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

C-122-858
Administrative Review
Segment Specific Indicator: Expedited Review
POR: 1/1/2015 – 12/31/2015
**Public Document**
E&C/OI/OIII: Team

**DATE:** June 28, 2019

**MEMORANDUM TO:** Alex Villanueva
Senior Director, Office I
Antidumping and Countervailing Duty Operations

**FROM:** Erin Begnal
Director, Office III
Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of Expedited Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada

---

## I. SUMMARY

In this expedited review of the countervailing duty (CVD) order on certain softwood lumber products from Canada, Commerce determines that countervailable subsidies are being provided to certain producers/exporters. Commerce also determines that countervailable subsidies provided to certain producers/exporters are *de minimis.* Below is the complete list of issues in this expedited review for which we received comments from interested parties.

List of Comments:

Comment 1: Whether Article 19.3 of the Subsidies and Countervailing Measures (SCM) Agreement Requires "Expedited CVD Reviews"
Comment 2: Whether Reviews Conducted Under Section 751(a)(2)(B) of the Act Are Limited to New Exporters and Producers
Comment 3: Whether Reviews Conducted Under Section 751(a) of the Act Cannot Begin Until at Least the Anniversary of the CVD Order and Must Act as the Basis for the Assessment of CVD Duties
Comment 4: Whether Section 736(c) of the Act Can Serve as the Basis for Conducting CVD Expedited Reviews
Comment 5: Whether Commerce Should Account for Respondents' Purchases of Subject Merchandise/Rough-Hewn Lumber and Whether Commerce Should Assign the "All-Others" Rate from the CVD Order to the Respondents in the Current Proceeding

Comment 6: Whether the Accelerated Capital Cost Allowance (ACCA) for Class 29 Assets Program Is *De Jure* Specific
Comment 7: Whether the Provincial and Federal Logging Tax Credits (PLTC and FLTC) Are Countervailable
Comment 8: Whether Business Development Bank of Canada (BDC) Loans Are Specific and Countervailable
Comment 9: Whether Commerce Correctly Determined Specificity for Various Tax and Employment Programs
Comment 10: Whether the Workforce Skills Development and Recognition Fund (aka, FDRCMO) Is *De Facto* Specific
Comment 11: Whether the Immigrant Investor Program Is *De Facto* Specific
Comment 12: Whether the Tax Credit for On-the-Job Training Period Is *De Facto* Specific
Comment 13: Whether the Tax Credit for Investments Relating to Manufacturing and Processing Equipment Is *De Jure* Specific
Comment 14: Whether the Scientific Research and Experimental Development (SR&ED) Tax Measure Is *De Facto* Specific
Comment 15: Whether Matra and Sechoirs Should Be Treated Separately
Comment 16: Whether Commerce Should Find Groupe Matra to Be Creditworthy
Comment 17: Whether Commerce Erred in Its Analysis of Investissement Québec (IQ) Guaranteed Loans
Comment 18: Whether Commerce Should Continue to Apply Partial Adverse Facts Available (AFA) to the Immigrant Investor Program
Comment 19: Whether it was Proper for Commerce to Consider New Subsidy Allegations in an Expedited Review
Comment 20: Whether New Brunswick's Property Tax Incentives for Private Forest Producers Is Countervailable
Comment 21: Whether the Benefit Analysis for New Brunswick's Property Assessment System Should Be Adjusted
Comment 22: Whether Commerce Should Correct Fontaine's Total Sales Amount
Comment 23: Whether Commerce Should Use Fontaine's Taxes Paid in 2015 to Calculate Receipt of Alleged Benefits During the Period of Review (POR)

## II. BACKGROUND

### A. Case History

Commerce published the *Preliminary Results* of the expedited review on February 1, 2019.[1] On March 11, 2019, Commerce received case brief submissions from the GOC, GNB, GOQ, Fontaine, Groupe Matra, NAFP, Rustique, and the petitioner.[2] On March 18, 2019, Commerce received rebuttal briefs from the GOC, GNB, GOQ, D&G, Fontaine, Lemay, Groupe Matra,

[1] *See Preliminary Results*. For the complete names of acronyms and full citations for regulatory, court, and case submissions referenced in this memorandum, *see* Appendices I through III.
[2] *See* Fontaine Case Brief, GNB Case Brief, GOC Case Brief, GOQ Case Brief, Groupe Matra Case Brief, NAFP Case Brief, Petitioner Case Brief, and Rustique Case Brief.

NAFP, Rustique, and the petitioner.[3]

Commerce received timely requests for a hearing from the GOC, GNB, GOQ, Fontaine, Rustique, Groupe Matra, NAFP, D&G, MLI, Roland, and the petitioner.[4] Commerce held a public hearing on March 27, 2019.[5]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[6] Additionally, on April 10, 2019, Commerce extended the deadline for the final results of the expedited review by 59 days until June 28, 2019.[7]

### B. Period of Review

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

## III. SCOPE OF THE ORDER

The merchandise covered by this order is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this order. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such

[3] *See* D&G Rebuttal Brief, Fontaine Rebuttal Brief, GNB Rebuttal Brief, GOC Rebuttal Brief, GOQ Rebuttal Brief, Groupe Matra Rebuttal Brief, Lemay Rebuttal Brief, NAFP Rebuttal Brief, Petitioner Rebuttal Brief, and Rustique Rebuttal Brief.
[4] *See* D&G, MLI, and Roland Hearing Request, Fontaine Hearing Request, GOC, GOQ, and GNB Hearing Request, Groupe Matra and Rustique Hearing Request, NAFP Hearing Request, and Petitioner Hearing Request.
[5] *See* Hearing Transcript.
[6] *See* Tolling Memorandum.
[7] *See* Postponement of Final Results Memorandum.

products can be readily differentiated from merchandise subject to this order at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered "finished," for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

The following items are excluded from the scope of this order:

- Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.
- U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.
- Box-spring frame kits if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- Radius-cut box-spring-frame components, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the HTSUS. This chapter of the HTSUS covers "Wood and articles of wood." Softwood lumber products that are subject to this order are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4406.11.00.00; 4406.91.00.00; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.19.05.00; 4407.19.06.00; 4407.19.10.01; 4407.19.10.02; 4407.19.10.54; 4407.19.10.55; 4407.19.10.56; 4407.19.10.57; 4407.19.10.64; 4407.19.10.65; 4407.19.10.66; 4407.19.10.67; 4407.19.10.68; 4407.19.10.69; 4407.19.10.74; 4407.19.10.75; 4407.19.10.76; 4407.19.10.77; 4407.19.10.82; 4407.19.10.83; 4407.19.10.92; 4407.19.10.93; 4409.10.05.00;

4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.50.0010; 4418.50.00.30; 4418.50.0050; and 4418.99.10.00.[8] Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.99.70.40; and 4421.99.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

## IV. SUBSIDIES VALUATION

### A. Allocation Period

Commerce has not made changes to and interested parties did not raise issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Results*. For a description of the allocation period and the methodology used for these final results, *see* the *Preliminary Results*.[9]

### B. Attribution of Subsidies

Commerce has not made changes to and interested parties did not raise issues in their case briefs regarding, the attribution of subsidies used in the *Preliminary Results*. For descriptions of the methodologies used for these final results, *see* the *Preliminary Results.*[10]

### C. Denominators

Fontaine and the petitioner commented on the denominator used in Fontaine's calculations in the *Preliminary Results*; Commerce has revised Fontaine's denominator for these final results.[11] Otherwise, Commerce has not made changes to, and interested parties did not raise issues in their

