate.

Comment 51: Whether the Government of Canada's Provision of C$130 Million for Resolute's Expropriated Assets Provides a Benefit

Petitioner's Case Brief

- Commerce made a fundamental error in analyzing this program under the MTAR provision in section 771(5)(E)(iv) of the Act, instead of analyzing it as a direct transfer of funds and a grant, under section 771(5)(D)(i) of the Act and 19 CFR 351.504, respectively. Commerce should correct this error in the final determination.[871]

- The fact that the payment resulted from a settlement under NAFTA has no import under CVD law.[872]

- The settlement was paid to Resolute, a company claiming to be "entirely new" after emerging from bankruptcy, who had nothing expropriated. If Resolute is indeed a new company, it was paid C$130 million for assets that were not its own, making the payment a subsidy.[873]

- The MTAR standard implicitly requires the purchase of goods, and the Government of Canada purchased a legal settlement, rather than goods.[874]

- Commerce should not simply accept the write-off value of the assets as the benchmark, and its MTAR analysis of "prevailing market conditions" required by section 771(5)(E) of the Act falls short of the statutory standard.[875]

Resolute's Case and Rebuttal Briefs

- Commerce correctly found in the Post-Preliminary Analysis that Canada's settlement of Resolute's investor-state claim conferred no countervailable benefit to Resolute.[876] The

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[871] *See* Petitioner's Case Brief at 52 (citing, *e.g.*, *Gov't of Sri Lanka*) and 54.

[872] *Id.* at 52.

[873] *Id.* at 53, 56.

[874] *Id.* at 54.

[875] *Id.* at 55-56.

[876] *See* Resolute's Case Brief at 87 and Resolute's Rebuttal brief at 6-12.

purchase of a legal settlement to cease litigation is not a grant; rather, it is the purchase of an agreement for consideration, which cannot be a financial contribution.[877]

- There is no benefit from a government's seizure of assets for which only partial compensation is obtained. In Resolute's case, the settlement agreement declared that the compensation represented "not more than the fair market value" of the expropriated right and assets and was ultimately approved by the Superior Court of Québec.[878]

- The company emerging from bankruptcy was only new as to its value for financial reporting purposes, but not as to its preserved assets (*i.e.*, the company was restructured, not created).[879]

- NAFTA Chapter 11 is not a Canadian government program, and all North American investors have the same rights under NAFTA, no matter the nature of their investment. Therefore, NAFTA arbitration awards are not specific.[880]

Government of Canada's Rebuttal Brief

- The Government of Canada's payment to Resolute did not provide a countervailable benefit.[881] The settlement payment was not a grant and the reason for the payment, *i.e.*, the fact that it is a legal settlement, does have import for CVD law.[882]

- The CIT has explained that a "grant" is a "gift-like transfer," and the settlement payment by Government of Canada to Resolute was not a gift, because the recipient of the payment here had to give up some property interest in exchange for the funds.[883]

- The petitioner's position would make every transfer of funds, goods, or services the provision of a grant in cash or kind, which is an absurd result.[884] Commerce must examine the transaction in question to determine what kind of transaction it is and whether it confers a countervailable subsidy.[885]

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[877] *See* Resolute's Rebuttal Brief at 8.

[878] *Id.* at 9-10.

[879] *Id.* at 11-12.

[880] *Id.* at 11-12.

[881] *See* GOC's Rebuttal Brief at 3.

[882] *Id.*

[883] *Id.* at 3-4.

[884] *Id*. at 4.

[885] *Id.*

- Abitibi-Bowater/Resolute provided something of value to the Government of Canada, its claim for C$500M brought against Canada under Chapter 11 of the NAFTA for the expropriation of its assets, in return for the settlement payment.[886]

- Abitibi-Bowater was renamed Resolute Forest Products, Inc. two years after the company's emergence from bankruptcy.[887]

- The Government of Canada is unaware of any aspect of bankruptcy law that provides that a bankrupt's claims against a third party are extinguished when a new company emerges out of bankruptcy, and petitioner does not provide any evidence to support such a position.[888] Further, the settlement agreement provides that if Abitibi-Bowater could not obtain approval for the settlement from both US and Canadian bankruptcy courts, the settlement would be null and void.[889] Therefore, the claim for C$500M would have become an asset of the bankruptcy trustee or it would have remained with Abitibi-Bowater/Resolute following the reorganization of the company.[890]

- The MTAR analysis is the appropriate analysis, as Commerce's analysis for MTAR is not limited to only the purchase of goods, per section 771(5)(E) of the Act.[891]

- Commerce's comparison of the $130M received by Resolute to the value of the settlement, $500M, and conclusion that the payment did not exceed the value of the assets, is proper.[892]

- The petitioner incorrectly states that only record evidence of the value of the assets is the C$500M claim asserted; an independent commission assessed a range of values from C$395M to C$456M for the date of the expropriation, as well as a forward-looking estimate range from C$413M to C$546M.[893]

- There is no obvious market in which to assess whether a settlement of a litigation claim exceeds the fair market value of the claim. [894] However, there is no record evidence suggesting that the settlement amount ultimately reached was for MTAR.[895]

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[886] *Id.* at 5.

[887] *Id.*

[888] *Id.* at 6.

[889] *Id.* at 6 (citing GOC February 2, 2018 Second NSA QR at Exhibit GOC-NSA 2-1 at 7).

[890] *Id*.

[891] *Id.* at 7.

[892] *Id.* at 8.

[893] *Id.* at 9.

[894] *Id.* at 10.

[895] *Id.*

Commerce's Position:

We disagree with petitioner and continue to find it appropriate to evaluate the Government of Canada's payment pursuant to a NAFTA Chapter 11 settlement as a purchase of goods for MTAR. We also continue to find that the amount received by Resolute (C$130 million) is adequate remuneration of its expropriated assets, and that no net benefit is conferred upon Resolute. Therefore, we continue to find that Resolute received no benefit under this program and, thus, have not considered whether this alleged assistance is countervailable.

On December 16, 2008, the Government of Newfoundland and Labrador, by means of the Abitibi-Consolidated Rights and Assets Act (2008 cA-1.01, as amended) (Abitibi Rights and Assets Act), expropriated all timber licenses, water rights, land and assets residing on the land, and easements from Abitibi-Bowater.[896] Abitibi-Bowater is a predecessor company of Resolute. No compensation was awarded to Abitibi-Bowater by the Government of Newfoundland and Labrador. In 2010, Abitibi-Bowater filed a Notice of Arbitration and Statement of Claim on the Government of Canada under Chapter 11 of NAFTA to seek compensation for damages arising out of the Government of Newfoundland and Labrador's expropriation.[897] The Government of Canada reached a settlement with Abitibi-Bowater by which Abitibi-Bowater withdrew its claim against the Government of Canada and the Government of Canada made a payment of C$130 million to Abitibi-Bowater.[898] We determined that it was more appropriate to view this settlement payment as a purchase of goods for MTAR in our Post-Preliminary Analysis,[899] and we verified the above explanation and found no discrepancies.[900]

In addition, in the Post-Preliminary Analysis we found that the settlement documentation demonstrates that the settlement payout represents an amount "not more than the fair market value of the rights and assets owned by Abitibi-Bowater expropriated under the Act."[901] Further, we noted that, in 2008, Abitibi-Bowater recorded, "as an extraordinary loss, a non-cash write-off of the carrying value of the expropriated assets of $256 million"[902] in its Form 10-K filing with the U.S. SEC.[903] As a result, we found that because the amount received by Resolute (C$130 million) is adequate remuneration of its expropriated assets, we determined that no net benefit is

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[896] *See* GNL November 9, 2017 IQR at 1-2 and Exhibit NL-ABITIBI-1.

[897] *See* Resolute's February 2, 2018 Second NSA QR at Exhibit RES-2NSA-1. *See also* GOC February 2, 2018 Second NSA QR at Exhibit GOC-NSA2-1.

[898] *See* GOC February 2, 2018 Second NSA QR at Exhibit GOC-NSA2-1.

[899] *See* Post-Preliminary Analysis at 25-26.

[900] *See* Resolute Verification Report at 36-38; GNL Verification Report at 29; and GOC Verification Report at 5.

[901] *See* Post-Preliminary Analysis at 25-26 (citing GOC February 2, 2018 Second NSA QR at Exhibit GOC-NSA2-1).

[902] We note that this value, based on a 2008 C$/$ exchange rate of 1.065953968, is C$273 million. *See* Resolute Post-Preliminary Calculation Memorandum.

[903] *See* Resolute November 10, 2017 IQR at Exhibit RES-NS-2.

conferred upon Resolute, that Resolute received no benefit under this program and, thus, did not consider whether this alleged assistance is countervailable.

We find that petitioner has provided no compelling argument to warrant a change in our evaluation, *i.e.*, to cause us to consider the payment as a direct transfer of funds and a grant, under section 771(5)(D)(i) of the Act and 19 CFR 351.504, rather than a purchase of goods pursuant under section 771(5)(D)(iv) of the Act. We recognize that the facts at issue here are atypical from programs we normally examine as a purchase of goods. Nonetheless, based on the evidence, we find the payment at issue to be more akin to a purchase of goods, rather than a "gift-like transfer," or grant. As discussed above, here, the Government of Newfoundland and Labrador expropriated Abitibi-Bowater's property, including its land and physical assets on the property. Abitibi-Bowater claimed that this expropriation was improper and that it was not properly compensated for the property provided to the government. The Government of Canada was willing to settle this claim and compensate the company for its property. Thus, Abitibi-Bowater was subsequently compensated for its property.[904] Therefore, we find that the Government of Canada's payment is most appropriately viewed as a purchase of goods.

As discussed in the *Lumber V CVD Final Determination*, we find that our benefit analysis in this instance related to a purchase of goods for MTAR is appropriately based upon the standard set forth under 19 CFR 351.503(b), and thus, we will consider a benefit to be conferred "where a firm … receives more revenues than it otherwise would earn" in the absence of the government program. This is further reflective of section 771(5)(E) of the Act, which provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy, and the "benefit-to-the-recipient" standard, which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice."[905]

Here, in valuing the benefit, if any, to Resolute, we examined Abitibi-Bowater's write-off of C$256 million in its 2010 financial statements.[906] Contrary to petitioner's argument, we also examined various other valuations on the record, including the settlement documentation at verification which we continue to find demonstrates that the settlement payout represents an amount "not more than the fair market value of the rights and assets owned by Abitibi-Bowater

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[904] We disagree with petitioner that Resolute is trying to have it "both ways" with respect to this alleged subsidy and its claim that Abitibi-Bowater's bankruptcy proceeding resulted in a change-in-ownership, by which certain subsidies were extinguished. In light of our findings discussed in Comment 6, we agree with Resolute that the company was new as to its value for financial reporting purposes, but not new as to its preserved assets, and that one of Abitibi-Bowater's assets and, therefore, part of the valuation calculation of the new company, was its legal claim related to the 2008 expropriation. *See* Resolute Verification Report at 37 (explaining that the settlement agreement was fully considered and approved by both the monitors and the court during the pendency of Abitibi-Bowater's bankruptcy proceeding). Nonetheless, since we are finding no net benefit for this program, we are not conducting an analysis regarding whether this settlement was a concurrent subsidy or whether it was extinguished by this bankruptcy. *See* Comment 6.

[905] *See Lumber V CVD Final Determination*, at Comment 51 (citing SAA at 927).

[906] *See* Resolute Verification Report at 37-38.

expropriated under the Act."[907] While no valuation studies were conducted at the time of the appropriation, any one of the several estimations on the record of this investigation would lead us to find that the amount received by Resolute (C$130 million) is adequate remuneration of its expropriated assets, and that no net benefit is conferred upon Resolute. Therefore, we continue to find that Resolute received no benefit under this program and, thus, have not considered whether this alleged assistance is countervailable.[908]

Tax Program Issues

Comment 52: Whether the ACCA for Class 29 Assets Tax Program is Specific

Government of Canada's Case Brief

- In the *Preliminary Determination*, Commerce improperly found the ACCA for Class 29 Assets program to be *de jure* specific within the meaning of section 771(5A)(D) of the Act. Commerce's findings are unsupported by record evidence, are not in accordance with law, and should be reversed in reaching the final determination.[909]

- The ACCA does not restrict which industries may use the program; instead, it provides that certain activities will not constitute manufacturing or processing for purposes of eligibility to claim the ACCA. Activity-based restrictions do not render the ACCA *de jure* specific. Moreover, the scope of the "industry" exclusion is limited, and most industries are still eligible. A program that is available to all producers is not specific merely because some activities are not eligible.[910]

- Even if the excluded activities are treated as excluded industries, the ACCA would only restrict a small number of "industries" which are eligible for other tax deductions and exemptions under the CITA. Therefore, when properly considered in the context of the entire CITA, the ACCA is not *de jure* specific.[911]

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[907] *See* Post-Preliminary Analysis at 25-26 (citing Government of Canada February 2, 2018 Second NSA QR at Exhibit GOC-NSA2-1); *see also* Resolute Verification Report at 37 ("Company officials stated that both Resolute and the GOC wanted to avoid a potential lengthy arbitration, and while company officials acknowledged that the agreed-upon settlement amount was lower than both Resolute's initial request for damages and the "write-off" value of C$256 million recorded in Resolute's 2010 financial statements, the settlement amount was the result of months of negotiations. In addition, the monitors stated that Abitibi-Bowater's C$130 million settlement with the GOC was reasonable, especially given Abitibi-Bowater's financial position at the time.")

[908] In this regard, based on the facts before us, we have not further evaluated arguments nor made a finding regarding whether this legal settlement in and of itself constitutes a countervailability study.

[909] *See* GOC's Case Brief at 2.

[910] *Id*. at 3-5.

[911] *Id*. at 8-14.

Petitioner's Rebuttal Brief

- Commerce has already considered and rejected these same arguments in the *Lumber V CVD Final Determination* and S*C Paper Expedited Review Final*, and it should reject them again here. Access to the ACCA for Class 29 Assets program is clearly limited to enterprises and industries engaged in certain excluded activities and is therefore *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.[912]

Commerce's Position:

Class 29 assets are machinery used in manufacturing or processing operations. Pursuant to the CITA and the Class 29 of Schedule II to the ITR, machinery and equipment acquired by a taxpayer after March 18, 2007 and before 2016, and that are primarily used in Canada for the manufacturing or processing of goods for sale or lease, can be depreciated on an accelerated, three-year basis as a deduction from the federal income in calculating federal tax owed.[913] Section 1104(9) of the ITR regulations provide that, for purposes of defining what constitutes manufacturing or processing in Class 29 Schedule II, "manufacturing or processing" does not include certain described categories of activities, such as farming and fishing, construction, logging, and extraction of natural gas, oil and minerals.[914] Therefore, the applicable tax laws for Class 29 explicitly exclude certain activities from the definition of manufacturing and processing; industries that are engaged exclusively in the excluded activities are not eligible for the ACCA for Class 29 assets program.

The arguments presented herein do not differ substantially from the arguments raised and addressed in *Lumber V CVD Final Determination* and *SC Paper Expedited Review Final*.[915] We find no evidence on the record of this investigation to deviate from our findings in those cases. Therefore, we continue to find 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.

Comment 53: Whether the School Tax Credit for Class 4 Major Industrial Properties Provides a Financial Contribution

Catalyst's and the Government of British Columbia's Case Brief

- The school tax credit for Class 4 Major Industrial properties does not provide a financial contribution because no revenue was foregone or otherwise due.[916]

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[912] *See* Petitioner's Rebuttal Brief at 24.

[913] *See* GOC November 9, 2017 IQR at GOC-VI-9.

[914] *Id*.

[915] *See Lumber V CVD Final Determination* IDM at Comment 68 and *SC Paper Expedited Review Final* IDM at Comment 32.

[916] *See* Catalyst's Case Brief at 77-78 and GBC's Case Brief at 36-38.

Petitioner's Rebuttal Brief

- The school tax credit provides a financial contribution in the form of revenue foregone, consistent with 771(5)(D)(ii) of the Act.[917]

Commerce's Position:

We disagree with the Government of British Columbia and Catalyst and continue to find the school tax credit for Class 4 Major Industrial properties to provide a financial contribution, consistent with 771(5)(D)(ii) of the Act. Catalyst and the Government of British Columbia essentially argue that any benefit prescribed in law cannot in fact provide a benefit because Catalyst is paying the rate prescribed by law. However, as we explained in the *Preliminary Determination*, the rate prescribed by the Order-in-Council for Class 4 Major Industrial properties is a preferential rate which provides for a "credit" on the property tax bills, and, as such, provides a benefit.[918]

No party disputes the facts as explained in the *Preliminary Determination*, and no new information came to light at verification.[919] As previously explained, the Government of British Columbia establishes school tax rates applicable to taxable property value in each of the eight non-residential property classes within the province.[920] For calendar year 2016, the school tax rates were set by Order-in-Council No. 267;[921] each non-residential property class has one applicable school tax rate. Also for 2016, the Government of British Columbia subsequently adjusted the school tax rate of $5.40 per $1,000 of taxable value, as indicated in the Order-in-Council, to $2.16 per $1,000 of taxable value for all Class 4 Major Industry properties, pursuant to the Provincial Industrial Property Tax Credit.[922] Catalyst owned Class 4 Major Industrial property in British Columbia during the POI, and benefited from the school tax credit it received from the Government of British Columbia on these properties.[923]

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[917] *See* Petitioner's Rebuttal Brief at 52.

[918] *See* PDM at 50.

[919] *See* GBC Verification Report at 5, where we noted that Government of British Columbia officials explained "that British Columbia Assessment determines which properties qualify as Class 4 Major Industrial properties and how major industrial properties are assessed under certain rules" and that "the Lieutenant Governor in Council must determine the tax rates each year. The tax rates are then sent to municipal tax collectors and to the provincial Surveyor of Taxes office."

[920] *See* GBC December 20, 2017 SQR at Appendix B and Exhibit BC-SUPP1-11 at Sections 119 and 120 of the *School Act*.

[921] *Id.* at Exhibit BC-SUPP1-12.

[922] *Id.* at Exhibit BC-SUPP1-13. All Class 4 Major Industry property in BC qualifies for the $2.16 per $1,000 of taxable value rate, pursuant to Section 131.2 of the *School Act*. *Id.* at Exhibit BC-SUPPl-11.

[923] *See* Catalyst December 12, 2017 SQR at Appendix SQ1-15 and Exhibit MAIN-13.

Under section 771(5)(D)(ii) of the Act, the financial contribution from a tax program is the amount of foregone revenue that is otherwise due.[924] Under the Order-in-Council No. 267, by providing a reduced tax rate to Class 4 Major Industry properties, the tax paid by Catalyst on its Class 4 Major Industrial properties was reduced; in fact, each of Catalyst's Class 4 property tax bills show a "School Tax Credit" amount.[925] At verification, Government of British Columbia officials stated that "the school tax credit displayed on tax notices for Class 4 Major Industrial properties makes the provincial tax rate reduction visible and allows other taxing jurisdictions to maintain or increase a tax presence" and "that the tax credit is enshrined in law and is part of annual considerations in setting the tax rates each year."[926] As a result, we continue to find that the program results in revenue foregone by the Government of British Columbia under section 771(5)(D)(ii) of the Act during the POI.

Comment 54: Whether the School Tax Credit for Class 4 Major Industrial Properties is Specific

Catalyst's and the Government of British Columbia's Case Brief

- The school tax credit for Class 4 major industrial properties is neither *de jure* nor *de facto* specific because objective criteria govern eligibility for the program and the tax rate is automatically adjusted for companies meeting the criteria.[927]

Petitioner's Rebuttal Brief

- The school tax credit is both *de jure* and *de facto* specific and Commerce should continue to find it to be countervailable.[928]

Commerce's Position:

We disagree with the Government of British Columbia and Catalyst and continue to find that the school tax credit for Class 4 Major Industrial properties is *de jure* specific under section 771(5A)(D)(i) of the Act.

The British Columbia Assessment Authority, an independent Crown corporation, determines which properties qualify as Class 4 Major Industrial properties and it conducts the assessments.[929] Section 20 of the *Assessment Act* delineates the types of properties that qualify as Class 4 major industries, and Class 4 major industries are expressly limited, as a matter of law,

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[924] *See* GBC Verification Report at 5, where Government of British Columbia officials stated that "funds are not disbursed under this program" and that the Government of British Columbia "collects the taxes paid, but does not track individual savings under the school tax credit."

[925] *Id.* at Exhibit MAIN-13.

[926] *See* GBC Verification Report at 5.

[927] *See* Catalyst's Case Brief at 74-75 and GBC's Case Brief at 39-42.

[928] *See* Petitioner's Rebuttal Brief at 50-51.

[929] *See* GBC December 20, 2017 SQR at BC-SUPP1-5.

to certain heavy industries.[930] As a manufacturer of UGW paper, Catalyst falls under, the category "manufacturing of pulp, paper, or linerboard" in Class 4.[931] Further, as explained in the *Preliminary Determination*,[932] in calendar year 2016, the school tax rates were set by Order-in-Council No. 267;[933] each non-residential property class has one applicable school tax rate. For 2016, the Government of British Columbia subsequently adjusted the school tax rate of $5.40 per $1,000 of taxable value, as indicated in the Order-in-Council, to $2.16 per $1,000 of taxable value for all Class 4 Major Industry properties, pursuant to the Provincial Industrial Property Tax Credit.[934] Thus, as a matter of law, the tax credit was limited to Class 4 Major Industry properties and such properties were, themselves, as a matter of law, limited to certain heavy industries, of which pulp and paper were expressly included. Therefore, we continue to find the school tax credit for Class 4 Major Industrial properties to be *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.

Further, we disagree with Catalyst and the Government of British Columbia that the tax credit is not specific because 'multiple" heavy industries are included under Class 4 Major Industry properties. The list is clearly limited to certain industries and this is consistent with our findings in other cases, where we similarly found that "because only the industries involved in the production of the products or the provision of services identified in the…legislation are eligible for the program, the eligible industries are limited by law and the program is *de jure* specific."[935] Therefore, the industries under Class 4 Major Industries, of which the pulp and paper industry is one, are a specific and limited group under section 771(5A)(D)(i) of the Act.[936] Additionally, we disagree with Catalyst that the eligibility criteria satisfy the statutory requirement for "objective criteria," given that they "favor one enterprise or industry over another."[937]

We also disagree with the Government of British Columbia and Catalyst that the school tax credit for Class 4 Major Industrial properties could not be *de facto* specific. Based upon the information on the record, we note that there are a limited number of properties within British Columbia which constitute Class 4 Major Industrial properties; in 2016, only 12,291 folios constituted Class 4 Major Industrial property, out of 2,119,043 folios in British Columbia in

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[930] *Id.* at Appendix B and Exhibit BC-SUPP1-5 at Section 20 of the *Assessment Act*. *See also* GBC December 28, 2017 SQR at BC-SUPP2-2 through BC-SUPP2-5, where the Government of British Columbia enumerates the property types in each property class.

[931] Additionally, we note that pulp and paper Class 4 properties accounted for a significant percentage of the total school taxes paid by Class 4 properties in BC in 2016. *See* GBC December 20, 2017 SQR at Appendix B-7 to B-8.

[932] *See* PDM at 50.

[933] *See* GBC December 20, 2017 SQR at Exhibit BC-SUPP1-12.

[934] *Id.* at Exhibit BC-SUPP1-13. All Class 4 Major Industry property in BC qualifies for the $2.16 per $1,000 of taxable value rate, pursuant to Section 131.2 of the *School Act*. *Id.* at Exhibit BC-SUPPl-11.

[935] *See CRS from Brazil* IDM at Comment 15.

[936] *See* GBC December 20, 2017 SQR at Appendix B and Exhibit BC-SUPP1-5 at Section 20 of the *Assessment Act*. *See also* GBC December 28, 2017 SQR at BC-SUPP2-2 through BC-SUPP2-5.

[937] *See* section 771(5A)(D)(ii) of the Act.

2016.[938] Further, we note that of the 406,690 active corporations in British Columbia as of December 31, 2016, only 1,975 owned Class 4 Major Industry property.[939] However, we rely here on our finding as described above that this program is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.

Comment 55: Whether the Coloured Fuel Tax Rate Provides a Financial Contribution

Catalyst's and the Government of British Columbia's Case Brief

- The coloured fuel tax rate does not provide a financial contribution because no foregone revenue exists for the Government of British Columbia to collect.[940]

Petitioner's Rebuttal Brief

- The coloured fuel tax provides a financial contribution, consistent with 771(5)(D)(ii) of the Act.[941]

Commerce's Position:

We disagree with the Government of British Columbia and Catalyst and continue to find the coloured fuel tax rate to provide a financial contribution, consistent with 771(5)(D)(ii) of the Act.

In its questionnaire response, the Government of British Columbia described coloured fuel as 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.[942] 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.[943] 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.[944] 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," including use in ships, locomotives, tractors/machines used off-highway, and stationary or portable engines.[945] The form FIN-430 must be provided to any

[938] *See* GBC December 28, 2017 SQR at BC-SUPP2-3 through BC-SUPP2-7.

[939] *Id*.

[940] *See* Catalyst's Case Brief at 80-81 and GBC's Case Brief at 43-48.

[941] *See* Petitioner's Rebuttal Brief at 53-54.

[942] *See* GBC November 9, 2017 IQR at BC Volume IV.

[943] *Id*.

[944] *Id.*

[945] *Id.* at BC-IV-2.

suppliers of colored fuel before making a purchase.[946] Companies may then purchase colored fuel at the reduced motor fuel tax rate.[947] 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.

A financial contribution for purposes of section 771(5)(D)(ii) of the Act means foregoing or not collecting revenue that is otherwise due. 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."[948] 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.[949] Therefore, this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone.[950] It is irrelevant to this inquiry whether the Government of British Columbia's differential tax scheme is supported by a policy rationale.

Comment 56: Whether the Coloured Fuel Tax Rate is Specific

Catalyst's and the Government of British Columbia's Case Brief

- The coloured fuel tax rate is neither *de jure* nor *de facto* specific because objective criteria govern eligibility for the program and the program is broadly available to any person or company for the allowed usages.[951]

Petitioner's Rebuttal Brief

- The coloured fuel tax rate is *de jure* specific, because it is limited to certain types of end users; alternatively, Commerce could find that this program is *de facto* specific because the recipients are clearly limited in number. Commerce should continue to find this program to be countervailable.[952]

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[946] *Id.* at BC-IV-3.

[947] *Id*.

[948] *Id.* at Exhibit BC-GAS-4 (*Motor Fuel Tax Act* at Section 15(3)).

[949] *Id.*

[950] *See also Lumber V CVD Final Determination* IDM at Comment 74 where, for this same program, we found it to provide a financial contribution.

[951] *See* Catalyst's Case Brief at 78-80 and GBC's Case Brief at 48-52.

[952] *See* Petitioner's Rebuttal Brief at 54-55.

Commerce's Position:

We continue to find that this program is *de jure* specific, in accordance with 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 ships, locomotives, tractors/machines used off-highway, and stationary or portable engines.[953] The specificity test is designed to avoid the imposition of countervailing duties 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."[954] Although Catalyst argues 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 off-highway activities, and there is no evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which use of coloured fuel is authorized.

Furthermore, this approach is consistent with our past practice. For example, in *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman*, Commerce 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. Thus, Commerce 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.[955]

We also disagree with the Government of British Columbia and Catalyst 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. 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.[956] 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 coloured fuel for one of the limited, prescribed purposes. Because we continue to determine that this program is *de jure* specific, we need not

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[953] *See* GBC November 9, 2017 IQR at BC-IV-11 ("As described in the statute, persons and businesses may purchase coloured fuel for use in logging, oil and gas, and mining industries, as well as certain farming activities, boats and ships, and industrial machines and stationary engines.") and at Exhibit BC-GAS-4 (*Motor Fuel Tax Act* at Section 15(1)).

[954] *See* SAA at 930.

[955] *See also Lumber V CVD Final Determination* IDM at Comment 74 where we found the same program to be specific.

[956] *See* GBC November 9, 2017 IQR at Exhibit BC-GAS-4 (*Motor Fuel Tax Act* at Section 15(1)).

address the Government of British Columbia's arguments regarding whether this program is *de facto* specific.

Comment 57: Whether Catalyst Benefited from the Coloured Fuel Tax Rate

Government of British Columbia's Case Brief

- Catalyst paid the appropriate tax rate for its fuel consumption and therefore did not receive any benefit.[957]

Commerce's Position:

We agree with the Government of British Columbia that Catalyst paid "the appropriate tax rate" under the Government of British Columbia's scheme to benefit users of coloured fuel. As discussed above, such users are limited to use of the fuel off-road and therefore benefit from a lower tax rate than they would have paid in the absence of the program. As such, we continue to find that Catalyst received a benefit in the form of tax savings, pursuant to 19 CFR 351.510(a)(1); the tax savings are 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."[958]

Comment 58: Whether the Powell River City Tax Exemption Program Provides a Financial Contribution

Catalyst's and the Government of British Columbia's Case Brief

- The Powell River City tax exemption program did not constitute a financial contribution because the City did not forgo or fail to collect "revenue that is otherwise due" under section 771(5)(D)(ii) of the Act; further, Catalyst actually paid more in property taxes in 2016 than it paid in the three years preceding the 2014 bylaw.[959]

Petitioner's Rebuttal Brief

- Under the bylaw, Catalyst is permitted to pay a property tax rate that is well below the one that would apply to Catalyst if its tax rate were established on the same basis as that of all other rate payers. The difference in the amount that Catalyst would otherwise have paid under the rules that apply to all other taxpayers, and the amount established in Bylaw 2394, is revenue that Powell River City has foregone.[960]

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[957] *See* GBC's Case Brief at 52-53.

[958] *See* GBC November 9, 2017 IQR at BC-IV-9 to BC-IV-10.

[959] *See* Catalyst's Case Brief at 66-70 and GBC's Case Brief at 53-55.

[960] *See* Petitioner's Rebuttal Brief at 45-48.

Commerce's Position:

We continue to find that this program provides a financial contribution, in accordance with section 771(5)(D)(ii) of the Act. As we explained in the *Preliminary Determination*,[961] in 2014, Powell River City passed Bylaw 2394 establishing a "revitalization tax exemption program" for a term of three years (*i.e.*, for calendar years 2015 through 2017).[962] Bylaw 2394 specified that this program applied exclusively to Class 4 major industrial property located within the revitalization area:[963]

> The amount of the Tax Exemption for each calendar year during the period for which the Tax Exemption Certificate is issued shall be calculated on the basis of the following formula:
>
> (a) the property value tax for the year for the Parcel based on the applicable assessed value of the Class 4 Major Industrial Land and Improvements times the rate of 43.76181 per thousand dollars of assessment, minus
>
> (b) the sum of $2,750,000.

Thus, the 2014 bylaw provided "tax certainty" for Catalyst by maintaining, through 2017, the property tax amount payable by Catalyst at C$2,750,000 per year.[964] The Government of British Columbia stated in its questionnaire response that Catalyst was the only participant in this program.[965]

Under section 771(5)(D)(ii) of the Act, the financial contribution from a tax program is the amount of foregone revenue that is otherwise due. Under the 2014 bylaw, by capping Catalyst's property tax at a specified ceiling amount for the years 2015 through 2017, the tax that Catalyst paid was substantially lower than the tax Catalyst would have paid in the absence of the revitalization area tax program. As a result, we find that there is a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act during the POI.

Catalyst and the Government of British Columbia both argue that the Powell River City tax exemption provided no financial contribution or benefit to Catalyst because 1) Catalyst paid more in property taxes in 2016 than it did in the three prior years and 2) because Catalyst paid the full amount required by the City of Powell River's tax rate bylaw for 2016. Catalyst's and the Government of British Columbia's arguments are not availing.

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[961] *See* PDM at 49.

[962] *See* GBC November 9, 2017 IQR at BC Volume III.

[963] *Id*. at Exhibit BC-PR-1 (Bylaw 2394 (2014), at section 6).

[964] Additionally, we note that the tax program was also specific to properties located within a certain revitalization area in the City of Powell River. *Id.*

[965] *Id*.

As an initial matter, Commerce previously countervailed an earlier iteration of this tax exemption for Catalyst in *SC Paper Expedited Review Final*, and found that the tax exemption provided by the City of Powell River amounted to revenue foregone.[966] In the instant case, the amount Catalyst paid in taxes in the prior years is not relevant, and arguments about what 'may' have happened, had Powell River City not passed Bylaw 2394, are mere speculation.[967] The record clearly demonstrates that Powell River City has provided Catalyst with "tax certainty," under Bylaw 2394, such that Catalyst will only pay C$2,750,000 in property taxes, and any difference in the assessment value will be a benefit to Catalyst in the form of revenue foregone by Powell River City. Further, the fact that Catalyst paid the amount it was billed in 2016, as provided for in Bylaw 2394, does not eliminate the financial contribution in the amount by which Catalyst's property tax was reduced as a result of the bylaw.

Comment 59: The Appropriate Benefit Calculation for the Powell River City Tax Exemption Program

Catalyst's Case Brief

- Even if Commerce determines that the Powell River City tax exemption program provided Catalyst a financial contribution, Commerce cannot use the City of Powell River's calculation of the benefit, but should compare the taxes paid with those paid in 2012 to 2014, which would result in no benefit; or the taxes paid in 2007 to 2009, as Commerce did in the *SC Paper Expedited Review Final*, which would result in a smaller benefit to Catalyst than Commerce found in the *Preliminary Determination*.[968]

Petitioner's Rebuttal Brief

- The most accurate calculation of the actual benefit to Catalyst is the amount of revenue the City of Powell River itself calculates as the Revitalization Bylaw credit; this reflects the actual reduction in Catalyst's property taxes resulting from the special exemption, as compared to what it would have paid if the normal Class 4 major industrial properties rate had applied.[969]

Commerce's Position:

We continue to find that the amount of tax savings, as calculated by Powell River City, best reflects the benefit to Catalyst under this program. At verification, Government of British Columbia officials clearly stated that 1) "this program provided for tax exemption on Catalyst's

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[966] *See SC Paper Expedited Review Final* IDM at 9 and Comment 3. However, unlike in the *SC Paper Expedited Review Final,* here the property tax exemption is clearly denoted and there are no ancillary agreements or land-transfers at issue. *Id.* at Comments 3 through 7.

[967] *See* Catalyst's Case Brief at 69, where Catalyst argues that, but for Bylaw 2394, it would have paid taxes on its Powell River City property at the rate of C$2,250,000. *See also* GBC's Case Brief at 54.

[968] *See* Catalyst's Case Brief at 70-73.

[969] *See* Petitioner's Rebuttal Brief at 48-49.

property tax"; 2) "Catalyst's property tax bill for the City of Powell River shows the credit for the difference between what was owed and the fixed tax amount of $2,750,000"; and 3) the total 2016 tax exemption to Catalyst is contained on the record.[970] None of these facts are in dispute. The record shows that Catalyst obtained a "Tax Exemption Certificate," under Bylaw 2394, 2014;[971] and consequently, Catalyst received a "Revitalization Bylaw" credit on its property tax bills for 2016.[972] The alternatives proposed by Catalyst do not appear to be more accurate measures of revenue foregone in 2016 by Powell River City than the amount that Powell River City itself calculated, based upon Bylaw 2394 (*i.e.*, the difference between the amount of tax that Catalyst actually paid and the amount it would otherwise owe in absence of the program). Catalyst has not advanced a compelling reason to compare the tax paid in 2016 with taxes paid in an earlier period, when Powell River City itself calculated the revenue foregone under the Bylaw and applied the credit to Catalyst's property tax bills. Thus, our calculation of revenue foregone, and the ensuing benefit, is in accordance with section 771(5)(D)(ii) of the Act and 19 CFR 351.509(b), to the extent taxes otherwise due were not collected; and consequently, we have not changed our calculation of this program from the *Preliminary Determination*.[973]

Comment 60: Whether Commerce Properly Determined the Amount of the Subsidy Kruger Received from Property Tax Exemptions

Kruger's Case Brief

- Commerce verified that Kruger's properties in Corner Brook and Deer Lake are exempt from municipal property taxes under the 1905 Pulp and Paper Act. During the POI, CBPP did not take the full exemption, waiving a portion of it by making payments "in lieu of" the taxes. Commerce erred when it did not take these payments into account in the benefit calculation because the payments directly relate to the taxes foregone.[974]

- Consistent with the plain language of the Act and regulations, including the definition of "financial contribution," the "gross" subsidy amount only consists of the difference between the tax that Kruger would have paid without the exemption and what it did pay in lieu thereof.[975]

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[970] *See* GBC Verification Report at 6; note that the actual tax exemption amount is proprietary. *See also* GBC November 9, 2017 IQR at BC-III-8, where the Government of British Columbia stated the "total amount of tax liability reduction for 2016."

[971] *See* Catalyst November 9, 2017 IQR at Exhibit PR-7.

[972] *Id.* at Exhibit PR-9; *see also Id.* at Exhibits PR-10 through PR-12, where Catalyst provided documentation regarding an error in the original calculation and a revised invoice and payment; and *see* Catalyst Verification Report at 9-10.

[973] *See* PDM at 49-50.

[974] *See* Kruger's Case Brief at 110-113 (citing, *e.g.*, *Uranium from Germany et. al.*).

[975] *Id.* at 114 (citing 19 CFR 351.509(a)(1) and *SC Paper from Canada Expedited Review Final* IDM at Comment 6).