[8] The following HTSUS numbers have been deleted, deactivated, replaced, or are invalid:

4407.10.0101, 4407.10.0102, 4407.10.0115, 4407.10.0116, 4407.10.0117, 4407.10.0118, 4407.10.0119, 4407.10.0120, 4407.10.0142, 4407.10.0143, 4407.10.0144, 4407.10.0145, 4407.10.0146, 4407.10.0147, 4407.10.0148, 4407.10.0149, 4407.10.0152, 4407.10.0153, 4407.10.0154, 4407.10.0155, 4407.10.0156, 4407.10.0157, 4407.10.0158, 4407.10.0159, 4407.10.0164, 4407.10.0165, 4407.10.0166, 4407.10.0167, 4407.10.0168, 4407.10.0169, 4407.10.0174, 4407.10.0175, 4407.10.0176, 4407.10.0177, 4407.10.0182, 4407.10.0183, 4407.10.0192, 4407.10.0193; and 4418.90.2500. These HTSUS numbers however have not been deactivated in CBP's ACE secure data portal, as they could be associated with entries of unliquidated subject merchandise. For information on the HTSUS numbers added to the scope of the order and ACE case reference file since the imposition of the order, *see* HTSUS Memorandum I and HTSUS Memorandum II.

[9] *See Preliminary Results* PDM at 9.

[10] *Id*. at 9-15.

[11] *See* Comment 22.

case briefs regarding, the denominators used in the *Preliminary Results*. For descriptions of the methodologies used for these final results, *see* the *Preliminary Results.*[12]

### D. Creditworthiness

Interested parties raised issues in their case briefs regarding the "uncreditworthiness" finding made by Commerce in the *Preliminary Results* with regard to Groupe Matra.[13] After considering those comments, Commerce has not made changes to its creditworthiness analysis for Groupe Matra.[14]

Commerce has not made changes to and interested parties did not raise issues in their case briefs regarding, the "uncreditworthiness" finding for Daveluyville.[15]

### E. Loan Interest Rate Benchmarks and Discount Rates

Commerce has not made changes to and interested parties did not raise issues in their case briefs regarding, loan interest rate benchmarks and discount rates used in the *Preliminary Results*. For a description of the loan benchmark rates and the discount rates used for these final results, *see* the *Preliminary Results* and applicable calculation memorandum.[16]

## V. ANALYSIS OF PROGRAMS

### A. Programs Determined To Be Countervailable

***New Brunswick Grant Program***

Innov8

Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results.*[17] We received no comments from interested parties regarding this program.

We calculate the following net countervailable subsidy rate:
NAFP: 0.01 percent *ad valorem*.[18]

[12] *See Preliminary Results* PDM at 15.
[13] *Id*. at 15-16.
[14] *See* Comment 16.
[15] *See Preliminary Results* PDM at 15-16.
[16] *Id*. at 16-18; *see also* Daveluyville – Preliminary Analysis of Uncreditworthiness; Groupe Matra – Preliminary Analysis of Uncreditworthiness; D&G Preliminary Calculations Memorandum; and Groupe Matra Preliminary Calculations Memorandum.
[17] *See Preliminary Results* PDM at 20.
[18] *See* NAFP Final Calculations Memorandum.

***Québec Grant Programs***

1. MFFP Educational Grant: Forest Industry Support

Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results.*[19] We received no comments from interested parties regarding this program.

We calculate the following net countervailable subsidy rate:
Roland: 0.09 percent *ad valorem*.[20]

2. Workforce Skills Development & Recognition Fund

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[21] Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results.*[22]

We calculate the following net countervailable subsidy rate:
Roland: 0.01 percent *ad valorem*.[23]

3. Immigrant Investor Program

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[24] Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results*.[25]

We calculate the following net countervailable subsidy rate:
Groupe Matra: 0.14 percent *ad valorem*.[26]

***Federal Tax Programs***

1. ACCA for Class 29 Assets

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[27] Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Results* for Fontaine due to a change to Fontaine's denominator.[28]

[19] *See Preliminary Results* PDM at 20-21.
[20] *See* Roland Final Calculations Memorandum.
[21] *See* Comment 10.
[22] *See Preliminary Results* PDM at 21-22.
[23] *See* Roland Final Calculations Memorandum.
[24] *See* Comment 11.
[25] *See* Preliminary Results PDM at 22-24.
[26] *See* Groupe Matra Final Calculations Memorandum.
[27] *See* Comment 6.
[28] *See* Comment 22.

Otherwise, Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results* for the other respondents. [29]

We calculate the following net countervailable subsidy rates:
D&G: 0.06 percent *ad valorem*;
Fontaine: 0.37 percent *ad valorem*;
Groupe Matra: 1.23 percent *ad valorem*;
MLI: 0.34 percent *ad valorem*;
Roland: 0.15 percent *ad valorem*; and
Rustique: 0.29 percent *ad valorem*.[30]

2. FLTC

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[31] Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Results* for Fontaine due to a change to Fontaine's denominator.[32] Otherwise, Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results* for the other respondents. [33]

We calculate the following net countervailable subsidy rates:
D&G: 0.06 percent *ad valorem*;
Fontaine: 0.13 percent *ad valorem*;
MLI: 0.04 percent *ad valorem*; and
Rustique: 0.75 percent *ad valorem*.[34]

3. Atlantic Investment Tax Credit

Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results*.[35] We received no comments from interested parties regarding this program.

We calculate the following net countervailable subsidy rate:
NAFP: 0.15 percent *ad valorem*.[36]

[29] *See Preliminary Results* PDM at 24-25.
[30] *See* D&G Final Calculations Memorandum; Fontaine Final Calculations Memorandum; Lemay Final Calculations Memorandum; Groupe Matra Final Calculations Memorandum; MLI Final Calculations Memorandum; Roland Final Calculations Memorandum; and Rustique Final Calculations Memorandum.
[31] *See* Comment 7.
[32] *See* Comment 22.
[33] *See Preliminary Results* PDM at 25.
[34] *See* D&G Final Calculations Memorandum; Fontaine Final Calculations Memorandum; MLI Final Calculations Memorandum; and Rustique Final Calculations Memorandum.
[35] *See Preliminary Results* PDM at 26.
[36] *See* NAFP Final Calculations Memorandum.

4. SR&ED Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[37] Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results.*[38]

We calculate the following net countervailable subsidy rate:
MLI: 0.01 percent *ad valorem*.[39]

***New Brunswick Tax Program***

New Brunswick Property Tax Incentives for Private Forest Producers

Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Results* based on comments submitted by interested parties in their case briefs regarding this program, which are addressed below.[40]

We calculate the following net countervailable subsidy rate:
NAFP: 0.01 percent *ad valorem*.[41]

***Québec Tax Programs***

1. Property Tax Refund for Forest Producers on Private Woodlands in Québec[42]

Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results.*[43] We received no comments from interested parties regarding this program.

We calculate the following net countervailable subsidy rates:
D&G: 0.05 percent *ad valorem*;
Rustique: 0.07 percent *ad valorem*.[44]

2. Tax Credit for Investments Relating to Manufacturing and Processing Equipment

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[45] Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Results* for Fontaine due to a change to Fontaine's denominator.[46]

[37] *See* Comment 14.
[38] *See Preliminary Results* PDM at 26.
[39] *See* MLI Final Calculations Memorandum.
[40] *See* Comment 20.
[41] *See* NAFP Final Calculations Memorandum.
[42] Program also known as "Property Tax Refund for Forest Producers on Private Woodlots in Québec."
[43] *See Preliminary Results* PDM at 27-28.
[44] *See* D&G Final Calculations Memorandum and Rustique Final Calculations Memorandum.
[45] *See* Comment 13.
[46] *See* Comment 22.

Otherwise, Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results* for the other respondents. [47]

We calculate the following net countervailable subsidy rates:
Fontaine: 0.69 percent *ad valorem*;
Groupe Matra: 0.05 percent *ad valorem*; and
Rustique: 0.50 percent *ad valorem*.[48]

3. Tax Credit for an On-the-Job Training Period

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[49] Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results.*[50]

We calculate the following net countervailable subsidy rate:
D&G: 0.01 percent *ad valorem*.[51]

4. City of Sainte-Marie Municipal Financial Assistance

Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results.*[52] We received no comments from interested parties regarding this program.

We calculate the following net countervailable subsidy rate:
Lemay: 0.04 percent *ad valorem*.[53]

5. PLTC – Québec

Interested parties submitted comments in their case briefs regarding this program, which are addressed below.[54] Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Results* for Fontaine due to a change to Fontaine's denominator.[55] Otherwise, Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results* for the other respondents. [56]

We calculate the following net countervailable subsidy rates:
D&G: 0.03 percent *ad valorem*;

[47] *See Preliminary Results* PDM at 28-29.
[48] *See* Fontaine Final Calculations Memorandum; Groupe Matra Final Calculations Memorandum; and Rustique Final Calculations Memorandum.
[49] *See* Comment 12.
[50] *See Preliminary Results* PDM at 30-31.
[51] *See* D&G Final Calculations Memorandum.
[52] *See Preliminary Results* PDM at 28-29.
[53] *See* Lemay Matra Final Calculations Memorandum.
[54] *See* Comment 7.
[55] *See* Comment 22.
[56] *See Preliminary Results* PDM at 31-32.

Fontaine: 0.07 percent *ad valorem*;
MLI: 0.02 percent *ad valorem*; and
Rustique: 0.38 percent *ad valorem*.[57]

6. MPPD – Q

Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results*.[58] We received no comments from interested parties regarding this program. We calculate the following net countervailable subsidy rate:
MLI: 0.01 percent *ad valorem*.[59]

7. Additional Deduction for Transportation Costs of Remote Manufacturing Small and Medium Enterprises

Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Results*.[60] We received no comments from interested parties regarding this program.

We calculate the following net countervailable subsidy rate:
Lemay: 0.01 percent *ad valorem*.[61]

***Federal Loan Program***

TISQFE

We received no comments from interested parties on the TISQFE program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[62]

We calculate the following net countervailable subsidy rates:
Groupe Matra: 0.29 percent *ad valorem*; and
Roland: 0.05 percent *ad valorem*.[63]

[57] *See* D&G Final Calculations Memorandum; Fontaine Final Calculations Memorandum; MLI Final Calculations Memorandum; and Rustique Final Calculations Memorandum.
[58] *See Preliminary Results* PDM at 32.
[59] *See* MLI Final Calculations Memorandum.
[60] *See Preliminary Results* PDM at 32-33.
[61] *See* Lemay Matra Final Calculations Memorandum.
[62] *See Preliminary Results* PDM at 34.
[63] *See* Groupe Matra Final Calculations Memorandum; and Roland Final Calculations Memorandum.

***Québec Loan and Loan Guarantee Programs***

1. Economic Diversification Fund for the Centre-du-Québec and Mauricie Regions[64]

We received no comments from interested parties on this loan program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[65]

We calculate the following net countervailable subsidy rate:
Roland: 0.01 percent *ad valorem*.[66]

2. RENFORT

We received no comments from interested parties regarding this program. Commerce has made no changes in the analysis of the program from the *Preliminary Results.*[67] For Lemay, we continue to find that this company did not benefit from this program.[68]

We calculate the following net countervailable subsidy rate:
Groupe Matra: 1.89 percent *ad valorem*.[69]

3. UNIQ

We received no comments from interested parties on this loan program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[70]

We calculate the following net countervailable subsidy rate:
Groupe Matra: 2.20 percent *ad valorem*.[71]

**B. Programs Determined Not to Provide Measurable Benefits During the POR**

The expedited review companies reported receiving benefits under various programs, some of which were self-reported. Based on the record evidence, we find that the benefits from certain programs were fully expensed prior to the POR, or are less than 0.005 percent *ad valorem*, when attributed to the respondents' applicable POR sales as discussed in the "Attribution of Subsidies" section above. Consistent with Commerce's practice,[72] we have not included those programs in our subsidy rate calculations for the respondents. We also determine that it is unnecessary for

[64] In its questionnaire response, Roland referred to the program as "Interest-Free Repayable Contribution through the 'Programme Fonds de Diversification Economique Pour les Regions du Centre du Québec et de la Mauricie.'" *See* Roland May 23rd SQNR Response at Exhibit RB-S22.
[65] *See Preliminary Results* PDM at 35-36.
[66] *See* Roland Final Calculations Memorandum.
[67] *See Preliminary Results* PDM at 28-29.
[68] *See* Lemay Final Calculations Memorandum.
[69] *See* Groupe Matra Final Calculations Memorandum.
[70] *See Preliminary Results* PDM at 37-38.
[71] *See* Groupe Matra Final Calculations Memorandum.
[72] *See, e.g., Lumber V Final* IDM at Programs Determined Not to Provide Countervailable Benefits During the POI.

Commerce to make a determination as to the countervailability of those programs. For the subsidy programs that do not provide a measurable benefit for each expedited review company, *see* the Final Calculations Memoranda.[73]

## C. Programs Determined to Be Not Countervailable

### 1. BDC Loans

Interested parties submitted comments in their case briefs regarding the BDC loan program, which are addressed below.[74] Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[75]

### 2. Workforce Integration Program

We received no comments from interested parties on this loan program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[76]

### 3. CEP

We received no comments from interested parties on the CEP program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[77]

### 4. MPPD

We received no comments from interested parties on the MPPD program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[78]

## D. Programs Determined to Be Tied to Non-Subject Merchandise

### Programme Exportation[79]

We received no comments from interested parties on the Programme Exportation. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[80]

---

[73] *See* D&G Final Calculations Memorandum; Fontaine Final Calculations Memorandum; Lemay Final Calculations Memorandum; Groupe Matra Final Calculations Memorandum; MLI Final Calculations Memorandum; NAFP Final Calculations Memorandum; Roland Final Calculations Memorandum; and Rustique Final Calculations Memorandum.
[74] *See* Comment 8.
[75] *See Preliminary Results* PDM at 38-39.
[76] *See Preliminary Results* PDM at 39.
[77] *See Preliminary Results* PDM at 40.
[78] *See Preliminary Results* PDM at 40.
[79] Also known as "Exportation Program (PEX)," *see* GOQ May 7th SQNR Response at Grant-64.
[80] *See Preliminary Results* PDM at 40-41.

### E. Programs Determined Not to Be Used During the POR

The expedited review companies reported non-use of programs which are being examined in this review. For a list of the subsidy programs not used by each respondent, *see* Appendix IV.