Government of Newfoundland and Labrador's Case Brief

- The Government of Newfoundland and Labrador makes the same arguments as Kruger, adding that: 1) the fact that the tax payments are not legally required as a result of Kruger's tax-exempt status has no bearing on the level of financial contribution and otherwise ignores that these payments were formalized and memorialized by agreement between CBPP and municipalities; and 2) the tax exempted and the payments in lieu of taxes serve the same purpose of revenue collection.[976]

Petitioner's Rebuttal Brief

- Commerce should continue to calculate the benefit on the amount of the property taxes waived. The type of adjustment Kruger suggests is not a permissible offset under section 771(6) of the Act, and Commerce has been steadfast in refusing to permit other types of offsets.[977]

Commerce's Position: Section 771(6) of the Act provides that, in determining the "net countervailable subsidy," Commerce may reduce the "gross countervailable subsidy" by the amount of certain types of payments, loss of value, or export charges levied specifically to offset the countervailable subsidy received. Specifically, these qualifying offsetting amounts are limited to:

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

As we recognized in *Lumber V CVD Final Determination*,[978] both Congress and the courts have confirmed that these are the only offsets Commerce is permitted to make under the statute.[979] We agree with the petitioner that Kruger's voluntary payments to the municipalities of Corner Brook and Deer Lake do not satisfy the narrow definition of qualifying offsets provided in section 771(6) of the Act. Accordingly, we find that there is no basis for Commerce to recognize these voluntary payments as an offset to the gross countervailable subsidy provided under the property tax exemption program.

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[976] *See* GNL's Case Brief at 43-46 (citing, *e.g.*, *Pure Magnesium from Israel*).

[977] *See* Petitioner's Rebuttal Brief at 102-104 (citing, *e.g.*, *SC Paper from Canada Expedited Review Final* IDM).

[978] *See Lumber V CVD Final Determination* IDM at Comment 15.

[979] *See S. Rep. No. 96-249 (1979)*, at 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").

To the extent Kruger and the Government of Canada argue that section 771(6) of the Act does not apply, and that we should consider such "grants in lieu of taxes" in determining the "gross countervailable subsidy" or reducing the benefit, we disagree. Kruger and the Government of Canada argue that Kruger's "gross countervailable subsidy" should be reduced by the voluntary payment made to Corner Brook and Deer Lake, despite the municipalities' exemption of Kruger from payment of property taxes. However, this is merely an attempt to encourage Commerce to accept Kruger's post-subsidy behavior as relevant to the subsidy calculation, where section 771(5)(C) of the Act, and its accompanying regulation, 19 CFR 351.503(c), expressly provide that Commerce is not required to take into account any "effect" of the subsidy on the company's performance, or how the company's behavior is otherwise altered, in determining whether the subsidy exists, *i.e.*, a benefit is conferred. The *CVD Preamble* also explains that:

> the determination of whether a benefit is conferred is completely separate and distinct from an examination of the "effect" of a subsidy. In other words, a determination of whether a firm's costs have been reduced or revenues have been enhanced bears no relation to the effect of those cost reductions or revenue enhancements on the firm's subsequent performance, such as its prices or output. In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy.[980]

Thus, we find that the fact that Kruger, on a voluntary basis, has made arrangements with the municipalities to provide payments in lieu of the taxes it would otherwise owe merely constitutes an "effect" of the subsidy on the firm's performance or behavior, and therefore has no bearing on our benefit analysis or our determination of the "gross countervailable subsidy."

The *CVD Preamble* further reinforces that "{i}f a financial contribution has been provided, either directly or indirectly, in a form which is specifically identified in the statute or regulations…, we will identify and measure the resulting benefit in accordance with the rules contained in the statute and regulations."[981] Here, as discussed in the Post-Preliminary Analysis, the exemption from property taxes provided by the Government of Newfoundland and Labrador is expressly covered by section 771(5)(D)(ii) of the Act ("foregoing or not collecting revenue that is otherwise due") and 19 CFR 351.509(a)(1) (full exemption of a direct tax). Neither of these provisions allow for an offset on the basis of any voluntary repayments, as the parties argue here. Specifically, 19 CFR 351.509(a)(1) states that "a benefit exists to the extent that the tax paid by the firm as a result of the program is less than the tax the firm would have paid in the absence of the program." The "program" here is the tax exemption under the 1905 Pulp and Paper Act, and thus, a benefit exists in the amount the firm has not paid taxes as a result of the program. As noted above, Kruger's voluntary payments to the municipalities are in no way part of "the program" at issue but are merely an after-the-fact "effect" of the program on the company's performance or behavior.

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[980] *See CVD Preamble*, 63 FR at 65361.

[981] *Id.*

In short, neither Kruger nor the Government of Canada point to any statutory or regulatory provision requiring Commerce to incorporate voluntary payments, whether labeled "GRANT IN LIEU TAXES" or otherwise, into its benefit calculation for a direct tax exemption such as the property tax exemption at issue here. Kruger's and the Government of Newfoundland and Labrador's citations to previous cases are inapposite. In several of the cases cited, the partial or total repayment of the grant or exemption provided was integral to the subsidy program itself.[982] These factual scenarios are dissimilar from the situation presented by the record evidence in the instant investigation. Kruger was exempted by law from paying all property taxes to Corner Brook and Deer Lake, and then voluntarily agreed to pay Corner Brook and Deer Lake a given amount.[983] Unlike in the cases cited by Kruger and the Government of Newfoundland and Labrador, here, there was no requirement by the municipalities or any other form of government that Kruger pay back any portion of its exempted taxes, nor were the payments part of the "program" at issue. Accordingly, we disagree with Kruger that Commerce should consider any portion of its voluntary payments to Corner Brook and Deer Lake when determining the benefit conferred to Kruger for the property tax exemption.

Comment 61: Whether the Québec SR&ED Tax Credit is *De Facto* Specific

Government of Québec's Case Brief

- *De facto* specificity analysis is not just an analysis of whether less than all of the companies in the province used the program. Rather, Commerce must consider whether the subsidy is limited in number on an enterprise or industry basis.[984]

- Commerce's preliminary analysis for this program neither followed the statutory criteria or established practice, but simply stated that the program was *de facto* specific and cited to exhibits contained in the Government of Québec's responses with no further explanation. This denied the Government of Québec a meaningful opportunity to comment on the decision.[985]

- The statistics relied upon by Commerce show that, by value and number of companies, the paper and wood product manufacturing industry accounted for an insignificant percentage of the credits granted from 2013 to 2016, with the vast majority of the tax credits given to a wide range of industries including agriculture, manufacturing, transportation and storage, wholesale trade, and finance and insurance.[986]

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[982] *See*, *e.g.*, *Magnesium from Canada* IDM at Comment 4; *Engineering Products from Singapore* 55 FR at 12249 .

[983] *See* Kruger Verification Report at 18-19 ("Company officials stated that CBPP is not required to pay municipal taxes to the municipalities of either Corner Brook or Deer Lake. Company officials stated that, nonetheless, because CBPP is a good corporate citizen, it gives each municipality a grant "in lieu" of the taxes that it would have otherwise owed.")

[984] *See* GOQ's Case Brief at 106 (citing *Bethlehem Steel*).

[985] *Id.* at 106.

[986] *Id.* at 107-108.

- Because the SR&ED tax credit is widely available and granted to a diverse set of industries, there is no basis to determine that it was *de facto* specific.

Resolute's Case Brief

- Resolute includes and incorporates by reference the arguments of the Government of Québec.[987]

Commerce's Position:

Consistent with *Lumber V CVD Final Determination*, we continue to find that this program is *de facto* specific in accordance with section 771(5A)(D)(iii)(I) of the Act.[988] 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.[989] 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."[990] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[991] 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, Commerce 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.[992] 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 number of pulp and paper users under section 771(5A)(D)(iii)(I) of the Act.

In this case, Commerce considered whether the recipients were limited in number on an enterprise basis. The number of enterprises that received the Québec tax credit is miniscule when compared to the potential number of corporate tax filers.[993] Because the specific information is BPI, we have not stated it here. However, we disagree with the Government of Canada that by referring to the BPI figures in its questionnaire response we have not given a meaningful opportunity for comment.

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[987] *See* Resolute's Case Brief at 69.

[988] *See Lumber V CVD Final Determination* IDM at Comment 64.

[989] *See* SAA at 930.

[990] *Id.*

[991] *Id.* at 931.

[992] *See CRS from Korea* IDM at Comment 13 and *Lumber V CVD Final Determination* IDM at Comment 64..

[993] *See* GOQ December 22, 2017 SQR at Exhibit QC-SUPP-PT1-RQ-1.

We also disagree that the diversity or variety of users is relevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act.[994] Rather, the statute states that a "subsidy may be specific as a matter of fact" where "{t}he *actual recipients* of the subsidy, whether considered on an enterprise or industry basis, are limited in number" (emphasis added).[995] The fact that there is a diversity of users of this program, other than just pulp and paper mills, does not negate the fact that there is a miniscule amount of recipients under this program, as discussed above.

The Government of Québec maintains there was no predominant user of this tax credit. However, predominant use is addressed by section 771(5A)(D)(iii)(II) of the Act, and is not the basis upon which Commerce reached its specificity determination with respect to this program.[996] Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, Commerce 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, Commerce will not undertake further analysis. Therefore, because recipients of the subsidy were limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the program *de facto* specific.

Comment 62: Whether the Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec is Specific

Government of Québec's Case Brief

- Commerce erred in its preliminary finding that this program is *de jure* specific. Although the program provides tax credits for the purchase of manufacturing and processing equipment, the equipment may be purchased by a wide variety of industries – including agriculture, construction, transportation, wholesale trade, retail trade, and food and beverages – with no restriction on where the equipment is used.[997]

- The paper and wood manufacturing industry is not the predominant user of the credit, accounting for a minority of the credits given under the program from 2013 to 2016. Therefore, Commerce must find that this program is not *de jure* or *de facto* specific and therefore not countervailable.[998]

Commerce's Position:

We disagree with the Government of Québec, and continue to find, as we did in our *Preliminary Determination*, that this program is *de jure* specific, within the meaning of section 771(5A)(D)(i)

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[994] *See*, *e.g.*, *Lumber V CVD Final Determination* IDM at Comment 50.

[995] *See* section 771(5A)(D)(iii)(I) of the Act.

[996] *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).

[997] *See* GOQ's Case Brief at 108-110.

[998] *Id.* at 109-110.

of the Act because recipients are limited, by law, to companies who purchase qualified manufacturing and processing equipment. As described in the *Preliminary Determination*, the GOQ provides a tax credit for investment in manufacturing or processing equipment. According to the GOQ, this credit was implemented in order to stimulate investments in such equipment and to support certain regions with struggling economies.[999] To qualify for the tax credit, property must, among other things, be manufacturing or processing equipment, be hardware used primarily for manufacturing or processing, or have been acquired after March 20, 2012, for purposes of smelting, refining, or hydrometallurgy activities related to ore extracted from a mineral resource located in Canada.[1000] Where the qualified property was acquired after December 2, 2014, the tax credit for investment is calculated on the portion of eligible expenses that exceeds $12,500. The basic rate of the tax credit for investment is four percent. The rate is increased where the property is acquired to be used primarily in a resource region and based on the size of the business that acquires it.[1001] The CITA defines manufacturing and processing, and explicitly excludes certain industries from the definition.[1002] For these reasons, we find this program akin to the ACCA for Class 29 Assets program as discussed in Comment 52, and adopt that same reasoning herein. Finally, we note that as stated in the SAA, the specificity test is an initial screening mechanism to winnow out only those foreign subsidies that are truly broadly available and widely used throughout an economy.[1003] 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."[1004] Thus, we continue to find this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

In light of the above, we have not further considered arguments pertaining to *de facto* specificity.

Comment 63: Whether the Tax Credit for Pre-Competitive Research is Specific

Government of Government of Québec's Case Brief

- Commerce erred in its preliminary finding that this program is *de facto* specific. This tax credit is available to any company that receives a qualification certificate from the Minister of Economy, Science, and Innovation, establishes that it conducted business in Canada, and has a private partnership agreement to carry out R&D (or has R&D carried out on its behalf).[1005]

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[999] *See* GOQ November 9, 2017 IQR at GOQ-RQ-2.

[1000] *Id.*

[1001] *Id.*

[1002] *Id.*

[1003] *See* SAA at 930.

[1004] *Id.*

[1005] *See* GOQ's Case Brief at 110.

- Pulp and paper companies are not the predominant users of the program, with no tax credits claimed in 2015 or 2016 by any companies in the paper and wood manufacturing industry, and only a minimal amount claimed by these companies in 2013 and 2014.[1006]

- The fact that the number of companies claiming the credit is not as large as other credits does not render those companies here "limited in number." Several industries received the credit, including agriculture, fishing and trapping, manufacturing, accommodations, and food and beverage, and the vast majority of companies that applied for the credit in 2016-2017 received it. Commerce may not impose CVD duties where disparity is demonstrated without evidence that the benefit was industry-specific.[1007]

- Based on these facts, Commerce must find that this program is not *de jure* or *de facto* specific and therefore not countervailable.

Resolute's Case Brief

- Resolute includes and incorporates by reference the arguments of the Government of Québec.[1008]

Commerce's Position:

In our Post-Preliminary Analysis, we found this program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number. Specifically, the tax credit is available only to taxpayers that hold a qualification certificate issued by the Minister of Economy, Science and Innovation and that, during the taxation year, carry on a business in Canada and conclude a private partnership agreement to carry out R&D work in Québec, or have R&D work carried out on its behalf in Québec.[1009] Thus, we find pursuant to the reporting by the Government of Québec that there were a limited number of companies that received the tax credit during the POI.[1010]

We disagree that the diversity or variety of users is relevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act.[1011] Rather, the statute states that a "subsidy may be specific as a matter of fact" where "{t}he *actual recipients* of the subsidy, whether considered on an enterprise or industry basis, are limited in number" (emphasis added).[1012] The fact that there

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[1006] *Id.* at 111.

[1007] *Id.* at 111 (citing *Bethlehem Steel*).

[1008] *See* Resolute's Case Brief at 70.

[1009] *See* GOQ January 5, 2018 SQR at GQ-SUPP-232.

[1010] *Id.* at Exhibit QC-SUPP-PT2-C79-12.

[1011] *See*, *e.g.*, *Lumber V CVD Final Determination* IDM at Comment 50.

[1012] *See* section 771(5A)(D)(iii)(I) of the Act.

is a diversity of users of this program, other than just pulp and paper mills, does not negate the fact that there is a limited amount of recipients under this program, as discussed above.

The Government of Québec maintains there was no predominant user of this tax credit. However, predominant use is addressed by section 771(5A)(D)(iii)(II) of the Act, and is not the basis upon which Commerce reached its specificity determination with respect to this program.[1013] Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, Commerce 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, Commerce will not undertake further analysis. Therefore, because recipients of the subsidy were limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the program *de facto* specific.

Comment 64: Whether the Credit for Fees and Dues Paid to a Research Consortium is Specific

Government Québec's Case Brief

- Commerce erred in its preliminary finding that this program is *de facto* specific. This tax credit is not limited to any company or industry, but rather is available to any taxpayer that operates a business in Canada and is a member of a qualified research consortium which conducts R&D related to its field.[1014]

- Pulp and paper companies are not the predominant users of this program. Pulp and paper companies received less than half of the credits granted during the POI, and industries belonging to agriculture, fishing, trapping, manufacturing, wholesale trade and finance, and insurance also received funds. During fiscal year 2016-2017, the vast majority of the tax claims submitted were approved.[1015]

Resolute's Case Brief

- Resolute includes and incorporates by reference the arguments of the Government of Québec.[1016]

Commerce's Position:

In our Post-Preliminary Analysis, we found this program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in

[1013] *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).

[1014] *See* GOQ's Case Brief at 112.

[1015] *Id.* at 112.

[1016] *See* Resolute's Case Brief at 70.

number.[1017] According to the Government of Québec, this tax credit is intended to enhance funding for non-profit private research centers by providing a tax credit on companies' eligible research and development expenditures paid to a research consortium, of which the company is a member.[1018] If a taxpaying corporation conducts business in Canada and is a member of an eligible research consortium in the course of its taxation year, it can claim a tax credit for fees and dues paid to the consortium.[1019] The rate for these tax credits is 14 percent for expenditures made with respect to a taxation year starting after December 2, 2014, which can increase to 30 percent for corporations with assets of C$50 million or less for the previous taxation year.[1020] This increased rate is only applicable to the first C$3 million of qualified expenditures.[1021] Corporations with assets of C$50-75 million and C$75 million or more in the previous taxation year can claim these tax credits for eligible expenditures over C$50,000 and C$225,000, respectively.[1022] The Government of Québec reported that there were a limited number of companies that received the tax credit in the POI.[1023]

We disagree that the diversity or variety of users is relevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act.[1024] Rather, the statute states that a "subsidy may be specific as a matter of fact" where "{t}he *actual recipients* of the subsidy, whether considered on an enterprise or industry basis, are limited in number" (emphasis added).[1025] The fact that there is a diversity of users of this program, other than just pulp and paper mills, does not negate the fact that there is a limited amount of recipients under this program, as discussed above.

To the extent the Government of Québec maintains there was no predominant user of this tax credit, we disagree. Predominant use is addressed by section 771(5A)(D)(iii)(II) of the Act, and is not the basis upon which Commerce reached its specificity determination with respect to this program.[1026] Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, Commerce 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, Commerce will not undertake further analysis. Therefore, because recipients of the subsidy were

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[1017] *See* GOQ January 5, 2018 SQR at Exhibit QC-SUPP-PT2-C16-16.

[1018] *See* GOQ November 9, 2017 IQR at GOQ-OTHER-105 and GOQ-OTHER-106.

[1019] *Id.*

[1020] *Id*. at GOQ-OTHER-106.

[1021] *Id.* at Exhibit QC-OTHER-RQ-8. We note that, even if the corporation claims these expenditures with respect to more than one consortium, the C$3 million limit is still in effect, regardless of the number of consortiums associated with the corporation.

[1022] *Id*.

[1023] *See* Government of Québec January 5, 2018 SQR at Exhibit QC-SUPP-PT2-C16-16.

[1024] *See*, *e.g.*, *Lumber V CVD Final Determination* IDM at Comment 50.

[1025] *See* section 771(5A)(D)(iii)(I) of the Act.

[1026] *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).

limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the program *de facto* specific.

Comment 65: Whether Québec's Tax Credit for Construction and Repair of Roads and Bridges Provides a Financial Contribution and a Benefit

Government of Canada's Case Brief

- Commerce erred when it found that this program provided a financial contribution in the form of revenue foregone because it is a provincial program to provide tax credits to companies for building and maintaining public roads, which is a service. Commerce also erred in its benefit calculations for the program because it failed to factor in the costs borne by Resolute.[1027]

Government of Québec's Case Brief

- Commerce should not have preliminarily found this program to be countervailable because the 2006 SLA Arbitration LCIA 81010 offset any "real-world" benefit that Resolute could have received. 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.[1028]

- The LCIA 81010 tribunal's award was based on actual and projected road building credits from 2006 through 2013, when both the program and the SLA expired. By fashioning the remedy to cover retrospective periods, the LCIA 81010 accounted for trade effects covering those periods via an export fee in place for 18 months, which coincided with the time that Resolute built roads and claimed the credit. Because Resolute paid an export tax on its shipments of softwood lumber from 2011 to 2013, but only received the tax credit during the POI, Resolute's benefit has already been accounted for.[1029]

- Commerce's stated rationale in countervailing this program in *Lumber V CVD Final Determination* (*i.e.*, that LCIA 81010 has no bearing on this investigation) ignores that the CVD statute is part of a larger body of law.[1030]

- The purpose of the CVD law is remedial, not punitive or retaliatory, and the accurate calculation of margins is a basic goal of the Act.[1031]

- To eschew unjust enrichment, double or overlapping recovery from the same injury should be avoided. The potential for double recovery arises when there are multiple procedures for

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[1027] *See* GOQ's Case Brief at 92.

[1028] *Id.* at 119-121.

[1029] *Id.* at 125-126.

[1030] *Id.* at 122 (citing *Chamberlain Grp.*, 381 F.3d at 1201-02).

[1031] *Id.* at 122 (citing *Nucor*, 414 F.3d at 1336 and *Rhone Poulenc*, 899 F.2d at 1191).

resolving a claim triggered by the same conduct, and, to the extent that an award or relief has been granted, such amount should be credited against any recovery under a separate compensation scheme.[1032]

- The SCM Agreement also requires that "with the effects of a particular subsidy. . . only one form of relief shall be available." Thus, the same subsidy cannot be countervailed twice under WTO rules, and the CAFC has made similar findings.[1033]

Resolute's Case Brief

- Resolute makes the same arguments as the Governments of Canada and Québec,[1034] adding that, if Commerce disagrees that the tax credits are for a good, rather than a service, it would have to examine this program under the MTAR standard; because the Government of Québec issued only partial reimbursements, the government could not have paid for road construction at MTAR.[1035]

Petitioner's Rebuttal Brief

- Commerce verified that Resolute received a tax credit under this program in 2016. Commerce should continue to countervail this program, consistent with its findings in *Lumber V CVD Final Determination.*[1036]

- LCIA 81010 has no bearing on this investigation. Commerce should find any arguments to the contrary to be unavailing, consistent with its finding in *Lumber V CVD Final Determination*. [1037]

- Any offset to Commerce's benefit calculation related to LCIA 81010 does not fall into one of the categories under section 771(6) of the Act and should be denied on this basis.[1038]

- This investigation covers an entirely distinct class or kind of merchandise than was subject to LCIA 81010. Commerce's mandate to determine if a government is providing a countervailable subsidy on a class or kind of merchandise imported into the United States

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[1032] *Id.* at 122-123 (citing *Bowers*, 320 F.3d at 1327 and *Sun Ship*, 447 U.S. at 725 (footnote 8)).

[1033] *Id.* at 123-125 (citing, *e.g.*, SCM Agreement, Annex 1A, *Brazil Aircraft Panel Report* at para. 7.26, and *Kajaria Iron Castings*, 156 F.3d at 1175).

[1034] *See* Resolute's Case Brief at 30-39.

[1035] *Id.* at 35.

[1036] *See* Petitioner's Rebuttal Brief at 108-109 (citing Resolute Verification Report at 26 and *Lumber V CVD Final Determination* IDM at 17 and Comment 78).

[1037] *Id.* at 110-111.

[1038] *Id.* at 109-110.

does not require an analysis of a different class or kind of merchandise in a completely different forum.[1039]

- The fact that Resolute received only partial reimbursements has no bearing on Commerce's analysis because there is no statutory requirement that a subsidy program completely offset a cost incurred by a respondent for it to be countervailable.[1040]

- Commerce verified that this is a tax program, not an MTAR program, which provides a direct transfer of funds under section 771(5)(D)(i) of the Act.[1041]

- Commerce should continue to find this program *de jure* specific under section 771(5A)(D)(i) of the Act.[1042]

Commerce's Position:

According to the Government of Québec, Revenue Québec permits corporations that incurred expenses for the construction or major repair of eligible access roads or bridges in public forest areas to claim a refundable tax credit for a portion of the expenses on their income tax returns.[1043] The Government of Québec 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.[1044] We verified that Québec sawmills are legally mandated to fulfill several obligations with regard to their TSGs, which include road construction, repairs, and maintenance.[1045] During the POI, Resolute received a refundable tax credit as reimbursement of Resolute's costs for the construction of roads.[1046]

As in *Lumber V CVD Final Determination*, we continue to find that the Government of Québec is reimbursing a cost that Resolute is legally required to incur in its normal course of business.[1047] As the landowner and steward of public forest areas, the Government of Québec

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[1039] *Id.* at 110.

[1040] *Id.* at 111.

[1041] *Id.*

[1042] *Id.*

[1043] *See* PDM at 53 and GOQ November 9, 2017 IQR at GOQ-RQ-32. *See also* Resolute November 10, 2017 IQR at 100; and *Lumber V CVD Final Determination* IDM at Comment 78.

[1044] *See* Resolute November 10, 2017 IQR at 100; and GOQ November 9, 2017 IQR at GOQ-RQ-38.

[1045] *See* Resolute Verification Report at 27 and Exhibit 6.

[1046] *See* Resolute November 10, 2017 IQR at 100 and Exhibit RES-NS-35; and Resolute December 18, 2017 SQR at 9; *see also* Resolute Verification Report at 26.

[1047] *See Lumber V CVD Final Determination* IDM at Comment 78.

requires harvesters who hold TSGs to perform various forest management activities in order to maintain the sustainability of forest areas.[1048] 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.[1049]

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 Government of Québec to relieve Resolute of a financial burden that Resolute would have otherwise incurred. Therefore, because the Government of Québec 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 revenue foregone under section 771(5)(D)(ii) of the Act and confers a benefit in the amount of the reimbursement pursuant to 19 CFR 351.509(a)(1). 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.

We agree with the petitioner that the LCIA 81010 is irrelevant to Commerce's analysis. As an initial matter, although the parties have provided some information pertaining to the LCIA 81010 arbitral award, there is insufficient record evidence to establish the relation of that arbitral award (which was in effect from 2011-2013) to Resolute's receipt of reimbursements under the program in 2016.[1050] Nor did we verify at either Resolute's or the Government of Québec's verifications any such details related to the LCIA arbitral award. Therefore, we find Resolute's and the Government of Québec's case brief arguments to be unsupported by the record evidence. Thus, we reach the same conclusion as we did in the *Lumber V CVD Final Determination*.[1051]

Within this investigation, Commerce 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. Commerce 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, Commerce is permitted to examine it. We further agree with the petitioner that the parties have not established that any amounts paid in relation to the arbitral award are a permissible offset under section 771(6) of the Act.

[1048] *See* GOQ November 9, 2017 Stumpage IQR at QC-S-58, QC-S-140, and Exhibit QC-STUMP-027. 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). *Id*. at QC-S-140.

[1049] *See* GOQ Verification Report at 9-10 and Exhibit 6.

[1050] *See* Resolute Verification Report at 26.

[1051] *See Lumber V CVD Final Determination* at Comment 78.

We also disagree with the respondent parties that our countervailing this program constitutes a double remedy, which is impermissible under either U.S. or international trade law. This investigation involves uncoated groundwood paper, a product distinct from softwood lumber for which no CVD duties have ever been collected by the United States. For this reason, we find that the respondents' reliance on the cases cited in support of their arguments to be misplaced.

We also disagree that Resolute's activities under this program constitute a service, and, thus, the associated payments are not countervailable. Resolute's construction of roads to access harvesting areas with the tenure, were performed in the furtherance of Resolute's harvesting activities, not to render a service to the general public of Québec. It would be economically illogical for a company to render a service in return for less than the cost to provide it, and there is no evidence on the record that Resolute did so during the POI.

Finally, we disagree with Resolute that the payments under this program are for the purchase of a good, or that the payments from the Government of Québec would be more appropriately investigated as under the MTAR provisions of the Act. As the petitioner correctly notes, the Credit for Construction and Repair of Roads and Bridges is a tax program, not an MTAR program. Thus, we find a financial contribution under this program is in the form of revenue foregone under section 771(5)(D)(ii) of the Act, not the purchase of goods for MTAR under section 771(5)(D)(iv) of the Act.

Grant Program Issues: Electricity

Comment 66: Whether Agreements to Curtail Consumption of Electricity Are Grants

At the *Preliminary Determination* and the Post-Preliminary Analysis, Commerce found that the mandatory respondents received countervailable subsides in the form of grants from the governments of British Columbia, Newfoundland and Labrador, Ontario, and Québec. These grants related to agreements the mandatory respondents had with respect to curtailing consumption of electricity or making electrical capacity available as part of a curtailment agreement.

Government of Canada and Provincial Governments' Case Brief

- Curtailment and capacity agreements do not constitute a legally-cognizable financial contribution as they are non-countervailable payments for services purchased by utilities. CVD law does not permit the countervailing of any transfer of resources from the government because a transfer must constitute a financial contribution under section 771(5)(D) of the Act. Since these power curtailment and capacity agreements provide for the purchase of services, they are beyond CVD law.[1052]

- Payments under these programs were for the waiver of the right to take electricity from the provincial utility on demand and to not use an agreed-upon amount of electricity (or, in the

[1052] *See* Government of Canada and Provincial Governments' Case Brief Case Brief at 74-80 (citing *Gov't of Sri Lanka*).

case of NL Hydro, to forgo the use of its own self-generated electricity in order to provide that electricity to the utility instead).

- In *Gov't of Sri Lanka*, the CIT stated that Commerce may not ignore the context in which a government transfers funds to a company. The same analysis in this case shows that provincial utilities compensated the companies for providing something of value, and their purchase does not fall within the common understanding of a "grant." Further, the payments involved no actual purchases or sale of electricity, only an agreement to reduce consumption or to provide standby capacity. Absent evidence that the price paid for curtailments and available capacity exceeded their value, there is no basis for finding a countervailable benefit.

- Companies clearly gave the utilities something of value (*i.e.*, curtailment of electricity) that came as a cost to the companies.

- Finally, at a minimum, the variable portion of the capacity assistance payments by NL Hydro, which involve the actual purchase of electricity should be analyzed as purchases for MTAR.

Government of British Columbia's Case Brief

- The Government of British Columbia makes the following additional arguments: 1) Commerce acknowledged in the *CVD Preamble* that it does not have the authority to countervail the purchase of services; 2) the record demonstrates that the Energy Managers subprogram is the purchase of a service to develop and maintain a strategic energy management plan and the Load Curtailment program is the purchase of a service to compensate large power users for curtailing a portion of their load upon request; and 3) Commerce confirmed that the of the Load Curtailment agreement is a "service agreement."[1053]

Government of Newfoundland and Labrador

- The Government of Newfoundland and Labrador makes the following additional arguments: 1) capacity assistance programs require CBPP to curtail or halt its own operations, and failure to provide such loads will result in penalty charges; 2) credits provided under this program are compensation for agreeing to incur monetary loss; 3) NL Hydro received benefit from this program because it does not have to invest in incremental generational capacity; 4) unlike in *Silicon Metal from Australia Prelim*, NL Hydro suffered blackouts and outages just prior to entering into capacity agreements; and 5) Commerce should also analyze the variable portion of the fee paid to CBPP as an MTAR, as Commerce did with the cogeneration agreement.[1054]

[1053] *See* GBC's Case Brief 8-10 (citing GBC Verification Report at 14).

[1054] *See* GNL's Case Brief at 28-38 (citing *CVD Preamble*).

Government of Ontario's Case Brief

- The Government of Ontario makes the following additional arguments: 1) Ontario Demand Response program relates to "general infrastructure" services that cannot be countervailed under U.S. law (FERC) or WTO rules; 2) Ontario Demand Response is a critical resource for Ontario's electricity grid; and 3) in the FERC Final Rule, FERC determined that demand response was a service.[1055]

Government of Québec's Case Brief

- The Government of Québec makes the following additional arguments: 1) the IEO is a demand response measure like those used by utilities in the United States and worldwide; 2) publications the FERC, NERC and NPCC and the Supreme Court's decision in *NERC* show that demand response measures like the IEO are commonplace; 3) payments under the IEO are fair and reasonable, as the value of the credits is determined by the *Régie*; 4) demand response programs used across North America, including in the United States; and 5) no benefit is conferred because participating customers face the risk of disruption to their businesses, causing uncertainty and risk when they are required to curtail power on notice of interruption from Hydro-Québec.[1056]

Catalyst's Case Brief

- Catalyst makes the following additional arguments: 1) it is well understood, in *Marus* and using the dictionary definition, that a service refers to a performance of labor that does not involve a good; 2) Catalyst only received payments from BC Hydro as long as it complied with curtailment requests; 3) Commerce's decision in *Lumber V CVD Final Determination* differs because the record is different and because the mere fact that the BC Smart Power subprograms provide incentives for energy efficiency does not establish that BC Hydro's load curtailment agreements are not purchases of services.[1057]

Kruger's Case Brief

- Kruger makes the following additional arguments: 1) absent these curtailment agreements, Hydro-Québec has an obligation to serve Kruger and meet its demand for electricity in full; 2) CBPP's Capacity Assistance Agreement with NL Hydro is distinct because CBPP makes its generation capacity available to NL Hydro on a standby basis; 3) the record shows that Hydro-Québec pays its customers the equivalent of the amount it would spend buying power on the open market; and 4) unlike in *Silicon Metal from Australia Prelim*, the record evidence shows that was a history of energy supply shortfalls and Kruger's energy services were interrupted due to high energy demands in the POI.[1058]

[1055] *See* GOO's Case Brief at 60-66.

[1056] *See* GOQ's Case Brief at 4-20, 22-24 (citing *NERC*).

[1057] *See* Catalyst's Case Brief at 84-90.

[1058] *See* Kruger's Case Brief at 94-97, 103-106.

Resolute's Case Brief

- Resolute makes the following additional argument: Commerce's determination in *Silicon Metal from Australia* is not applicable for energy curtailment programs in Québec and Ontario because the record shows that that the program was used in the POI and the rates for both fixed and variable fees are based on auction prices.[1059]

White Birch's Case Brief

- White Birch makes the following additional arguments: 1) White Birch clearly stated in its responses that the program was not a grant but a demand response program that provides value to Hydro-Québec and should be analyzed under the MTAR approach; 2) if payments under the program were a "gift," customers would commit to more than they do; 3) payments received under the IEO program are not based on generational costs but rather on the prices for which demand is procured in the free market under Decision D-2014-156, promulgated by Québec's energy regulator; 4) the prices in effect for the IEO participants were set following a shortage of supply and an underestimation of demand; 5) applicants for the program were turned down when Hydro-Québec had no additional requirements for capacity in a certain region; 6) Hydro-Québec did not over-purchase reserve electricity such that demand capacity offered by IEO participants was worthless; and 7) Commerce should analyze White Birch's participation in the program using an MTAR analysis, since the rate at which Hydro-Québec purchased demand from White Birch was lower than the rate at which it sold demand to White Birch.[1060]

Petitioner's Rebuttal Brief

- Commerce reasonably treated these payments as grants under section 771(5)(D)(i) of the Act because the programs provide incentives to lower the respondent's electricity usage, as determined in *Lumber V CVD Final Determination* and in *Wire Rod from Italy*.[1061]

- Respondents' invocation of FERC standards is misplaced because Commerce and FERC are charged with different statutory mandates, and to use FERC's definition of capacity assistance would require Commerce to overstep its mandate, as the U.S. Supreme Court held in *Epic*.

- Commerce should reject the arguments related to *Silicon Metal from Australia* because: 1) Commerce did not require curtailments in order for the curtailment program to be countervailable, but merely listed the lack of curtailments as a factor; 2) in *SC Paper from Canada*, Commerce rejected the claims that partial use or partial payment somehow negates the effect of the subsidy received;[1062] and 3) the respondents ignore Commerce's recent

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[1059] *See* Resolute's Case Brief at 47, 59-63, 66-68.

[1060] *See* White Birch's Case Brief at 2-21.

[1061] *See* Petitioner's Case Brief at 36-41 (citing *Lumber V CVD Final Determination, Wire Rod from Italy, CTL Plate from Korea Final, Silicon Metal from Australia*, and *SC Paper from Canada).*

[1062] See Petitioner's Rebuttal Brief at 39, citing SC Paper from Canada at Comment 31 ("{t}he assertion that JDIL was not fully reimbursed for either the silviculture or the forest management activities it performed is immaterial.

decision in *CTL Plate from Korea Final*, where Commerce rejected the argument that the demand response program constitutes a government purchase of services.

- Commerce has previously addressed claims that "partial use" or "partial payment" somehow negates the effect of the subsidy received and has rejected these arguments.[1063] In the instant investigation, the fact that actual curtailment may only occasionally occur does not erase the benefit from the payments.[1064]

Commerce's Position:

We disagree that curtailment of power use during peak demand amounts to a performance of a service by the company.[1065] First, as discussed in Comment 36, we have determined that electricity is a good and, therefore, not a service.[1066] We also disagree, in part, that the load curtailment programs under consideration in this investigation are not grants. Commerce has found in previous cases that load curtailment programs are the provision of a grant.[1067] Regardless of how the parties classify these programs, it is clear from the record that their purpose is to incentivize the companies to lower energy usage. Hence, these payments are more properly treated as grants, not as compensation. Accordingly, the respondents' argument that we unlawfully countervailed compensation for services purchased by government-owned utilities is misplaced.

We disagree that *Silicon Metal from Australia Prelim* is dispositive, or that it undermines our determination that the Canadian load curtailment programs are countervailable. Contrary to the respondent parties' assertions, that decision did not establish a requirement that there be no actual curtailments in order for the curtailment payments to be countervailable. In *Silicon Metal from Australia Prelim*, no company participating in the program curtailed its electricity consumption during the POI. Further, Commerce's analysis did not end there; the absence of

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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.")

[1063] *Id.* ("{t}he 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.")

[1064] *See* Petitioner's Rebuttal Brief at 38-39.

[1065] We disagree with the Government of British Columbia that Commerce verified that BC Hydro's load curtailment program involved payments for the provision of a service. Any statements in the verification report on this topic merely document discussions held with individuals involved in the program, unaccompanied by any conclusions as to appropriate treatment of the programs themselves.

[1066] While Commerce has used dictionary definitions to support our approach to an issue, a dictionary definition does not supersede Commerce's consistent application of the Act. *See Chevron*, which states "if 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."

[1067] *See Lumber V CVD Final Determination* IDM at Comment 58*; Wire Rod from Italy* IDM at Comment 2*;* and *Silicon Metal from Australia* at Comment 2, and *CTL Steel Plate from Korea* at *73182.*

curtailment activities was only one of the factors Commerce considered when determining that the load curtailment program was a grant.[1068] Like in Silicon Metal from Australia, here the curtailment agreements between the parties contained a fixed component, which were granted regardless of whether a government-owned utility called for the respondents to curtail their electricity usage or not. Further, the fact that curtailment of electricity occurred during the POI does not negate the benefit from the payments themselves. Therefore, we continue to find that, pursuant to section 771(5)(D)(i) of the Act and 19 CFR 351.504(a), these credits confer a benefit in the amount of electricity credits received by Kruger, Resolute, and White Birch.

We also disagree that it is relevant that the payments under these programs were determined by reference to "market principles" or that the agreements provided for penalties. As we stated in *SC Paper Expedited Review Final*, partial use or partial payment under a program (*e.g.*, the provision for penalties) does not negate the effect of the subsidy received.[1069] Moreover, the fact that the agreements are subject to penalties is not relevant because if the respondent did not curtail, it would not have received the payment, and there would have been no benefit. Similarly, the fact that companies may incur costs when curtailing energy usage does not impact our benefit calculation under 19 CFR 351.504(a).