## VI. DISCUSSION OF THE ISSUES

**Comment 1:** Whether Article 19.3 of the SCM Agreement Requires "Expedited CVD Reviews"

*The Petitioner's Comments*

- In promulgating 19 CFR 351.214(k), Commerce stated in the *Proposed Rule Preamble* that the regulation was necessary "{t}o implement Article 19.3 of the SCM Agreement."[81] Commerce's understanding of Article 19.3, as explained in the *Proposed Rule Preamble*, significantly and impermissibly goes beyond what Congress stated was necessary to conform U.S. law to such international obligations.[82]
- WTO obligations are not self-executing but must be enacted into U.S. law to take effect. Thus, WTO obligations cannot serve as an independent basis for conducting expedited reviews, and Commerce cannot rely on Article 19.3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)[83] as a justification for conducting reviews under 19 CFR 351.214(k).[84]
- Furthermore, in promulgating 19 CFR 351.214(k), Commerce went beyond the changes envisioned by Congress in enacting the Uruguay Round Agreements Act (URAA).[85] Specifically, Congress approved each of the Uruguay Round Agreements, including the SCM Agreement in the URAA, as well as the SAA.[86] In doing so, Congress stated that the SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." The SAA summarized the changes Congress felt were necessary to conform U.S. law to Article 19.3 of the SCM Agreement.[87]
- The relevant sections of the SAA demonstrate that Congress was expressly aware of the obligation under Article 19.3 of the SCM Agreement to establish a procedure for determining an individual CVD rate for those exporters or producers that were not actually investigated. As explained in the SAA, Commerce amended the Act to provide for the calculation of individual CVD rates for individually investigated companies as well as for individual "all-others" rates

[81] *See Proposed Rule Preamble*, 61 FR at 7318.
[82] *See* Petitioner Case Brief at 5-6, 12, citing to *Proposed Rule Preamble*, 61 FR at 7318.
[83] *See* Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, April 15, 1994, 1867 U.N.T.S. 14, 33 I.L.M. 1143 (1994); Marrakesh Agreement; SCM Agreement, Article 19.3; Section 101 of the URAA; 19 U.S.C. § 3511 *et seq*.
[84] *See* Petitioner Case Brief at 5-6, 12.
[85] *See* URAA.
[86] *See* SAA.
[87] *See* Petitioner Case Brief at 13.

for those companies not individually investigated. This calculation was to be done at the preliminary and final determination stages.[88]

- Congress' understanding of the obligations of Article 19.3 of the SCM makes clear that the phrase "actually investigated" means both "individually investigated" companies and all other companies that exported during the POI and received a CVD rate based on the results of the investigation. That is, the terms "actually investigated" and "individually investigated" are not synonymous.[89]
- The phrase "not actually investigated" as used in Article 19.3 means those "new" exporters or producers who did not export during the POI. This understanding is consistent with the views of other WTO members, including Taiwan and the European Commission, who in the WTO Negotiating Group on Rules discussed obligations under Article 19.3 with reference to new shipper reviews.[90]
- Furthermore, in *Mexico – Definitive Anti-Dumping Measures on Beef and Rice*,[91] the United States and Mexico discussed the obligations for new shipper reviews expressly under the relevant language of Article 19.3 of the SCM Agreement and Article 9.5 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994.[92] The WTO dispute settlement panel in that case explained that "in case a producer or exporter which (i) has not exported the product to the country concerned during the period of investigation and (ii) is not related to an exporter or producer already subject to the duty requests a new shipper review, the authority is required to promptly carry out such a review."[93]
- In promulgating 19 CFR 351.214(k), Commerce's interpretation of Article 19.3 of the SCM Agreement is contrary to the understanding of Commerce and other WTO members that such an obligation is limited to "new shippers" that did not export during the POI and does not require an expedited review of companies covered by the original investigation.[94]
- Section 103(a) of the URAA provides that "the President may proclaim such actions, and other appropriate officers of the United States Government may issue such regulations," as are necessary to implement any provision of the URAA as written and understood by Congress, not the SCM Agreement itself. Through the URAA Congress expressly provided statutory changes to comply with the obligations of Article 19.3 of the SCM Agreement, and there is no "gap" that permits Commerce to rewrite or expand its requirements.[95]
- Because Article 19.3 of the SCM Agreement does not permit an expedited review of the respondents, Commerce should rescind this review and assign the respondents the all-others rate from the CVD Orders.[96]

*GOC, GNB, Fontaine, Lemay, and NAFP's Comments*

[88] *Id.* at 13-15, citing SAA at 941-942.
[89] *See* Petitioner Case Brief at 15.
[90] *Id.* at 15-16.
[91] *See Mexico – Beef and Rice* at paras. 7.264-7.269.
[92] *See* Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, April 15, 1994, 1868 U.N.T.S. 201 at Article 9.5 (Antidumping Agreement).
[93] *See* Petitioner Case Brief at 16-18 (citing Panel Report, *Mexico – Beef and Rice*, at paras. 7.264-7.269).
[94] *See* Petitioner Case Brief at 19.
[95] *Id.*
[96] *Id.* at 2-3.

- The petitioner does not challenge that the regulation 19 CFR 351.214(k) provides for expedited reviews following the issuance of a countervailing duty order, in the circumstances described in the regulation. Instead, the petitioner argues that Commerce had no legal authority to promulgate this regulation in the first place, so that the reviews are, effectively, unlawful.[97]
- The petitioner mischaracterizes the purpose of the expedited review requirement in Article 19.3 of the SCM Agreement and ignores the clear statutory authority conferred on Commerce by the URAA to promulgate 19 CFR 351.214(k), the provision that implements the WTO obligation pursuant to the URAA grant of authority.[98]
- Contrary to the petitioner's assertions, Article 19.3 of the SCM Agreement requires expedited reviews of companies that exported during the POI but were not individually examined so that those exporters can promptly obtain their own individual CVD rate. Article 19.3 therefore demonstrates that the United States, as a WTO Member, would be required to make a provision for an expedited review procedure for exporters that were not individually examined in the underlying CVD investigation.[99]
- Sections 101, 102, and 103 of the URAA demonstrate that Congress clearly intended that there be an expedited review process to implement Article 19.3 of the SCM Agreement.[100]
- Congress's approval of the SCM Agreement in section 101(a)(1) of the URAA constitutes statutory acceptance of the obligations of Article 19.3 for expedited CVD reviews.[101]
- The URAA not only expressly approved each of the WTO agreements, it also approved the accompanying SAA.[102] The SAA, which Congress denominated as "authoritative,"[103] confirms that it was the intention of the Administration that amendments to U.S. law being made to implement the SCM Agreement would include a specific provision to implement the expedited review requirement of Article 19.3 of the SCM Agreement.[104]
- The petitioner makes no mention of section 103(a) of the URAA,[105] which provides a clear grant of authority for Commerce to promulgate and implement the expedited review provision in 19 CFR 351.214(k).[106] Since Congress approved the SCM Agreement, which includes the obligation to provide expedited reviews to new shippers and to companies that had shipped during the POI but were not investigated for reasons other than a refusal to cooperate, section 103 therefore provides explicit legal support for Commerce's adoption of its regulation on expedited reviews in CVD cases to companies other than new shippers.[107]
- The petitioner acknowledges the existence of Article 19.3 of the SCM Agreement, which is the main section in that Agreement that is the basis for the expedited review regulation, but the

---

[97] *See* GOC Rebuttal Brief at 3; *see also* GNB Rebuttal Brief at 1.
[98] *See* GOC Rebuttal Brief at 1.
[99] *See* GNB Rebuttal Brief at 5; *see also* GOC Rebuttal Brief at 5-6; and NAFP Rebuttal Brief, Attachment I at 6.
[100] *See* GNB Rebuttal Brief, Appendix I at 3-5; *see also* GOC Rebuttal Brief at 9; and NAFP Rebuttal Brief, Attachment I at 3-5.
[101] *See* GOC Rebuttal Brief at 10.
[102] *See* section 101(a)(2) of the URAA, 19 U.S.C. § 3511(a)(2).
[103] *See* section 102(d) of the URAA, 19 U.S.C. § 3512(d).
[104] *See* GOC Rebuttal Brief at 10; *see also* NAFP Rebuttal Brief, Attachment I at 6-7; and GNB Rebuttal Brief, Appendix I at 6-7.
[105] *See* 19 U.S.C. § 3513(a).
[106] *See* GNB Rebuttal Brief at 5; *see also* GOC Rebuttal Brief at 12; Fontaine Rebuttal Brief at 1; and Lemay Rebuttal Brief at 2.
[107] *See* GOC Rebuttal Brief at 12-13.

petitioner incorrectly argues that Article 19.3 only applies to new shippers, *i.e.*, companies that did not export during the underlying POI. This interpretation is not only inconsistent with the plain meaning of that article but is also contrary to the position that the United States consistently has taken as to the scope of obligations created by Article 19.3.[108]

- Article 19.3 imposes only two requirements for entitlement to an expedited review: (1) the company requesting the review was not individually investigated; and (2) the basis for non-investigation was "for reasons other than a refusal to cooperate." Thus, Article 19.3 explicitly applies to companies that exported during the POI but were not selected for individual investigation. There is simply nothing in the text of Article 19.3 as adopted to support the petitioner's argument that an exporter must also be a new shipper to get the benefit of an expedited review.[109]
- This interpretation of Article 19.3 was upheld by the WTO in *Mexico – Anti-Dumping Measures on Beef and Rice*.[110]
- Furthermore, the petitioner's assertion that only new shippers were "not actually investigated" fails to account for Article 19.3's requirement that expedited reviews be made available for those "not actually investigated for reasons other than refusal to cooperate." An exporter can only refuse to cooperate when Commerce has requested information from it during an investigation. Article 19.3 would not need to carve out specifically uncooperative POI exporters were they not otherwise entitled to expedited reviews.[111]
- The SAA contains nothing that would limit expedited reviews to new shippers.[112]
- The inclusion of a new shipper requirement in the expedited review provision of Article 9.5 of the Antidumping Agreement, but not in the expedited review provision of Article 19.3 of the SCM Agreement, demonstrates that Article 19.3 of the SCM Agreement, in contrast to Article 9.5 of the Antidumping Agreement, was not intended to be restricted to new shippers.[113]
- In *Irving Paper Limited v. United States*, Commerce articulated that Article 19.3 of the SCM Agreement required CVD expedited reviews, and section 103 of the URAA authorizes Commerce to promulgate 19 CFR 351.214(k) to implement the requirements of Article 19.3.[114] In its final results, Commerce should conclude it has legal authority to conduct CVD expedited reviews, and in accordance with that authority and its past practice, decline to continue to apply the "all-others" cash deposit rate from the original investigation to expedited review respondents as proposed by the petitioner.[115]

---

[108] *Id.* at 3.
[109] *See* GOC Rebuttal Brief at 6; *see also* NAFP Rebuttal Brief, Attachment I at 11-12; and GNB Rebuttal Brief, Appendix I at 11-12.
[110] *See* GOC Rebuttal Brief at 7-8; *see also* NAFP Rebuttal Brief, Attachment I at 11-12; and GNB Rebuttal Brief, Appendix I at 11-12.
[111] *See* GOC Rebuttal Brief at 17.
[112] *Id.* at 10.
[113] *See* GOC Rebuttal Brief at 8-9; *see also* GNB Rebuttal Brief, Attachment I at 12; and NAFP Rebuttal Brief, Attachment I at 12.
[114] *See* GOC Rebuttal Brief at 13-14 (citing *Irving Paper Limited v. United States*, Court No. 17-00128, Defendant's Response to the Court's December 28, 2017 Order, dated January 30, 2018 (United States Response to Questions from the Court), at Answer 3, at Petitioner's February 2, 2018 Comments on the Department's Conduct of Any "Expedited Reviews" of This Order, Exhibit 2. *Irving Paper Limited v. United States* was dismissed pursuant to voluntary stipulation of dismissal by all parties. *See* Irving Order of Dismissal.).
[115] *See* NAFP Rebuttal Brief at 2-3.

**Commerce's Position:** Commerce disagrees with the petitioner that Article 19.3 of the SCM Agreement is limited to new shipper reviews and does not obligate Members to make CVD expedited reviews available. Article 19.3 of the SCM Agreement, which is part of the Uruguay Round Agreements, expressly provides for expedited reviews of non-investigated exporters or producers in CVD proceedings.[116] In particular, Article 19.3 of the SCM Agreement provides, in relevant part:

> Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

In the URAA, Congress made numerous amendments to the antidumping and countervailing duty provisions of the Tariff Act of 1930. The section of the SAA accompanying the URAA[117] entitled "Company-Specific Subsidy Rates and Expedited Reviews" provides:

> Pursuant to existing section 706(a)(2), Commerce normally calculates a country-wide rate applicable to all exporters unless there is a significant differential in CVD rates between companies or if a state-owned company is involved. Article 19.3 of the Subsidies Agreement provides that any exporter whose exports are subject to a CVD order, but which was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review to establish an individual CVD rate for that exporter.
>
> Several changes must be made to the Act to implement the requirements of Article 19.3 of the Subsidies Agreement.[118]

As explained in the SAA, sections 264 and 265 of the URAA implemented some of the requirements of Article 19.3 of the SCM Agreement.[119] Section 265(1) repealed section 706(a)(2) and amended section 777A(e) of the Act to set out a general rule favoring individual rates for each exporter or producer, as well as exceptions to that general rule.[120] Section 264(a) of the URAA provided that when Commerce issues preliminary affirmative CVD determinations under section 703(d)(1) of the Act or final affirmative CVD determinations under 705(c)(1)(B) of the Act, it will calculate an individual subsidy rate for all exporters or producers individually investigated, and an all-others rate for exporters or producers not individually investigated.[121] Furthermore, section 264(b)(2) of the URAA amended section 705(c) of the Act to provide rules for calculating the all-others rate.[122] Sections 264 and 265 did not, however, implement the particular requirement in Article 19.3 of the SCM Agreement for expedited CVD reviews. In

---

[116] *See* SCM Agreement, Article 19.3.
[117] The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." Section 102(d) of the URAA; 19 U.S.C. § 3512(d).
[118] *See* SAA at 941.
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.* at 942.

other words, despite the recognition by Congress of the need to apply expedited reviews for those "not actually investigated other than a refusal to cooperate" in the SAA, the Act did not set forth the procedures by which expedited reviews of non-investigated exporters or producers in CVD proceedings would be conducted.

However, under section 103(a) of the URAA, Congress delegated to Commerce the authority to promulgate regulations to ensure that remaining obligations under the URAA which were not set forth in particular statutory provisions were set forth in the Code of Federal Regulations. Specifically, section 103(a) states:

> After December 8, 1994—
> (1) the President may proclaim such actions, and
> (2) other appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date any of the Uruguay Round Agreements enters into force with respect to the United States is appropriately implemented on such date. Such proclamation or regulation may not have an effective date earlier than the date of entry into force with respect to the United States of the agreement to which the proclamation or regulation relates.[123]

Commerce, as an "appropriate officer{} of the United States Government," in accordance with that statutory provision and in order to ensure that all provisions of United States law were consistent with the United States' obligations under the URAA, therefore promulgated 19 CFR 351.214(k), which provides the rules for conducting expedited CVD reviews for companies that Commerce "did not select for individual examination."