We disagree that the IEO benefits from this program while the respondent companies do not, or that any advantages to the governmental utilities in administering the programs are relevant to the benefit that the respondent companies received from those authorities. In analyzing the benefit received by a grant, Commerce considers the benefit to be amount of grant received by the company. Further, Commerce's regulations at 19 CFR 351.504(a) do not contemplate any advantages the government might receive by administering the program, nor do our regulations require Commerce to take into account benefits other companies may have not received.[1070] Because the governmental utilities made a "direct transfer of funds" via a grant to the respondent companies, we find that they received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

We also disagree that, consistent with *Gov't of Sri Lanka,* Commerce must define the term "benefit" as a "gift without consideration" or that it is appropriate to consider the context in which a grant is provided. Rather, the regulations state that Commerce will "measure the extent to which a financial contribution (or income or price support) confers a benefit" as provided for the specific type of benefit, as described under the regulations.[1071] Commerce does not consider "the effect of the government action" on the respondents' performance, or whether the respondents altered their behavior.[1072] Under this framework, any grant payments of the associated costs incurred are, in fact, a benefit to the respondents. Additionally, while such

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[1068] *Silicon Metal from Australia Prelim* IDM at 6-8, *determination unchanged in Silicon Metal from Australia* IDM at Comment 2.

[1069] *See SC Paper Expedited Review Final* at Comment 31.

[1070] *See CVD Preamble*, 63 FR at 65361 ("{T}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy."

[1071] 19 C.F.R. 351.503(a).

[1072] 19 C.F.R. 351.503(c).

curtailment programs may be commonplace in other countries, it does not follow that they must not be countervailable under U.S. countervailing duty law.

As we stated in Comment 36, the decisions used by other agencies are not controlling on Commerce. Therefore, we find the respondents' arguments that we should view load curtailment programs in the same way as FERC to be unpersuasive.

Notwithstanding the above, we agree with the respondent parties that the variable payment under Capacity Assistance Program with NL Hydro should be evaluated as the purchase of a good for MTAR, as CBPP provides a good (*i.e.*, electricity) to NL Hydro. We continue to find that the fixed payment under this program is a grant for the reasons stated above. For further discussion, see Comment 77.

Since we have determined that load curtailment is a grant, we need not address the respondents' arguments that load curtailment programs are an un-countervailable provision of a service.

Based on our analysis of the arguments submitted by respondent parties, we find no reason to deviate from our finding in the Preliminary Determination that, as payment for complying with BC Hydro, NL Hydro, IESO, and Hydro-Québec interruption notices, the participants receive certain fixed and variable credits.

Comment 67: Whether the Power Smart Subprograms are *De Jure/De Facto* Specific

In the *Preliminary Determination,* Commerce found each of the four 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.[1073]

Catalyst's and the Government of British Columbia's Case Brief

- Commerce cannot reasonably conclude that the Energy Manager, TMP, Load Curtailment, and Incentives subprograms are specific to any industry or group of industries. Rather, BC Hydro's Power Smart program, writ large, is available to all 1.96 million BC Hydro customers. The Power Smart program is tailored to meet the unique electricity demand profiles of BC Hydro's residential, commercial, and industrial customers, with the common goal of encouraging energy consumption. Commerce, in its final determination, should find that the BC Power Smart subprograms are neither *de jure* nor *de facto* specific.[1074]

Petitioner's Rebuttal Brief

- Commerce should continue to find the BC Hydro Power Smart program provides a countervailable benefit.[1075]

[1073] *See* PDM at 61-64.

[1074] *See* Catalyst's Case Brief at 82-84 and GBC's Case Brief at 2-8.

[1075] *See* Petitioner's Rebuttal Brief at 57.

Commerce's Position:

We find no reason to change the specificity determinations made in the *Preliminary Determination* with respect to these subprograms.[1076] 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. Record evidence shows that BC Hydro operates multiple subprograms under the broader Power Smart program.[1077] While all the subprograms under the umbrella Power Smart program share the same overarching goals, each subprogram has distinct and separate eligibility criteria.[1078] In particular, the record shows that (1) eligibility for the Energy Manager subprogram is limited to industrial customers that use more than 10 GwH of electricity per year;[1079] (2) eligibility for the TMP subprogram is limited to operators of TMP mills who are connected to the BC Hydro system at above 60 KV;[1080] (3) eligibility for the Load Curtailment subprogram is limited to industrial customers served at the transmission service rate with a minimum bid of 5 mW of curtailable load;[1081] and (4) eligibility for the Incentives subprogram is limited to industrial customers that consume more than 1 GwH of electricity annually.[1082] Therefore, we disagree that Commerce must look at the Power Smart program as a whole, or consider other subprograms, in assessing the specificity of the Energy Manager, TMP, 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*,[1083] the subsidies that are provided by BC Hydro under each subprogram are expressly limited by law to enterprises that meet specific energy generation and consumption requirements, meaning that the Government of British Columbia has established, by law, a limited group of enterprises that may receive grants from BC Hydro under the Energy Manager, Load Curtailment, and Incentives Power Smart subprograms. The fact that the Government of British Columbia may not have limited eligibility for these subprograms to specific industries does not alter this conclusion. Further, in the case of the TMP program, the consumers must operate a TMP mill (*i.e.*, the subsidy is specific to the pulp and paper industry) and must be connected to the BC Hydro system at above 60 KV.[1084]

[1076] *See* PDM at 61-64.

[1077] *See* GBC November 9, 2017 IQR at Volume II, BC II-3 to BC II-9.

[1078] *Id.*

[1079] *See* GBC November 9, 2017 IQR at Volume II, Exhibit BC-BCH-6, at 3.

[1080] *Id.* at Volume II, BC II-6.

[1081] *Id*. at Volume II, BC II-8 and at Exhibit BC-BH-10

[1082] *Id*. at Volume II, Exhibit BC-BH-3.

[1083] *See* PDM at 61-64.

[1084] *See* GBC November 9, 2017 IQR at Volume II.

Therefore, we continue to find that each of these subprograms is *de jure* specific under section 771(5A)(D)(i) of the Act. This finding is consistent with Commerce's findings in *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination*. In the *Lumber V CVD Final Determination*, we found the Incentives subprogram, Industrial Energy Managers subprogram, and Load Curtailment subprogram to be *de jure* specific under section 771(5A)(D)(i) of the Act.[1085] Additionally, in the *SC Paper Expedited Review Final*, we found the TMP program to be specific to TMP mills, and the Industrial Energy Managers subprogram, to be *de jure* specific under section 771(5A)(D)(i) of the Act.[1086]

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. Although we have not addressed arguments that the Power Smart programs are not *de facto* specific, we note that the number of users of the specific Power Smart subprograms are certainly limited in number, as the subprograms are tailored to large consumers of electricity, or to TMP mills in the case of the TMP program.[1087] Further, we note that finding *de facto* specificity with respect to programs used by Catalyst would be a straightforward matter, since, according to BC Hydro officials at verification, Catalyst is "the largest single consumer of power in the province" of British Columbia and that, "when there were seven {TMP} mills in British Colombia, they consumed 10 percent of the electricity in the province."[1088]

Comment 68: The Appropriate Benefit for the Power Smart: Load Curtailment Program

Catalyst's Case Brief

- If Commerce disagrees that BC Hydro Power Smart Load Curtailment is a purchase of services, it must modify the benefit calculation, since the program was not a simple grant. but required Catalyst to curtail its power usage and consequently incur costs, particularly in the form of lost production.[1089]

- Commerce verified that "Catalyst provided back-up calculations for {the} opportunity cost, showing MwH of electricity curtailed, based on the calls in 2016 and based upon the energy intensity, marginal machine production efficiency on an annualized basis, and the average contribution margin by mill for paper products in 2016."[1090]

[1085] *See Lumber V CVD Final Determination* IDM at Comment 59.

[1086] *See SC Paper Expedited Review Prelim* PDM at "6. BC Hydro Power Smart Program," unchanged in *SC Paper Expedited Review Final* IDM at Comment 8.

[1087] Additionally, Catalyst confirmed that the "BC Hydro Power Smart incentives were individually negotiated." *See* Catalyst November 9, 2017 IQR at IV.C.5-5.

[1088] *See* GBC Verification Report at 11.

[1089] *See* Catalyst's Case Brief at 90-91.

[1090] *Id.* at 91 (citing Catalyst Verification Report at 8)

- Pursuant to section 771(5)(E) and 19 CFR 351.503, when calculating the benefit from a subsidy program, Commerce must account for the entirety of the transactions involved. In *SC Paper Expedited Review Final*, Commerce calculated the "gross countervailable subsidy" by analyzing both sides of the transaction. In *Lumber V CVD Final Determination*, Commerce explained that "an underlying theme behind the definition of benefit" under the statute is whether there is a "benefit to the recipient," particularly when a unique alleged program is at issue.[1091]

- In *Lumber V CVD Final Determination*, Commerce considered the full amount of BC Hydro's load curtailment program because no party argued or provided evidence of the value provided to participate in the program, as Catalyst has done here. Therefore, Commerce should calculate the benefit to Catalyst under this program as the payment in excess of the value of Catalyst's obligations and costs from participation in the program.[1092]

Petitioner's Rebuttal Brief

- Commerce should reject Catalyst's request because the type of adjustment suggested is not a permissible offset to the amount of the subsidy calculated.[1093]

- Commerce's governing statute, section 771(6) of the Act, narrowly defines the types of offsets that are permitted in calculating net countervailable subsidies and Commerce has refused to permit offsets other than the three specifically provided for in the statute.[1094]

- In *Lumber IV AD AR Final*, Commerce limited "net countervailable subsidy" to the three narrow offsets under section 771(6) of the Act. Commerce reiterated its decision in *SC Paper Expedited Review Final* and *Lumber V CVD Final Determination*.[1095]

Commerce's Position:

As we explained in Comment 60, section 771(6) of the Act provides that, in determining the "net countervailable subsidy," Commerce may reduce the "gross countervailable subsidy" by the amount of certain types of payments, loss of value, or export charges levied specifically to offset the countervailable subsidy received. Specifically, these qualifying offsetting amounts are limited to:

[1091] *Id.* at 91-92 (citing *SC Paper Expedited Review Final* at Comment 6 and *Lumber V CVD Final Determination* at Comment 51)

[1092] *Id* at 92-93.

[1093] *See* Petitioner's Rebuttal Brief at 58-59.

[1094] *Id*. at 59

[1095] *Id.* at 59-60 (citing *Lumber IV AD AR Final* IDM at Comment 43; *SC Paper Expedited Review Final* IDM at Comment 33; and *Lumber V CVD Final Determination* IDM at Comment 71).

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

As we recognized in *Lumber V CVD Final Determination*,[1096] both Congress and the courts have confirmed that these are the only offsets Commerce is permitted to make under the statute.[1097] We agree with the petitioner that the offset requested by Catalyst is not one of the enumerated offsets that are permitted by the statute.

We disagree with Catalyst that Commerce should calculate a "gross countervailable subsidy" which is net of Catalyst's costs under section 771(5)(E) and 19 CFR 351.503. In *SC Paper Expedited Review Final*, Commerce determined that the gross countervailable subsidy was the difference between what Catalyst received (property tax ceiling) and the value of what Catalyst provided (*e.g.*, transfer of property and the mortgage discharge).[1098] However, the material facts of that program differ from the Power Smart program at issue here. In *SC Paper Expedited Review Final*, the agreement that established the parameters of this program set that Catalyst would transfer to City of Powell River certain of its properties, transfer a limited partnership interest, and discharge a mortgage. In exchange, the City of Powell River provided Catalyst with a property tax ceiling for the 2010 to 2014 tax years. In this case, the agreement to curtail came with no similar agreement and, therefore, Commerce appropriately calculated the benefit for the program pursuant to section 771(5)(D)(i) of the Act and 19 CFR 351.504(a). In *Lumber V CVD Final Determination*, Commerce determined the benefit for a sale of electricity for MTAR was the benefit-to-the-recipient standard.[1099] Since the Power Smart program at issue is properly analyzed as a grant, and not as an MTAR, program (*see* Comment 66), we find Catalyst's reliance on *Lumber V CVD Final Determination* unpersuasive.

Comment 69: The Correct Calculation for the BC Hydro Power Smart TMP and Incentives Subprograms

Catalyst's and the Government of British Columbia's Case Brief

- At Catalyst's verification, Commerce noted that the funds provided under the BC Hydro Power Smart TMP and Incentives subprograms constitute contingent liabilities, which

[1096] *See Lumber V CVD Final Determination* IDM at Comment 15

[1097] *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").

[1098] *See SC Paper Expedited Review Final* IDM at Comment 6.

[1099] *See Lumber V CVD Final Determination* IDM at Comment 51.

require Catalyst to undertake and maintain certain activities for a specific period of time. Consistent with these observation, Commerce should calculate the benefit for these programs as contingent liabilities.[1100]

- Additionally, with respect to the TMP engineering studies, the 0.5 percent test should be performed on the C$45 million approved in 2014, and the study amounts should all be allocated over the AUL period, from the year of receipt. Alternatively, if Commerce continues to expense the studies in the year of receipt, the benefit was received by Catalyst when the report was finished, not when the Government of British Columbia paid the consultant, and thus Commerce should recognize the benefits as such.

Commerce's Position:

We agree, based on information verified with Catalyst, that both the TMP and Incentives subprograms constitute contingent liabilities, pursuant to 19 CFR 351.505(d), and we have made adjustments to our calculations to treat them as such.[1101] While this information was verified, we lacked time to collect all the amounts needed to determine how much liability was released on a yearly basis. Therefore, for both the TMP and Incentives subprograms, we have treated the amount of liability eliminated in each year as a grant received in that year, pursuant to 19 CFR 351.505(d)(2), and we have treated the remaining outstanding liability (*i.e.*, "repayment obligation") as an interest-free loan, pursuant to 19 CFR 351.505(d)(1).[1102] We will continue to collect information on these programs, in any subsequent administrative review.

Additionally, we agree with Catalyst that the TMP engineering studies were performed under the C$45 million envelope of TMP funding.[1103] As such, we have performed the 0.5 percent test on the total C$45 million in approved TMP funding, and have allocated the engineering study benefits over the AUL period (based upon completion date), and then cumulated the benefit with the TMP project funding, to calculate the total TMP benefit, pursuant to 19 CFR 351.524(d).[1104]

Comment 70: Whether Hydro-Québec's IEO Program Is Specific

Government of Québec's Case Brief

- Commerce preliminarily determined that the IEO program is *de jure* specific because it is limited to industrial users with the technical capacity to curtail power on notice of interruption. However, the IEO program is available to all medium-power customers, large-power customers on rate L (industrial), and rate LG customers. These customer types are

[1100] *See* Catalyst's Case Brief at 93-104 and GBC's Case Brief at 11-12.

[1101] *See* Catalyst Verification Report at 2 and 7-9 and verification exhibit 11. *See also* Catalyst November 9, 2017 IQR at Exhibit TMP-9. *See also* GBC Verification Report at 14-15.

[1102] *See* Catalyst Final Calc Memo at Attachment 5.

[1103] *See* Catalyst November 9, 2017 IQR at IV.C.3-1 through IV.C.3-3 and Exhibit TMP-10.

[1104] *See* Catalyst Final Calc Memo at Attachments 2 and 5

comprised of thousands of entities from a wide variety of industry sectors. Based on these facts, Commerce's *de jure* specificity determination is unsupported by record evidence.[1105]

- Commerce also preliminarily determined that the IEO program is *de facto* specific because it is predominantly used by the pulp and paper industry. The IEO program is also available to all medium-power customers and rate LG customers, though no medium-power customer participated in the IEO under investigation during the POI. Record evidence shows that other industries use the program and that the program should not be considered specific to pulp and paper.[1106]

Commerce's Position:

We are unpersuaded by the respondent parties' assertion that the IEO program is not specific. 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 Hydro-Québec through the IEO program are expressly limited by law to enterprises that meet specific energy generation and consumption requirements and have the technical capacity to curtail power on notice of interruption, meaning that the Government of Québec has established, by law, a limited group of enterprises that may receive grants from Hydro-Québec under this program. The fact that the Government of Québec may not have limited eligibility to commonly-defined industries does not alter this conclusion. Therefore, we continue to find the Hydro-Québec IEO program to be *de jure* specific within the meaning of 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 further examined whether the program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Comment 71: Whether Hydro-Québec's Industrial Systems Program/Energy Efficiency Program is Countervailable

Government of Québec's Case Brief

- In its Post-Preliminary Analysis, Commerce incorrectly found that Hydro-Québec's Industrial Systems/Energy Efficiency program was *de facto* specific and provided a benefit equal to the amount of the grant. Commerce's specificity determination is contrary to the evidence and the law. For the final determination, Commerce should determine the program is not countervailable because it is neither *de jure* nor *de facto* specific.[1107]

[1105] GOQ's Case Brief at 21.

[1106] *Id.* at 21-22.

[1107] *See* GOQ's Case Brief at 25.

- The pulp and paper industry is not a predominant user of the program, nor does it receive a disproportionally large amount of assistance under the program. During the AUL period, 1,818 companies in many different industries received assistance under the program.[1108]

- Further, eligibility was automatic and based on established criteria. Assistance under the program is available to all "goods producing" companies and is given based on the projected kilowatt hour savings.[1109]

- Moreover, the program does not confer a benefit on respondents. The objective of the program is to reduce the use of electricity through energy efficiency projects, and the assistance provided was based on actual reduction in the use of electricity. Payments are made on a contractual basis, and companies must fulfill their contract requirements in order to receive the funds.[1110]

- The program is profitable to Hydro-Québec, which is evidence that any benefit conferred goes to Hydro-Québec.[1111]

- Even if Commerce were to find the program specific, Hydro-Québec's Industrial Systems/Energy Efficiency program is not countervailable because the Government of Québec is purchasing the service of energy efficiency (*i.e.*, the reduction of electricity use), and a government's purchase of services is not countervailable under the statute.[1112]

Resolute's Case Brief

- Resolute includes and incorporates by reference the arguments of the Government of Québec in its case brief.[1113]

- Should Commerce consider the reimbursements to be non-recurring, any amounts received prior to 2011 would have been extinguished in accordance with the Fresh-Start accounting in accordance with GAAP and the bankruptcy proceedings.[1114]

Commerce's Position:

In our Post-Preliminary Analysis, we found that a limited number of companies received grants from the program during the POI and the AUL period, and, therefore, we preliminarily determined that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act. The Government of Québec argues that the program is not *de facto* specific because

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[1108] *Id*. at 27-28.

[1109] *Id*. at 28.

[1110] *Id*. at 28-29.

[1111] *Id*.

[1112] *Id*.

[1113] See Resolute's Case Brief at 82-83.

[1114] *Id*.

the pulp and paper industry is not a predominant user of the program, nor does it receive a disproportionally large amount of assistance under the program. The fact that companies in many different industries received assistance under the program does not negate the fact that during the AUL period, only 1,818 companies received assistance under this program, which represents less than one percent of all industries in Québec. The program is not widely used throughout the provincial economy, and, therefore, we continue to find it *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

We disagree that this program does not confer a benefit on the respondent companies in this investigation. As we stated in our Post-Preliminary Analysis, Kruger, Resolute, and White Birch received grants under Hydro-Québec's Industrial Systems/Energy Efficiency program and its predecessor programs during the AUL period.[1115] The respondent parties' assertion that the project is profitable for Hydro-Québec does not negate the fact that respondent companies received grants from Hydro-Québec under the program during the AUL period and the POI. We continue to find that this program provides a benefit to those companies under section 771(5)(E) of the Act, and that the benefit exists in the amount of non-recurring reimbursement payments received by those companies, pursuant to 19 CFR 351.504(a).

Moreover, we disagree with the respondent parties that Hydro-Québec's Industrial Systems/Energy Efficiency program is not countervailable because the Government of Québec is purchasing the service of energy efficiency (*i.e.*, the reduction of electricity use). We do not agree that the reduction of electricity usage amounts to a performance of a service for which the government is paying. Record evidence indicates that the reimbursement payments are "incentives" to the company, provided in the manner of non-recurring grants.[1116] Therefore, we continue to find that Hydro-Québec's Industrial Systems/Energy Efficiency program conferred a benefit to Kruger, Resolute, and White Birch equal to the amount of the non-recurring grants received, pursuant to 19 CFR 351.504(a).

Finally, we agree with Resolute that amounts received for this grant program prior to 2011 are extinguished, consistent with our analysis of Resolute's bankruptcy proceedings and subsequent CIO. *See* Comment 6, above. Therefore, for the final determination, we excluded subsidies received prior to 2011 from our calculations.

Comment 72: Whether the Hydro-Québec Special L Rate for Industrial Customers Affected by Budworm Confers a Benefit

Government of Québec's Case Brief

- The Côte-Nord Rate L is a discounted electricity rate provided to Resolute's Baie-Comeau and Clermont mills; this rate is designed to compensate those mills for some of the costs they incur as a result of the regional spruce budworm epidemic. Commerce erred in its Post-Preliminary Analysis in determining that the discounted rate is *de jure* specific because the

[1115] Kruger did not receive a measurable benefit during the POI.

[1116] *See* GOQ January 5, 2018 SQR at GQ-SUPP-124. *See also* GOQ Verification Report at 15-17.

beneficiaries are limited to the two mills operating on the Côte-Nord (*i.e.*, Resolute's Clermont and Baie-Comeau mills).[1117]

- The Côte-Nord Rate L does not provide a benefit because it provides only partial reimbursement for the increased costs associated with harvesting timber and producing paper in a budworm-infested region. Due to the widespread infestation, the Clermont and Baie-Comeau mills do not have a choice but to harvest the diseased timber for which they still pay premium stumpage prices. The rate discounts a portion of the increased electricity costs related to the increased power needed to process budworm-infested wood.[1118]

- The Côte-Nord Rate L provides Resolute's Baie-Comeau and Clermont mills a limited discount on electricity invoices in recognition of the sustained financial difficulties the mills have encountered. Because this reduced rate constitutes a partial reimbursement for the increased costs associated with operating in a budworm-infested region, the Côte-Nord Rate L is not a countervailable subsidy under the statute.[1119]

Commerce's Position:

As stated in our Post-Preliminary Analysis and verified by Commerce,[1120] Resolute approached the Government of Québec requesting financial assistance in response to the increased costs required to harvest certain forests affected by the budworm epidemic. Specifically, Resolute stated that it met with, and showed a presentation to, Government of Québec officials to demonstrate the rising costs and diminishing returns in harvesting these affected areas. As a result, there was no application; instead, industry parties and the Government of Québec established a fixed rate reduction in Hydro-Québec's L-rate price structure to mitigate the increased electricity costs affecting all companies operating in the region.

Through Order in Council 1147-2015, Hydro-Québec agreed to a special rate contract with two of Resolute's mills (*i.e.*, Clermont and Baie-Comeau) to provide a fixed rate for the distribution of electricity. These contracts, valid from January 1, 2016, through December 31, 2020, provide a 20 percent rate discount applicable to the first 63.5 and 83.8 megawatts of Resolute's Baie-Comeau and Clermont mills, respectively.

After consideration of the Government of Québec's arguments, we are not persuaded that Côte-Nord Rate L does not provide a benefit because it provides only partial reimbursement for the increased costs associated with harvesting timber and producing paper in a budworm-infested region. The notion that the payments received do not cover the full costs does not negate the benefit from the payments received. This is consistent with *SC Paper Expedited Review Final*,

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[1117] *See* GOQ's Case Brief at 59.

[1118] *Id*. at 60-61.

[1119] *Id*. at 61.

[1120] *See* Resolute Verification Report at 15-16.

when we found that partial use of, or partial payment under, a program does not negate the effect of the subsidy received.[1121]

Therefore, for this final determination, we continue to find that the Côte-Nord Rate L discount for Resolute's two mills is *de jure* specific under section 771(5A)(D)(i) of the Act, because these mills are the only beneficiaries of Hydro-Québec's specialized rate discount contracts under the Order in Council. We also continue to find that the discount confers a benefit under 19 CFR 351.525(b)(6)(v) in the amount of electricity credits received by Resolute.

Comment 73: Whether the IESO Demand Response Is Specific

Government of Ontario's Case Brief

- Even if Commerce were to continue to find that payment for the provision of Demand Response services is a financial contribution, the program is neither *de jure* nor *de facto* specific because it is generally available to all industries and sectors.[1122]

- Commerce has investigated similar Demand Response programs in the past and has found such programs to be non-countervailable because they were not specific. For instance, in *CTL Steel Plate from Korea*, Commerce examined a program almost identical to Ontario's Demand Response. Specifically, a VCA was introduced in South Korea to provide "a stable supply of electricity and to improve energy efficiency by reducing demand during periods of peak consumption that occur during the summer." Commerce concluded that the program was neither specific in law, nor specific in fact, due to the wide range of industries that provided VCA services to the grid and were compensated by the government.[1123]

- The IESO procures Demand Response capacity through competitive mechanisms from service providers able to provide this capacity (through the energy market) in exchange for an availability payment. The competitive mechanism during the first third of the POI – when the auction system was being implemented – was based on a competitive contract system, Capacity Based Demand Response, designed to serve for the interim period. Irrespective of the mechanism, eligibility during the POI was not limited to any industry sector. The auction allows large consumers, as well as aggregators of smaller institutional, commercial, industrial, and even residential customers, to compete to provide Demand Response capacity for summer or winter commitment periods. These resources then help to meet Ontario's overall system adequacy needs.[1124]

- Further, Demand Response in Ontario is not *de facto* specific because of the variety of industries that provided Demand Response service during the POI, as Commerce verified.[1125]

[1121] *SC Paper Expedited Review Final* at Comment 31.

[1122] *See* GOO's Case Brief at 66.

[1123] *Id*. at 67.

[1124] *Id*. at 67-68

[1125] *Id*. at 68.

Resolute's Case Brief

- The Electricity Demand Response program is generally available, widely used and, therefore, not specific to an enterprise or industry or group of enterprises or industries.

Commerce's Position:

In our *Preliminary Determination*, we preliminarily determined that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number. After consideration of the respondent parties' arguments, we are not persuaded to change our specificity determination for this final determination. The fact that a variety of industries were eligible and participated in this program during the POI does not negate the fact that the actual recipients of the subsidy are limited in number. As verified at the Government of Ontario, only seven industrial direct participants and high-energy-consumer aggregators, including Resolute, participate in the Demand Response program.[1126] Therefore, we continue to find the IESO Demand Response to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number.

Because we are not finding specificity based on section 771(5A)(D)(iii)(II) or (III) of the Act, the Government of Ontario's citation to *CTL Steel Plate from Korea* is not applicable.

Comment 74: Whether the Ontario IEI Program is Specific

Government of Ontario's and Resolute's Case Briefs

- Neither U.S. law nor record evidence supports Commerce's finding in the *Preliminary Determination* that the Ontario IEI program is countervailable.[1127]

- The IEI program is not *de jure* specific. Commerce's preliminary determination that specificity can be found because program recipients are limited to "large industrial customers" is both unlawful and not credible. "Large industrial customers" is a broad category that does not create a discrete class of beneficiaries satisfying the requirements of the statute and includes almost every industrial sector in Ontario. *De jure* specificity must be found on an enterprise or industry basis pursuant to the terms of a law or regulation.[1128]

- Further, the IEI program is not *de facto* specific. The *de facto* specificity provisions of the law require that the actual number of users must be limited in number, or an enterprise or industry must be predominant or disproportionate user of the program, and the facts here do not support such a finding. Record evidence demonstrates that IEI program participants

[1126] *See* GOO Verification Report at 17.

[1127] *See* GOO's Case Brief at 86.

[1128] *Id.* at 87. *See also* Resolute's Case Brief at 68.

represent a broad cross-section of industries in Ontario. No particular company or industry disproportionately benefited from participation in the IEI program.[1129]

Commerce's Position:

In our *Preliminary Determination*, we found Ontario's IEI Program *de jure* specific because the recipients are limited to large industrial customers, including Resolute, who is eligible based on its classification under NAICS code 321110: Sawmills and Wood Preservation[1130]. Based upon our analysis of the arguments submitted by the interested parties, we find no reason to change our specificity determination with respect to the IEI program. We continue to find the IEI Program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

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 the Government of Ontario under the IEI program are expressly limited to large industrial customers,[1131] meaning that the Government of Ontario has established, by law, a limited group of enterprises that may receive grants from the Government of Ontario under this program.

Therefore, we continue to find that the IEI program is *de jure* specific under section 771(5A)(D)(i) of the Act. Having made a finding of *de jure* specificity, we have not examined whether the program *de facto* specific under section 771(5A)(D)(iii) of the Act.

Comment 75: Whether the Ontario IEI Program is Tied to Non-Subject Merchandise

Government of Ontario's Case Brief

- Record evidence shows that the IEI program is not attributable, in part or in whole, to the production of subject merchandise. IEI grants are tied to specific facilities in Ontario that do not produce UGW paper, including Resolute's sawmills in Atikokan and Ignace.[1132]

- Commerce's regulation under 19 CFR 351.525(b)(5) require that IEI program benefits tied to specific facilities must be allocated, if at all, to the products produced in those facilities. The intent to evaluate a program's benefit based on products produced by recipient facilities is clearly demonstrated through Congressional intent, cited in the *CVD Preamble*.[1133]

[1129] *Id*. at 87-88. *See also* Resolute's Case Brief at 69.

[1130] *See* the *Preliminary Determination* at 69.

[1131] *Id.*

[1132] *See* GOO's Case Brief at 88.

[1133] *Id.* (citing *CVD Preamble*, 63 FR at 65403)

- Commerce's past practice in *Uranium from Germany et. Al*, *Washers from Korea,* and *Refrigerators from Korea Final* is consistent with the approach of assessing subsidy benefits.[1134]

Commerce's Position:

We disagree with the Government of Ontario that the Ontario IEI program is tied to non-subject merchandise. The fact that Resolute manufactures non-subject merchandise at the Atikokan and Ignace mills does not change the fact that those two mills are part of the Resolute corporate group. The Atikokan and Ignace mills are not distinct corporate entities, which would require Commerce 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, Atikokan and Ignace are mills owned by Resolute Growth, a sister company to Resolute, wholly-owned by Resolute Canada's ultimate parent company, Resolute Forest Products Inc.[1135] Further, the Atikokan and Ignace mills are input suppliers, producing woodchips that are used in the production of subject merchandise.[1136] Neither the Act nor Commerce's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."[1137] Further, Commerce does not tie subsidies on a plant- or factory-specific basis.[1138]

Commerce recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose.[1139] Subsidies provided to a division of a company, such as a sawmill, 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 IEI 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 Commerce'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, Commerce analyzes the purpose of the subsidy based on information available at the time of bestowal.[1140] Commerce's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed, rather than

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[1134] *Id.* (citing *Uranium from Germany et. Al* IDM at Comment 14, *Washers from Korea* IDM at 18, and *Refrigerators from Korea Final* IDM at Comment 14).

[1135] *See* Resolute November 9, 2017, IQR at 3-4, 13.

[1136] *Id.* at 4.

[1137] *See SC Paper from Canada* IDM at 161 (citing *CFS from China* IDM at Comment 8).

[1138] *See*, *e.g.*, *SC Paper Expedited Review Final* IDM at 99.

[1139] *See CVD Preamble*, 63 FR at 65403.

[1140] *Id*.

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 Government of Ontario) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.[1141]

Resolute contends that grants received under the IEI program are tied to the production of non-subject merchandise because they were given to Resolute mills that do not produce subject merchandise. However, there is no information on the record that establishes that, at the time of approval or bestowal, the benefits from the grant are tied to the production of non-subject merchandise. This program provided credits for meeting various contractual obligations to conserve energy, including energy operating, management, and metering plans.[1142] Officials from the Government of Ontario stated that, in order to encourage increased energy consumption among manufacturers, they established incentives whereby, if companies meet a minimum incremental volume commitment, in addition to meeting other contractual requirements, they would be eligible for certain rebates.[1143] We thus find that there is no record evidence establishing that the payments under the IEI program are tied solely to producers of non-subject merchandise.

Comment 76: Whether Capacity Assistance Payments to CBPP Are Specific

Government of Newfoundland and Labrador's Case Brief

- Commerce erred in its Post-Preliminary Analysis in finding that CBPP's capacity assistance agreement with NL Hydro is *de facto* specific because the actual recipients are limited in number. The fact that there are only three industrial customers, including CBPP, involved in capacity assistance agreements is not itself indicative of a limited number of recipients because it does not consider the proper universe of potential recipients.[1144]

- The Province of Newfoundland is very small and potential participants in the program are, therefore, limited on an absolute basis. As discussed at verification, "although all industrial customers in Newfoundland are eligible for the capacity assistance program, there are only a very small number of these customers on the island and the largest of these (outside of CBPP) would not entertain an agreement." Three companies out of a very small number, given Newfoundland and Labrador's limited economic diversification, is not "limited" as intended by the statute. The statute states that, in assessing *de facto* specificity, Commerce shall take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy. Commerce failed to do so and, thus, should find that the capacity assistance agreement is not *de facto* specific.[1145]

[1141] *See, e.g., Essar Steel Ltd.* at 1296.

[1142] *See* Resolute November 9, 2017 IQR at 90.

[1143] *See* GOO Verification Report at 21.

[1144] *See* GNL's Case Brief at 38.

[1145] *Id*. at 39.

Commerce's Position:

We disagree with the Government of Newfoundland and Labrador that we erred in our specificity finding in our Post-Preliminary Analysis with respect to Kruger's Capacity Assistance Agreement with NL Hydro. Section 771(5A)(D)(iii)(I) of the Act states that a subsidy is *de facto* specific where the actual number of recipients of a subsidy are limited in number. The *CVD Preamble* discusses whether the "economy as a whole" should be considered in Commerce's specificity analysis, and explains that the starting point of Commerce's specificity analysis "will always be number of users."[1146] Additionally, the SAA clearly states that, in reference to economic diversification and length of time, "{t}he Administration intends that these additional criteria serve to inform the application of, rather than supersede or substitute for, the enumerated specificity factors."[1147] Therefore, we find no reason to deviate from our finding in the Post-Preliminary Analysis that capacity assistance agreements with NL Hydro are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy are limited in number.

Comment 77: Whether the Capacity Assistance Fees Paid to CBPP Provided a Benefit

Government of Canada and Provincial Governments' Case Brief

- The variable portion of the capacity assistance payments by NL Hydro, which involve the actual purchase of electricity, should be analyzed as purchases for MTAR.[1148]

Government of Newfoundland and Labrador's Case Brief

- The benefit to CBPP for capacity assistance fees can only exist to the extent the fees paid by NL Hydro amount to more than what the market would have paid CBPP for the same services. Since the capacity credit is materially lower than the average marginal capacity on the Island Interconnection System and the variable fees is lower than the comparable cost for operating gas turbines in the Province, the fees were market based and confer no benefit.[1149]

Kruger's Case Brief

- Commerce mistakenly evaluated actual sales of electricity made by CBPP under its Capacity Assistance Agreement with NL Hydro as a grant when, under Commerce's approach to sales of electricity, they should be evaluated as sales of electricity for MTAR.[1150]

[1146] *See CVD Preamble*, 63 FR at 65359.

[1147] *See* SAA at 931.

[1148] *See* Government of Canada and Provincial Governments' Case Brief at 80.

[1149] *See* GNL's Case Brief at 34-38.

[1150] *See* Kruger's Case Brief at 108.

Commerce's Position:

We agree with the respondents that Kruger's variable payments under the Capacity Assistance Agreement should be treated as a sale of goods for MTAR. We determine that NL Hydro is providing a financial contribution to Kruger in the form of a purchase of goods under section 771(5)(D)(iv) of the Act to CBPP by virtue of NL Hydro's purchase of electricity. We also determine that the sale of electricity to NL Hydro under the Capacity Assistance Agreement is *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. For instance, in 2016, NL Hydro purchased electricity from seven power producers and had capacity assistance agreements with only three customers.[1151] We further find that a benefit was provided within the meaning of section 771(5)(E)(iv) of the Act to the extent that NL Hydro purchased electricity for MTAR from Kruger when measured against an appropriate benchmark for electricity. To determine the amount of the benefit, we compared the rate that Kruger paid to the unit price of electricity in the variable payment that NL Hydro paid to CBPP, consistent with the benefit-to-the-recipient standard. We multiplied the difference by the total volume of electricity purchased by NL Hydro for each month and then summed those amounts. Because this program is recurring under 19 CFR 351.524(c)(1), we divided the sum of the benefits by the total sales of Kruger's UGW paper producers. On this basis, we determine that Kruger received a net countervailable subsidy from the fixed and variable payments from this program of 0.35 percent *ad valorem* under this program.[1152]

We disagree with the respondents that the fixed fee, which Kruger would receive regardless of whether it was called upon to provide energy to NL Hydro,[1153] was a sale of goods for MTAR. Therefore, we have continued to treat any fixed payments Kruger received under this program as a grant. *See* Comment 66.

Grant Program Issues: Other

Comment 78: Whether the Canada-BC Job Grant Program is Specific

Catalyst's and the Government of British Columbia's Case Brief

- Commerce incorrectly determined that the Canada-BC Job Grant is regionally specific; it is also not *de facto* specific, because grants under the Canada-BC Job Grant program were provided on a generally-available basis within British Columbia.[1154]

Petitioner's Rebuttal Brief

- Commerce should continue to determine that the Canada-BC Job Grant specific under section 771(5A)(D)(iv) of the Act, because it "is limited to an enterprise or industry within a

[1151] *See* GNL January 5, 2018 SQR at 14 and Exhibit NL-CAA-3, page 13.

[1152] *See* Kruger Final Calc Memo.

[1153] *See* GNL Verification Report at 26.