Furthermore, we disagree with the petitioner's arguments that Congress interpreted the term "not actually investigated for reasons other than a refusal to cooperate" in Article 19.3 of the SCM Agreement to mean that expedited reviews were only applicable to parties that had not exported merchandise during the period of investigation. That interpretation of the SCM Agreement and United States' law is illogical and contrary to the express terms of both. If a company was: (1) not "actually investigated;" and (2) the reason had nothing to do with its decision to not assist Commerce in the conduct of an investigation, there is no additional language that suggests the additional requirement argued by the petitioner -- that to be "entitled to an expedited review," a company would have had to (3) not exported during the period of investigation.

Commerce has been clear on this interpretation since it issued the *Proposed Rule Preamble* for 19 CFR 351.214(k) in 1996. In the *Proposed Rule Preamble*, Commerce explained that the new regulations covered new shipper reviews and "also establishes a procedure for conducting an expedited review of exporters that are not individually examined in countervailing duty investigations." It therefore explained, "{t}o implement Article 19.3 of the SCM Agreement, paragraph (k) expands the new shipper review procedure to cover exporters that were not individually examined in a countervailing duty investigation where the Secretary limited the

[123] *See* 19 U.S.C. § 3513(a).

investigation under section 777A(e)(2)(A) of the Act."[124] Commerce explained the differences for procedures which applied to new shippers and those which applied to "noninvestigated exporter{s}" that did not "qualify as a new shipper."[125]

We therefore disagree with the petitioner that Article 19.3 of the SCM Agreement does not "permit" an expedited review of the respondents. Not only does it provide for such an obligation of its Members, but 19 CFR 351.214(k) ensures that United States law is consistent with those obligations, in accordance with section 103(a) of the URAA. This is consistent with Commerce's position in *Irving Paper Limited v. United States*, in which Commerce explained, in response to questions from the Court, the authority pursuant to which it promulgated 19 CFR 351.214(k).[126]

**Comment 2:** Whether Reviews Conducted Under Section 751(a)(2)(B) of the Act Are Limited to New Exporters and Producers

*The Petitioner's Comments*

- Commerce's regulations provide for expedited CVD reviews at 19 CFR 351.214(k), which is entitled "New shipper reviews under section 751(a)(2)(B) of the Act." Section 751(a)(2)(B) of the Act is limited to the "determination of antidumping duties or countervailing duties for new exporters and producers."[127]
- In *Irving Paper Limited v. United States*,[128] the United States stated that 19 CFR 351.214 was promulgated pursuant to section 751(a)(2)(B) of the Act. Specifically, Commerce's motion to dismiss stated: "Commerce's final results of the expedited review of the CVD order on supercalendered paper from Canada were conducted pursuant to {19 CFR 351.214(k)}, which governs the administration of an expedited review of a CVD order for non-selected exporters. {19 CFR 351.214} is entitled 'New shipper reviews under section 751(a)(2)(B) of the Act.'"[129]
- If Commerce's authority to conduct expedited CVD reviews is based on section 751(a)(2)(B) of the Act, Commerce must comply with the explicit requirements of that provision. Specifically, exporters or producers qualifying for a review under section 751(a)(2)(B) must (1) not have exported subject merchandise during the POI; and (2) must not be affiliated with any exporter or producer who exported subject merchandise during the POI.[130]
- Because respondents acknowledged that they exported subject merchandise during the POI, they do not qualify as a "new shipper," and Commerce does not have the authority to review the respondents on the basis of section 751(a)(2)(B) of the Act. Therefore, if Commerce's

[124] *See Proposed Rule Preamble*, 61 FR at 7318.
[125] *Id.* at 7318-7319. In the *Final Rule Preamble*, Commerce reiterated that the regulation it had drafted and was issuing was intended to address United States obligations under Article 19.3 of the SCM Agreement. Commerce described that obligation accordingly: "Article 19.3 requires expedited reviews for exporters that were not 'actually investigated' in a CVD investigation." *See Final Rule Preamble*, 62 FR at 27322.
[126] *See* Petitioner Comments on Conduct of Expedited Review at Exhibit 2 (citing United States Response to Questions from the Court, at Answer 3).
[127] *See* Petitioner Case Brief at 3, 6.
[128] *See* Irving Motion to Dismiss at Petitioner's January 28, 2018 Objection to the Department's Conduct of Expedited Reviews, Exhibit 1.
[129] *See* Petitioner Case Brief at 6 (citing Irving Motion to Dismiss at 10).
[130] *See* Petitioner Case Brief at 6.

authority to conduct CVD expedited reviews is based on section 751(a)(2)(B) of the Act, Commerce must rescind the review of the respondents and assign them the all-others rate from the investigation.[131]

*GOC, GNB, and NAFP's Comments*

- The petitioner claims that the United States has acknowledged that its authority to conduct expedited reviews derives from section 751(a)(2)(B) of the Act are misleading. The United States has explicitly stated that it has full authority under the URAA to promulgate regulations under 19 CFR 351.214(k).[132]
- The petitioner is incorrect in its assertion that in *Irving Paper Limited*, Commerce stated that it promulgated 19 CFR 351.214(k) pursuant to section 751(a)(2)(B). In that case, Commerce made clear that CVD expedited reviews under 19 CFR 351.214(k) are conducted in accordance with the provisions of section 751(a)(2)(B) of the Act, which applies to new shipper reviews, not that Commerce's regulations for CVD expedited reviews derive their authority from section 751(a)(2)(B) of the Act.[133]
- Because the new shipper review procedure is expanded to implement Article 19.3, there are important distinctions between a new shipper review and an expedited CVD review, chief among them being that a "noninvestigated exporter does not qualify as a new shipper."[134]
- The United States has acknowledged in prior cases, and Canada agrees, that {section 751(a)(2)(B) of the Act is} not the basis of Commerce's authority to promulgate the expedited review regulation at 19 CFR 351.214(k).[135]

**Commerce's Position:** We disagree with the petitioner that because the respondents do not qualify as new shippers, Commerce must rescind this expedited review and assign them the all-others rate from the investigation. As we explained above, Commerce conducts expedited CVD reviews pursuant to 19 CFR 351.214(k) and in accordance with section 103(a) of the URAA. We understand that Commerce placed the expedited review provision for "noninvestigated exporters" in the overall regulation titled "New shipper reviews under section 751(a)(2)(B)" causes confusion. However, Commerce did not issue this particular subsection of 19 CFR 351.214 pursuant to section 751(a)(2)(B) of the Act, and never claimed as much. As Commerce explained in the *Proposed Rule Preamble*:

> Section 351.214 sets forth the procedures for conducting new shipper reviews, a new procedure contained in section 751(a)(2) of the Act. This section *also establishes a procedure for conducting an expedited review of exporters that are not individually examined in countervailing duty investigations*.[136]

Consistent with this explanation, the last sentence of the introduction to 19 CFR 351.214 states that "in addition" to providing the rules for requesting and conducting new shipper reviews, the

---

[131] *Id.* at v, 3, 7.
[132] *See* GNB Rebuttal Brief at 1, 3.
[133] *Id.* at 3-4.
[134] *See* GNB Rebuttal Brief at 4, citing *Proposed Rule*, 61 FR at 7318-7319.
[135] *See* GOC Rebuttal Brief at 4.
[136] *See Proposed Rule Preamble*, 61 FR at 7317 (emphasis added).

regulation also "contains rules regarding requests for expedited reviews by non-investigated exporters in certain countervailing duty proceedings."[137] Furthermore, the *Final Rule Preamble* explained that certain amendments to the *Proposed Rule Preamble* regarding the period of review for expedited reviews were meant "to better reflect the distinctions between a paragraph (k) review and a new shipper review."[138]

In addition, under the express language of 19 CFR 351.214(k), a company requesting an expedited CVD review need not be a new shipper. Although 19 CFR 351.214(k)(3) states that Commerce "will conduct a review under this paragraph (k) in accordance with the provisions of this section applicable to new shipper reviews" at 19 CFR 351.214(a)-(j), there are several differences in the regulatory procedures for new shipper reviews and CVD expedited reviews. For example, under 19 CFR 351.214(b)(2), a company requesting a new shipper review must certify that it did not export subject merchandise to the United States during the POI, or was not affiliated with an exporter or producer that did. In contrast, 19 CFR 351.214(k)(1)(i) states that a company requesting a CVD expedited review must submit a certification that "{t}he requester exported the subject merchandise to the United States during the period of investigation."

The *Proposed Rule Preamble* also underscores that a company requesting an expedited CVD review does not have to qualify as a new shipper. The *Proposed Rule Preamble* provides:

> To implement Article 19.3 of the SCM Agreement, paragraph (k) expands the new shipper review procedure to cover exporters that were not individually examined in a countervailing duty investigation where the Secretary limited the investigation under section 77A(e)(2)(A) of the Act. *There are a few important differences between this procedure and the procedure for a regular new shipper review.*[139]

The *Proposed Rule Preamble* explains that one such difference is that "*because the noninvestigated exporter does not qualify as a new shipper*, the Secretary will not permit a bond to be substituted for a cash deposit of estimated duties."[140] Therefore, the *Proposed Rule Preamble* specifically states that a company qualifying for a CVD expedited review is not a new shipper.

With respect to the petitioner's argument about the United States' Motion to Dismiss in *Irving Paper Limited v. United States*, the United States never claimed that the expedited review provision under 19 CFR 351.214(k) was promulgated pursuant to section 751(a)(2)(B) of the Act. In fact, in that same litigation, in response to a question from the Court, the United States provided clarification on this issue, explaining that the regulation was issued pursuant to section 103(a) of the URAA, while jurisdiction was granted under 28 U.S.C. § 1581(c), through the application of 19 CFR 351.214(k):

---

[137] *See* 19 CFR 351.214(a).
[138] *See Final Rule Preamble*, 62 FR at 27321. Commerce explained that "{u}nder (k)(3)(i), the period of review will be the period of investigation used by the Secretary in the investigation that gave rise to the CVD order."
[139] *See Proposed Rule Preamble*, 61 FR at 7318 (emphasis added).
[140] *Id.* at 7319 (emphasis added).

> Is it Defendant's position that 19 U.S.C. § 1675(a)(2)(B) gives Commerce the authority to promulgate regulations for an expedited review of a noninvestigated producer/exporter in a CVD proceeding?
>
> No. Defendant's position is that section 3513(a) of title 19[141] provides Commerce with the authority to promulgate the regulation governing expedited countervailing duty reviews at issue in this case. This position is explained in detail in section III below.
>
> Section 1675(a)[142] is relevant to the jurisdictional question before the Court because Commerce's expedited review of the countervailing duty order on supercalendered paper from Canada was conducted pursuant to 19 C.F.R. § 351.214(k), which governs expedited reviews of countervailing duty orders for non-selected exporters. *Final Results*, 82 Fed. Reg. at 18,897.
>
> Under 19 C.F.R. § 351.214(k)(3), Commerce "will conduct a review under this paragraph (k) in accordance with the provisions of this section applicable to new shipper reviews" subject to several exceptions, none of which is relevant here. Section 351.214(b) provides that an exporter or producer's request for a new shipper review is "{s}ubject to the requirements of section 751(a)(2)(B)" of the Tariff Act of 1930, as amended, codified at 19 U.S.C. § 1675(a)(2)(B). Subject to an exception that is inapplicable here, final determinations under section 1675 of title 19, which governs both countervailing duty and antidumping duty administrative reviews, may be contested under 28 U.S.C. § 1516a(a)(2)(A), and, thus, fall within this Court's jurisdiction under 28 U.S.C. § 1581(c). 28 U.S.C. § 1516a(a)(2)(B)(iii).[143]

In sum, Commerce conducts expedited CVD reviews pursuant to 19 CFR 351.214(k) and in accordance with section 103(a) of the URAA. Accordingly, there is no basis for Commerce to rescind this CVD expedited review because the respondents are not new shippers.

**Comment 3:** Whether Reviews Conducted Under Section 751(a) of the Act Cannot Begin Until at Least the Anniversary of the CVD Order and Must Act as the Basis for the Assessment of CVD Duties

*The Petitioner's Comments*

- In the expedited CVD review for *Supercalendered Paper from Canada*, Commerce cited section 751(a)(1) of the Act as its basis of authority for conducting the review.[144] Similarly, in *Lumber IV*, Commerce initiated an expedited CVD review based on its authority under section 751(a) of the Act.[145]

[141] *See* section 103 of the URAA.
[142] *See* section 751 of the Act.
[143] *See* United States Response to Questions from the Court, at Answer 1.
[144] *See* Petitioner Case Brief at 7 (citing *Supercalendered Paper from Canada Expedited Review Prelim*, 81 FR at 85521).
[145] *See* Petitioner Case Brief at 7-8 (citing *Lumber IV Expedited Review Initiation*, 67 FR at 46956).

- In the more recent expedited reviews of *CTL Plate from China*[146] and *CORE from Korea*,[147] Commerce did not identify the statutory authority for conducting expedited CVD reviews, but rather stated that it was initiating the reviews in accordance with 19 CFR 351.214(k).[148]
- If Commerce bases its authority to conduct expedited CVD reviews generally on section 751(a) of the Act, Commerce must rescind this review.[149]
- Reviews conducted under section 751(a) of the Act are subject to two requirements. First, under section 751(a)(1) of the Act, reviews are limited to those "beginning on the anniversary of the date of publication of a countervailing duty order." Second, under section 751(a)(2)(C) of the Act, the results of such reviews "shall be the basis for the assessment of countervailing or antidumping duties." In other words, reviews of companies other than new exporters and producers under section 751(a) of the Act cannot begin until at least the year after the publication of a CVD Order, and the results of such reviews must serve as the basis for the assessment of CVD duties, and not merely as the basis for deposits of estimated duties.[150]
- The respondents requested this expedited review and Commerce initiated the review in January and March 2018, respectively. Because reviews under section 751(a) of the Act cannot begin until at least one year after the publication of the CVD order, Commerce could not have begun its review under section 751(a) of the Act until at least January 3, 2019, the anniversary date of the CVD order.[151]
- However, 19 CFR 351.214(k)(3)(i) states that the period of review for an expedited review is the period of investigation for the investigation that led to the publication of the CVD orders. The respondents requested that the period of review be January 1, 2015 through December 31, 2015, which is a year and a half before the beginning of the presumptive first period of review. To the extent that Commerce's regulations conflict with the unambiguous language of the statute, Commerce must follow the statute.[152]
- Section 751(a)(2)(C) of the Act also requires that the results of reviews act as the basis for the assessment of CVD duties, and section 751(a)(1) of the Act requires Commerce to publish notice of the duties to be assessed as a result of any determination made under section 751(a) of the Act. However, 19 CFR 351.214(k) states that the "final results of a review…will not be the basis for the assessment of countervailing duties."[153]
- To the extent that Commerce's regulations conflict with the explicit language of the statute, Commerce must follow the statute. As such, Commerce should rescind this expedited review and continue to assign the respondents the all-others rate under the CVD Orders.[154]