[1154] *See* Catalyst's Case Brief at 81-82 and GBC's Case Brief at 33-36.

designated geographical region within the jurisdiction of the authority providing the subsidy."[1155]

Commerce's Position:

We disagree with the Government of British Columbia and Catalyst and continue to find that the Canada-BC Job Grant is regionally specific, pursuant to section 771(5A)(D)(iv) of the Act. The Canada-BC Job Grant is a Government of Canada program, whereby the Government of Canada and the Government of British Columbia have entered into an agreement for the Government of Canada to provide federal funds to be distributed in the province of British Columbia for labor market support activities, pursuant to the terms of the agreement.[1156]

At verification, the Government of British Columbia described this program as one of a series of Canada Job Fund agreements between the Federal government and individual provincial/territorial governments.[1157] Pursuant to the agreement at issue, the Government of Canada provides C$65 million per year to be distributed by the Government of British Columbia.[1158] Catalyst also reported that the Canada-BC Job Grant Program "is a federal Canadian government program."[1159] We agree with the petitioner that the Government of Canada therefore provides funding for the grant to a "designated geographic region within its jurisdiction"– British Columbia. The authority "providing the subsidy" in this instance is the Government of Canada, not the Government of British Columbia. While the Government of British Columbia may have responsibility for managing the program, the source of the money for the grants is the Government of Canada.

We therefore disagree with Catalyst and the Government of British Columbia. Pursuant to the SAA,

> {Commerce's longstanding} practice recognizes that subsidies granted by a state or province on a generally available basis within a state or province (*i.e.*, not limited to certain enterprises within a state or province) are not specific, and therefore are not actionable. However, central government subsidies limited to a region (including a province or state) are specific even if generally available throughout that region.[1160]

[1155] *See* Petitioner's Rebuttal Brief at 55-56.

[1156] *See* GBC November 9, 2017 IQR at BC-I-1 to BC-I-3 and Exhibit BC-JG-1. Specifically, the Government of British Columbia stated that "{u}nder this agreement, the Canadian federal government funds two-thirds and the employer funds one-third of each grant." *Id.* at BC-I-1.

[1157] *See* GBC Verification Report at 3 ("officials explained that every province and territory has an agreement with the Federal Government, but each one is administered differently by the provinces").

[1158] *Id.* at 3.

[1159] *See* Catalyst Verification Report at 6.

[1160] *See* SAA at 914.

We find that the program at issue falls into the latter category, *i.e.*, a federal government program which is limited to a province. 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.[1161] We have not addressed arguments regarding whether this program is *de facto* specific, because we find it to be regionally specific.

Comment 79: Whether Emploi-Québec Programs are Specific

Government of Québec's Case Brief

- Commerce erred in its Post-Preliminary Analysis in finding that the FDRCMO and MFOR programs are specific because thousands of companies received grants under these programs across hundreds of different industries. Any company from any sector can apply for assistance under the program and eligible business can include private for-profit businesses, cooperatives, and non-profit companies.[1162]

- Commerce also erred in its Post-Preliminary Analysis in stating that its specificity finding for the Emploi-Québec programs was consistent with *Aircraft from Canada*. In that case, Commerce found that the MFOR and FDRCMO programs were *de facto* specific because the aerospace products and parts industry received a disproportionate share of the benefits disbursed to the manufacturing sector, under section 771(5A)(D)(iii)(III) of Act. Commerce's *de facto* specificity determination in its Post-Preliminary Analysis was based on a finding that the MFOR and FDRCMO programs are *de facto* specific because they are limited in number of enterprises, under section 771(5A)(D)(iii)(I) of the Act.[1163]

- The record demonstrates that over the last five fiscal years the pulp and paper companies accounted for an average of only 3.32 percent of all projects approved under the FDRCMO program. Furthermore, the pulp and paper industry did not account for a predominant or disproportionate amount of the MFOR grants in any year from fiscal years 2012-2013 through 2016-2017.[1164]

- These programs are not targeted nor are they "limited in number" by enterprise. Therefore, Commerce should determine that the MFOR and FDRCMO programs are not *de jure* or *de facto* specific and therefore are not countervailable.[1165]

[1161] This finding is also consistent with Commerce's specificity finding regarding the Canada-New Brunswick Job Grant program in *Lumber V CVD Final Determination* IDM at Comment 56.

[1162] *See* GOQ's Case Brief at 113-114.

[1163] *Id*. at 115.

[1164] *Id*. at 115-116.

[1165] *Id*. at 117.

Commerce's Position:

We agree with the respondent parties that our specificity finding for the Emploi-Québec programs in the Post-Preliminary Analysis was not on the same basis as the specificity finding in *Aircraft from Canada*. In that case, we found the Emploi-Québec programs specific because the aerospace products and parts industry received a disproportionate share of the benefits disbursed to the manufacturing sector, in accordance with section 771(5A)(D)(iii)(III) of Act. Nonetheless, in our Post-Preliminary Analysis, we correctly determined that the Emploi-Québec FDRCMO and MFOR grants are *de facto* specific because the government of Québec reported that there were a limited number of companies, on an enterprise basis, that received grants under the FDRCMO and MFOR programs.[1166] For the final determination, we continue to find that a limited number of companies received grants under these programs, in accordance with section 771(5A)(D)(iii)(I) of the Act.

While we do not dispute that any company in Québec can apply for the MFOR and FDRCMO programs, an analysis of the usage data submitted by the Government of Québec shows that only a very small number of companies received grants under the MFOR program during the AUL period, when compared to the total number of registered companies in Québec.[1167] Further, while the number of companies that received FDRCMO grants during the same period was slightly higher, the percentage was not appreciably different.[1168] Based on these facts, we determine that the actual number of recipients of assistance from the Emploi-Québec programs during the POI was limited in number. 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. The Emploi-Québec programs are not widely used throughout the provincial economy; therefore, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 80: Whether Emploi-Québec Programs are Recurring

Government of Québec's Case Brief

- Commerce erred in its Post-Preliminary Analysis in finding that the FDRCMO and MFOR grants are non-recurring.[1169]

- Pursuant to 19 CFR 351.524(c)(2), Commerce considers three factors when determining whether a program is recurring or non-recurring: (1) whether the subsidy is exceptional and the recipient cannot be expected to receive additional subsidies under the same program on an ongoing basis from year to year; (2) whether the subsidy requires or receives the

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[1166] *See* GOQ February 9, 2018 SQR at Exhibits QC-SUPP3-PT2-42 and QC-SUPP3-PT2-43.

[1167] *See* GOQ January 5, 2018 SQR at GQ-Supp-31 and GQ-Supp-42. *See also* February 9, 2018 SQR at Exhibits QC-SUPP3-PT2-42 and QC-SUPP3-PT2-43. The Government of Québec has claimed business proprietary treatment for the number of companies that used the FDRCMO and MFOR programs.

[1168] *Id*.

[1169] *See* GOQ's Case Brief at 113.

government's express authorization or approval; and (3) whether the subsidy is tied to capital structure or assets of the firm. Emploi-Québec programs are employment and human resource programs, not connected to the capital structure or assets of the firm; therefore, Commerce's non-recurring determination was based on the first and second criteria.[1170]

- Grants provided to respondents under the MFOR and FDRCMO programs are not exceptional, and, in fact, the respondents received grants under multiple contracts in the same year and under different contracts year after year.[1171] Emploi-Québec grants are given as long as the project proposals meet the objective criteria set out by Government of Québec regulations.[1172]

- Although the Emploi-Québec programs require approval from the agency, that criterion alone is not determinative as to whether a program is recurring or non-recurring. In fact, Commerce's questionnaire recognizes that worker assistance and worker training programs are presumptively recurring programs.[1173]

- For these reasons, Commerce should treat the Emploi-Québec programs as recurring for the purposes of its final determination.[1174]

Petitioner's Rebuttal Brief

- Commerce's methodology for countervailing the MFOR grants to Stadacona in the Post-Preliminary Analysis is in accordance with its regulations and prior practice.[1175]

Commerce's Position:

We disagree with the Government of Québec that the FDRCMO and MFOR grants are recurring. While Commerce's regulations include a non-binding illustrative list of the programs "normally" treated as providing recurring benefits (*i.e.*, "{d}irect tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies"), they also provide a test for determining whether a benefit is recurring. Specifically, 19 CFR 351.524(c)(2) states:

[1170] *Id.* at 118.

[1171] *See* GOQ's Case Brief at 118.

[1172] *Id.* at 119.

[1173] *Id.* at 119 (citing 19 CFR 351.524(c), identifying "worker assistance; worker training" as the types of programs Commerce "normally will treat" as recurring).

[1174] *Id.*

[1175] *See* Petitioner's Rebuttal Brief at 119.

> If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:
>
> (i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;
>
> (ii) Whether the subsidy required or received the government's express authorization or approval (*i.e.*, receipt of benefits is not automatic); or
>
> (iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

Therefore, in examining whether a grant is recurring or non-recurring, Commerce will examine whether the grant is received on a regular or predictable basis, or if it requires express approval from the government. As explained in our Post-Preliminary Analysis and in more detail below, we continue to find that it is appropriate to treat these grants as non-recurring subsidies because separate, project-specific government approval was required to receive benefits and funding for all projects under the FDRCMO and MFOR programs and because funding for projects under the FDRCMO and MFOR programs were limited in duration.[1176]

The Government of Québec does not dispute the fact that Emploi-Québec programs require express approval from the agency, and record evidence supports the fact that companies must receive express approval in order to receive Emploi-Québec grants.[1177] We also examined whether respondents expect to receive additional subsidies under this program on an annual basis. Record evidence points to the fact that the MFOR and FDRCMO "programs typically run for a year."[1178] Moreover, the application forms submitted by companies to Emploi-Québec have a start date and an end date and require that the applicant provide a description of the project activities, expected results, costs, etc.[1179] The application form itself states that, "At the end of the agreement the last payment will be made within 60 days of the filing and acceptance of the required documents by Emploi-Québec."[1180] All of these facts indicate that each grant must be applied for separately and that recipients cannot expect to receive additional amounts under the same program on an ongoing basis from year to year.

[1176] We note that there is a specific regulation pertaining to worker-related subsidies (19 CFR 351.513), but this does not detract from our determination to treat the programs at issue here as non-recurring, which is further supported by the petitioner.

[1177] *See*, *e.g.*, GOQ Verification Report at 4-5.

[1178] *Id.* at 4.

[1179] *See*, *e.g.*, White Birch December 12, 2017 SQR at Exhibits G-28 and G-30.

[1180] *Id.*

Therefore, we continue to determine that the Emploi-Québec program is properly treated as a non-recurring subsidy for purposes of the final determination.

Comment 81: Whether the PCIP Provides a Benefit

Government of Québec Case Brief

- The PCIP is a program that reimburses harvesters for up to 90 percent of the costs incurred to meet certain government-mandated harvesting activities. Although Resolute was reimbursed for certain of its expenses under the program, Commerce failed in the *Preliminary Determination* to analyze whether the reimbursement was a benefit under section 771(5)(E) of the Act. When Commerce undertakes this analysis, it will find that PCIP does not confer a benefit on harvesters.[1181]

- Timber harvested during partial cut operations is billed at the normal stumpage rates applicable to the tariffing zone in which the stand is located. Those stumpage rates are based on the operating costs of conducting a total-cut or clear-cut. The PCIP aims to compensate for the increased costs caused by a mandated partial cut.[1182]

- Because the MFFP requires harvesters to carry out partial cuts on certain stands of Crown land, harvesters' compliance results in additional costs which are not borne by harvesters who are not subject to partial cut requirements. Further, by law, the PCIP reimburses no more than 90 percent of the additional cost resulting from the partial cut prescriptions; as a consequence, harvesters subject to partial cut requirements incur costs as a result of specific government action, which are not fully reimbursable, while being charged the same stumpage rates as harvesters who can clear cut. Thus, Commerce should find that PCIP confers no benefit.[1183]

Resolute's Case Brief

- Resolute's conformity with PCIP requirements qualifies as a service for the government; partial reimbursements for services performed are not countervailable in accordance with law.

- The PCIP cannot be a grant because it is not a "gift without consideration." The government received consideration (*i.e.*, the partial cutting of stands) in return for the payment made.[1184]

- It is the Government of Québec, not Resolute, that benefits from the program because the program promotes the Government's sustainability goals. Resolute does not benefit because

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[1181] *See* GOQ's Case Brief at 89.

[1182] *Id.* at 90.

[1183] *Id.* at 89-90.

[1184] *See* Resolute's Case Brief 39 (citing *Gov't of Sri Lanka*).

it: 1) cannot, by law, be fully reimbursed for the increased cost of partial cutting; and 2) has no reasonable expectation that the forest lot it helped sustain will be available for its own harvest in 40 years. Commerce may not countervail a benefit greater than a benefit actually received.[1185]

- Resolute incurs costs to effect Québec's sustainability policy that compensates no more than 90 percent of the costs incurred for completing Québec's partial cut requirements. Comparatively, Resolute's access to standing timber within a stand is limited as opposed to a harvester with the ability to clear cut a whole stand.[1186]

Commerce's Position:

We disagree that the PCIP confers no benefit. The PCIP aims to reduce 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 Government of Québec requires harvesters who hold TSGs to perform various reforestation and land stewardship activities in order to maintain the long-term health and sustainability of forest areas. Under the SFDA, the Government of Québec requires TSG holders to perform "other forest development activities," which include partial cuts, whereby a harvester is limited to removing no more than 50 percent of the volume of a harvest stand. The Government of Québec mandates partial cuts on certain harvest stands in order to "encourage natural regeneration of forest areas without the need to replant…" 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.[1187]

However, we disagree that this is a sufficient demonstration that PCIP reimbursements do not constitute a benefit. Resolute received payments in the form of reimbursements under the PCIP, which partially offset the cost incurred for 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 19 CFR 351.504(a). The fact that the reimbursements were only partial does not negate the fact that a benefit was received.

We disagree with Resolute that any advantages to the Government of Québec in undertaking the PCIP, or to harvesters cutting in other forest areas of the province, are relevant to the benefit that Resolute received from the Government of Québec. In analyzing the benefit received by a grant, Commerce considers the benefit to be amount of grant received by the company. 19 CFR 351.504(a) does not contemplate any advantages the government might receive by administering the program, nor do our regulations require Commerce to take into account benefits other

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[1185] *Id.* 39-41 (citing *Gov't of Sri Lanka*).

[1186] *Id.*

[1187] *See* GOQ November 9, 2017 IQR at QC-PCIP-1 to 2; Resolute November 9, 2017 IQR at 93-100; and Resolute Verification Report at 27.

companies may have not received. Because the Government of Québec made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

We also disagree with Resolute that Commerce must define the term "benefit" as a "gift without consideration," given the language of our regulations which explicitly defines that term as "the amount of the grant." Nonetheless, as noted above, in the absence of the PCIP reimbursements, Resolute would still have been legally obligated to comply with the rules of the PCIP in order to harvest in the affected forest areas. Under this framework, any reimbursement of the associated costs incurred are, in fact, a benefit to Resolute.

Finally, we disagree that Resolute's activities under the PCIP constitute a service, and, thus, the associated payments are not countervailable. Under this program, the Government of Québec provided a grant to Resolute for its construction of roads to access harvesting areas with the tenure, were performed in the furtherance of Resolute's harvesting activities, not to render a service to the Government of Québec.

For the foregoing reasons, we continue to determine that this program is countervailable.

Comment 82: Whether the Paix des Braves Program Provides a Countervailable Benefit

Government of Canada and Provincial Governments' Case Brief

- Companies receiving compensation from Québec as a result of participation in this program do not receive full reimbursement for the costs incurred for their expenses. In determining whether there was a financial contribution and the amount of any benefit, Commerce should take into account the additional costs borne by Resolute.[1188]

Government of Québec's Case Brief

- Harvesters who harvest on Cree (aka "Paix des Braves") territories incur additional costs associated with a wider dispersion of harvest blocks; despite these higher costs, they are still billed at the same stumpage rates in the applicable tariffing zones as those harvesters harvesting elsewhere. Because the harvesters on Cree lands are already at a disadvantage vis-à-vis other harvesters, they receive no benefit pursuant to section 771(5)(E) of the Act.[1189]

- Commerce should reverse its preliminary finding and determine that reimbursements under the Cree Agreement program do not confer a benefit on these harvesters.[1190]

[1188] *See* the GOC and Provincial Governments' Case Brief at 92.

[1189] *See* GOQ's Case Brief at 92-93 (citing the Oxford Dictionary, which defines "benefit" as "an advantage or profit from something").

[1190] *See* the GOQ's Case Brief at 93.

Resolute's Case Brief

- The Paix des Braves obligations constitute a service provided by Resolute to the Government of Québec in order for the government to fulfill its promise to the Cree Nation, as set out in the agreement between those parties. Services provided to a government are not countervailable under the Act.[1191]

- Resolute receives no benefit from the partial reimbursements under the program, and Commerce may not countervail an amount that exceeds any benefit.[1192]

Commerce's Position:

We disagree with the respondent parties and continue to find that payments made by the Government of Québec to Resolute as a result of its harvesting activities on the Paix des Braves territory constitutes a countervailable subsidy. Like the PCIP, payments under this program aim to reduce a cost that Resolute is legally required to incur in its normal course of business.[1193]

Resolute received payments in the form of reimbursements under the Paix des Braves program, which partially offset the cost incurred for 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 19 CFR 351.504(a). The fact that the reimbursements were only partial does not negate the fact that a benefit was received.

We disagree that any advantages to harvesters cutting in other forest areas of the province are relevant to this issue. The fact that harvesters of Crown land in other areas are ineligible to participate in the program says nothing about the benefit that Resolute itself receives under it. Section 771(5)(D)(i) of the Act defines the term "financial contribution" as "the direct transfer of funds, such as grants…" and 19 CFR 351.504(a) states that, in the case of a grant, "a benefit exists in the amount of the grant." Because the Government of Québec made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

Finally, we disagree that Resolute's activities under this program constitute a service, and, thus, the associated payments are not countervailable. Under this program, the government of Québec provided a grant in the furtherance of Resolute's harvesting activities, not to render a service to the Government of Québec.

For the foregoing reasons, we continue to determine that this program is countervailable.

[1191] *See* Resolute's Case Brief at 42-43 (citing section 771(5)(E)(iv) of the Act).

[1192] *See* Resolute's Case Brief at 43.

[1193] *See* Resolute November 10, 2017 IQR at 122-123; GOQ November 9, 2017 IQR at GOQ-OTHER-8 and Exhibit QC-OTHER-CA-1; GOQ Verification Report II at 19-20; and Resolute Verification Report at 20.

Comment 83: Whether the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance Provides a Countervailable Benefit

Government of Québec's Case Brief

- Commerce preliminarily determined that this program was countervailable because it was both *de jure* and *de facto* specific, and because Resolute reported that it received a payment during the POI in the form of a direct transfer of funds from the government. However, Commerce failed to analyze whether the reimbursement was a benefit under section 771(5)(E) of the Act. The Government of Québec has placed extensive evidence on the record demonstrating that this program does not confer a benefit on harvesters, including Resolute.[1194]

- This program allows for "special interventions" prescribed by the MFFP when a natural or anthropogenic disturbance causes significant destruction of the forest, such as fire, wind-throw, or insect epidemics. Such disturbances increase the unit cost of harvesting because of the reduced per-hectare salvageable volume. The program does not confer a benefit on harvesters but instead compensates for additional costs associated with preserving the health of the public forest.[1195]

- Eligibility is not limited to sawmills or pulp mills, nor to certain regions in Québec. The work completed by timber purchasers is work that is in the interest of the Government of Québec (*i.e.*, a service rendered by Resolute for the province). Under this program, the Government of Québec reimburses harvesters for the additional costs associated with performing salvage operations necessary to preserve the health of the forest. Because the program is a reimbursement for the increased per-unit harvesting costs incurred by salvage operations, payments under the program do not confer a benefit.[1196]

Resolute's Case Brief

- Commerce should find that compensatory programs, such as this one, for harvesting in areas affected by the spruce budworm epidemic do not constitute countervailable subsidies. This program compensates companies for harvesting in areas affected by natural disturbances, such as infestations or forest fires. The compensation reimburses some of the increased harvesting costs incurred by companies in their compliance with the Government of Québec's requirements.[1197]

[1194] *See* the GOQ's Case Brief at 93-94.

[1195] *Id*. at 94.

[1196] *Id*. at 95.

[1197] *See* Resolute's Case Brief at 84.

Commerce's Position:

We disagree with the respondent parties and continue to find that payments made by the Government of Québec to Resolute under this program constitutes a countervailable subsidy. Like the PCIP, payments under this program aim to offset a cost that Resolute is legally required to incur in its normal course of business[1198] and, thus, they confer a benefit under section 771(5)(E) of the Act.[1199]

As the landowner and steward of public forest areas, the Government of Québec requires harvesters who hold TSGs to perform various reforestation and land stewardship activities in order to maintain the long-term health and sustainability of forest areas. Under the SFDA, the Government of Québec requires TSG holders perform accelerated cutting of wood in forests when a natural or anthropogenic disturbance, such as spruce budworm, occurs.[1200]

Section 771(5)(D)(i) of the Act defines the term "financial contribution" as "the direct transfer of funds, such as grants…" and 19 CFR 351.504(a) states that, in the case of a grant, "a benefit exists in the amount of the grant." Because the Government of Québec made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

We disagree that Resolute's activities under this program constitute a service, and, thus, the associated payments are not countervailable. Under this program, the government of Québec provided a grant for Resolute's harvesting activities, such as accelerated harvesting and processing of wood from infected forests. These activities were performed in the furtherance of Resolute's harvesting activities, not to render a service to the Government of Québec.

To the extent the parties argue this program is not specific because eligibility is not limited to sawmills or pulp mills, nor to certain regions in Québec, we find this argument irrelevant. As explained in the *Preliminary Determination*, we find this program *de jure* specific under section 771(5A)(D)(i) of the Act because eligible recipients are limited on an industry basis (*i.e.*, the forestry industry). Furthermore, we continue to find this program is *de facto* specific because the totality of the program's benefit in 2015 and 2016 was attributed to sawmills.[1201]

For the foregoing reasons, we continue to determine that this program is countervailable.

[1198] *See* GOQ November 9, 2017 IQR at GOQ-OTHER-81-82.

[1199] *See also CVD Preamble*, 63 FR 65360.

[1200] *Id*. at GOQ-OTHER-84.

[1201] *See* GOQ November 9, 2017 IQR at Exhibit QC-OTHER-AD-11.

Comment 84: Whether the FPInnovations Ash Development Project Provides a Countervailable Benefit

Government of Québec's Case Brief

- Commerce failed to analyze whether FPInnovations was a government authority or whether it was entrusted or directed by the government to provide funds to Kruger under section 771(5)(B) of the Act. Absent such a finding, Commerce should not derive any countervailing duties associated with FPInnovations provision of funding for the fly ash development program.[1202]

- If Commerce erroneously finds that FPInnovations is a government authority, it must analyze whether the payments constituted a benefit under section 771(5)(E) of the Act.[1203]

- The Government of Québec placed ample evidence on the record with respect to the fly ash development project, demonstrating that it does not confer a benefit on producers of subject merchandise. Fly ash, cement, and concrete are not subject merchandise. Commerce should therefore reverse its preliminary finding and determine that the payments made by FPInnovations to Kruger for the fly ash development project do not constitute a countervailable subsidy.[1204]

Commerce's Position:

In our Post-Preliminary Analysis, we found that FPInnovations, a not-for-profit organization, signed an agreement with the MFFP, an agency of the Government of Québec formerly called MRNF, to fund a project that reuses fly ash produced by KPPI's[1205] cogeneration plant, as part of funds set aside by the Government of Québec for the Green Chemistry budget.[1206] The funds for this Green Chemistry budget are administered by MRNF/MFFP, and provided to Kruger via FPInnovations per the agreement.[1207]

We verified that Kruger works with FPInnovations for all research projects conducted in Québec, and that FPInnovations is the entity that applies to the Government of Québec for the funding for all projects.[1208] In 2011, Kruger approached MFFP to obtain financing through the Green Chemistry Program; it was agreed that MFFP would pay directly to FPInnovations, as partner in

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[1202] GOQ's Case Brief at 95-97.

[1203] *Id*. at 97

[1204] *Id*.

[1205] KPPI is a cross-owned affiliate of KTR.

[1206] *See* GOQ November 9, 2017 IQR at GOQ-OTHER-65.

[1207] *Id.* at GOQ-OTHER-51 and GOQ-OTHER-66.

[1208] *See* Kruger Verification Report at 13.

the project, and that FPInnovations would administer the grant for MFFP.[1209] In accordance with section 771(5)(B)(iii) of the Act, we find this to be evidence that FPInnovations is entrusted by a governmental authority (*i.e.*, MFFP) to provide funds to Kruger, as FPInnovations' practices in funding projects do not differ in substance from practices normally followed by governments.

In our Post-Preliminary Analysis, we stated that we "preliminarily determine that there is a financial contribution in the form of a direct transfer of funds from the government to a respondent, within the meaning of section 771(5)(D)(i) of the Act." In this case, as verified by Commerce, the funds for the fly ash development project came from MFFP, a governmental agency, *through* FPInnovations. The project application and approval were submitted to and approved by MFFP.[1210] As we verified, "MFFP transferred the funds to FPInnovations, who then reimbursed Kruger upon receiving Kruger's invoice."[1211] Therefore, we continue to find that there is a financial contribution in the form of a direct transfer of funds from the government to Kruger.

We also disagree that this program does not confer a benefit on producers of subject merchandise. Although fly ash, cement, and concrete are not subject merchandise, ash is a by-product of the energy cogeneration process and is thus related to the production of subject merchandise. Kruger became interested in adding value to the ash generated during the energy cogeneration process, and Kruger approached FPInnovations with a request that FPInnovations find a use for it. The result of this request was KPPI's construction of a silo for the storage of the ash.[1212] The project was approved on July 17, 2012, by the MFFP under the Green Chemistry Program, which encourages companies in the pulp and paper industry to find new ways to harness biogas and greenhouse gasses.[1213] KPPI received funds through FPInnovations during the POI as a contribution for the installation of an ash storage silo and as a reimbursement for certification fees.

Payments received under this grant confer a benefit on KPPI in accordance with section 771(5)(B) of the Act. Moreover, participation in this program was limited to companies using forest fibers or derivatives from forest fibers, such as fly ash, making it *de jure* specific under section 771(5A)(D)(i) of the Act.

For the foregoing reasons, we continue to determine that this program is countervailable.

[1209] *See* GOQ Verification Report at Exhibit 14.

[1210] *See* Kruger Verification Report at 13.

[1211] *See* GOQ Stumpage Verification Report at 20-21.

[1212] *See* Kruger Verification Report at 13.

[1213] *Id.*

Comment 85: Whether the PAREGES Program is Specific and Confers a Benefit

Government of Québec's Case Brief

- The PAREGES program is neither *de jure* or *de facto* specific. Eligibility was automatic and based on established criteria, and all sectors and industries in Québec were eligible to submit projects for consideration.[1214]

- Even if Commerce were to find the program specific, PAREGES is not countervailable because the Government of Québec is purchasing the service of greenhouse gas reduction and avoidance.

Commerce's Position:

In our Post-Preliminary Analysis, we found this program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number on an enterprise basis. We also found that the grants provided under the PAREGES program provide non-recurring benefits, pursuant to 19 CFR 351.524(b).

We are not persuaded by the Government of Québec's arguments regarding the specificity of this program. The fact that many sectors of the Québec economy were eligible to seek financial support under this program does not negate the fact that the actual recipients are limited in number.[1215] 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.[1216] 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."[1217] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[1218] 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, Commerce 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.[1219] Thus, we have followed the instructions of the SAA and our practice in determining whether this program is *de facto* specific.

[1214] *See* GOQ's Case Brief at 129.

[1215] *See* GOQ January 5, 2018 SQR at GQ-SUPP-267.

[1216] *See* SAA at 929.

[1217] *Id.*

[1218] *Id.* at 931.

[1219] *See CRS from Korea* IDM at Comment 13 and *Lumber V CVD Final Determination* IDM at Comment 62.

In this case, we considered whether the recipients were limited in number on an enterprise basis. As discussed at verification, only 40 projects were approved during the five years the Agency accepted applications.[1220] Therefore, we continue to find this program *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number. Because of this finding, we need not address the parties' arguments regarding *de jure* specificity.

We are also unpersuaded by the Government of Québec's argument that this program is not countervailable because the program constitutes the purchase of services by the government. We do not agree that the reduction of greenhouse gas emissions amounts to a performance of a service for which the government is paying. Record evidence indicates that the payments are "incentives" to the company, provided in the manner of non-recurring grants.[1221] Therefore, we continue to find that the PAREGES program conferred a benefit to Kruger equal to the amount of the grant, pursuant to 19 CFR 351.504(a).

Comment 86: Whether the Ontario Forest Roads Funding Program is Countervailable

Government of Canada's Case Brief

- Commerce erred when it found that this program provided a financial contribution in the form of a grant because it is a Government of Ontario program to build and maintain roads, which is a service. Commerce also erred in its benefit calculations for the program because it failed to factor in the costs borne by Resolute.[1222]

Government of Ontario's Case Brief

- Commerce should not have preliminarily found this program to be countervailable because it compensates harvesters for the construction of general infrastructure owned by the Government of Ontario. As a result, the constructions and maintenance obligations of the harvesters extend far beyond roads for harvesting timber.[1223]

- The Government of Ontario reimburses harvesters under this program on a sliding scale, including full reimbursement for costs related to "primary" roads and 50 percent for costs related to "branch" roads. Primary roads are normally permanent and provide principal access to an FMU, whereas branch roads provide access within the FMU. Harvesters must meet strict technical and environmental standards in meeting their construction obligations.[1224]

[1220] *See* GOQ Verification Report at 23.

[1221] *See* GOQ January 5, 2018 SQR at GQ-SUPP-256. *See also* GOQ Verification Report at 22-24.

[1222] *See* GOQ's Case Brief at 91-92.

[1223] *Id.* at 54-55.

[1224] *Id.* at 55-56.

- The construction of forest roads benefits a broad range of users, including the public, including, among others, tourism operators, railway companies, and the general public. In light of this, Commerce should find that a financial contribution does not exist, consistent with its practice.[1225]

Resolute's Case Brief

- Resolute makes the same arguments as the Governments of Canada and Ontario, adding that, if Commerce disagrees that the reimbursements are for a good, rather than a service, it would have to examine this program under the MTAR standard; because the Government of Ontario issued only partial reimbursements, the government could not have paid for road construction at MTAR. Further, to the extent that any benefit was conferred, it was Resolute who conferred it to the Government of Ontario, given that Resolute is subsidizing the province's road building and maintenance as a cost of access to Crown timber.[1226]

Petitioner's Rebuttal Brief

- Commerce should continue to countervail this program, consistent with its findings in *Lumber V CVD Final Determination* related to a similar program administered by the Government of Québec. Commerce verified that the Government of Ontario reimbursed Resolute under this program for certain road construction costs.[1227]

- The fact that Resolute received only partial reimbursements has no bearing on Commerce's analysis because there is no statutory requirement that a subsidy program completely offset a cost incurred by a respondent for it to be countervailable.[1228]

- Commerce verified that this is a grant program, not an MTAR program, and Resolute's activities do not constitute services.[1229]

- The *CVD Preamble* sets forth Commerce's intent to find that a benefit exists where "input costs are reduced relative to what they would be in the absence of the financial contribution." Because Resolute is obligated to build and maintain roads in order to harvest on Crown lands, the Government of Ontario's payments to Resolute reduce its costs relative to what they would have been without Ontario's subsidy program.[1230]

[1225] *Id.* at 57-60 (citing, *e.g.*, *Carbon Steel Wire Rod from Saudi Arabia*, 51 FR at 4210, *PET Resin from Oman* IDM at 8, and *2002 CRS from Korea* at 22).

[1226] *See* Resolute's Case Brief at 30-36.

[1227] *See* Petitioner's Rebuttal Brief at 111-113 (citing *Lumber V CVD Final Determination* IDM at Comment 78 and GOO Verification Report at 11).

[1228] *Id.* at 113.

[1229] *Id.*

[1230] *Id.* at 113-114 (citing *CVD Preamble*, 63 FR at 65360).

- *2002 CRS from Korea* does not apply because, in that case, the Government of Korea did not provide the respondent a payment to lower costs for roads it was legally obligated to build and maintain.[1231]

Commerce's Position:

We agree with the petitioner that this program functions in a manner which is similar to Québec's Tax Credit for Construction and Repair of Roads and Bridges program and should be treated similarly. Like the Québec program, the Ontario Forest Roads Funding Program is designed to reduce costs that Resolute is legally required to incur in its normal course of business,[1232] and, thus, they confer a benefit under section 771(5)(E) of the Act.[1233]

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 Government of Ontario to relieve Resolute of taxes otherwise due to the government. Therefore, because the Government of Ontario provides reimbursements to Resolute for costs it incurs for the construction of access roads or bridges in public forest areas, 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 companies who have approved FMPs and AWSs.

We disagree that Resolute's activities under this program constitute a service, and, thus, the associated payments are not countervailable. The activities performed by Resolute, such as building roads to access harvesting areas on Crown land, were performed in the furtherance of Resolute's harvesting activities, not to render a service to the Government of Ontario. Because we find Resolute's construction of roads to further its harvesting abilities, we do not find this to be "general infrastructure" as defined under 19 CFR 351.524(d) as infrastructure that is created for the broad societal welfare of a country, region or municipality. Therefore, we disagree that these activities fall under the rubric of "general infrastructure," or that the cases cited in support of this proposition are on point.

We also disagree with Resolute that the payments under this program are for the purchase of a good, or that the payments from the Government of Ontario would be more appropriately investigated as under the MTAR provisions of the Act. This program is a grant program, not an MTAR program. Thus, the financial contribution under this program is a direct transfer of funds under section 771(5)(D)(i) of the Act, not the purchase of goods for MTAR under section 771(5)(D)(iv) of the Act.

[1231] *Id.* at 115 (citing *2002 CRS from Korea*, 67 FR at 62102).

[1232] *See* GOO's Case Brief at 54-57 (describing the functioning of the program and citing to the relevant portions of the GOO's questionnaire responses).

[1233] *See also CVD Preamble*, 63 FR at 65360).

We disagree with Resolute that any advantages to the Government of Ontario from Resolute's road-building activities are relevant to this issue. Governments cannot receive "benefits" within the meaning of 19 CFR 351.504(a). Section 771(5)(D)(i) of the Act defines the term "financial contribution" as "the direct transfer of funds, such as grants…" and 19 CFR 351.504(a) states that, in the case of a grant, "a benefit exists in the amount of the grant." Because the Government of Ontario made a "direct transfer of funds" via a grant to Resolute, we find that Resolute received a benefit in the amount of the grant, pursuant to 19 CFR 351.504(a).

For the foregoing reasons, we continue to determine that this program is countervailable.

Comment 87: Whether the EcoPerformance Program is Specific and Confers a Benefit

Government of Québec's Case Brief

- Commerce erred in finding that the EcoPerformance Program is specific and confers a benefit. All sectors of the Québec economy were eligible to seek financial support under this program, provided they use fossil fuels and want to reduce their fossil fuel use in a measurable, sustainable manner by means of energy efficiency measures, or by means of energy conversion projects. Therefore, this program is neither *de jure* nor *de facto* specific within the meaning of section 771(5A) of the Act.[1234]

- The pulp and paper industry's participation in this program represents less than one percent of the funds disbursed during the POI.[1235]

- Even if Commerce finds that the EcoPerformance Program is specific, the program does not confer a benefit because the Government of Québec is purchasing the service of greenhouse gas reduction and avoidance. The *CVD Preamble* recognizes that government purchases of services cannot give rise to a countervailable subsidy, stating that "if governmental purchases of services were intended to be treated similarly to the governmental purchase of goods, the statue and the SCM Agreement would specifically mention services as they do with the provision of goods and services."[1236]

Commerce's Position:

In our Post-Preliminary Analysis, we found this program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number on an enterprise basis.

We are not persuaded by the Government of Québec's arguments regarding the specificity of this program. The fact that many sectors of the Québec economy were eligible to seek financial support under this program does not negate the fact that the actual recipients are limited in

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[1234] *See* GOQ's Case Brief at 136-137.

[1235] *Id*. at 140.

[1236] *Id*. at 142, citing the *CVD Preamble*, 63 FR at 65379 and the SCM Agreement, Article 1.1(a)(1).

number.[1237] 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.[1238] 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."[1239] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[1240] 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, Commerce 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.[1241] 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 percentage of program funds disbursed to a particular industry under section 771(5A)(D)(iii)(I) of the Act.

In this case, we considered whether the recipients were limited in number on an enterprise basis. As confirmed at verification, during the AUL period, 461 companies, from a range of industries, received assistance under this program.[1242] This number represents significantly less than one percent of the potential corporate tax filers in Québec.[1243]

Therefore, we continue to find this program *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number. Because of this finding, we need not address the parties' arguments regarding *de jure* specificity.

We are also unpersuaded by the Government of Québec's argument that this program is not countervailable because it constitutes the purchase of services by the government. We do not agree that the reduction of greenhouse gas emissions amounts to a performance of a service for which the government is paying. Record evidence indicates that the payments are "incentives" to the company directly from the government, provided in the manner of non-recurring grants.[1244] Therefore, we continue to find that the EcoPerformance program conferred a benefit to Kruger, Resolute, and White Birch equal to the amount of the grants, pursuant to 19 CFR 351.504(a).

[1237] *See* GOQ January 5, 2018 SQR at Exhibit GQ-SUPP-PT2-ECO-8.

[1238] *See* SAA at 929.

[1239] *Id.*

[1240] *Id.* at 931.

[1241] *See CRS from Korea* IDM at Comment 13 and *Lumber V CVD Final Determination* IDM at Comment 62.

[1242] *See* GOQ Verification Report at 17.

[1243] *See* GOQ December 22, 2017SQR at Exhibit GQ-SUPP- 9.

[1244] *See* GOQ January 5, 2018 SQR at GQ-SUPP-124. *See also* GOQ Verification Report at 15-17.

Equity Program Issues

Comment 88: Whether Preferred Shares Issued by Kruger Inc./KPPI in 2012 were Debt or Equity

In 2012, pursuant to a series of related agreements between IQ, KPPI, and KPPI's parent company Kruger Inc., IQ forgave debt owed to IQ. In exchange for the cancelation of a portion of this debt,[1245] IQ received preferred shares in KPPI; on the same day, as permitted under the terms of the agreement, IQ converted these shares into preferred shares in Kruger Inc. with the same nominal value. In the *Preliminary Determination*, we found it appropriate to treat the preferred shares issued by KPPI and Kruger Inc. as an exchange of debt for equity, rather than debt.[1246]

In making this determination, we used Commerce's "hybrid securities" methodology, by which Commerce analyzes the transaction using a hierarchical set of criteria designed to distinguish debt from equity.[1247] This methodology was sustained by the CIT in *Geneva Steel*.[1248]

Kruger's Case Brief

- Commerce should treat the issuance of preferred shares to IQ as a loan, rather than as equity. The hybrid securities methodology used by Commerce to find otherwise was pointedly not adopted in the current trade regulations,[1249] and Commerce retains the flexibility to adapt its prior policy as necessary.

- Commerce erred in applying the hybrid securities methodology to the facts of this case. There was no need for Commerce to proceed beyond the first criterion in the hierarchy (*i.e.*, repayment obligation) because IQ has a right to demand repayment. Commerce's requirement of repayment "certainty" is not only unreasonable, but Commerce verified that Kruger expects IQ to redeem its preferred shares on the first available date.[1250]

- Preferred shares with an unconditional redemption right at "a fixed or determinable amount at a fixed or determinable date" are considered under Canadian GAAP as debt.[1251]

[1245] IQ forgave a portion of this debt outright. *See* Prelim Equityworthiness Memo at 8. For further discussion of Commerce's treatment of this forgiven debt, *see* Comment 90, below.

[1246] *See* Prelim Equityworthiness Memo at 5.

[1247] *Id.* at 3-5.

[1248] *See Geneva Steel*.

[1249] *See* Kruger's Case Brief at 77 (citing *CVD Preamble*, 63 FR at 65349).

[1250] *Id.* at 78 to 80. Kruger likens its issuance of preferred shared to IQ to the purchase of U.S. Series E savings bonds, which a buyer can, but is not required to, redeem at any time after one year; although there is no mandatory redemption obligation, the obligation is clearly debt (as the buyer cannot purchase part of the U.S. government).

[1251] *Id.* at 81 (citing Section 3856 of the Canadian Institute of Chartered Accountant's Handbook).

Consistent with GAAP, Kruger classifies the shares as debt on Kruger Inc.'s financial statements.

- Kruger's preferred shares would also be classified as debt under U.S. GAAP, which does not differ materially from Canadian GAAP.[1252] Commerce must take GAAP into consideration in the companion AD investigation, requiring Commerce to treat any dividend payments on the preferred shares as financing expenses. Commerce cannot reasonably treat the shares as debt for AD and equity for CVD purposes.

- The U.S. Tax Court considers the totality of the circumstances to distinguish between debt or equity and have considered hybrid instruments as debt in prior cases where there was an overwhelming economic incentive of the holder to divest itself of the instrument by a maturity date.[1253] Because Kruger has not paid dividends on its preferred shares, IQ has no economic incentive to retain the shares.

- Given the above facts, Commerce should evaluate whether Kruger received a loan benefit, instead of treating the transaction as an equity infusion.

Government of Québec's Case Brief

- The Government of Québec makes generally the same arguments as Kruger with respect to the hybrid securities methodology, elaborating on the history of this methodology and asserting that Commerce has applied this methodology only once in the past 20 years.[1254]

- The Government of Québec also makes generally the same arguments as Kruger with respect to Canadian and U.S. GAAP, as well as the companion AD investigation, adding only supporting statements related to FASB's 1985 Concepts Statement No. 3 and FASB Statement of Concepts No. 6 and a reference to 19 CFR 351.507(a)(3), which requires that a company's books and records be adjusted to conform to GAAP.[1255]

- Commerce did not analyze IQ's ownership rights in the Preliminary Equityworthiness Memorandum; however, the preferred shares confer no ownership rights (such as voting power) or risks (such as default). Instead, like debt, the preferred shares are protected against issuances that would have priority and the obligation to repay is clear and unambiguous. Thus, Commerce should treat the preferred shares as debt.[1256]

[1252] *Id.* at 82 (citing FASB ASC 480 and SEC Accounting Series Release No. 268).

[1253] *Id.* at 84 (citing *Hewlett-Packard*).

[1254] *See* GOQ's Case Brief at 81-82 (citing *Geneva Steel*).

[1255] *Id.* at 85-86

[1256] *Id.* at 83-85.

- The fact that there were conditions attached to the preferred shares is irrelevant and does not create any ambiguity as to the repayment obligation, contrary to statements in the Preliminary Equityworthiness Memorandum.[1257]

- There was no financial contribution because nothing was "contributed." Governmental forgiveness or assumption of debt is controlled by 19 CFR 351.508, and because here is no forgiveness or assumption of debt, 19 CFR 351.508 does not apply. Instead, Commerce should analyze the preferred shares as debt under 19 CFR 351.507. [1258]

- The *Preliminary Determination* overlooks the fact Commerce has defined loans broadly in the context of 19 CFR 351.505 to include forms of debt financing other than that which is normally considered a loan. Thus, Commerce should treat the preferred shares as a loan for the final determination.[1259]

Petitioner's Rebuttal Brief

- Commerce should continue to find that IQ's share transaction with KPPI was an equity infusion. The use of the hierarchical approach sustained in *Geneva Steel* was appropriate, and Commerce's verification findings support its conclusion that there were no guaranteed interest or dividends.[1260]

- Commerce's decision not to codify the *Geneva Steel* approach is irrelevant, in light of the *CVD Preamble*'s clear statement that Commerce "has no present intention of deviating {from that approach}."[1261]

- Commerce was correct to conclude that there was no certainty of repayment, given IQ's long history of not exercising its rights as a lender to Kruger even in the face of default. Commerce should consider IQ's mission as a factor in its analysis.[1262]

Commerce's Position:

As noted above, in 2012, pursuant to a series of related agreements between IQ, KPPI, and KPPI's parent company Kruger Inc., IQ forgave a debt owed to IQ. In exchange for the cancelation of this debt, IQ received preferred shares in KPPI; on the same day, as permitted under the terms of the agreement, IQ converted these shares into preferred shares in Kruger Inc.

[1257] *Id.* at 84-85.

[1258] *Id.* at 80-81. We presume that the Government of Québec referred to 19 CFR 351.507, instead of 19 CFR 351.505, in error.

[1259] *Id.* at 82-83 footnote 302.

[1260] *See* Petitioner's Rebuttal Brief at 98-100 (citing GOQ Verification Report at 19).

[1261] *Id.*

[1262] *Id.* at 100-102 (citing GOQ Verification Report at 19). The petitioner's argument involves BPI information which cannot be discussed here.

with the same nominal value. Through the IQ's decree Kruger Inc. was relieved of the underlying debt that was forgiven.[1263]

IQ's decree authorizing this action states:

> {Whereas} corporate reorganizations have taken place within the Kruger Group which have resulted in Kruger Inc. now being the debtor of this loan; {and whereas} Kruger Inc. requested the government to repay the balance of its loan by issuing convertible preferred shares of its subsidiary Papiers de publication Kruger Inc. . . It is ordered, therefore, on the recommendation of the Minister of Développement économique, de l'Innovation et de l'Exportation:
>
> {that} Investissement Québec be mandated to accept, in respect of the full repayment of the balance of the loan, convertible preferred shares of the capital stock of Papiers de publication Kruger Inc., . . . and to convert, if applicable, such shares into preferred shares of the capital stock of Kruger inc. having the same terms and conditions as those originally issued . . . [1264]

Because IQ forgave Kruger Inc.'s loan in exchange for preferred shares, it is appropriate to analyze the transaction as debt forgiveness pursuant to 19 CFR 351.508. Subsection (a) of this regulation states:

> In the case of assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. <u>In situations where the entity assuming or forgiving the debt receives shares in a firm in return for eliminating or reducing the firm's debt obligation, the Secretary will determine the benefit under 351.507 (equity infusions)</u>.[1265]

This regulation makes no distinction between the type of shares issued to the government, but rather directs Commerce to determine the benefit under the regulation related to equity infusions. Accordingly, we have continued to treat the shares issued by KPPI and Kruger Inc. to IQ as a debt-for-equity swap for the final determination.

We disagree with the Government of Québec that this regulatory provision does not apply here, as IQ "receive{d} shares in a firm in return for eliminating or reducing the firm's debt obligation." In addition, in connection with the governmental decree, IQ forgave a significant portion of Kruger Inc.'s loan outright. Thus, the regulation clearly is applicable.

[1263] *See* GOQ November 9, 2017 IQR at GOQ-OTHER-35.

[1264] *Id.* at Exhibit GOQ-OFA-IQS -1.

[1265] *See* 19 CFR 351.508(a) (emphasis added).

In addition to our debt forgiveness and equity regulations, we continue to find the methodology employed in *Geneva Steel* to be relevant in this instance. Although Commerce does not often employ this methodology, the *CVD Preamble* recognizes that it may be appropriate to analyze the treatment of "hybrid instruments" as debt or equity using it.[1266] Here, although we could have simply relied on the regulation, to ensure that our analysis was appropriate based on these unique facts, we resorted to the hybrid methodology.

We do not find persuasive arguments that our analysis under the hybrid securities criteria is incorrect. Therefore, our analysis continues to lead us to the conclusion that we appropriately viewed this transaction as a debt-for-equity swap, given that: 1) the Government of Québec and Kruger have a long-standing relationship, under which repayment obligations were not strictly enforced, and Kruger provided no reason for Commerce to believe that the situation would differ in this instance (thus, at best, the repayment obligation criterion is ambiguous); 2) under the guaranteed interest/dividend criterion, while the preferred shares provide for the payment of dividends, this condition was subject to certain meaningful contingencies; as a result, unlike with a loan, IQ's return was not guaranteed; and 3) the payment of dividends is not like the payment of interest; it is a distribution of a share of the profits in a firm (given to equity stakeholders, not lenders).[1267] We disagree that Commerce has improperly imposed a "certainty" requirement under the first criterion. Our determination was based on the facts and circumstances before us, that is, IQ's long history of not exercising its rights as a lender to Kruger even in the face of default.

Finally, we disagree with the respondents that the treatment of preferred shares under GAAP or by a U.S. tax court is relevant to our determination. We appropriately relied on our longstanding methodology, and the facts before us. Therefore, in light of the foregoing, and given the clear language of the regulations, we have continued to treat the shares as equity for the final determination.

Comment 89: Whether Any Benefit in the 2012 Debt-to-Equity Conversion Is Attributable to Kruger Inc.

As noted above, in 2012, IQ exchanged certain debt owed to it for preferred shares in KPPI, and shortly thereafter it converted these shares into preferred shares in Kruger Inc. In the *Preliminary Determination*, we found it appropriate to characterize the preferred shares as equity instruments and attribute the benefit to KPPI. This determination was based in part on a finding that the debt owed to IQ was owed by KPPI, not Kruger, Inc. Thus, we used uncoated

[1266] *See* Prelim Equityworthiness Memo at 1-2 (citations omitted).

[1267] *Id.* for a detailed discussion of the application of the hybrid securities methodology as applied to the facts of this case. Because of qualities of the preferred shares in KPPI are identical to the qualities of the preferred shares in Kruger Inc., we view our discussion of the issue as equally relevant in regard to the Kruger Inc. preferred shares.

groundwood paper producer's sales as the denominator in our benefit calculation, rather than the consolidated sales of Kruger Inc.[1268]

Kruger's Case Brief

- Commerce incorrectly attributed the benefit from the debt exchange to KPPI, instead of to Kruger Inc. Only Kruger Inc. had preferred shares outstanding during the POI, and it alone was obligated to make dividend payments to IQ. Because Kruger Inc. would have been the only party to have benefitted from any non-commercial dividend/interest rate, the benefit must be attributed solely to Kruger Inc. and allocated over its POI sales.[1269]

- Under 19 CFR 351.505(a), a benefit exists to the extent that the amount that a firm pays on a loan is less than the amount the firm would pay on a comparable commercial loan. Any government benefit for a below-market rate loan thus is conferred on the entity obligated to pay interest/dividends, which was Kruger Inc.

- Given the structure of the agreement, Commerce should treat the value of the preferred shares as an interest-free contingent liability loan at the nominal share value, and the portion of the original debt forgiven as a grant. For a discussion of the debt forgiveness, *see* Comment 90 below.[1270]

Petitioner's Rebuttal Brief

- Commerce is correct in attributing the benefit to KPPI alone. IQ's investment was in KPPI, and the debt forgiven was owed by KPPI.[1271]

Commerce's Position:

As noted in Comment 88, above, we disagree with Kruger that it is appropriate to treat the preferred shares as debt. However, we agree that the benefit related to the equity infusion relates to Kruger Inc.

According to the government decree authorizing the debt forgiveness and simultaneous equity infusion, "Kruger Inc. {is} the debtor of this loan" and IQ is "mandated to accept, in respect of the full repayment of the balance of the loan, convertible preferred shares of the capital stock" of KPPI, and "to convert, if applicable, such shares into preferred shares of the capital stock of Kruger Inc."[1272] Therefore, it is appropriate to attribute the benefit related to IQ's action to both KPPI and Kruger Inc. Accordingly, we have revised the benefit calculation to use the Kruger Inc.'s consolidated sales values (which include the sales of KPPI) as the denominator.

[1268] *See Preliminary Determination* at 21 to 22. For further discussion of Commerce's treatment of the forgiven debt, *see* Comment 90, below.

[1269] *See* Kruger's Case Brief at 85-86.

[1270] *Id.* at 88.

[1271] *See* Petitioner's Rebuttal Brief at 102.

[1272] *See* GOQ November 9, 2017 IQR at Exhibit QC-OTHER-IQS-1.

Given the unique circumstances of this case: (1) Kruger Inc. was obligated as debtor on the loan and received a benefit with the loan's cancellation; and (2) the transaction was structured such that IQ would hold shares in Kruger Inc., rather than KPPI, we find it appropriate to examine the equityworthiness of Kruger Inc. instead of KPPI. We agree with Kruger that the purpose of the transaction was to forgive the debt owed by Kruger Inc.

Although the infusion initially went into KPPI, the parties purposely structured the agreement to allow IQ's infusion to wipe out Kruger Inc.'s debt. The terms of the of the agreements included a stipulation that allowed IQ at any time to exchange its shares in KPPI for equivalent shares of Kruger Inc. The record evidence shows that IQ exchanged the shares only hours after the equity infusion into KPPI. Therefore, given the unique circumstances of the terms of the agreements related to the equity infusion, we find it appropriate to analyze the equityworthiness of Kruger Inc.

Section 771(5)(E)(i) of the Act and 19 CFR 351.507(a)(1) state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. Pursuant to 19 CFR 351.507(a)(2), an equity infusion is considered inconsistent with the usual investment practice if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same newly issued shares.

If private investor prices are not available, then pursuant to 19 CFR 351.507(a)(3), Commerce will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. Under 19 CFR 351.507(a)(4)(i), Commerce will consider a firm to be equityworthy if it determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. In making this determination, Commerce may examine the following factors, among others: (1) objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question; (2) current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles; (3) rates of return on equity in the three years prior to the government infusion; and (4) equity investments in the firm by private investors.

Section 351.507(a)(4)(ii) of Commerce's regulations further stipulates that Commerce will "normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion." Absent an analysis containing information typically examined by potential private investors considering an equity investment, Commerce will normally determine that the equity infusion provides a countervailable benefit. Commerce will not necessarily make such a determination if the absence of an objective analysis is consistent with actions of a reasonable private investor in the country in question.

If a firm is found to be equityworthy, Commerce must still examine the terms and the nature of the equity purchased to determine whether the investment was otherwise inconsistent with the usual investment practice of private investors. 19 CFR 351.507(a)(5).

In the case of IQ's investment in Kruger Inc., there are no private investor prices available for comparison. Therefore, pursuant to 19 CFR 351.507(a)(3), it is necessary to determine whether the firm funded by the government-provided infusion was equityworthy at the time of the infusion. Our examination of the expert report for IQ is discussed in depth in the Prelim Equityworthiness Memo. Commerce expressed doubts that the expert report represents "objective analysis, containing information typically examined by potential private investors considering an equity investment" as required und 19 CFR 351.507(a)(4)(ii) as applied to an equity investment in KPPI. However, the report clearly does not meet the criteria required for an equity investment in Kruger Inc., because an equity investment of shares in Kruger Inc. is not discussed as an option in the report. And, as noted above, Kruger persuasively argues that the objective of the transaction was that IQ ultimately would hold shares in Kruger Inc.[1273]

Because we have determined that the preferred shares at issue are equity, rather than debt instruments, Kruger's arguments about how to treat the preferred shares once characterized as debt instruments are moot.

Therefore, we find that IQ's investment in Kruger Inc. was inconsistent with the practice of private investors. As a result, we determine, in accordance with 19 CFR 351.507(a)(4), that Kruger Inc. was not equityworthy at the time of the debt-to-equity conversion, and that, as a result, this infusion constitutes a benefit, within the meaning of section 771(5)(E)(i) of the Act, to Kruger Inc.

To calculate the benefit, we performed the "0.5 percent test" by dividing the benefit received by total 2012 sales of the UGW paper producers and Kruger Inc., who was not an UGW paper producer at the time of the infusion. Because the resulting ratio exceeded 0.5 percent, we allocated a portion of the benefit to the POI using Commerce's standard allocation formula.[1274] We used the 13-year AUL period described in the "Allocation Period" section, above, when conducting the allocation calculation. Because the funds received under the equity infusion were given to Kruger Inc., we used the UGW paper producers' total sales and Kruger Inc.'s total sales as the denominator, consistent with 19 CFR 351.525(b)(6)(ii). On this basis, we preliminarily determine the countervailable subsidy rate for Kruger under this program to be 0.75 percent *ad valorem*.[1275]

[1273] *See* Kruger December 18, 2017 SQR at Exhibit Q56-A.

[1274] *See* 19 CFR 351.524(d)(1).

[1275] *See* Kruger Final Calc Memo.

Comment 90: How to Determine the Benefit for Kruger Inc.'s 2012 Loan Forgiveness

Kruger's Case Brief

- Commerce correctly treated the portion of the original debt forgiven as a grant; it erred, however, in treating a portion of the "equity" investment (*i.e.*, the difference between the face value of the preferred shares and the fair value reflected on Kruger Inc.'s financial statements) as debt forgiveness as well.[1276]

- The fair value of the shares has continued to increase over time. Nothing in the Act or regulations authorizes Commerce to mark down the value of the preferred share debt. Commerce may treat a portion of a principal balance due on a loan as a grant only under two conditions not present here: if it is forgiven or if repayment depends on a contingency that has become not viable.[1277]

- If Commerce continues to treat Kruger's write down as debt forgiveness, it should take care not to double-count other portions of the benefit calculation.[1278]

- The debt forgiveness provided a benefit to both Kruger Inc. and KPPI and, thus, should be allocated over the consolidated sales of Kruger Inc. (which includes KPPI's sales). Commerce's decision to attribute the benefit solely to sales of UGW paper is based on an omission of some facts and a misapprehension of others, including: 1) a proprietary detail about the loan, and the fact that IQ never released Kruger Inc. from its obligations under the loan; and 2) Kruger Inc.'s role was not of a loan guarantor, but KPPI's role was.[1279]

Government of Québec's Case Brief

- The Government of Québec makes the same argument as Kruger with regard to the attribution of the benefit to Kruger Inc.[1280]

Commerce's Position:

As discussed in Comment 88 above, we continue to find that it is appropriate to treat the preferred shares as equity for purposes of our analysis. Upon further consideration, as discussed in Comment 89 above, we find that: 1) it is appropriate to consider IQ's equity infusion as an infusion into Kruger Inc., given that IQ exchanged its shares in KPPI for shares of Kruger Inc. on the date that it acquired the KPPI shares and the underlying debt belonged to Kruger Inc.; 2) Kruger Inc. was not equityworthy at the time of that it issued its preferred shares to IQ; and 3) the benefit from the equity infusion is attributable to Kruger Inc. because under IQ's structure

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[1276] *See* Kruger's Case Brief at 86-87.

[1277] *Id.* at 87-88.

[1278] *Id.* at 88. Because Kruger has claimed BPI treatment for this argument, we are unable to discuss it further here.

[1279] Because Kruger has claimed BPI treatment for certain aspects of this argument, we are unable to discuss it further here. *See* Kruger's Case Brief at 88 to 91.

[1280] *See* the GOQ's Case Brief at 88.

and terms of the agreement, IQ's would at some point in time ultimately hold shares in Kruger Inc.

As a result of these determinations, the issue of whether it is appropriate to characterize the marked-down portion of the equity infusion reflected on Kruger Inc.'s financial statements as equity or debt forgiveness is moot. However, as noted above, we agree with Kruger Inc. that the denominator for our benefit calculation should include Kruger Inc.'s consolidated sales value, and we have revised our calculations accordingly for purposes of the final determination.

Comment 91: Whether IQ's 2015 Investment in KHLP Was Tied to Non-Subject Merchandise

In 2015, IQ invested C$106,000,00 in KHLP, a new Kruger company formed at the time of the investment, in return for 25 percent of this company. The equity investment was intended for, among other things, the conversion of a paper machine owned by Kruger's KTR paper mill into a machine which produces non-subject merchandise.[1281] In our *Preliminary Determination*, we found KHLP to be unequityworthy.[1282] We also preliminarily found that a loan by IQ to KTR, aligned with the equity investment in KHLP, to be not countervailable because the loan was tied to the production of non-subject merchandise.[1283]

Kruger's Case Brief

- In response to declining demand for UGW paper products, Kruger developed a business strategy to shift production from UGW paper products to packaging products, such as linerboard. Consistent with this strategy, Kruger requested that IQ provide a loan guarantee to finance the project. IQ, instead, agreed to provide funds only as an investment in Kruger's profitable packaging business. Given this requirement, Kruger spun off its paper mill located in Trois-Rivières and its packaging divisions into new companies, KTR and Krupack respectively, both owned by KHLP.[1284]

- The subscription agreement between IQ and Kruger required KHLP to use the infusion to invest in specific amounts in KTR and Krupack, and it also required that KHLP use these funds to undertake specific actions, none of which involved UGW paper.[1285] Commerce confirmed these facts at verification. Given these conditions, IQ's investment was tied to the

[1281] This paper machine is hereinafter referred to as "Paper Machine No. 10."

[1282] *See* PDM at 22.

[1283] *Id.* at 80-81.

[1284] *See* Kruger's Case Brief at 8-13 and 15.

[1285] *Id.* at 14 and 22. In particular, IQ required KHLP to use the funds invested in KTR in the Paper Machine No. 10 conversion project. Because Kruger claimed BPI treatment for the remainder of the underlying facts, we are unable to disclose them here. *See* Prelim Equityworthiness Memo.

production of non-subject merchandise, and thus provided no countervailable subsidy to UGW paper.[1286]

- Although the *CVD Preamble* states that Commerce considers equity infusions to be "untied because they benefit all production," it provides guidelines for tying such infusions on a case-by-case basis. Commerce verified that the funds were used for the agreed-upon purpose, and IQ's investment in Krupack could not benefit subject merchandise because Krupack does not produce any (*i.e.*, this investment does not "benefit all production").[1287]

- Commerce's preliminary analysis was flawed, erring both in its statement that "Commerce does not normally trace the allocations of equity down through the company" and "the terms of the agreement clearly related to KHLP's entire production." Commerce not only had no need to trace KHLP's actual use of the funds because the use was stated in the agreements, but it verified their use. Further, Commerce relied on an ancillary provision in the agreement in finding that the infusion benefited all production; it should instead have focused on whether the subsidy itself is tied to the production of a particular product (and here it was not tied to UGW paper).[1288]

Government of Québec's Case Brief

- The Government of Québec makes the same arguments as Kruger, adding that the same decree that authorized the loan and tied it to the conversion of Paper Machine No. 10 also tied the equity investment in KHLP to the production of non-subject merchandise.[1289]

Petitioner's Rebuttal Brief

- Commerce's preliminary analysis was correct and should be unchanged in the final determination. As a general matter, Commerce does not tie equity investments down through a company, consistent with its practice and guidance in the *CVD Preamble*.[1290]

- Commerce's regulations provide that "{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 this case, the equity infusion was tied not to a particular product, but rather was an investment in KHLP more generally.[1291]

- Kruger's claims that the IQ equity investment was tied, to and could only benefit, production of non-subject merchandise is not supported by the record. Thus, Commerce should continue

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[1286] *Id.* at 14-15 and 22-23.

[1287] *Id.* at 23-24 (citing *CVD Preamble*, 62 FR at 65400-402).

[1288] *Id.* at 24-25 (citing Prelim Equityworthiness Memo at 11).

[1289] *See* GOQ's Case Brief at 63.

[1290] *See* Petitioner's Rebuttal Brief at 86 (citing *DRAMs from Korea* IDM at Comment 14 ("{Commerce} does not normally treat debt forgiveness or equity infusions as 'tied' subsidies"; also citing *CVD Preamble*, 62 FR at 65400).

[1291] *Id.* at 85 (citing 19 CFR 351.525(b)(5)).

to allocate the benefit from the equity infusion to the sales of the UGW producers and Krupack.[1292]

Commerce's Position:

We disagree with Kruger. Commerce's practice with respect to equity infusions is to find that the infusion benefits the firm's entire production in which the investment is made as a whole. Consistent with this practice, in the *Preliminary Determination*, we found that IQ's investment in KHLP benefitted KHLP as a whole, rather than any particular product produced, or project undertaken, by this firm.[1293]

The rationale behind Commerce's practice is found in the *CVD Preamble*. According to the *CVD Preamble*:

> {T}here are various ways in which a subsidy can be tied. However, regardless of the method, we attribute a subsidy to sales of the product or products to which it is tied. In this regard, one can view an "untied" subsidy as a subsidy that is tied to sales of all products produced by a firm. For example, we consider certain subsidies, such as payments for plant closures, equity infusions, debt forgiveness, and debt-to-equity conversions, to be untied because they benefit all production.[1294]

The *CVD Preamble* further recognizes that an equity infusion reduces a firm's cost of capital.[1295] Commerce recognizes the fungible nature of a corporation's invested capital resources.[1296] An equity infusion, regardless of how it is used by the recipient firm, frees up funds to be applied to any of the firm's activities.

We acknowledge that the agreement explicitly requires that KHLP use the funds invested by IQ for specific purposes related to non-subject merchandise, and that KHLP followed the terms of the agreement. However, the specific agreement between the parties also contains provisions which relate to KHLP's operations as a whole.[1297] Language in the agreements governing IQ's equity infusion include broad provisions that took into account KHLP as a whole, including all of its production. Moreover, given the record evidence, we find it would be inaccurate and misleading to say that the investment relates solely to the production of non-subject merchandise.

[1292] *Id.* at 88. Because the facts on which this argument is made are BPI, we are unable to disclose them here.

[1293] *See*, *e.g., DRAMs from Korea* IDM at Comment 14.

[1294] *See CVD Preamble*, 63 FR at 65400.

[1295] *Id.* at 65360 (comparing a program which reduces a firm's cost of capital to a countervailable equity infusion).

[1296] *See*, *e.g.*, *Silicon Metal from Brazil* IDM at Comment 2; *see also Camargo* (citing *Telephone Systems from Korea Final Determination*, 54 FR 53141, 55149.

[1297] *See* Prelim Equityworthiness Memo at 10-11. Kruger has claimed BPI treatment for these additional conditions, and, therefore, we cannot discuss them further here.

Therefore, in this case, consistent with our regulations and practice, we continue to find that the equity infusion into KHLP is untied, pursuant to 19 CFR 351.525(b)(5).

Given these facts, we do not find respondent's argument persuasive to overcome the rationale behind Commerce's practice, which is that money is inherently fungible and that equity infusions benefit the entire operation of the firm receiving the infusion. Further, as noted above, the agreement between the parties contained other provisions that related to KHLP as a whole, and not just particular products produced by it.

We disagree with Kruger that the additional provisions are ancillary or otherwise unimportant, however, we find it unlikely that a private investor would require the additional terms and conditions imposed on Kruger. Generally, we would expect private equity investors to be interested exclusively in the projected financial returns from their investment, and not attach such additional terms and conditions as we have here.

Accordingly, based on the facts in this case, we continue to find the equity infusion into KHLP benefits all production.

Comment 92: Whether the Equityworthiness Analysis for KHLP in 2015 is Correct

As noted above, Kruger formed KHLP in 2015, using assets from Kruger Inc. and KPPI. Because KHLP was a newly-created company, we used Kruger Inc.'s financial information to compute the financial ratios used in our equityworthiness analysis under 19 CFR 351.507(a)(4)(i)(B) and 19 CFR 351.507(a)(4)(i)(C), rather than using the financial information of the divisions from which KHLP was created.

Kruger's Case Brief

- Commerce erroneously departed from its own regulations by analyzing the financial performance of Kruger Inc., instead of the past financial statements of Kruger Inc. and KPPI divisions that were spun off to form KTR and Krupack. KHLP, not Kruger Inc. was the "recipient firm" contemplated in the regulations.[1298]

- In prior equityworthiness determinations involving newly-formed firms, Commerce has consistently analyzed the equityworthiness of the new entity. Further, Commerce has no precedent for the methodology undertaken in the *Preliminary Determination* (*i.e.*, examining whether Entity A was equityworthy by analyzing the financial data of Entity B, then allocating the benefit over the sales of Entity A).[1299]

- KHLP is not remotely similar to Kruger Inc., either in nature, size, or financial performance. In light of this, the financial performance of Kruger Inc. is not a reasonable predictor of the

[1298] *See* Kruger's Case Brief at 29 (citing 19 CFR 351.507(a)(4)(i)(B)).

[1299] *Id.* at 29-31 (citing *Aircraft from Canada*; *Refrigerators from Korea Final* IDM; and *2015 Cold-Rolled Flat Products from Korea Prelim* IDM).

future financial prospects of KHLP, and Commerce erred in evaluating the investment that IQ declined to rather than one that it actually made.[1300]

- Commerce's general standard for evaluating equityworthiness is to examine the "extent to which the investment decision is inconsistent with the usual investment practice of private investors" in the same country. No reasonable investor would have undertaken the same analysis as Commerce; instead, like IQ and Kruger, it would have hired expert accountants and valuation experts to evaluate the company in which the investment was made.[1301]

- As a matter of policy, Commerce should focus on the recipient entity, rather than its parent company. In this case, the recipient firm performed better, but that may not be true in other cases. Analyzing the wrong firm could allow companies to manipulate the analysis, using a Commerce-sanctioned roadmap to risk-free subsidization.[1302]

- Commerce's reasons for rejecting KHLP's data do not withstand scrutiny because: 1) financial statements of new firms will always be unavailable, and the Act and regulations do not require that Commerce rely exclusively on audited financial statements; 2) the divisional financial statements of the Trois-Rivières mill and other relevant producer roll up into the audited financial statements of Kruger Inc.; 3) KHLP's audited financial statements for 2015 were available (albeit ignored by Commerce); 4) Kruger Inc.'s debt generally did not transfer to KHLP, and, thus, it was not relevant to analyzing KHLP's past or present performance; and 5) there is no regulatory basis for evaluating "the indicators of current and past performance of the corporate management and controlling interests of KHLP."[1303]

Government of Québec's Case Brief

- The Government of Québec makes the same arguments as Kruger, adding that KHLP's POI audited financial statements are on the record, Commerce should use them to determine KHLP's equityworthiness; Commerce's concerns raised in the *Preliminary Determination* were put to rest at verification; and the valuation reports did not miss or overlook relevant debt.[1304]

Petitioner's Rebuttal Brief

- Commerce's preliminary analysis was correct and should be unchanged in the final determination. KHLP is a new company, with no financial track record. Kruger Inc. has a

[1300] *Id.* at 31-32.

[1301] *Id.* at 33-34 (citing 19 CFR 351.507(a)(1)).

[1302] *Id.* at 33.

[1303] *Id.* at 33-36 (citing Prelim Equityworthiness Memo at 14). Kruger further argues that any Kruger Inc. debt that did transfer to KHLP was extinguished at closing. *Id*. at 28.

[1304] *See* the GOQ's Case Brief at 66-72.

controlling interest in KHLP, and its financial indicators provide an appropriate basis for the analysis.[1305]

- Commerce should take into account an argument about debt.[1306]

Commerce's Position:

Kruger formed KHLP in 2015, using assets from Kruger Inc. and KPPI. Consistent with our finding in the *Preliminary Determination*, we continue to find it appropriate to use Kruger Inc.'s financial data when analyzing KHLP's past performance.[1307]

Commerce's equityworthiness determinations are governed by 19 CFR 507(a)(4)(i). Subsection (B) of this regulation permits Commerce to consider "current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts." Subsection (C) permits Commerce to also examine rates of return on equity in the three years prior to the government equity infusion. These provisions direct Commerce to examine the factors for the "recipient firm" of the equity infusion, and Commerce does so routinely in its equityworthiness analyses where data are available. However, Commerce must consider alternative approaches in cases, like here, where the recipient firm is newly-created.

The recipient firm of the equity infusion under consideration is KHLP. This company was created as a holding company with two subsidiaries, a UGW paper producer known as KTR and a producer of non-subject paper products known as Krupack. Both KTR and Krupack were also newly-created, existing prior to the infusion only as separate divisions within other Kruger companies. Because KHLP was a newly-formed holding company with no operations of its own at the time of IQ's equity infusion, the direct examination of KHLP's performance prior to the infusion is impossible. Given these facts, Commerce has two possible choices as a proxy for past performance of KHLP: 1) the divisional financial statements for the divisions from which the operations and assets were transferred to KHLP at formation; or 2) the financial statements of KHLP's parent company, Kruger Inc. We continue to choose the latter option.[1308]

We disagree that we must take a narrow view of the term "recipient firm" in 19 CFR 507(a)(4)(i)(B), which would require reliance solely on financial data (or lack thereof) from the firm into which the equity infusion was made. In the absence of available data, such a strict

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[1305] *See* Petitioner's Rebuttal Brief at 88.

[1306] *Id*. Because the facts on which this argument is made are BPI, we are unable to disclose them here. For further discussion, *see* Prelim Equityworthiness Memo at 13-17.

[1307] *See* Prelim Equityworthiness Memo at 13-15 for a detailed discussion of the decision to use the financial data of Kruger Inc. to compute various financial ratios. Because the facts on which this decision is made are BPI, we are unable to discuss them here.

[1308] A more fulsome explanation of our determination is set forth in the Prelim Equityworthiness Memo. Because Kruger claimed BPI treatment for this information, however, we are unable to discuss them further here. For further discussion, *see* Prelim Equityworthiness Memo at 15.

interpretation of this regulation is unreasonable. First, the regulations governing U.S. CVD law do not limit the factors Commerce may consider when analyzing the equityworthiness of a firm. 19 CFR 351.507(4)(i) lists the factors that Commerce "may examine… among others." It is clearly within Commerce's authority to analyze additional factors on a case-by-case basis.

Additionally, Commerce has often performed analyses based on both consolidated and unconsolidated companies in the creditworthiness context depending on the facts of the case.[1309] Further, Commerce has applied this same rationale specifically in instances when the relevant firm is a newly-formed company, where Commerce found it appropriate to analyze the parent company as an indicator of financial health.[1310] While we recognize that these analyses were conducted in the context of creditworthiness, nothing in the statutory or regulatory provisions concerning equityworthiness addresses a situation where the "recipient firm" is a newly-formed entity. Clearly, in the past, Commerce has used its discretion to alter its analysis depending on the facts of the case. In this instance, we find it necessary to exercise this discretion. Therefore, given the uniqueness of the situation at hand, we find that it is appropriate to consider the financial health of the parent company, Kruger Inc., in the absence of sufficient information regarding the financial health of a newly-formed company in our equityworthiness analysis.

Thus, we disagree with Kruger that a reasonable investor would not undertake the analysis performed by Commerce. A reasonable investor, given the limited information available in analyzing a newly-formed company, may next seek information on the parent company of the new entity, as this gives information about the operations of the group in control of the company and is often the only information reasonably available.

We also disagree that the precedent cited by the respondents is on point. In *Aircraft from Canada*, as discussed in the preliminary decision memorandum from that case, the analysis performed was on a project-specific basis, which is unique in and of itself, and does not relate to our facts here.[1311] Further, in *Refrigerators from Korea Final,* Commerce examined the financial position of a predecessor company, with its own complete financial statements, when evaluating the financial position of its successor.[1312] Finally, in *2015 Cold-Rolled Flat Products from Korea Prelim*, Commerce examined a complex debt restructuring process, and found the recipient firm unequityworthy based on its inability to provide an objective analysis, and, thus, we did not consider the financial performance of that firm.[1313] We do not find these cases to be relevant to the current situation. If anything, these cases demonstrate that, where the facts of the

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[1309] *See, e.g., Steel Wire Rod from Canada,* 62 FR 54974 (analyzing the parent/holding company); *OCTG from Austria Prelim,* 60 FR 4600 (analyzing the consolidated company; unchanged in Final); *Wire Rod from Brazil* IDM at "Creditworthiness" (analyzing an unconsolidated company).

[1310] *See, e.g., CFS from China* IDM at Comment 12; *OTR Tires from China AR Prelim*, 75 FR at 64271; *Citric Acid from China 2009* IDM at Comment 18.

[1311] *See Aircraft from Canada Prelim* PDM at 9. To the extent the parties rely on any supporting memoranda from *Aircraft* for their arguments, we note that those memoranda are not on the record of this case and therefore we have not considered such arguments.

[1312] *See Refrigerators from Korea* IDM at "Equityworthiness of DWJ and DWE."

[1313] *See 2015 Cold-Rolled Steel Flat Products from Korea Prelim* PDM at "DWI's Debt-to-Equity Swaps."

proceeding are unique, Commerce has determined the proper approach on a case-by-case basis. Thus, none of the cases cited by Kruger support its argument.

We also disagree that a reasonable private investor would not consider the past performance of management prior to purchasing a significant stake in a newly-formed company. This is particularly true when there is an expectation that those same managers have influence over the actions and activities of the new firm, as is the case here. While this fact alone may not require us to examine the financial performance of Kruger Inc., we disagree that it is totally irrelevant to the analysis.

Finally, we disagree that KHLP and Kruger Inc. are so dissimilar that Kruger Inc.'s performance is not indicative of the future performance of KHLP. In the Prelim Equityworthiness Memo, we discussed the various factors which led us to view the past performance of Kruger Inc. as the best predicator of the future performance of KHLP given the record in this case. We disagree, for the same reasons, that the divisional financial statements are better indicators of KHLP's past performance or future prospects or that the position of KHLP at the time of the equity infusion is best deduced from the financial records of KHLP.

Consistent with our preliminary determination, we continue to use Kruger Inc.'s financial information in the computation of various ratios to aid in the analysis of the equityworthiness of KHLP.

Comment 93: Whether KHLP was Equityworthy

Kruger's Case Brief

- The record indicates KHLP was equityworthy and, thus, IQ's equity investment provided no benefit. Commerce properly analyzed the valuation reports commissioned and shared by the parties to the investment, and it appropriately concluded that they satisfied the requirement of an objective analysis. Any concerns expressed by Commerce were resolved at verification.[1314]

- The valuation reports constitute detailed, robust, pre-infusion objective analysis of KHLP's future financial prospects. These reports appropriately considered KHLP's debt position, and they analyzed the appropriate "recipient firm."[1315]

- Commerce incorrectly analyzed KHLP's current and past indicators of financial health by applying a test for loans rather than equity.[1316] Use of creditworthiness benchmarks for equityworthiness determinations is inappropriate because a company may be equityworthy even if it is not creditworthy. Commerce has recognized that the two determinations are

[1314] *See* Kruger's Case Brief at 26-27.

[1315] *Id.* at 26-29.

[1316] *Id.* at 37 (citing Prelim Equityworthiness Memo at 15, where Commerce relied on *Solar Cells from China* to compute current and quick ratios relevant to loans under 19 CFR 351.505(a)(4)(i)(B)-(C)).

separate. Commerce's precedent aside, however, KHLP meets Commerce's standards for quick and current ratios when one considers the data on the divisional statements (pre-infusion) and KHLP's 2015 audited financial statements[1317]

- KHLP's historical and current rates of return on equity are healthy, further demonstrating that KHLP was not only equityworthy but it was generating a reasonably healthy rate of return at the time of IQ's investment.[1318]

- Commerce found no fault in the market analyses or projections on the record, and only took issue with how the cost of capital in the reports compared with Kruger Inc.'s historical performance; this concern disappears when Commerce focuses its analysis on KHLP.[1319]

- Commerce's final concern is based on an incorrect analysis of a BPI provision which is common to agreements made to protect minority shareholders. Instead of diminishing IQ's stake in the new company, this provision enhances it.[1320]

Government of Québec's Case Brief

- The Government of Québec makes the same arguments as Kruger, adding that IQ and Kruger engaged outside firms to conduct comprehensive financial assessments and fair market value valuations of the businesses that would be combined to form KHLP.[1321] Because of differences in the valuations, both IQ and Kruger engaged additional experts to provide reports.[1322]

- There is no record evidence that KHLP was unequityworthy. The petitioner did not provide any contrasting expert reports challenging the work of experts preparing the reports for IQ and Kruger. Commerce must conclude based on the evidence on the record that KHLP was equityworthy.[1323]

Petitioner's Rebuttal Brief

- Commerce's preliminary analysis was correct and should be unchanged in the final determination.[1324]

[1317] *Id.* at 37-38 (citing *Flat-Rolled Products from Argentina*).

[1318] *Id.* at 39.

[1319] *Id.* at 40.

[1320] *Id.*

[1321] *See* the GOQ's Case Brief at 74.

[1322] *Id.* at 72-75.

[1323] *Id.* at 76 -77.

[1324] *See* Petitioner's Rebuttal Brief at 88.

Commerce's Position:

As noted above, in 2015, IQ invested $106,000,00 in KHLP, in return for 25 percent of this firm. The equity investment was intended, among other things, for the conversion of a paper machine owned by KTR that was producing subject merchandise into a machine which produces non-subject merchandise. After analyzing this investment under 19 CFR 507(a)(4)(i), we preliminarily found that KHLP was not equityworthy at the time of the equity infusion from IQ, and we find no basis to alter this decision in the final determination.

As explained in detail in our Prelim Equityworthiness Memo, because private investor prices for the partnership units were not available, we examined the following factors, among others: 1) objective analyses prepared prior to the investment; 2) current and past indicators of the recipient firm's (*i.e.*, KHLP's) financial health; 3) rates of return on equity in the three years prior to the government infusion; 4) analyses of KHLP's future financial prospects; and 5) whether certain provisions of the agreements between the parties were inconsistent with the actions of a reasonable private investor concerned with maximizing the return on investment.[1325]

Based on an analysis of these factors and the facts on the record in this case, we find that, at the time of IQ's equity infusion in KHLP, KHLP did not show an ability to generate a reasonable rate of return within a reasonable period of time from the perspective of a reasonable private investor, in accordance with 19 CFR 351.507(a)(4). We also continue to find that there is ample record evidence to demonstrate that IQ's investment in KHLP was inconsistent with the practice of private investors, also in accordance with 19 CFR 351.507(a)(3).[1326]

We disagree that the valuation reports are dispositive as to KHLP's equityworthiness.[1327] While the existence of valuation reports is essential to Commerce's analysis, they do not form the sole basis for an equityworthiness finding. Indeed, our regulations at 19 CFR 507(a)(4)(i)(B)-(D) permit us to consider current and past indicators of the recipient firm's financial health, its historical return on equity, and any other private equity investments, among other factors. When we view IQ's investment in KHLP through the lens of these additional factors, as noted above, we find that KHLP was not equityworthy at the time of the infusion.

We disagree that the quick, current, and debt-to-equity ratios relied upon in our analysis are inapplicable to equityworthiness determinations. We acknowledge that the case cited as precedent, *Solar Cells from China*, referenced a creditworthiness determination. However, we disagree that these ratios have no value in the context of an equityworthiness determination, given that they provide a snapshot of a respondent's current and past financial health. Further, Commerce has relied on these ratios in making other equityworthiness findings.[1328] In

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[1325] *See* Prelim Equityworthiness Memo at 10-17.

[1326] *Id*. at 17.

[1327] See Prelim Equityworthiness Memo at 17. Although we no longer have concerns about whether the divisional financial statements are audited or that these statements were relied on by the reports, our other reservations remain.

[1328] *See, e.g., Refrigerators from Korea Final* at Comment 28.

consideration of the Government of Newfoundland and Labrador's and Kruger's arguments, however, we have expanded our analysis to consider Kruger Inc.'s net income to net sales ratios for the three years before the infusion. The consideration of these ratios along with the others does not lead to a different result.[1329]

Finally, we disagree that the additional provisions included in the agreement between KHLP and IQ should either have no bearing on this analysis or weigh in favor of a finding that KHLP was equityworthy. As noted in Comment 92, above, the provisions at issue are inconsistent with the behavior of a reasonable private investor seeking to maximize a return on investment.

Based on the foregoing, we continue to find that KHLP was unequityworthy at the time of IQ's investment.

Loan Program Issues

Comment 94: Whether CBPP was Creditworthy

In 2014, the Government of Newfoundland and Labrador made a long-term loan to CBPP in the amount of C$110 million. Based on an allegation from the petitioner, consistent with our practice, we analyzed whether CBPP was creditworthy at the time of the loan. Our preliminarily analysis showed that the present and past financial health of CBPP, as reflected in various financial indicators calculated from the firm's financial statements and accounts and CBPP's potential inability to meet its costs and fixed financial obligations with its cash flow, are inconsistent with that of a creditworthy company. Therefore, we preliminarily determined that CBPP was uncreditworthy at the time it received the loan from the Government of Newfoundland and Labrador.[1330]

In our *Preliminary Determination*, we did not consider a long-term private revolving credit facility (revolving loan) taken out by CBPP around the same time as the Government of Newfoundland and Labrador loan in our analysis for the following reasons: 1) the revolving loan had post-dated the government loan and had significantly different terms (including loan length, type, and security requirements); 2) the revolving loan was provided by pre-existing lenders who had relevant history with CBPP;[1331] and 3) the negotiation of the private loan was a condition of the government-provided loan.

Kruger's Case Brief

- The *CVD Preamble* states that receipt of comparable long-term commercial loans, unaccompanied by a government guarantee, will normally constitute dispositive evidence

[1329] *See* Kruger Final Calc Memo.

[1330] *See* PDM at 19.

[1331] Because the facts on which this argument is made are BPI, we are unable to disclose them here. *See* Kruger Final Creditworthiness Memo.

that a firm is not uncreditworthy. Because CBPP had such a loan, Commerce erred in not considering it.[1332]

- The *CVD Preamble* indicates that, in defining a "comparable long-term loan," Commerce considers the timing, amount, repayment term ("*e.g.*, less than two years"), and "unusual aspects" of the loan. In this case, CBPP's long-term commercial loan meets the standard set out in the *CVD Preamble*, because it is an unguaranteed private bank loan taken out on the same day as the loan from the Government of Newfoundland and Labrador, in a large amount, with a term of not less than two years, with no "unusual aspects" that would indicate that the lenders would not reasonably have assessed CBPP's credit risk.[1333]

- Commerce's conclusions were based on factual findings unsupported by the record. The private loan closed on the same day as the Government of Newfoundland and Labrador loan (not two months before, as Commerce found), and CBPP clearly was able to obtain private financing because it did obtain it.[1334] Kruger's statement that the loans were not comparable was taken out of context.[1335]

- The private loan was linked to the Government of Newfoundland and Labrador loan[1336] and Commerce verified that the Government of Newfoundland and Labrador relied on the private lenders to perform the necessary due diligence and assess CBPP's credit risk. Record evidence demonstrates that the Government of Newfoundland and Labrador would not have provided its loan "but for" the private loan, but there is no evidence that the converse is true.[1337]

- Nothing in Commerce's practice or regulations supports a rejection of the private loan simply because it was made after the government loan. Rather, 19 CFR 351.505(a)(4)(i) refers to "the time of the government loan," and case precedent references loans "during the restructuring period." Lenders would assess the borrower's creditworthiness in both the year of the loan and the year before, and Commerce should do the same.[1338]

- Commerce evaluated CBPP's creditworthiness using a definition of "comparable commercial loan" relevant to benchmarks. However, this term is not used under the uncreditworthy companies section of the regulation, and commercial loans which are not comparable provide equal evidence of creditworthiness. Thus, Commerce's findings that the loans were of

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[1332] *See* Kruger's Case Brief at 44-45.

[1333] *Id.* 45-46.

[1334] *Id.* at 46-48.

[1335] *Id.* at 53.

[1336] For the nature of this linkage, *see* Kruger Final Creditworthiness Memo.

[1337] *Id.* at 48.

[1338] *Id.* at 49-50 (citing *CFS from Korea* IDM at Comment 8).

different duration and had different terms are irrelevant. Indeed, the fact that the private loan carried greater risk than the government loan undercuts Commerce's conclusion.[1339]

- The fact that the private loan involved pre-existing lenders is also irrelevant because those lenders would have made a determination that they were better off taking the new credit risk than declaring default on CBPP's prior loans. Similarly, the fact that the loans were not independent is irrelevant to the question of whether the private lenders would have assessed CBPP's creditworthiness.[1340]

- Commerce erred in its evaluation of CBPP's financial data because it included long-term debt awaiting refinancing as current liabilities when computing CBPP's quick and current ratios for 2011-2013. This effectively treated them as liabilities which CBPP would have had to repay in each of these years, resulting in double-counting. Because all parties to the loans expected them to be refinanced as long-term loans (and they were, in fact, refinanced), CBPP was relieved of any repayment obligation with respect to them, and no lender would have included them in CBPP's quick and current ratios, it would be unreasonable to treat them as current obligations.[1341] When the long-term debt is removed from the quick and current ratios, CBPP met Commerce's benchmarks in each of the years analyzed.[1342]

- Commerce should also consider 2014, the first year in which the quick and current ratios would be impacted by the financing, in its analysis, consistent with the CIT's holding that a commercial lender would examine a firm's projected financial ratios after receipt of a government loan. The quick and current ratios computed for that year highlight the distortion created by inclusion of the unrefinanced debt in the ratios in previous years.[1343]

- Commerce should consider CBPP's "EBITDA,"[1344] which is an objectively superior profitability measure. CBPP's EBITDA in 2013 and 2014 was robust and trending upward, indicating more than sufficient cash flow to pay interest on the Government of Newfoundland and Labrador and private loans. Also, at the time of the Government of Newfoundland and Labrador loan, CBPP was current on all interest payments on its pre-existing loans.[1345]

[1339] *Id.* at 49-51 (citing 19 CFR 351.505(a)(2)).

[1340] *Id.* at 52-53 (stating business proprietary conditions). For further discussion, *see* Kruger Final Creditworthiness Memo.

[1341] *Id.* at 54-59.

[1342] *Id.* at 59-60.

[1343] *Id.* at 60-61 (citing *Archer Daniels*, 917 F. Supp. 2d at 1347-48).

[1344] Earnings Before Interest, Taxes, Depreciation, and Amortization.

[1345] *See* Kruger's Case Brief at 61-62.

- CBPP successfully completed the restructuring of its existing loans and closed on new ones. Thus, Commerce should disregard a concern reflected in the Prelim Equityworthiness Memo.[1346]

- Because CBPP was creditworthy under Commerce's traditional analysis, the Government loan conferred no benefit. In making this determination, Commerce should use as its benchmark a national average interest rate for comparable commercial loans, given that CBPP had no comparable commercial loans of its own.[1347]

- Commerce should take into consideration the security and default positions when determining whether CBPP was creditworthy, if it does not consider these factors when selecting an appropriate benchmark rate.[1348] A borrower that can provide full security and excess guarantee is creditworthy in every meaning of the term, and the Act requires Commerce to recognize that reality.[1349]

Government of Newfoundland and Labrador's Case Brief

- The Government of Newfoundland and Labrador made the same arguments as Kruger, adding that: 1) Commerce verified the underlying facts and found no discrepancies; and 2) the high risk of electricity outages was relevant to the Government of Newfoundland and Labrador's intentions with respect to this issue.[1350]

Petitioner's Rebuttal Brief

- The term of the government loan is extremely generous, reflecting a policy objective of preventing CBPP from going out of business. At the time that the loan was made, CBPP was in "terrible" financial condition, as evidenced by information in its financial statements, as well as news accounts related to the company's financial problems and statements by the Government of Newfoundland and Labrador's Minster of Natural Resources.[1351]

- CBPP is already in violation of certain loan covenants contained in the agreement with the Government of Newfoundland and Labrador, although it has not yet been declared in default.[1352]

[1346] *Id.* at 62-64. Because Kruger has claimed BPI treatment for this concern, we are unable to discuss it further here. *See* Kruger Final Creditworthiness Memo.

[1347] *Id.* at 65.

[1348] For further discussion, see Comment 95, below.

[1349] *See* Kruger's Case Brief at 71-72.

[1350] *See* GNL's Case Brief at 8-19. Because the GNL has claimed BPI treatment with respect to its intentions, we are unable to discuss them further here. For further discussion.

[1351] *See* Petitioner's Rebuttal Brief at 89-92 (citing a June 8, 2012, CBS News article contained in the petitioner's November 29, 2017 NSAs at Exhibit 3).

[1352] *Id.* at 92-93 (citing Kruger November 9, 2017 at 78 and Kruger December 18, 2017 SQR at 27).

- Commerce correctly did not include CBPP's private bank loan in its analysis, with each of its stated reasons for rejection sufficient to support the decision. Kruger's arguments gloss over the fact that the government loan agreement was signed two months before the private loan agreement. Further, the fact that one loan was dependent on the other makes the loans inextricably linked, and it is relevant that the private loan was made by pre-existing lenders who stood to gain from CBPP's receipt of the government loan.[1353]

- While the private lenders did undertake a creditworthiness analysis, they would have factored into it the new government lending. Commerce should also take into account that CBPP's history with the private lenders.[1354]

- Commerce should not recalculate CBPP's quick and current ratios. Calculating these ratios based on data presented in CBPP's financial statements is consistent with Commerce's practice and regulations.[1355]

- Kruger's assertions that CBPP's term and revolving loans outstanding in 2011-2013 were long-term obligations awaiting refinancing is not supported by the record, and Canadian GAAP required them to be reported as current liabilities on CBPP's financial statements. Commerce should reject Kruger's circular reasoning (*i.e.*, ignoring debt which would not be repaid until it was refinanced cannot be an appropriate assessment of a company's ability to meet its debt obligations).[1356]

Commerce's Position:

On February 9, 2014, CBPP and the Government of Newfoundland and Labrador reached an agreement whereby the government made CBPP a long-term loan in the amount C$110,000,000.[1357] Consistent with our finding in the *Preliminary Determination*, we continue to find that CBPP was not creditworthy at the time of its receipt of this government loan. The examination of creditworthiness is an attempt to determine if a company could obtain long-term financing from conventional commercial sources. Under Commerce's regulations at 19 CFR 351.505(a)(4)(i), Commerce is directed to consider a firm to be uncreditworthy if it determines that:

> based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. {Commerce} will determine uncreditworthiness on a case-by-case basis . . .

[1353] *Id.* at 93-95.

[1354] *Id.* at 96. For details of the petitioner's proprietary argument, *see* Kruger Final Creditworthiness Memo.

[1355] *Id.* at 97 (citing 19 CFR 351.505(a)(4)(i)(B)).

[1356] *Id.*

[1357] *See* Kruger November 9, 2017 IQR at 76 to 77.

In making creditworthiness determinations, this regulation provides that:

> {Commerce} may examine, among other factors, the following:
>
> (A) The receipt by the firm of comparable commercial long-term loans;
>
> (B) The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts;
>
> (C) The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and
>
> (D) Evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

In the *Preliminary Determination*, we analyzed whether CBPP was uncreditworthy at the time of the government loan using the factors set forth in 19 CFR 351.505(a)(4)(i). Specifically, we found that:

- CBPP's sole private loan, taken out around the time of, but post-dating, the government loan, was not comparable because it had a significantly different value, terms (*e.g.*, the private loan had a variable rate and the government loan a fixed rate),[1358] and security requirements and was provided by pre-existing lenders from whom the Government of Newfoundland and Labrador required CBPP to obtain new financing as a condition of the government loan;[1359]

- CBPP's 2010-2013 financial statements contained relevant statements by CBPP's auditors related to its financial position;[1360]

- an analysis of CBPP's quick and current ratios showed that they were inconsistent with those of a creditworthy company;[1361] and

- CBPP provided no evidence that the Government of Newfoundland and Labrador considered CBPP's future financial position when setting the terms of the loan. [1362]

[1358] *See* Hearing Transcript at 60, making the terms of the two loans public.

[1359] *See* Prelim Equityworthiness Memo at 19-20.

[1360] *Id.* at 20-21.

[1361] *Id.* at 21-22.

[1362] *Id.* at 22.

We disagree with Kruger and the Government of Newfoundland and Labrador that the above analysis was flawed. Kruger and the Government challenge our analysis on the following grounds: 1) the private loan was comparable when viewed under the standard set out in the *CVD Preamble* and in light of the verified facts on the record; 2) Commerce improperly included in its analysis of CBPP's quick and current ratios long-term debt awaiting refinancing, effectively double-counting it; 3) Commerce failed to consider either CBPP's 2014 financial data or its EBITDA, both of which provide a more accurate picture of CBPP's financial status; and 4) Commerce should have taken the level of security into account, which shows CBPP was creditworthy.

With regard to the first argument, there is no dispute that, under 19 CFR 351.505(a)(4)(ii), the receipt of a comparable long-term commercial loan, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy. Nor is there any dispute that CBPP had a long-term commercial loan which was not guaranteed by the Government of Newfoundland and Labrador. However, CBPP had only one such loan, which was the basis for the Government of Newfoundland and Labrador loan. Furthermore, we continue to find that loan in question is not comparable to CBPP's government-provided loan at issue in this investigation. Therefore, we do not find that the single long-term commercial loan is indicative of creditworthiness.

In reaching this conclusion, we looked to the *CVD Preamble* for guidance. According to the *CVD Preamble*:

> In general, we believe that if commercial banks are willing to provide loans to the firm, we should not substitute our judgement and find the firm to be uncreditworthy. This does not mean, however, that if the firm has taken out a single commercial bank loan we would find that loan to be dispositive evidence that the firm was creditworthy. Instead, the intent of this paragraph is to indicate that, where the firm has recourse to commercial sources for loans, as made evident by receipt of such loans, and the commercial loans are comparable to the government loan, those loans will be dispositive of the firm's creditworthiness.[1363]

The language in the *CVD Preamble* is clear. The existence of "a single commercial bank loan" does not constitute "dispositive evidence that the firm is creditworthy." While Commerce may consider such a loan in its creditworthiness analysis, it will only consider such a loan dispositive evidence when the loan under consideration is comparable to the government loan. Thus, we disagree with CBPP that the mere existence of its single commercial loan should have ended Commerce's inquiry.

The *CVD Preamble* provides an example of a loan that Commerce would not consider dispositive as to a firm's creditworthiness:

> If, for example, the firm has obtained a single commercial loan in the year in question for a relatively small amount, and the loan has short repayment term

[1363] *See CVD Preamble,* 63 FR at 65367 (emphasis added).

> (*e.g.*, less than two years), or has unusual aspects, receipt of that loan will not be dispositive of the firm's creditworthiness, and we will go on to examine the other factors listed in paragraph (a)(4)(i) B through D.[1364]

We disagree with respondent parties that, because CBPP's private loan was taken out in the same year as the government loan for a longer duration than stated in the *CVD Preamble* (*i.e.*, two years), that Commerce should find it dispositive of CBPP's creditworthiness, consistent with the *CVD Preamble*.[1365] Although the amount of CBPP's private loan was by no means small, it was significantly smaller than the government loan.[1366] Further, while the term of the private loan was longer than two years, it was not substantially longer, and the term was only a fraction of the length of the government loan.[1367] Most importantly, however, CBPP's private loan had a number of unusual aspects, not the least of which was the inextricably-linked nature of the government loan, the private loan, and other factors. Significantly, the government loan itself had terms relevant to this linkage.[1368] We also find the substantial difference in the level of security on the two loans to support our finding that the loans were not comparable.[1369] In light of these facts, we disagree with the respondents that we did not consider CBPP's private loan simply because of its timing vis-à-vis the government loan.[1370]

We also disagree that the existence of the private loan signifies that CBPP "has recourse to commercial sources for loans" as contemplated by the *CVD Preamble*. Although CBPP obtained private financing, as noted above, the private lenders had additional incentive to make the loan in question, given that their history.[1371] Further, while the private lenders may have conducted due diligence, any related reports prepared are not on the record of this investigation, nor were they provided or reviewed at verification. Any statements in the verification report on this topic merely document discussions held with individuals involved in the transactions, unaccompanied by documentation supporting their statements related to due diligence.

[1364] *Id.* (emphasis added). We note that this language, as well as the prior-quoted language, is set forth in a section entitled "Creditworthiness Analysis." Thus, we disagree with Kruger that it relates to loans used as benchmarks. Indeed, the first sentence in the section states, "Paragraph (a)(4) sets forth the standard for determining whether a firm is uncreditworthy," and the remainder of the section discusses the conditions under which Commerce would make a finding of uncreditworthiness.

[1365] *Id.*

[1366] *See* Prelim Equityworthiness Memo at 19.

[1367] *Id.* at 20.

[1368] *Id.* at 19-20.

[1369] *Id.*

[1370] We further disagree with the respondents that the timing of the private loan is irrelevant. Although the two loans may have closed on the same day, they were structured to be dependent on one another. *See* Kruger November 9, 2017 IQR at Exhibit NL CBBP-1 through NL CBBP-10 and Kruger Final Creditworthiness Memo.

[1371] For further discussion, *see* Kruger Final Creditworthiness Memo.

Finally, we disagree the level of security required on the government loan weighs in favor of CBPP's creditworthiness. Instead, if anything, the fact that the Government of Newfoundland and Labrador required a significant level of security on the loan signifies that the credit risk on the loan was commensurately high. Thus, instead of undercutting our conclusion, this fact supports it. Therefore, we disagree with Kruger and continue to find that the private revolving loan is not a comparable commercial loan to be examined pursuant to 19 CFR 351.505(a)(4)(i)(A), and it cannot provide dispositive proof of CBPP's creditworthiness.[1372]

With regard to the second argument (*i.e.*, Commerce incorrectly analyzed CBPP's present and past financial health, as reflected in its financial statements), we continue to find that our analysis was consistent with Commerce's practice.[1373] This analysis shows that CBPP's current, quick, and interest coverage ratios, derived from CBPP's financial statements in the year of the government loan and the three preceding years, do not meet the standards for a creditworthy company.

We disagree with the respondents that it is appropriate to disregard the current portion of CBPP's long-term debt in our analysis because this debt is simply "awaiting refinancing." To the contrary, the evidence on the record shows that this is not accurate.[1374] Thus, it is appropriate to consider each of these outstanding loans in our analysis, consistent with their treatment under GAAP; indeed, to omit such loans from our analysis would present a distorted picture of CBPP's actual financial state.

We also disagree with the respondents that we should expand our analysis to include CBPP's financial position after the receipt of the government loan or that the precedent cited by Kruger, *Archer Daniels*, is on point. In that case, Commerce found it appropriate to include the government loans at issue in its calculation of financial ratios used in its creditworthy analysis. The CIT accepted Commerce's reasoning, holding that nothing in the regulation *required* Commerce to exclude the loans from the calculations.[1375]

[1372] We disagree with the respondents that it is inappropriate to rely on the factors used to determine "comparable" loans for benchmarking purposes. If the existence of "comparable" loans within the meaning of 19 CFR 351.505(a)(4)(ii) is sufficient to end Commerce's creditworthiness analysis, those same loans would show, when used for benchmarking purposes, that a benefit does not exist. Therefore, we find the respondents' argument unpersuasive.

[1373] *See, e.g., Aircraft from Canada Prelim* PDM at 9-10; unchanged in *Aircraft from Canada* and *Solar Cells from China* IDM at Comment 17.

[1374] Because the facts on which this conclusion is made are BPI, we are unable to disclose them here. *See* Kruger Final Creditworthiness Memo.

[1375] *See Archer Daniels*, 917 F. Supp. 2d at 1348. In *Archer Daniels*, Commerce did not exclude the government loans to avoid giving a distortive picture of the firms' financial positions because of the specific facts of that case. There is no similar reason here. CBBP's financial position prior to the government loan is clear. In this case, Kruger urges Commerce to look at the effects of the subsidy and use those same beneficial effects to transform an uncreditworthy company into a creditworthy one.

Here, in contrast, Kruger and the Government of Newfoundland and Labrador argue that Commerce should include in its analysis changes in CBPP's total business position, extending far beyond data on the loan itself, that could not have been "information available at the time of the government provided loan," as set forth in 19 CFR 351.505(a)(4)(i). The fact that the new loan improved CBPP's financial position is unsurprising; the receipt of a loan may very well improve the financial health of a company in the short term. However, what it cannot do is render an uncreditworthy company creditworthy at the time that the loan itself was made. The question before us is not whether the parties made a reasonable decision given their particular circumstances and policy objectives, but whether CBPP could have obtained long-term loans from conventional sources at the time of the government-provided loan.[1376] The actual performance of CBPP in 2014, after the receipt of the government loan, does not answer this question.

Finally, it has not been our practice to examine EBITDA ratios of firms when conducting a creditworthy analysis, and the respondents cite no cases where EBITDA was used. Further, the analysis conducted for CBPP in the *Preliminary Determination* shows clearly that CBPP was uncreditworthy at the time of the government loan, and the respondents have given us no reason to depart from that analysis here. We note that CBPP's financial difficulties, reported in the Canadian press, corroborate our analysis.[1377] Therefore, based on these facts, we continue to find that CBPP was not creditworthy at the time of the government loan. None of the factors we examined indicate a contrary result.

Comment 95: Whether Commerce Erred in Calculating the Benchmark for CBPP's 2014 Loan

As noted above, in 2014, the Government of Newfoundland and Labrador made a long-term loan to CBPP in the amount of C$110 million. Under the loan agreement, the Government of Newfoundland and Labrador required CBPP to provide significant assets as security for the loan, with a provision to sell those assets to the Government of Newfoundland and Labrador in the event of CBPP's default.[1378]

Kruger's Case Brief

- Commerce erred in determining an appropriate benchmark interest rate because it failed to consider that the loan was fully secured. The level of security a lender obtains affects the credit risk and, thus, the interest rate on the loan, and in this case the Government of Newfoundland and Labrador had no risk of loss.[1379]

[1376] *Id.* at 1331; *see also* 19 CFR 351.505(a)(4).

[1377] *See* November 29, 2017 NSAs at Exhibit 1 through Exhibit 3.

[1378] *See* Kruger's Case Brief at 66.

[1379] *Id.* at 66-68.

- The interest rate in Canada at that time for all long-term loans was three percent, and private lenders provided CBPP a loan at a significantly lower rate than the rate computed by Commerce for uncreditworthy companies. Thus, it was absurd for Commerce to find that CBPP would have had to pay 18.2 percent annually on a comparable private loan.[1380]

- The Act requires that Commerce determine "the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Commerce's approach to determine the benchmark rate[1381] is inappropriate because Moody rates only unsecured bonds, and, thus, the rates are not relevant to the risk the Government of Newfoundland and Labrador was taking.[1382]

- Commerce's regulation governing benchmark calculations only directs Commerce "normally" to base these calculations on Moody's default rates, and the *CVD Preamble* affords Commerce the discretion to consider the level of security on a loan when selecting a benchmark.[1383] This discretion has been upheld by the Courts.[1384]

- Commerce should select as its benchmark rate using the Bank of America Merrill Lynch Canada Corporate Bond Index because this Index reflect Canadian dollar-denominated investment grade corporate, securitized and collateralized debt publicly issued in the Canadian market, with at least one year to maturity and a minimum of C$100 million outstanding. This is analogous to rates Commerce has used in other cases and upheld by the Courts.[1385]

- Alternatively, Commerce should use the average interest rate charged by commercial banks in Canada for three-year loans to companies with comparable credit.[1386]

Government of Newfoundland and Labrador's Case Brief

- The Government of Newfoundland and Labrador made the same arguments as Kruger, adding that: 1) the record shows that the Government of Newfoundland and Labrador took specific steps to ensure a favorable outcome under any circumstance; and 2) there is no evidence to contradict the valuations on the record for the assets provided as security.[1387]

[1380] *Id.* at 66-68.

[1381] Commerce determined the benchmark rate by adjusting the commercial bank long-term average rate upward using the difference in cumulative default rates between investment grade bonds and Caa-C grated bonds, as reported by Moody's Investors Services.

[1382] *See* Kruger's Case Brief at 68-69 (citing section 771(5)(E)(2) of the Act).

[1383] *Id.* at 69-70 (citing 19 CFR 351.505(a)(3)(iii) and *CVD Preamble*, 63 FR at 65362).

[1384] *Id.* at 70 (citing *PPG*, 746 F.Supp. at 124-127).

[1385] *Id.* at 70-71 (citing *LTV Steel*, 985 F.Supp. at 108).

[1386] *Id.* at 71.

[1387] *See* GNL's Case Brief at 19 -24.

Commerce's Position:

We disagree with the respondents. As noted above, the Government of Newfoundland and Labrador required CBPP to provide significant assets as security for the long-term government-provided loan. In our *Preliminary Determination*, we did not consider this security in our calculation of the uncreditworthy interest rate analysis for CBPP, and we decline to do so now. Our calculation is unchanged from the *Preliminary Determination*.

Commerce's regulations at 19 CFR 351.505(3)(iii) sets out the methodology for determining the what a private commercial lender would loan the uncreditworthy company at the time of the government provided loan. Under this analysis Commerce is not trying to find a comparable loan to the government loan provided. Simply put, where a company is found to be uncreditworthy, Commerce will apply the methodology set forth under 19 CFR 351.505. Under this methodology, Commerce is directed to calculate this interest rate using{a specific} formula, which the includes following components: 1) the term of the loan; 2) the long-term interest rate that would be paid by a creditworthy company; 3) the probability of default by an uncreditworthy company within n years; and 4) the probability of default by a creditworthy company within n years.[1388] The formula is based on the assumption that a lender's expected return on all loans should be equal. When determining the probability of default, the regulation directs Commerce to rely on the average cumulative default rates reported for the Caa to C-rated category of companies in Moody's study of historical default rates of corporate bond issuers.[1389]

Commerce's practice is not take a single loan into account, but rather the company's financial health at the time of the government loan. Commerce has declined in the past to make such adjustments based on security of the loan for creditworthy companies, and it would be even more improper to do so for an uncreditworthy firm.[1390] As stated in the *CVD Preamble,* to take security into account when calculating the interest rate for uncreditworthy companies, is an exercise that is not only complicated but highly speculative. Indeed, the *CVD Preamble* states in regard to the benchmark interest rate calculation for uncreditworthy companies:

> …we are not proposing to calculate the probability that a particular uncreditworthy firm will default on a particular loan. Such a calculation would require extensive data and analysis, and any conclusion would be highly speculative.[1391]

Therefore, as noted above, we continue to determine the benchmark interest rate here using the formula in our regulations.

We disagree with Kruger and the Government of Newfoundland and Labrador that the interest rate on the private loan signed around the same time is relevant to this question. As noted above,

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[1388] *See* 19 CFR 351.505(3)(iii).

[1389] *Id*.

[1390] *See OCTG from China Review* at Comment 10.

[1391] *See CVD Preamble*, 63 FR at 65365.

we find that this loan is not comparable to the government-provided loan and, as a result, it is equally irrelevant to here.

We also disagree that application of the formula inaccurately reflects "the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." As noted above, we find that CBPP was uncreditworthy at the time of the loan, and CBPP had no comparable loans from private lenders. Therefore, the record contains no evidence of the rate that CBP would pay on a comparable commercial loan. In the absence of data, Commerce relies on the formula to derive a reasonable proxy, and we have done so here.

Similarly, we disagree with Kruger's argument that our approach is inappropriate because Moody rates only unsecured bonds, and, thus, the rates do not properly measure the default risk to the Government of Newfoundland and Labrador. Kruger misunderstands the purpose behind our calculation, which is to determine a commercial lending rate relevant to an uncreditworthy firm which is, at the time of the government loan, unable to obtain a comparable commercial loan on the market. Again, as noted above, Commerce does not take a single loan into account under the creditworthy analysis. Nor is it pertinent to seek a loan that is most similar to the government loan in question. Thus, the specifics of the loan at issue have no application to the calculation.

Finally, because we disagree with Kruger that it is appropriate to depart from the formula set forth in 19 CFR 351.505(a)(3)(iii), Kruger's additional arguments related to the selection of a benchmark rate are moot.

Comment 96: Whether Interest Due from the Government of Newfoundland and Labrador Loan to CBPP and Paid in 2017 Provided No Benefit in the POI

Kruger's Case Brief

- Commerce miscalculated the benefit related to IQ's loan to CBPP by including an interest payment made in January 2017.[1392] Commerce should correct this error in its final calculations.

Commerce's Position:

We agree and have corrected our final calculations accordingly.[1393]

[1392] *See* Kruger's Case Brief at 72-73 (citing 19 CFR 351.505(b)(c)(1) and 19 CFR 351.505(b)(c)(2)).

[1393] *See* Kruger Final Calc Memo.

Comment 97: Whether Commerce Erred in Its Benefit Calculation for the IQ Loan Guarantee to KEBLP

Kruger's Case Brief

- Commerce made two calculation errors in its benefit calculation related to a loan guarantee provided by IQ to KEBPL: 1) it counted one principal payment as a payment of interest; and 2) it failed to subtract the guarantee fee paid to IQ.[1394] Commerce should correct these errors in its final calculations.

Commerce's Position:

We agree and have used corrected our final calculations accordingly.

Company-Specific Issues

Catalyst

Comment 98: How to Treat Catalyst's Unreported Log and Wood Fiber Purchases

Petitioner's Case Brief

- Catalyst failed to disclose two discrepancies in its reported data for log and wood fiber at the beginning of verification; thus, Commerce should apply AFA to account for these discrepancies. Specifically, Catalyst revealed that it failed to report 1.2 percent of its total 2016 log purchases due to an accounting error, as well as 0.11 percent of its wood fiber purchases.

- For the unreported log purchases, Commerce should apply the highest per-cubic meter subsidy rate calculated on any individual log purchase as the benefit for the unreported purchases. For the unreported wood fiber purchases, Commerce should apply the highest calculated subsidy rate for any individual reported wood fiber purchase as the benefit for these unreported purchases.[1395]

Catalyst's and Government of British Columbia's Rebuttal Briefs

- The unreported log purchases were not a reporting failure because Catalyst reported the exact information maintained in its records (which contained a mis-keyed invoice). Further, the 0.11 percent reconciling difference is so small that it should be disregarded.

- Catalyst fully cooperated and the inadvertent reporting errors warrant, at most, only facts available (*i.e.*, applying the average subsidy rate, not the highest subsidy rate).[1396]

[1394] *See* Kruger's Case Brief at 108-110 (citing, *e.g.*, *Rebar from Turkey Prelim* at 16-17).

[1395] *See* Petitioner's Case Brief at 27-28.

[1396] *See* Catalyst's Rebuttal Brief at 19-22 and GBC's Rebuttal Brief at 22-24.

Commerce's Position:

We agree with Catalyst that the minor differences encountered in the reconciliation of its log and wood residue purchases do not warrant AFA. During the reconciliation of Catalyst's log and wood residue purchases, company officials stated that Catalyst had inadvertently failed to report 1.2 percent of log purchases during the POI due to an accounting error whereby the invoice date was mis-keyed as 2012, instead of 2016.[1397] Further, company officials stated that they were unable to reconcile 0.11 percent of total reported log and fiber purchases to Catalyst's books and records.[1398]

Catalyst cites *Stainless Steel Cookware from Korea* as an example of a case where Commerce disregarded a minor reconciling difference found at verification.[1399] Catalyst also cites to *SC Paper Expedited Review Final*, noting that Commerce found a similar reconciling difference, and disregarded the difference in its benefit calculation.[1400] Consistent with these cases, we agree with Catalyst that it is appropriate to disregard the 0.11 percent reconciling difference in this investigation. Further, we agree with Catalyst that facts available pursuant to section 776(a) of the Act is similarly appropriate for Catalyst's 1.2 percent of log purchases discovered during the reconciliation. The log purchases were mis-recorded in Catalyst's own accounting system, and we confirmed this at verification by obtaining and reviewing a complete download of the log purchase data in Catalyst's accounting system. Thus, we find it more appropriate to view this mistake as a clerical error embedded in Catalyst's own data, rather than as a failure to cooperate in this investigation or to carefully comb its books and records. As such, in light of Catalyst's cooperation in this investigation and the inadvertent nature of the error, we are applying neutral facts available. Thus, we are applying the average subsidy rate found for Catalyst's log purchases to the additional log purchases, and we have increased the total log purchase benefit, as calculated, by 1.2 percent.[1401]

Resolute

Comment 99: Whether Commerce Should Use Resolute's Revised SR&ED Tax Credit

Petitioner's Case Brief

- Commerce should use the tax credit amounts revised at verification to compute Resolute's benefit under this program.

[1397] *See* Catalyst Verification Report at 14.

[1398] *Id*.

[1399] *See Stainless Steel Cookware from Korea* at Comment 3.

[1400] *See* Catalyst's Rebuttal Brief at 21-22.

[1401] *See* Catalyst Final Calc Memo at Attachment 10.

Commerce's Position:

We agree and have used the revised figure in our final calculations.[1402]

Comment 100: Whether Commerce Correctly Determined the Dates of Approval for the MFOR Worker Training Grants to White Birch's Stadacona Mill

White Birch's Case Brief

- In its Post-Preliminary Analysis, Commerce incorrectly determined the dates of approval for the MFOR worker training grants provided to White Birch's Stadacona mill. Commerce conducted its "0.5 percent test," pursuant to 19 CFR 351.524(b), "on the amounts of grants approved by Emploi-Québec over the recipient's total sales in the years the agreements were approved." When the approved amount passed this test, Commerce allocated the actual amounts of the grant disbursements in the years of receipt over the AUL period.[1403]

- Commerce found that an agreement for a worker training project initially approved for White Birch's Stadacona mill in 2010 for a maximum financial contribution of a certain amount. This amount was subsequently revised downward in a second grant approved in 2012. Both the 2010 and 2012 grants passed the "0.5 percent test" based on the maximum allowable amount set out in these agreements in the years the agreements were approved, not the total that was received. This resulted in multiple calculations based on a theoretical maximum.[1404]

- Commerce's methodology is incorrect because the "approval" amount is simply a maximum authorized amount and the actual amounts received were distinctly different from the maximum authorized amounts. The maximum amounts set forth under the MFOR grant agreement do not constitute an approval of the funds to be received but rather establish the maximum amount White Birch is eligible to receive. Therefore, Commerce cannot treat the maximum amount listed on the agreement as an "approval amount" for the 0.5 percent test.

- Under Commerce's regulations, a grant is allocated or expensed in the year of receipt based on whether the amount approved under the program is greater or less than 0.5 percent of the relevant sales. In the case of the MFOR agreements for worker training grants to the Stadacona mill, the disbursements actually approved in each year were the amounts received. Therefore, Commerce should apply the 0.5 percent test to those amounts, in which case it will find that the grants should be expensed in the year of receipt.[1405]

[1402] *See* Resolute Final Calc Memo.

[1403] *See* White Birch's Case Brief at 23-24.

[1404] *Id*. at 24.

[1405] *Id*. at 25.

- The *CVD Preamble* applies to a situation where the amounts authorized by a grant and the total disbursed amount are identical. In that scenario, the approval amount is fixed in year one and is disbursed over a period of yearly installments. In this situation, however, White Birch's compliance with the Government of Québec's requirements between approval and disbursement resulted in the case of Stadacona receiving a grant amount far below that authorized. White Birch does not receive any funds under this program until it incurs the expense and submits a reimbursement request to Emploi-Québec for qualifying expenditures. As such, an amount that was never received cannot constitute the basis for measuring the amount of the grant to countervail.[1406]

- Consistent with the 0.5 percent test, the grants that White Birch received in each year of its MFOR program for the Stadacona mill should be expensed in the year of receipt.[1407]

Petitioner's Rebuttal Brief

- Commerce's methodology for countervailing the MFOR grants to Stadacona in the Post-Preliminary Analysis is in accordance with its regulations and prior practice. White Birch incorrectly interprets the *CVD Preamble* in arguing that an approval must involve a fixed amount where that exact amount is the amount dispersed over a period of years.[1408]

- White Birch's interpretation of Commerce's regulations and the *CVD Preamble* is not substantiated by any case law, the Act, legislative history, or prior Commerce practice. The *CVD Preamble* is clear that Commerce will apply the 0.5 percent test to the full amount approved, not to each individual installment.[1409]

- Commerce correctly followed its practice with regard to countervailing the MFOR grant in its post-preliminary calculations, and it should continue to do so in this final determination.[1410]

Commerce's Position:

We disagree with White Birch that in our Post-Preliminary Analysis, we incorrectly countervailed the MFOR worker training grants provided to White Birch's Stadacona mill. Consistent with 19 CFR 351.524(b)(2), we performed the 0.5 percent test on the MFOR grants in the years in which these grants were approved. We are not persuaded by White Birch's argument that we should consider the year of receipt of the funds to determine the date of approval for the MFOR grants. The *CVD Preamble* states that Commerce "will apply the 0.5

[1406] *Id*. at 26-28, citing the *CVD Preamble*, 63 FR at 65394.

[1407] *Id*. at 29.

[1408] *See* Petitioner's Rebuttal Brief at 120.

[1409] *Id*. at 121, citing the *CVD Preamble*, 63 at 65394.

[1410] *Id*. at 121-122.

percent test to the full amount approved, not to each individual installment."[1411] Our regulations do not require that the amounts approved and amounts received match. In fact, the *CVD Preamble* states that, "it is more appropriate to base our determination of whether the subsidy should be allocated over time on the full amount approved, rather than on periodic installments."[1412] Accordingly, the year in which the grant was approved is the appropriate year in which we should conduct the "0.5 percent" test, because that year represents the year when "the full amount" was approved.

We are also unpersuaded by White Birch's argument that the approval amounts under the MFOR program are simply maximum authorized amounts. The *CVD Preamble* makes clear that we affirmatively intend to conduct the 0.5 percent test on amounts approved versus received.[1413] Additionally, White Birch has not cited any case precedent to support its argument that we should deviate from our standard practice. Therefore, for the purposes of this final determination, we continue to countervail White Birch's MFOR grants following the methodology used in our Post-Preliminary Analysis.

Conclusion

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish this final determination of this investigation and the final subsidy rates in the *Federal Register*.

☒	☐
Agree	Disagree

8/1/2018

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

[1411] *See CVD Preamble*, 63 FR at 65394.

[1412] *Id.*

[1413] *Id.*

APPENDIX I

ACROYNM AND ABBREVIATION TABLE

Acronym/Abbreviation	Complete Name
AAC	Annual Allowable Cut
Abitibi-Bowater	Abitibi-Bowater Canada Inc.
ACCA	Accelerated Capital Cost Allowance
Act	Tariff Act of 1930, As Amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AHA	Available Harvest Area
AITC	Atlantic Investment Tax Credit
APO	Administrative Protective Order
AR	Administrative Review
ASC	Accounting Standards Codification
Asker Report	John Asker, Ph.D., "Economic Analysis of Factors Affecting Cross Jurisdictional Stumpage Price Comparisons," (*see* GOC's January 2, 2018 Factual Information Submitted in Response to the Government of Nova Scotia's Supplemental Questionnaire Response at Attachment 3).
AUL	Average Useful Life
AUV	Average Unit Values
AWS	Annual Work Schedule
BC	British Columbia
BC Forest Act	British Columbia Forest Act
BC Hydro	British Columbia Hydro and Power Authority
BDT	Bone Dry Ton
BDU	Bone Dry Unit
BMMB	Wood Marketing Bureau (Québec)
Borusan	Borusan Mannesmann Sanayi Ve Ticaret A.S.
BPI	Business Proprietary Information
Bureau de decision	Bureau de decision et de revision
CAFC	Court of Appeals for the Federal Circuit
Canfor	Canfor Corporation, Canfor Wood Products Marketing Ltd. and, Canadian Forest Products, Ltd.
Catalyst	Catalyst Paper Corporation
CBP	U.S. Customs and Border Protection
CBPP	Corner Brook Pulp and Paper Limited
CCAA	Companies' Creditors Arrangement Act
CEAC	Chip Export Advisory Committee
CFR	Code of Federal Regulations

Acronym/Abbreviation	Complete Name
CHP	Combined Heat and Power Contract
CIO	Change in Ownership
CIP	Canadian International Power Company
CIT	Court of International Trade
CITA	Canada's Income Tax Act
Commerce	U.S. Department of Commerce
CPC	Catalyst Paper Corporation
CVD	Countervailing Duty
DBH	Diameter at Brest Height
Deloitte	Deloitte LLP
DSM	Demand Side Management
eFAR	Electronic Facility Annual Return
EPA	Electricity Purchase Agreement
EPPs	Wood Residue and Log Export Permitting Processes
Fairfax	Fairfax Financial Holdings Limited
FASB	Financial Accounting Standards Board
FDRCMO	Fonds De Developpement et de Reconnaissance des Competences de la Main-d'Oeuvre (translated as Workforce Skills Development and Recognition Fund)
FERC	Federal Energy Regulatory Commission
Fibrek	Fibrek General Partnership
FIR	Factual Information Response
FMP	Forest Management Plan
FMU	Forest Management Unit
FOB	Free On Board
FPPGTP	Federal Pulp and Paper Green Transformation Program
FSPF	Ontario Forest Sector Prosperity Fund
Fuel Tax Refunds	Fuel Tax Refunds for Stationary Purposes and for Certain Other Purposes
FY	Fiscal Year
Gannett	Gannett Supply Corporation
GBC	Government of British Columbia
GNS	Government of Nova Scotia
GOC	Government of Canada
Golding Report	Jasen Golding, "A Comparison Between the Acadian Forest Region in Nova Scotia and New Brunswick and the Boreal Forest Region in Ontario," (*see* GOO's January 2, 2018 Factual Information in Response to Nova Scotia Supplemental Questionnaire Response at Exhibit ON-NSR-1)
GOO	Government of Ontario
GOQ	Government of Québec
GTA	Global Trade Atlas
GTIS	Global Trade Information Services

Acronym/Abbreviation	Complete Name
GwH	Gigawatt Hours
HOEP	Hourly Ontario Energy Price
HTS	Harmonized Tariff Schedule
HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
IEI	Industrial Electricity Incentives
IEO	Interruptible Electricity Option
IESO	Independent Electricity System Operator
IPI	Implicit Price Index
IPP	Independent Power Producer
IQ	Investissement Québec
IQR	Initial Questionnaire Response
ITA	International Trade Administration
ITC	U.S. International Trade Commission
ITR	Canadian Income Tax Regulations
JDIL	J.D. Irving Limited
KEBLP	Kruger Energy Bromptonville, L.P.
Kg	Kilogram
KHLP	Kruger Holdings L.P.
KPMG Report	KPMG LLP - Report on 2015-16 Ontario Softwood Timber Costs and Sources (March 6, 2017) (*see* GOO November 13, 2017 Initial Stumpage Questionnaire Response at Exhibit ON-STATS-3)
KPPI	Kruger Publication Papers Inc.
Kruger	Kruger Trois-Rivieres L.P., Corner Brook Pulp and Paper, Kruger Publication Papers Inc., Kruger Holdings L.P., Kruger Energy Bromptonville LP, Kruger Energy Bromptonville Inc., Kruger Holdings GP Inc., Kruger Trois-Rivières GP Inc., Kruger Trois-Rivières L.P., Company X,[1] Kruger Inc., Hicliff Corporation, and Ovide Rouillard Inc
Krupack	Kruger Packaging L.P.
KTR	Kruger Trois-Rivieres L.P.
KV	Kilovolts
LCIA	London Court of International Arbitration
LMP	Labour Market Partnership
LTAR	Less Than Adequate Remuneration
m^3	Cubic Meter
Marshall Report	Marshall, Robert C. - Expert Report (March 2017) (see GOQ November 13, 2017 Stumpage IQR at Exhibit QC-Stump-78)
MBF	Thousand Board Feet

[1] Kruger claimed business proprietary treatment for the name of this company, and, thus, we cannot disclose it here. As a consequence, we hereinafter refer to it as "Company X."

Acronym/Abbreviation	Complete Name
MFFP	Ministry of Forests, Wildlife and Parks
MFOR	Mesure de Formation de la Main-D'Oeuvre Volet Enterprises (translated as Manpower Training Measure)
Miller Report	Earle Miller, "Characteristics of Nova Scotia's Wood Fibre Market," (*see* GOC's January 2, 2018 Factual Information Submitted in Response to the Government of Nova Scotia's Supplemental Questionnaire Response at Attachment 4)
MNP Survey	Survey of the Ontario Private Timber Market Report
MRNF	Ministére des Ressources naturelles et de la Faune (English: Ministry of Natural Resources and Wildlife)
MTAR	More Than Adequate Remuneration
MVST	Market Value of Standing Timber
mW	Megawatts
NAFTA	North American Free Trade Agreement
NAICS	North American Industry Classification System
NAWFR	North American Wood Fiber Review
NERC	North American Electric Reliability Corporation
NIER	Ontario Northern Industrial Electricity Rate
NL Hydro	Newfoundland and Labrador Hydro
NME	Non-Market Economy
NORPAC	North Pacific Paper Company
NPCC	Northeast Power Coordinating Council
NS	Nova Scotia
NSA	New Subsidy Allegations
NSUARB	Nova Scotia Utility and Review Board
Oakmont	Oakmont Capital
OIC	Order in Council
Pabrai	Pabrai Investment Funds
PAE 2011-01	Purchase Power Program 2011-01
PAREGES	Program d'aide visant la reduction ou l'évitement des émissions de gaz à effet de serre par l'implantation de projets intermodaux dans le transport des marchandises (translated as, Assistance Program Aiming to Reduce or Avoid Greenhouse Gas Emissions through the Implementation of Intermodal Rail and Marine Transport Projects)
PCIP	Partial Cut Investment Program
PDM	Preliminary Decision Memorandum
Petitioner	North Pacific Paper Company (NORPAC)
PNW	Pacific Northwest
POI	Period of Investigation
POR	Period of Review

Acronym/Abbreviation	Complete Name
PPA	Power Purchase Agreement
PREI	Powell River Energy Inc.
QR	Questionnaire Response
R&D	Research and Development
Régie	*Régie de l'Énergie*
Resolute	Resolute FP Canada Inc., Resolute Forest Products Inc., Resolute Growth Canada Inc., and Resolute Sales Inc.
Resolute Growth	Resolute Growth Canada Inc.
RFP	*Request for Proposal*
RV	Residual Value
SAA	Statement of Administrative Action (From the URAA)
SC Paper	Super Calendared Paper
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SEC	Securities and Exchange Commission
SFDA	Sustainable Forest Development Act
SLA	Softwood Lumber Agreement
SPF	Spruce-Pine-Fir
SR&ED	Scientific Research and Experimental Development
Steelhead	Steelhead Partners LLC
TIPFP	Tax Incentives for Private Forest Producers
TIPFP Property Tax	TIPFP - Property Tax Refund for Forest Producers on Private Woodlands in Québec
TMP	Thermomechanical Pulp
Training in MFMS	Tax Credit for Training in the Manufacturing, Forestry, and Mining Sectors
TSG	Timber Supply Guarantee
UAE	United Arab Emirates
UGW paper	Certain Uncoated Groundwood Paper
USDA	U.S. Department of Agriculture
VCA	Voluntary Curtailment Adjustment
White Birch	White Birch Paper Canada Company NSULC
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
1988 CVD Preamble	*Countervailing Duties*, 53 FR 52306 (December 27, 1988)
2002 CRS from Korea	*Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 Fed. Reg. 62102 (Oct. 3, 2002) and accompanying Issues and Decision Memorandum
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)
2015 Cold-Rolled Flat Products from Korea Prelim	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 79567 (December 22, 2015)
Aircraft from Canada	*100- to 150-Seat Large Civil Aircraft From Canada: Final Affirmative Countervailing Duty Determination*, 82 FR 61252 (December 27, 2017) and accompanying Issues and Decision Memorandum
Aircraft from Canada Prelim	*100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 82 FR 45807 (October 2, 2017)
Al Tech	*Al Tech Specialty Steel Corp. v. United States*, 661 F.Supp. 1206 (CIT 1987)
Allegheny Fed. Circuit	*Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1347 (Fed. Cir. 2004)*
Allegheny II	*Allegheny Ludlum Corp. v. United States*, 25 Ct. Int'l Trade 816, 821 (2001)
Aluminum Extrusions from China 2014 Final	*Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 92778 (December 20, 2016)
Aluminum Extrusions from China 2014 Prelim	*Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2014,* 81 FR 38137 (June 13, 2016)
Aluminum Extrusions from China 2015 Review Prelim	*Aluminum Extrusions from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2015*, 82 FR 26438 (June 7, 2017)
Aluminum Extrusions from China 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)
Aluminum Foil from China	*Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018)

Short Citation	Administrative Case Determinations/Court Decisions
Amended Preliminary Determination	*Certain Uncoated Groundwood Paper from Canada: Amended Preliminary Countervailing Duty Determination*, 83 FR 16050 (April 13, 2018)
Anderson	*Anderson v. U.S. Sec'y of Agric., 462 F. Supp. 2d 1333 (CIT 2006)*
Archer Daniels	*Archer Daniels Midland*, 917 F.Supp. 2d 1331 (CIT 2013)
Ball Bearings From Thailand	*Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof From Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof From Thailand,* 54 FR 19130 (May 3, 1989)
Beijing Tianhai	*Beijing Tianhai Industry Co., Ltd. v. United States, 52 F. Supp. 3d at 1374 (CIT 2015)*
Bethlehem Steel	*Bethlehem Steel Corp. v. United States*, 140 F.Supp. 2d 1354 (CIT 2001)
Biodiesel from Argentina Prelim	*Biodiesel from Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part*, 82 FR 40748 (August 28, 2017)
Borusan	*Borusan Mannesmann Boru Sanayi v Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306 (CIT 2015)
Bowers	*Bowers v. Baystate Tech., Inc.*, 320 F.3d 1317 (CAFC 1990)
Brazil Aircraft Panel Report	*Brazil – Export Financing Programme For Aircraft*, WT/DS46/R (April 14, 1999)
Camargo	*Camargo Correa Metais, S.A. v. United States,* 17 CIT 897, 902 (CIT 1993)
Canada Feed-In Tariff Program	*Canada – Measures Relating to the Feed-In Tariff Program*, (WT/DS426/AB/R), adopted May 6, 2013
Canada Renewable Energy Generation Sector	*Canada – Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS412/AB/R, circulated May 6, 2013
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)
CCP HQP from Indonesia	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determinations*, 75 FR 59209 (September 27, 2010)
Certain Passenger Vehicle and Light Truck Tires from China	*Certain Passenger Vehicle and Light Truck Tires From China: Final Affirmative Determination,* 80 FR 34888 (June 18, 2015).
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)
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)
CFS from China	*Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007)

Short Citation	Administrative Case Determinations/Court Decisions
CFS from Korea	*Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination,* 72 FR 60639 (October 25, 2007)
CFS Paper from Indonesia	*Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007)
Chamberlain Grp.	*Chamberlain Grp. Inc. v. Skylink Tech, Inc.*, 381 F.3d 1178 (CAFC 2004)
Chevron	*Chevron, U.S.A., Inc. v. Nat'l Res. Def. Council, Inc., 4*67 U.S. 837, 843 (1984)
China GOES Panel Report	*China – Countervailing and Anti-dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States,* WT/DS414R (June 15, 2012)
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 China 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 China 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)
Citric Acid from China 2009	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) and accompanying Issues and Decision Memorandum
Citric Acid from China 2011	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011,* 79 FR 108 (January 2, 2014)
Citric Acid from Thailand	*Citric Acid and Certain Citrate Salts from Thailand: Final Negative Countervailing Duty Determination, and Final Negative Critical Circumstances Determination, 83 FR 26004 (June 5, 2018)*
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)
CORE from Korea 2010 Review Final	*Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013)
Corus Staal	*Corus Staal BV v. United States,* 395 F.3d 1343, 1348 (Fed. Cir. 2005)
CRS from Brazil	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination,* 81 FR 49940 (July 20, 2016)

Short Citation	Administrative Case Determinations/Court Decisions
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)
CRS from Russia	*Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination,* 81 FR 49935 (July 29, 2016)
CTL Plate from Korea Final	*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)
CTL 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)
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)
CUP from Indonesia	*Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination,* 81 FR 3104 (January 20, 2016)
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)
CVD Preamble	*Countervailing Duties; Final Rule,* 63 FR 65348 (November 25, 1998)
Delverde	*Delverde, SrL v. United States, 202 F.3d 1360, 1366, 1367 (Fed. Cir. 2000)*
DRAMS from Korea	*Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003)
DRAMS from Korea	*Final Affirmative Countervailing Duty Determination: Dynamic Random Access memory Semiconductors from the Republic of Korea,* 68 FR 37122 (June 23, 2003)
Drill Pipe from China	*Drill Pipe from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011,* 78 FR 150 (August 5, 2013)
Drill Pipe from China Investigation	*Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011)
Engineering Products from Singapore	*Final Negative Countervailing Duty Determination: Certain Computer Aided Software Engineering Products from Singapore*, 55 FR 12248 (Apr. 2, 1990)
Epic	*Epic Sys. Corp v. Lewis*, 138 S.Ct. 1612 (2018)
Erlenbaugh	*Erlenbaugh v. United States*, 4019 U.S. 239, 243, 34 L. Ed. 2d 446, 93 S. Ct. 477 (1972)
Essar Steel Ltd.	*Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285 (CIT 2010), 678 F.3d 1268 (Fed. Cir. 2012)
Estate of Cowart	*Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 479, 120 L. Ed. 2d 379, 112 S. Ct. 2589 (1992)
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)

Short Citation	Administrative Case Determinations/Court Decisions
FERC	*FERC v. Electric Power Supply Association*, 136 S.Ct. 760 (2015)
FERC Final Rule	*Demand Response Compensation in Organized Wholesale Energy Markets* (issued March 15, 2011)
Final Modification	*Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act: Modification of Agency Practice Regarding Privatizations*, 68 FR 37125, 37137 (June 23, 2003)
Flat-Rolled Products from Argentina	*Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR 18006 (April 26, 1984)
Fresh Cut Flowers from Mexico	*Certain Fresh Cut Flowers From Mexico; Final Negative Countervailing Duty Determination,* 49 FR 15007 (April 16, 1984)
Geneva Steel	*Geneva Steel v. United States*, 914 F.Supp. 563 (CIT 1996)
Gov't of Sri Lanka	*Government of Sri Lanka v. United States*, No. 17-00059, Slip Op. 18-43 (CIT April 17, 2018)
Guangdong Wireking	*Guangdong Wireking Houseware & Hardware Co., Ltd. v. U.S.*, 900 F.Supp.2d 1362, 1370 (CIT 2013)
Heckler	*Heckler v. Campbell*, 461 U.S. 458 (1983)
Hewlett-Packard	*Hewlett-Packard Company v. Commissioner of Internal Revenue*, 875 F3d 494 (CAFC 2017)
Honey from Argentina Final Determination	*Final Affirmative Countervailing Duty Determination: Honey From Argentina*, 66 FR 50613 (October 4, 2001)
Honey from Argentina Preliminary Determination	*Honey from Argentina: Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination on Honey from the People's Republic of China*, 66 FR 14521 (March 13, 2001)
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)
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)
Hynix Semiconductor	*Hynix Semiconductor, Inc. v. United States*, 29 CIT 995, 1001 (CIT 2005)
Initiation Checklist	Antidumping and Countervailing Duty Investigation Initiation Checklist: Certain Uncoated Groundwood Paper from Canada, at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Uncoated Groundwood Paper from Canada.
Iron Mechanical Transfer Drive Components from China	*Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016)
JSW Steel	*JSW Steel Ltd. v. United States*, No. 16-00165, slip op. 18-51 (CIT, May 9, 2018)
Kajaria Iron Castings	*Kajaria Iron Castings Pvt. Ltd. v. United States,* 156 F.3d 1163, 1174 (Fed. Cir. 1998)
Kitchen Racks from China	*Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009)

Short Citation	Administrative Case Determinations/Court Decisions
Leather from Argentina	*Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather from Argentina*, 55 FR 40212 (October 2, 1990)
Liquid Sulfur Dioxide from Canada Initiation	*Initiation of Antidumping Duty Investigation: Liquid Sulfur Dioxide from Canada,* 70 FR 69735 (November 17, 2005)
Low Enriched Uranium from France	*Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France,* 66 FR 65901 (December 21, 2001)
LTV Steel	*LTV Steel Co., Inc. v. United States*, 985 F.Supp. 95, 108 (CIT 1997)
Lumber I	*Final Negative Countervailing Duty Determinations; Certain Softwood Lumber Products from Canada*, 48 FR 24159 (May 31, 1983)
Lumber III CVD Final Determination	*Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 FR 22570 (May 28, 1992)
Lumber IV AD AR Final	*Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005)
Lumber IV CVD 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)
Lumber IV CVD 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)
Lumber IV CVD 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 CVD Prelim 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)
Lumber IV CVD Preliminary Results of 1st AR	*Notice of Preliminary Results of Countervailing Duty Review: Certain Softwood Lumber from Canada*, 69 FR 33204, (June 14, 2004)
Lumber IV CVD Preliminary Results of 3rd AR	*Notice of Preliminary Results and Extension of Final Results of Countervailing Duty Administrative Review" Certain Softwood Lumber Products from Canada*, 71 FR 33932 (June 12, 2006)
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)
Lumber IV Remand	*Remand Redetermination, Certain Softwood Lumber Products from Canada, Final Affirmative Countervailing Duty Determination,* USA-CDA-2002-1904-03 (January 12, 2004)

Short Citation	Administrative Case Determinations/Court Decisions
Lumber NSR	*Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005)
Lumber V CVD Final Determination	*Certain Softwood Lumber Products Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017)
Lumber V CVD 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)
Lumber V Sales Final	*Certain Softwood Lumber Products From Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017)
Magnesia Carbon Bricks from China	*Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (Aug. 2, 2010)
Magnesium from Canada	*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada,* 57 FR 30946 (July 13, 1992)
Marus	*United States v. Marus*, 487 F. Supp. 2d 289 (E.D.N.Y. 2007)
Maverick Tube CAFC	*Maverick Tube Corp. v. United States,* 857 F.3d 1353, 2017 U.S. App. LEXIS 9336, 38 Int'l Trade Rep. (BNA) 2223, 2017 WL 2324225
Maverick Tube CIT	*Maverick Tube Corp. v. United States, 2016 Ct. Intl. Trade LEXIS 17, 37 Int'l Trade Rep. (BNA) 2829, SLIP OP. 2016-16*
Maverick Tube Remand Redetermination	Final Results of Remand Redetermination in the CVD Investigation of Certain Oil Country Tubular Goods from Turkey (*Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret v. United States; Maverick Tube Corporation v. United States*, Consol. Ct. No. 14-00229, 61 F. Supp. 3d 1306 and Slip Op. 15-59), dated August 31, 2015
Melamine from Trinidad and Tobago Final	*Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination,* 80 FR 68849 (November 6, 2015)
Microsoft	*Microsoft Corp. v. GeoTag Inc.* 817 F. 3d 1305 (Fed. Cir. 2016)
Mitsubishi	*Mitsubishi Electric Corporation v. United States*, 700 F. Supp. 538, 556 (CIT 1988) aff'd, 898 F.2d 1577 (Fed. Cir. 1990)
Motor Vehicle Mfrs.	*Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)*
NAFTA August 13, 2003 Panel Decision	*Article 1904 Binational Panel Review Under the North American Free Trade Agreement in the Matter of Certain Softwood Lumber Products from Canada, Final Affirmative Countervailing Duty Determination*, USA-CDA-2002-1904-03, Decision of the Panel (August 13, 2003)
NAFTA June 7, 2004 Panel Decision	*Article 1904 Binational Panel Review Under the North American Free Trade Agreement in the Matter of Certain Softwood Lumber Products from Canada, Final Affirmative Countervailing Duty Determination*, USA-CDA-2002-1904-03, Decision of the Panel (June 7, 2004)

Short Citation	Administrative Case Determinations/Court Decisions
Nails from China and the UAE Initiations	*Certain Steel Nails from the People's Republic of China and the United Arab Emirates: Initiation of Antidumping Duty Investigations,* 72 FR 38816 (July 16, 2007)
Nucor	*Nucor Corp. v. United States, 414 F.3d 1331, 1336* (Fed. Cir. 2005)
OCTG from Argentina	*Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 32307 (June 13, 1997)
OCTG from Austria Prelim	*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination: Oil Country Tubular Goods from Austria*, 60 FR 4600 (January 24, 1995)
OCTG from China	*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)
OCTG from China 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 Inv from Argentina	*Initiation of a Countervailing Duty Investigation; Oil Country Tubular Goods from Argentina*, 49 Fed. Reg. 28,289, 28,290 (July 11, 1984)
OTR Tires from China AR Prelim	*New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 (October 19, 2010)
Pasta from Italy 8th AR	*Certain Pasta From Italy: Preliminary Results of the Eight Countervailing Duty Administrative Review*, 70 FR 17971 (April 8, 2005), *unchanged in Certain Pasta From Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005).
PC Strand from China	*Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010)
PET Resin from Oman	*Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 81 FR 13321 (March 14, 2016) and accompanying Issues and Decision Memorandum
Plywood from China	*Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 58273 (September 23, 2013)
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)
PPG	*PPG Industries v. United States*, 746 F. Supp. 119 (CIT 1990)
Preliminary Determination	*Certain Uncoated Groundwood Paper From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 2133 (January 16, 2018) and accompanying Decision Memorandum (PDM)

Short Citation	Administrative Case Determinations/Court Decisions
Prosperity Tieh	*Prosperity Tieh Enter. Co. v United States*, 284 F.Supp. 3d 1364 (CIT, 2018)
Pure Magnesium from Israel	*Final Affirmative Countervailing Duty Determinations: Pure Magnesium From Israel*, 57 FR 349351 (September 27, 2001)
Rebar 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, 2017)
Rebar from Turkey Prelim	*Steel Concrete Reinforcing Bars from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 82 FR 12196 (March 1, 2017)
Refrigerators from Korea Final	*Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 17410 (March 26, 2012)
Refrigerators from Korea Prelim	*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)
Rhone Poulenc	*Rhone Poulenc, Inc. v. United States,* 899 F.2d 1185 (CAFC 2004)
RZBC Group	*RZBC Group Shareholding Co. v. United States,* 100 F. Supp. 3d 1288 (CIT 2015)
S. Rep. No. 96-249 (1979)	Trade Agreements Act of 1979, Senate Report Number 96-249 (1979) reprinted in 1979 U.S.C.C.A.N. 381, 472
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
Sandt Tech	*Sandt Tech., Ltd. v. Resco Metal & Plastics Corp.,* 264 F.3d 1344, 1350-51 (Fed. Cir. 2001)
SC Paper Expedited Review Final	*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 Expedited Review Prelim	*Supercalendered Paper from Canada: Preliminary Results of Countervailing Duty Expedited Review,* 81 FR 85520 (November 28, 2016)
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 NAFTA Report	*In the Matter of Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, Sec. No. USA-CDA-2015-1904-01 (April 13, 2017)
Shrimp from Ecuador	*Certain Fresh Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination,* 78 FR 50389 (August 19, 2013)

Short Citation	Administrative Case Determinations/Court Decisions
Silicon Metal from Australia	*Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination,* 83 FR 9834 (March 8, 2018), and accompanying Issues and Decision Memorandum
Silicon Metal from Australia Prelim	*Silicon Metal from Australia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 37843 (August 14, 2017)
Silicon Metal from Brazil	*Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil,* 65 FR 7497 (February 15, 2000).
Sinks from China	*Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 78 FR 13017 (February 26, 2013)
Solar Cells from China	*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)
Solar World Ams, Inc.	*Solar World Ams, Inc. v. United States*, 125 F. Supp. 3d 1318 (CIT 2014)
Sri Lanka	*Government of Sri Lanka v. United States*, No. 17-00059, Slip Op. 18-43 (CIT April 17, 2018)
SSP from Belgium 9th AR	*Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 74 FR 57627 (November 9, 2009)*
Stainless Steel Bar from India	*Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023 (September 13, 2005)
Stainless Steel Cookware from Korea	*Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Final Results and Rescission, In Part, of Antidumping Duty Administrative Review*, 68 FR. 7503 (February 14, 2003)
Stainless Steel Sheet and Strip from China	*Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9715 (February 8, 2017)
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)
Steel Wheels from China	*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 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)
Steel Wire Rod from Canada	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada*, 62 FR 54972 (October 22, 1997)
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)

Short Citation	Administrative Case Determinations/Court Decisions
Steel Wire Rod from Venezuela	*Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997)
Sun Ship	*Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 723-26 (1980)
Transweb	*Transweb LLC v. 3M Innovative Props. Co.*, 812 F.3d 1295, 1301-02 (Fed. Cir. 2016)
U.S. CVD Investigation of DRAMs from Korea Panel Report	*United States – Countervailing Duty Investigation on Dynamic Random-Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/AB/R, circulated June 27, 2005
U.S. CVD Measures on Certain Products from China Panel Report	*United States – Countervailing Duty Measures on Certain Products from China,* WT/DS437/R (July 14, 2014)
U.S. Export Restraints Panel Report	*United States – Measures Treating Export Restraints as Subsidies*, WT/DS194/R (June 29, 2001)
Uranium from Germany et. al	*Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 69 FR 40869 (July 7, 2004)
Washers from Korea	*Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 75975 (December 26, 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)
Wheatland Tube	*Wheatland Tube Co. v. U.S.*, 4952 F.3d 1355, 1364 (Fed. Cir. 2007)
Wire Rod from Brazil	*Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792(August 30, 2002) and accompanying Issues and Decision Memorandum
Wire Rod from Canada	*Final Affirmative Countervailing Duty Determination; Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 55813 (August 30, 2002) and accompanying Issues and Decision Memorandum
Wire Rod from Italy	*Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Final Affirmative Determination*, 83 FR 13242 (March 28, 2018)
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)
Zhejian DunAn	*Zhejian DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333 (CAFC 2011)
Özdemir	*Özdemir Boru San. ve Tic. Ltd. Sti. v. United States,* No. 16-00206, 2017 LEXIS 142, 10 (CIT October 16, 2017)

CASE-RELATED DOCUMENTS

This section is sorted by Date.

Date	Short Citation	Complete Document Title
October 13, 2015	SC Paper Final Calc Memo	Memorandum, "Final Determination Calculations for Resolute FP Canada Inc. for the Final Affirmative Countervailing Duty Determination in the Countervailing Duty Investigation of Supercalendered Paper from Canada," dated October 13, 2015
August 30, 2017, September 15, 2017, September 20, 2017, and September 26, 2017	White Birch Request for Voluntary Respondent Treatment	White Birch's Letter, "Certain Uncoated Groundwood Paper from Canada, Case No. C-122-862: Request for Voluntary Respondent Treatment," dated August 29, 2017. White Birch and its Mills reiterated this request twice on August 30, 2017, and again on September 15, 2017, September 20, 2017, and September 26, 2017
September 22, 2017	Initial Questionnaire	Commerce's Letter, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Countervailing Duty Questionnaire," dated September 22, 2017
November 9, 2017	Catalyst November 9, 2017 IQR	Catalyst's November 9, 2017 Initial Questionnaire Response
November 9, 2017	GBC November 9, 2017 IQR	GBC's November 9, 2017 Initial Questionnaire Response
November 9, 2017	GNL November 9, 2017 IQR	GNL's November 9, 2017 Initial Questionnaire Response
November 9, 2017	GOC November 9, 2017 IQR	GOC's November 9, 2017 Initial Questionnaire Response
November 9, 2017	GOO November 9, 2017 IQR	GOO's November 9, 2017 Initial Questionnaire Response
November 9, 2017	GOO November 9, 2017 Non-Stumpage IQR	Government of Ontario's November 9, 2017, Initial Non-Stumpage Questionnaire Response
November 9, 2017	GOQ November 9, 2017 IQR	GOQ's November 9, 2017 Initial Questionnaire Response
November 9, 2017	Kruger November 9, 2017 IQR	Kruger's November 9, 2017 Initial Questionnaire Response

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November 9, 2017	White Birch November 9, 2017 IQR	White Birch's November 9, 2017 Initial Questionnaire Response
November 10, 2017	Resolute November 10, 2017 IQR	Resolute's November 10, 2017 Initial Questionnaire Response
November 13, 2017	Catalyst November 13, 2017 Log Export IQR	Catalyst's November 13, 2017 Initial Stumpage Questionnaire Response
November 13, 2017	Dr. Hendricks Report	Expert Report of Ken Hendricks, Ph.D. - An Economic Analysis of the Ontario Timber Market and an Examination of Private Market Prices in that Competitive Market (March 10, 2017) (*see* GOO November 13, 2017 Initial Stumpage Questionnaire Response at Exhibit ON-PRIV-2)
November 13, 2017	GBC November 13, 2017 Log Export IQR	GBC's November 13, 2017 Initial Stumpage Questionnaire Response
November 13, 2017	GOC November 13, 2017 Stumpage IQR	GOC's November 13, 2017 Initial Stumpage Questionnaire Response
November 13, 2017	GOO November 13, 2017 Stumpage IQR	GOO's November 13, 2017 Initial Stumpage Questionnaire Response
November 13, 2017	GOQ November 13, 2017 Stumpage IQR	GOQ's November 13, 2017 Initial Stumpage Questionnaire Response
November 13, 2017	Marshall Report	Expert Report of Robert C. Marshall, Ph. D (March 10, 2017) (*see* GOQ's November 13, 2017 Initial Stumpage Questionnaire Response at Exhibit QC-STUMP-096
November 13, 2017	MNP 2015/2016 Survey	GOO's November 13, 2017 Initial Stumpage Questionnaire Response at Exhibit ON-PRIV-1
November 13, 2017	Resolute November 13, 2017 Stumpage IQR	Resolute's November 13, 2017 Initial Stumpage Questionnaire Response
November 13, 2017	White Birch November 13, 2017 Stumpage IQR	White Birch's November 13, 2017 Initial Stumpage Questionnaire Response
November 29, 2017	November 29, 2017 NSAs	Petitioner's, "Certain Uncoated Paper from Canada: New Subsidy Allegations For Kruger, Resolute, and White Birch," dated November 29, 2017
December 4, 2017	MNP 2016/2017 Survey	GOO's Leter, "Factual Information to Measure the Adequacy of Remuneration," dated December 4, 2017 at ON-ADEQ-2

Date	Short Citation	Complete Document Title
December 8, 2017	Commerce December 8, 2017 SQ to Catalyst	Commerce's Letter, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Second Supplemental Questionnaire," dated December 8, 2017
December 8, 2017	Dr. Hendricks Addendum	Expert Report of Ken Hendricks, Ph.D. - An Economic Analysis of the Ontario Market for Pulpwood and Wood Chips (December 8, 2017) (*see* Letter from the GOO, "Factual Information to Measure the Adequacy of Remuneration," dated December 8, 2017 at Exhibit ON-ADEQ-3)
December 8, 2017	GOO Factual Information Submission	GOO's Letter, "Factual Information to Measure the Adequacy of Remuneration," dated December 8, 2017
December 11, 2017	Catalyst December 11, 2017 Benchmark Submission	Catalyst's Letter, "Certain Uncoated Groundwood Paper from Canada," dated December 11, 2017
December 11, 2017	Petitioner December 11, 2017 Benchmark Submission	Petitioner's Letter, "Certain Uncoated Groundwood Paper from Canada: Petitioner's Benchmark Data Factual Information Submission," dated December 11, 2017
December 11, 2017	Resolute's Factual Information Submission	Resolute's Letter, "Submission of Factual Information to Measure the Adequacy of Remuneration," dated December 11, 2017
December 12, 2017	Catalyst December 12, 2017 SQR	Catalyst's December 12, 2017 First Supplemental Questionnaire Response
December 12, 2017	White Birch December 12, 2017 SQR	White Birch's December 12, 2017 Supplemental Questionnaire Response
December 15, 2017	Resolute December 15, 2017 SQR	Resolute's December 15, 2017 Supplemental Questionnaire Response
December 15, 2017	White Birch December 15, 2017 SQR	White Birch's December 15, 2017 Supplemental Questionnaire Response
December 18, 2017	Kruger December 18, 2017 SQR	Kruger's December 18, 2017 Supplemental Questionnaire Response
December 18, 2017	Resolute December 18, 2017 SQR	Resolute's December 18, 2017 Supplemental Questionnaire Response
December 18, 2017	White Birch December 18, 2017 SQR	White Birch's December 18, 2017 Supplemental Questionnaire Response
December 20, 2017	Catalyst December 20, 2017 SQR	Catalyst's December 20, 2017 Supplemental Questionnaire Response

Date	Short Citation	Complete Document Title
December 20, 2017	GBC December 20, 2017 SQR	GBC's December 20, 2017 Supplemental Questionnaire Response
December 20, 2017	GOC First Non-Stumpage SQR	GOC's Letter, "Countervailing Duty Investigation of Uncoated Groundwood Paper from Canada: Government of Canada's Response to the First Supplemental Questionnaire," dated December 20, 2017
December 20, 2017	Petitioner December 20, 2017 RFI	Petitioner's Letter, "Certain Uncoated Groundwood Paper from Canada: Petitioner's Rebuttal To Catalyst's Benchmark Data Factual Information Submission," dated December 20, 2017
December 20, 2017	Resolute December 20, 2017 Non-Stumpage SQR	Resolute's December 20, 2017 Non-Stumpage Supplemental Questionnaire Response
December 21 2017	GNS December 21, 2017 SQR	GNS' December 21, 2017 Supplemental Questionnaire Response
December 21, 2017	NS Survey	Report on Prices for Standing Timber Sales from Nova Scotia Private Woodlots for the Period April 1, 2015 through March 31, 2016 (*see* GNS's December 21, 2017 Stumpage Questionnaire Response at Exhibit NS-STUMP-1)
December 21, 2017	Resolute December 21, 2017 CIO Appendix	Resolute's December 21, 2017 Supplemental Questionnaire Response, CIO Appendix
December 22, 2017	GOQ December 22, 2017 SQR	GOQ's December 22, 2017 Supplemental Questionnaire Response
December 22, 2017	Kruger December 22, 2017 SQR	Kruger's December 22, 2017 Supplemental Questionnaire Response
December 28, 2017	GBC December 28, 2017 SQR	GBC's December 28, 2017 Supplemental Questionnaire Response
December 29, 2017	Kruger December 29, 2017 SQR	Kruger's December 29, 2017 Supplemental Questionnaire Response
January 2, 2018	GOO January 2, 2018 FIR	GOO's January 2, 2018 Factual Information in Response to Nova Scotia Supplemental Questionnaire Response
January 5, 2018	GOQ January 5, 2018 SQR	GOQ's Letter, "Certain Uncoated Groundwood Paper from Canada; Response of the Government of Quebec to Remaining Portions of the Department's 1st Supplemental Questionnaire," dated January 5, 2018

Date	Short Citation	Complete Document Title
January 8, 2018	Market Memorandum, Ontario	Commerce Memorandum to the File, "Preliminary Determination Memorandum on Ontario Private Stumpage Market Distortion" dated January 8, 2018
January 8, 2018	Market Memorandum, Québec	Commerce Memorandum to the File, "Preliminary Determination Memorandum on Quebec Private Stumpage Market Distortion" dated January 8, 2018
January 8, 2018	Prelim Equityworthiness Memo	Memorandum, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Analysis of the Equityworthiness of Equity Infusions in Certain of Kruger's Cross-Owned Affiliates and the Creditworthiness of Another Cross-Owned Affiliate at the Time of a loan from the Government of Newfoundland and Labrador (GNL)," dated January 8, 2018.
January 16, 2018	Catalyst Verification Agenda	Catalyst's Letter, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada; Verification of Catalyst Paper Corporation's Questionnaire Responses," dated January 16, 2018
January 29, 2018	GOQ January 29, 2018 NSA Response	GOQ's Letter, "Certain Uncoated Paper from Canada: Response of the Government of Québec to the Department's Second New Subsidy Allegation Questionnaire," dated January 29, 2018
February 2, 2018	GOC February 2, 2018 Second NSA QR	GOC's Letter, "Government of Canada's Second New Subsidy Allegations Questionnaire Response," dated February 2, 2018
February 2, 2018	Resolute's February 2, 2018 Second NSA QR	Resolute's Letter, "Uncoated Groundwood Paper from Canada: Countervailing Duty Investigation, Resolute's Response to Second New Subsidy Allegations Questionnaire and Request for Hearing," dated February 2, 2018.
February 9, 2018	GOQ February 9, 2018 SQR	GOQ's February 9, 2018 Third Supplemental Questionnaire Response
February 13, 2018	Catalyst Verification Report	Memorandum, "Verification of the Questionnaire Responses of Catalyst Paper Corporation," dated February 13, 2018
February 13, 2018	GBC Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of British Columbia and, in Part, the Government of Canada," dated February 13, 2018

Date	Short Citation	Complete Document Title
March 12, 2018	Scope Amendment Memo	Memorandum, "Certain Uncoated Groundwood Paper from Canada: Scope Comments Decision Memorandum for the Preliminary Determination," dated March 12, 2018
March 28, 2018	White Birch Verification Report	Memorandum, "Verification of the Questionnaire Responses of White Birch Paper Canada Company," dated March 28, 2018
April 17, 2018	GNL Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of Newfoundland and Labrador," dated April 17, 2018
April 18, 2018	GOC Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of Canada," dated April 18, 2018
May 10, 2018	Commerce's May 10, 2018 Letter to Petitioner	Petitioner's Letter, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Rejection of New Factual Information," dated to May 10, 2018
May 14, 2018	Petitioner's May 14, 2018 Refiling of NAWFR Benchmark	Petitioner's Letter, "Certain Uncoated Groundwood Paper from Canada: Petitioner's Refiling Of Benchmark Information On The Public Record And Withdrawal Of Request For Confidential Treatment," dated May 14, 2018
May 18, 2018	GNS Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of Nova Scotia," dated May 18, 2018
June 6, 2018	GOQ Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of Québec," dated June 6, 2018
June 6, 2018	Resolute Verification Report	Memorandum, "Verification of the Questionnaire Responses of Resolute FP Canada Inc.," dated June 6, 2018
June 7, 2018	GOO Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of Ontario," dated June 7, 2018
June 7, 2018	Kruger Verification Report	Memorandum, "Verification of Kruger's Questionnaire Responses," dated June 7, 2018
June 18, 2018	GOQ Stumpage Verification Report	Memorandum, "Verification of the Questionnaire Responses of the Government of Québec," dated June 18, 2018
June 18, 2018	GOQ Verification Report II	Memorandum, "Verification of the Questionnaire Responses of the

Date	Short Citation	Complete Document Title
		Government of Québec," dated June 18, 2018
June 18, 2018	Post-Preliminary Analysis	Memorandum, Post-Preliminary Analysis of Countervailing Duty Investigation: Certain Uncoated Groundwood Paper from Canada, dated June 18, 2018
June 18, 2018	Resolute Post-Preliminary Determination Calculation Memo	Memorandum, "Countervailing Duty Investigation of Uncoated Groundwood Paper from Canada: Post-Preliminary Determination Calculation Memorandum for Resolute FP Canada Inc.," dated June 18, 2018.
June 25, 2018	Catalyst's Case Brief	Catalyst's Case Brief, "Certain Uncoated Groundwood Paper from Canada: Catalyst's Case Brief," dated June 25, 2018
June 25, 2018	Gannett's Case Brief	Gannett's Case Brief, "Certain Uncoated Groundwood Paper from Canada: Case Brief," dated June 25, 2018
June 25, 2018	Petitioner's Case Brief	Petitioner's Case Brief, "Countervailing Duty Investigation of Uncoated Groundwood Paper From Canada: Petitioner's Case Brief," dated June 25, 2018
June 25, 2018	Resolute's Case Brief	Resolute's Case Brief, "Certain Uncoated Groundwood Paper from Canada: Resolute's Countervailing Duty Case Brief," dated June 25, 2018
June 25, 2018	White Birch's Case Brief	White Birch's Case Brief, "Certain Uncoated Groundwood Paper from Canada, Case No. C-122-862: and White Birch Paper Case Brief," dated June 25, 2018
June 26, 2018	GBC/GOC's Log Export Case Brief	Government of Canada's and Government of British Columbia's Case Brief, Volume IV, Brief on Wood Residue and Log Export Permitting Processes, of Combined Government of Canada and Provincial Government's Case Briefs, dated June 26, 2018
June 26, 2018	GBC's Case Brief	Government of British Columbia's Case Brief, Volume III, of Combined Government of Canada and Provincial Government's Case Briefs, dated June 26, 2018
June 26, 2018	GNL's Case Brief	Government of Newfoundland and Labrador's Case Brief, Volume V, of Combined Government of Canada and Provincial Governments' Case Briefs, dated June 26, 2018
June 26, 2018	GOC and Provincial Governments' Case Brief	GOC and Provincial Governments' Case Brief, "Canadian Government Parties' Case Briefs," dated June 26, 2018

Date	Short Citation	Complete Document Title
June 26, 2018	GOC's Case Brief	Government of Canada's Case Brief, Volume II, of Combined Government of Canada and Provincial Governments' Case Briefs, dated June 26, 2018
June 26, 2018	GOO's Case Brief	Government of Ontario's Case Brief, Volume VI, of Combined Government of Canada and Provincial Governments' Case Briefs, dated June 26, 2018
June 26, 2018	GOQ's Case Brief	Government of Québec's Case Brief, Volume VII Part 1: Non-Stumpage Arguments, of Combined Government of Canada and Provincial Governments' Case Briefs, dated June 26, 2018
June 26, 2018	GOQ's Stumpage Case Brief	Government of Québec's Case Brief, Volume VII Part II: Stumpage Arguments, of Combined Government of Canada and Provincial Governments' Case Briefs, dated June 26, 2018
June 26, 2018	Kruger's Case Brief	Kruger's Case Brief, "Uncoated Groundwood Paper from Canada: Case Brief of the Kruger Parties," dated June 26, 2018
July 2, 2018	Catalyst's Rebuttal Brief	Catalyst's Rebuttal Brief, "Certain Uncoated Groundwood Paper from Canada: Catalyst's Rebuttal Brief," dated July 2, 2018
July 2, 2018	Gannett's Rebuttal Brief	Gannett's Letter, "Certain Uncoated Ground wood Paper from Canada: Letter in Lieu of Rebuttal Brief," dated July 2, 2018
July 2, 2018	GBC's Rebuttal Brief	Government of British Columbia's Rebuttal Brief, Volume II, of Combined Government of Canada and Provincial Governments' Rebuttal Briefs, dated July 2, 2018
July 2, 2018	GNL's Rebuttal Brief	Government of Newfoundland and Labrador's Rebuttal Brief, Volume III, of Combined Government of Canada and Provincial Governments' Rebuttal Briefs, dated July 2, 2018
July 2, 2018	GNS's Rebuttal Brief	GNS's Rebuttal Brief, "Uncoated Groundwood Paper from Canada: Government of Nova Scotia Rebuttal Brief," dated July 2, 2018
July 2, 2018	GOC's Rebuttal Brief	GOC and Provincial Governments' Rebuttal Brief, "Canadian Government Parties' Rebuttal Briefs," dated July 2, 2018
July 2, 2018	GOQ's Rebuttal Brief	Government of Québec's Rebuttal Brief, Volume IV, of Combined Government of Canada and Provincial Governments' Rebuttal Briefs, dated July 2, 2018
July 2, 2018	Kruger's Rebuttal Brief	Kruger's Rebuttal Brief, "Uncoated Groundwood Paper from Canada: Rebuttal Brief of the Kruger Companies," dated July 2, 2018

Date	Short Citation	Complete Document Title
July 2, 2018	Petitioner's Rebuttal Brief	Petitioner's Rebuttal Brief, "Countervailing Duty Investigation of Uncoated Groundwood Paper From Canada: Petitioner's Rebuttal Brief," dated July 2, 2018
July 2, 2018	Resolute's Rebuttal Brief	Resolute's Rebuttal Brief, "Certain Uncoated Groundwood Paper from Canada: Resolute's Rebuttal Brief," dated July 2, 2018
July 2, 2018	White Birch's Rebuttal Brief	White Birch's Rebuttal Brief, "Certain Uncoated Groundwood Paper from Canada, Case No. C-122-862: White Birch Paper Rebuttal Brief," dated July 2, 2018
July 11, 2018	Hearing Transcript	Public Hearing, In the Matter of: the Administrative Review of the Antidumping Order on Certain Uncounted Groundwood Paper from Canada, dated July 11, 2018
August 1, 2018	Catalyst Final Calc Memo	Memorandum, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Final Determination Calculation Memorandum for Catalyst," dated August 1, 2018
August 1, 2018	Kruger Final Calc Memo	Memorandum, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Final Determination Calculation Memorandum for Kruger," dated August 1, 2018
August 1, 2018	Kruger Final Creditworthiness Memo	Memorandum, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Kruger Business Proprietary Information Referred to in the Issues and Decision Memorandum for the Final Determination in This Investigation," dated August 1, 2018.
August 1, 2018	Ontario Final Market Memorandum	Department Memorandum, "Ontario Market Analysis Memorandum for Final Determination," dated August 1, 2018
August 1, 2018	Québec Final Market Memorandum	Department Memorandum, "Québec Market Analysis Memorandum for Final Determination," dated August 1, 2018
August 1, 2018	Resolute Final Calc Memo	Memorandum, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Final Determination Calculation Memorandum for Resolute," dated August 1, 2018
August 1, 2018	White Birch Final Calc Memo	Memorandum, "Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Final Determination Calculation Memorandum for White Birch," dated August 1, 2018.

Date	Short Citation	Complete Document Title
December 1, 2018	Resolute December 1, 2017 NSA QR	Resolute's Letter, "December 1, 2017 New Subsidy Allegations Questionnaire Response," dated December 1, 2018.

APPENDIX II

NOT-USED AND NOT-MEASURABLE PROGRAMS, BY COMPANY

Catalyst

Programs Determined Not To Provide Measurable Benefits to Catalyst During the POI

Count	Title
	Government of Canada Programs
1	Federal Forestry Industry Transformation Program
2	ecoENERGY Efficiency for Industry Program
3	Transport Canada's Marine Security Contribution Program
4	Untied Payments from the Government of Canada
5	Interest from the GOC on Late Payment from the Government of Net Goods and Services Tax
6	EDC's Accounts Receivable Insurance Program
7	EDC's Financing and Investment Program
8	Federal Accelerated Capital Cost Allowances for Class 29 Assets
9	Federal Scientific Research and Experimental Development (SR&ED) Tax Credit
10	Federal Apprenticeship Job Creation Tax Credit
11	Transformative Technologies Pilot Scale Demonstration Program
	Government of British Columbia Programs
12	BC SR&ED Tax Credit
13	Flight Refunds from the BC Ministry of Finance
14	BC Adjustments Related to Pollution Permits
15	Environment Testing at the Crofton Mill
16	BC Lease of Buildings in Port Alberni
17	BC Ministry of Forestry, Lands and Natural Resource Operations Contributions for Competitiveness Studies
18	BC Training Tax Credits
19	Commissions from BC for Timely Filing its Provincial Sales Tax Returns
20	Differences in BC Monthly Carbon Tax Remittances
21	BC Property Assessments
22	WorkSafeBC Workers Compensation
23	City of Port Alberni: Property Purchase and Road Dedication Agreement
	Local Government Programs
24	District of North Cowichan Water Payments
25	Cowichan Valley Regional District Land Payments
26	City of Port Alberni Fire Hydrant Deposit
27	City of Port Alberni Property Purchase and Road Dedication Agreement

Programs Determined Not To Be Used by Catalyst During the POI

Count	Title
	Government of Canada Programs
1	Forest Innovation Program
2	Sustainable Development Technology Canada
3	Atlantic Canada Opportunities Agency Loans – Atlantic Innovation Fund
4	Atlantic Canada Opportunities Agency Loans – Business Development Program
5	Western Economic Diversification – Western Innovation Initiative
6	Export Guarantee Program
7	Atlantic Investment Tax Credit
8	EDC's Account Performance Security Guarantee Program
	Province of Alberta
9	Bioenergy Producers Credit Program Grant in Alberta
10	Alberta Innovates
11	Alberta Mountain Pine Beetle Project
12	Alberta Resource Road Program
13	Alberta Tax-Exempt Fuel Program for Marked Fuel and Alberta's Tax Rebates for Clear Fuel
14	Alberta SR&ED Tax Credit
15	Alberta Export Support Fund
	Province of New Brunswick
16	New Brunswick Financial Assistance to Industry Program
17	New Brunswick Total Development Fund
18	Northern New Brunswick Economic Development and Innovation Fund
19	New Brunswick Workforce Expansion: One Job Pledge
20	New Brunswick Provision of Silviculture Grants
21	New Brunswick License Management Fees
22	New Brunswick R&D Tax Credit
23	New Brunswick's Large Industrial Renewable Energy Purchases
	Newfoundland and Labrador
24	Newfoundland and Labrador Provision of Loans to Corner Brook
25	Government of Newfoundland and Labrador Gasoline Tax Exemption or Rebate
26	Newfoundland and Labrador Manufacturing and Processing Profits Tax Credit
27	Newfoundland and Labrador SR&ED Tax Credit
28	Government of Newfoundland and Labrador Silviculture Payments to CBPP
29	Government of Newfoundland and Labrador Waiver of Insect and Disease Control Payments
30	Waiver of Cost Share Payments Under the Government of Newfoundland and Labrador Productive Forest Lands Inventory Program
31	Government of Newfoundland and Labrador Loan to CBPP – Uncreditworthiness Allegation

32	Government of Newfoundland and Labrador's Provision of $130 Million to Resolute
33	Government of Newfoundland and Labrador Repurchase of Timber Rights
34	Canada-Newfoundland and Labrador Job Grants (Canada-NL Job Grant)
35	Property Tax Exemption
36	Newfoundland and Labrador Hydro (NL Hydro) Cogeneration Purchase Agreement
37	Secondary Energy Arrangements with NL Hydro
38	Capacity Assistance Agreement with NL Hydro
	Province of Ontario
39	Forestry Industry Grants Under the Ontario Forest Sector Prosperity Fund
40	Ontario Forestry Growth Fund
41	Pilot Biorefinery Program
42	Ontario Northern Industrial Electricity Rate Program
43	Loan Guarantee Program in Ontario
44	The Government of Ontario's Purchase of Electricity for MTAR
45	The Government of Ontario Electricity Demand Response Payments
46	Ontario's Forest Roads Funding Program
47	The Government of Ontario's Provision of IESO Industrial Electricity Incentives
48	The Government of Ontario's Purchase of Electricity for MTAR
49	Ontario Forest Roads Funding Program
50	The Government of Ontario Electricity Demand Response Payments
51	Ontario's Forest Roads Funding Program
	Province of Québec
52	Investment Program for Treated Partial Forests in Québec (Partial Cut Investment Program)
53	Provision of Below-Market Rate Loans from Investissement Québec
54	Québec Tax Holiday for Large Investment Projects
55	Tax Credit for Acquisition of Manufacturing and Processing Equipment in Québec
56	Québec Capital Cost Allowance for Property Used in Manufacturing and Processing
57	Credits for Construction and Major Repair of Public Access Roads and Bridges in Forest Areas
58	Tax Incentives for Private Forest Producers – Property Tax Refund for Forestry Producers on Private Woodlands in Québec
59	Québec SR&ED Tax Credit
60	Government of Québec Purchase of Electricity for MTAR under PAE 2011-01
61	The Government of Québec's Provision of IESO Industrial Electricity Incentives
62	Hydro Québec Interruptible Electricity Option
63	IQ Loan Guarantee to KEBLP
64	Training Grant for White Birch's Stadacona Mill
65	Hydro Québec Interruptible Electricity Option
66	Hydro Québec Special "L" Rate for Customers Affected by Spruce Budworm
67	Hydro Québec Interruptible Electricity Option
68	Fees and Dues Paid to a Research Consortium
69	IQ Loan Guarantee to KEBLP

70	Hydro Québec's Industrial Systems Program/Energy Efficiency Program
71	EcoPerformance – MERN (TEQ)
72	Road Diversion
73	Fees and Dues Paid to a Research Consortium
74	Connection of Electricity Sub-Station to Hydro Québec Grid
75	Energy Efficiency Conversion Projects
76	Tax Credit for Private Partnership Pre-Competitive Research
77	Emploi Québec: Fonds De Developpement et de Reconnaissance des Competences de la Main-d'Oeuvre (FDRCMO) (Workforce Skills Development and Recognition Fund)
78	Emploi Québec: Mesure de Formation de la Main-d'Oeuvre Volet Enterprises (MFOR) (Manpower Training Measure)
79	Assistance Program Aiming to Reduce or Avoid Greenhouse Gas Emissions through the Implementation of Intermodal Rail and Marine Transport Projects (PAREGES)
80	FPInnovations Ash Valuation Development Grants
	Stumpage Programs
81	Alberta Provision of Stumpage for LTAR
82	British Columbia Provision of Stumpage for LTAR
83	New Brunswick Provision of Stumpage for LTAR
84	Ontario Provision of Stumpage for LTAR
85	Québec Provision of Stumpage for LTAR

Kruger

Programs Determined Not To Provide Measurable Benefits to Kruger During the POI

Count	Title
	Government of Canada Programs
1	Atlantic Canada Opportunities Agency Loans – Atlantic Innovation Fund
2	Federal SR&ED Tax Credit
3	Atlantic Investment Tax Credit
4	Natural Sciences and Engineering Research Council (NSERC), the Canadian Institutes of Health Research and the Social Sciences and Humanities Research Council and Industry Canada
5	Post Doctorate for Industrial R&D
	British Columbia
6	British Columbia SR&ED Tax Credit
	Newfoundland and Labrador
7	Infrastructure Buy Back
8	Forest Access Road Construction
9	Biomass Project
10	Green Fund
11	NL Hydro Energy Reduction Program for TMP
12	Reconstruction Hinds Lake – NL Hydro
13	Transportation Costs for Northern Peninsula
14	Government Repurchase of Timber Rights
15	Secondary Energy Arrangements with NL Hydro
16	Biomass Drying Feasibility
	Québec
17	Québec Tax Holiday for Large Investment Projects
18	Tax Credit for Acquisition of Manufacturing and Processing Equipment in Québec
19	Program 1[1]
20	Programmes d'efficacité énergétique d'Hydro-Québec
21	EcoPerformance (Programmes subvention MRNQ, PRCML)
22	Programme de réduction du mazout lourd
23	Aide au Reclassement
24	Programme analyse et démonstration industrielles
25	Appui au Développement Industriel
26	Program 2[2]
27	Emploi Québec: Mesure de Formation de la Main-d'Oeuvre Volet Enterprises (MFOR) (Manpower Training Measure)

[1] *See* Kruger Final Calc Memo.
[2] *Id.*

28	Emploi Québec: Fonds De Developpement et de Reconnaissance des Competences de la Main-d'Oeuvre (FDRCMO) (Workforce Skills Development and Recognition Fund)
29	Hydro-Québec Connection of Electricity Sub-Station Program

Programs Determined Not To Be Used by Kruger During the POI

Count	Title
	Government of Canada Programs
1	Federal Forestry Industry Transformation Program
2	Federal Pulp and Paper Green Transformation Program
3	Forest Innovation Program
4	Transformative Technologies Pilot Scale Demonstration Program
5	Sustainable Development Technology Canada
6	Atlantic Canada Opportunities Agency Loans – Business Development Program
7	Western Economic Diversification – Western Innovation Initiative
8	Export Guarantee Program
9	Federal Apprenticeship Job Tax Credit
10	EDC's Financing and Investment Program
11	EDC's Account Performance Security Guarantee Program
	Province of Alberta
12	Bioenergy Producers Credit Program Grant in Alberta
13	Alberta Innovates
14	Alberta Mountain Pine Beetle Project
15	Alberta Resource Road Program
16	Alberta Tax-Exempt Fuel Program for Marked Fuel and Alberta's Tax Rebates for Clear Fuel
17	Alberta SR&ED Tax Credit
18	Alberta Export Support Fund
	Government of British Columbia
19	Canada-BC Job Grant
20	BC Hydro's Power Smart: Industrial Energy Managers Program
21	BC Hydro's Power Smart: TMP Program
22	BC Hydro's Power Smart: Load Curtailment
23	BC Hydro's Power Smart: Incentives
24	British Columbia Powell River City Tax Exemption Program
25	British Columbia Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification
26	BC Hydro's Electricity Purchase Agreements
	Province of New Brunswick
27	New Brunswick Financial Assistance to Industry Program
28	New Brunswick Total Development Fund
29	Northern New Brunswick Economic Development and Innovation Fund
30	New Brunswick Workforce Expansion: One Job Pledge
31	New Brunswick Provision of Silviculture Grants
32	New Brunswick License Management Fees
33	New Brunswick R&D Tax Credit
34	New Brunswick's Large Industrial Renewable Energy Purchases

	Newfoundland and Labrador
35	Government of Newfoundland and Labrador Gasoline Tax Exemption or Rebate
36	Newfoundland and Labrador Manufacturing and Processing Profits Tax Credit
37	CBPP Pension Plans
	Province of Nova Scotia
38	Bowater Mersey Grant
	Province of Ontario
39	Forestry Industry Grants Under the Ontario Forest Sector Prosperity Fund
40	Ontario Forestry Growth Fund
41	Pilot Biorefinery Program
42	Ontario Northern Industrial Electricity Rate Program
43	Loan Guarantee Program in Ontario
44	Government of Ontario Purchase of Electricity for MTAR
45	Ontario Forest Roads Funding Program
	Province of Québec
46	Investment Program for Treated Partial Forests in Québec (Partial Cut Investment Program)
47	Credits for Construction and Major Repair of Public Access Roads and Bridges in Forest Areas
48	Tax Incentives for Private Forest Producers – Property Tax Refund for Forestry Producers on Private Woodlands in Québec
49	HQ Special L Rate for Industrial Customers Affected by Spruce Budworm
50	Hydro Québec's Industrial Systems Program/Energy Efficiency Program
51	Road Diversion
52	Connection of Electricity Sub-Station to Hydro Québec Grid
53	Training Grant for White Birch's Stadacona Mill
	Stumpage Programs
54	Alberta Provision of Stumpage for LTAR
55	British Columbia Provision of Stumpage for LTAR
56	British Columbia Log and Wood Residue Export Restraints
57	New Brunswick Provision of Stumpage for LTAR
58	Ontario Provision of Stumpage for LTAR
59	Québec Provision of Stumpage for LTAR

Resolute

Programs Determined Not To Provide Measurable Benefits to Resolute During the POI

Count	Title
	Government of Canada Programs
1	Centre Emersion
2	Federal Accelerated Capital Cost Allowances for Class 29 Assets
3	Federal Research Consortium
	Government of Ontario Programs
4	Cooperative Education Tax Credit
5	Chemical Engineer Intern Placement
	Government of Québec Programs
6	Tax Credit for Acquisition of Manufacturing and Processing Equipment in Québec
7	Formabois
8	Tax Credit for Technological Adaptation Services
9	Tax Credit for on-the-Job Training
10	Tax Credit for University Research or Research Carried Out by a Public Research Centre or a Research Consortium
11	Sectoral Committee Forest Management Employees
12	MFFP Forest Camp Reimbursement
13	Study on Chip Quality and Quality of Fiber Inventory
14	MFFP Educational Grant
15	Innovation and Development for the Region of Manicouagan
16	Waste Management Training
17	MQ-128 Worker Training Program
18	EcoPerformance

Programs Determined Not To Be Used by Resolute During the POI

Count	Title
	Government of Canada Programs
1	Federal Forestry Industry Transformation Program
2	Forest Innovation Program
3	Transformative Technologies Pilot Scale Demonstration Program
4	Sustainable Development Technology Canada
5	Atlantic Canada Opportunities Agency Loans – Atlantic Innovation Fund
6	Atlantic Canada Opportunities Agency Loans – Business Development Program
7	Western Economic Diversification – Western Innovation Initiative
8	Export Guarantee Program
9	Federal Apprenticeship Job Creation Tax Credit
10	Atlantic Investment Tax Credit
11	EcoEnergy for Renewable Power
12	EcoEnergy for Efficiency
13	Natural Sciences and Engineering Research Council of Canada, Industrial R& D Fellowships, and Industrial Undergraduate Student Research Awards
14	Employment and Social Development Canada Job Creation Partner
	Government of Alberta
15	Bioenergy Producers Credit Program Grant in Alberta
16	Alberta Innovates
17	Alberta Mountain Pine Beetle Project
18	Alberta Resource Road Program
19	Alberta Tax-Exempt Fuel Program for Marked Fuel and Alberta's Tax Rebates for Clear Fuel
20	Alberta Scientific Research and Experimental Development Tax
21	Alberta Export Support Fund
	Government of British Columbia
22	Canada-BC Job Grant
23	BC Hydro's Power Smart: Industrial Energy Managers Program
24	BC Hydro's Power Smart: TMP Pulp Program
25	BC Hydro's Power Smart: Load Curtailment
26	BC Hydro's Power Smart: Incentives
27	British Columbia Powell River City Tax Exemption Program
28	British Columbia Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification
29	British Columbia Scientific Research and Experimental Development Tax Credit
30	BC Hydro’s Electricity Purchase Agreements
31	British Columbia Log and Wood Residue Export Restraints
	Province of New Brunswick
32	New Brunswick Financial Assistance to Industry Program

33	New Brunswick Total Development Fund
34	Northern New Brunswick Economic Development and Innovation Fund
35	New Brunswick Workforce Expansion: One Job Pledge
36	New Brunswick Provision of Silviculture Grants
37	New Brunswick License Management Fees
38	New Brunswick R&D Tax Credit
39	New Brunswick's Large Industrial Renewable Energy Purchases
	Newfoundland and Labrador
40	Newfoundland and Labrador Provision of Loans to Corner Brook
41	Government of Newfoundland and Labrador Gasoline Tax Exemption or Rebate
42	Newfoundland and Labrador Manufacturing and Processing Profits Tax Credit
43	Newfoundland and Labrador SR&ED Tax Credit
	Province of Ontario
44	Ontario Forestry Growth Fund
45	Pilot Biorefinery Program
46	Loan Guarantee Program in Ontario
47	Ontario Research and Development Tax Credit
48	Compensation for Disrupting Waterflow At Hydro-Electric Facilities
	Province of Québec
49	Provision of Below-Market Rate Loans from Investissement Québec
50	Québec Tax Holiday for Large Investment Projects
51	Québec Capital Cost Allowance for Property Used in Manufacturing and Processing
52	Alma Book Paper Machine Project
53	Maniwaki Sawmill Project
54	Reimbursement for Relocation of Power Lines at Hydro Saguenay
	Stumpage Programs
55	Alberta Provision of Stumpage for LTAR
56	British Columbia Provision of Stumpage for LTAR
57	New Brunswick Provision of Stumpage for LTAR

White Birch

Programs Determined Not To Provide Measurable Benefits to White Birch During the POI

Count	Title
	Government of Canada Programs
1	GOC Warehousing Agreement with Soucy Mill
2	GOC Small Business Job Credit
	Government of Québec Programs
3	Québec Capital Cost Allowance for Property Used in Manufacturing and Processing
4	Tax Credit for On-the-Job Training Period in Québec
5	Logging Tax Credit
6	Emploi Québec Miscellaneous Training
	Local Government Programs
7	Land Sale and Exchange with the City of Gatineau (Québec)

Programs Preliminarily Determined Not To Be Used by White Birch During the POI

Count	Title
	Government of Canada Programs
1	Federal Forestry Industry Transformation Program
2	Federal Pulp and Paper Green Transformation Program
3	Forest Innovation Program
4	Sustainable Development Technology Canada
5	Transformative Technologies Pilot Scale Demonstration Program
6	Atlantic Canada Opportunities Agency Loans – Atlantic Innovation Fund
7	Atlantic Canada Opportunities Agency Loans – Business Development Program
8	Western Economic Diversification – Western Innovation Initiative
9	Atlantic Investment Tax Credit
10	Federal Scientific Research and Experimental Development Tax Credit
11	Federal Apprenticeship Job Creation Tax Credit
12	Export Guarantee Program
	Province of Alberta
13	Bioenergy Producers Credit Program Grant in Alberta
14	Alberta Innovates
15	Alberta Mountain Pine Beetle Project
16	Alberta Resource Road Program
17	Alberta Tax-Exempt Fuel Program for Marked Fuel and Alberta's Tax Rebates for Clear Fuel
18	Alberta SR&ED Tax Credit
19	Alberta Export Support Fund
	Government of British Columbia
20	Canada-BC Job Grant
21	British Columbia Hydro Power Smart Grants
22	BC Hydro Power Smart: TMP Program
23	BC Hydro Power Smart: Load Curtailment
24	BC Hydro Power Smart: Incentives
25	British Columbia Powell River City Tax Exemption Program
26	British Columbia Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification
27	British Columbia Scientific Research and Experimental Development Tax Credit
28	BC Hydro's Electricity Purchase Agreements for MTAR
29	BC Log and Wood Residue Export Restraints
	Province of New Brunswick
30	New Brunswick Financial Assistance to Industry Program
31	New Brunswick Total Development Fund
32	Northern New Brunswick Economic Development and Innovation Fund
33	New Brunswick Workforce Expansion: One Job Pledge
34	New Brunswick Provision of Silviculture Grants

35	New Brunswick License Management Fees
36	New Brunswick R&D Tax Credit
37	New Brunswick's Large Industrial Renewable Energy Purchases
	Newfoundland and Labrador
38	Government of Newfoundland and Labrador Gasoline Tax Exemption or Rebate
39	Newfoundland and Labrador Manufacturing and Processing Profits Tax Credit
40	Newfoundland and Labrador SR&ED Tax Credit
	Province of Ontario
41	Forestry Industry Grants Under the Ontario Forest Sector Prosperity Fund
42	Ontario Forestry Growth Fund
43	Pilot Biorefinery Program
44	Ontario Northern Industrial Electricity Rate Program
45	Loan Guarantee Program in Ontario
	Province of Québec
46	Investment Program for Treated Partial Forests in Québec (Partial Cut Investment Program)
47	Wood Fiber Technology Project for Papier Masson in Québec
48	Provision of Below-Market Rate Loans from Investissement Québec
49	Québec Tax Holiday for Large Investment Projects
50	Credits for Construction and Major Repair of Public Access Roads and Bridges in Forest Areas
51	Tax Incentives for Private Forest Producers – Property Tax Refund for Forestry Producers on Private Woodlands in Québec
52	Québec SR&ED Tax Credit
53	Government of Québec Purchase of Electricity for MTAR
	Stumpage Programs
54	Alberta Provision of Stumpage for LTAR
55	British Columbia Provision of Stumpage for LTAR
56	New Brunswick Provision of Stumpage for LTAR
57	Ontario Provision of Stumpage for LTAR

PROGRAMS DEFERRED UNTIL A SUBSEQUENT ADMINISTRATIVE REVIEW

	Province of Québec
1	Fuel Tax Refunds for Stationary Purposes and for Certain Other Purposes
2	Rexforet
3	Silviculture Work
4	Tariff 29
5	Lynx and Hare Study
6	PREI