*GOC, GNB, and NAFP's Comments*

- Commerce also has authority under section 751(a) of the Act as well as its "gap filling" authority to adopt regulations under 19 CFR 351.214(k). Therefore, even if section 751(a) of

[146] *See CTL Plate from China Expedited Review Final*, 83 FR at 34115.
[147] *See CORE from Korea Expedited Review Initiation*, 81 FR at 68404.
[148] *See* Petitioner Case Brief at 8, fn. 20.
[149] *Id.* at 5.
[150] *Id.* at 4, 8-9.
[151] *Id.* at 4, 9.
[152] *Id.*
[153] *Id.* at 4-5, 10.
[154] *Id.* at 10.

the Act does not directly apply to expedited reviews, Commerce's gap filling authority authorizes it to promulgate 19 CFR 351.214(k).[155]

- The provision for administrative reviews at section 751(a)(1) of the Act requires Commerce to conduct a periodic review "{a}t least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order" if a request has been received and notice published in the Federal Register. The introductory words, "{a}t least once," recognize Commerce's authority to conduct periodic reviews, and do not impose any limit on the type, number, or timing of periodic reviews other than to require that there must be an opportunity for a review no later than one year after an order is published.[156]
- There is nothing in the aforementioned language that prohibits an earlier review. Thus, section 751(a)(1) of the Act implies that Commerce may conduct other periodic reviews, before or after the first-year anniversary of an order.[157]
- Furthermore, in stating that Commerce must conduct a review "at least" once every 12 months beginning on the anniversary date of the order, section 751(a) of the Act allows for more frequent reviews.[158]
- The petitioner claims that a review under section 751(a) of the Act must result in an assessment of countervailing duties, so that an expedited review resulting in a cash deposit rate is not permitted. However, the petitioner ignores the plain language of section 751(a)(1) of the Act, which states that periodic reviews may result in "any notice of any duty to be assessed" *or* "estimated duty to be deposited." Thus, an expedited review under section 751(a) of the Act can, as provided for under 19 CFR 351.214(k), result in an estimated deposit rate for the reviewed exporter without an assessment rate.[159]
- Support for this interpretation is evident by the difference between the language used for countervailing duty reviews when compared to antidumping reviews, *i.e.*, subparagraph 751(a)(1)(A) of the Act requires Commerce to "review and determine the amount of any net countervailable subsidy," but does not specify what Commerce is to do when it makes that determination. In contrast, subparagraph 751(a)(1)(B) of the Act requires Commerce to "review and determine (in accordance with paragraph (2)), . . . the amount of any antidumping duty." The referenced "paragraph (2)" states, in part, that "{t}he determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties."[160] However, unlike antidumping reviews, the reference in subparagraph 751(a)(2)(C) of the Act to "countervailing duties" only covers new shipper countervailing duty reviews under section 751(a)(2)(B) of the Act.[161]
- In contrast, countervailing duty reviews under section 751(a)(1)(A) of the Act are not subject to the assessment requirement of section 751(a)(2)(C) of the Act. This further supports a conclusion that a review conducted pursuant to section 751(a)(1)(A) of the Act can result in a

[155] *See* GOC Rebuttal Brief at 14-15, 17-18; *see also* GNB Rebuttal Brief at 1, 5, and Appendix I at 7-11; and NAFP Rebuttal Brief, Attachment I at 7-11.
[156] *See* GOC Rebuttal Brief at 15.
[157] *Id*.
[158] *See* GNB Rebuttal Brief, Appendix I at 8; *see also* NAFP Rebuttal Brief, Attachment I at 8.
[159] *See* GOC Rebuttal Brief at 15; *see also* NAFP Rebuttal Brief, Attachment I at 8.
[160] *See* GOC Rebuttal Brief at 16.
[161] *Id*.

countervailing duty cash deposit rate without requiring assessment, just as Commerce has provided for in expedited reviews conducted pursuant to 19 CFR 351.214(k).[162]

- Apart from section 751(a)(1) of the Act, section 751(b)(1) of the Act would also permit expedited reviews as a "changed circumstance." Although such reviews normally cannot be conducted less than 24 months after publication of an order,[163] the provision authorizes a review in less than 24 months for "good cause shown."[164] Conducting an expedited review for the purpose of fulfilling the clear intent of the SAA and U.S. obligations under the SCM Agreement as adopted by Congress would constitute such "good cause." Furthermore, the language in section 751(b) of the Act is broad enough for Commerce to fill in the statutory gaps through the promulgation of 19 CFR 351.214(k).[165]

**Commerce's Position:** Commerce disagrees with the petitioner's assertion that this expedited review could not be initiated before January 2019 and must serve as the basis for the assessment of CVDs. The petitioner conflates the purpose and procedures for expedited CVD reviews and administrative reviews, which are separate proceedings that are governed by different regulations, promulgated according to distinct authorities, and provide different remedies. As explained in Comment 1, Commerce conducts expedited CVD reviews according to the procedures set out in 19 CFR 351.214(k), in accordance with section 103(a) of the URAA, not section 751(a) of the Act, as the petitioner suggests. Section 751(a) of the Act governs administrative and new shipper reviews of orders, while 19 CFR 351.213 lays out specific procedures for administrative reviews of orders under section 751(a)(1) of the Act. Because this is an expedited CVD review, section 751(a)(1) of the Act and 19 CFR 351.213 are inapplicable to this proceeding.

However, 19 CFR 351.221 is a regulation that applies to reviews in general. Under 19 CFR 351.221(a) and (b), it states that upon a request for a review, Commerce will: (i) promptly publish in the *Federal Register* a notice of initiation of the review; (ii) issue questionnaires to the appropriate interested parties requesting factual information for the review; (iii) conduct (if necessary) a verification; (iv) issue and publish preliminary results of review in the *Federal Register*; (v) issue final results of review and publish them in the *Federal Register*; and finally, (vi) "if the review involves a revision to the cash deposit rates for estimated … countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries." All of those provisions apply to this proceeding and are differentiated from 19 CFR 351.221(c)(1), which by its terms is a "special rule" that only applies to "administrative reviews and new shipper reviews."

Commerce properly conducted this review in accordance with 19 CFR 351.221(a) and (b), and its regulations for expedited CVD reviews at 19 CFR 351.214(k). Expedited CVD reviews allow an exporter or producer not selected as a mandatory or voluntary respondent in an investigation to obtain an individual cash deposit rate before the anniversary date of an order in instances in which it was impracticable to examine each known exporter or producer during the underlying

[162] *Id*.
[163] *See* section 751(b)(4) of the Act.
[164] *Id*.
[165] *See* GOC Rebuttal Brief at 17.

investigation.[166] As such, the relevant time period for an expedited CVD review is the period of investigation, which the *Final Rule Preamble* explains as follows:

> Under paragraph (k)(3)(i), the period of review will be the period of investigation used by the Secretary in the investigation that gave rise to the CVD order. This change will enable {Commerce} to use government data from the original investigation, thereby enabling {Commerce} to truly expedite the review. The objective is to provide a noninvestigated exporter with its own cash deposit rate prior to the arrival of the first anniversary month of the order, at which point the exporter may request an administrative review. In this regard, in paragraph (k)(3)(iii) we have clarified that the final results of a paragraph (k) review will not be the basis for the assessment of countervailing duties.[167]

Consistent with this explanation, 19 CFR 351.214(k)(3)(i) stipulates that the period covered by an expedited review is "the period of investigation used by {Commerce} in the investigation that resulted in the publication of the countervailing duty order," and 19 CFR 351.214(k)(3)(iii) states that the final results of an expedited review "will not be the basis for the assessment of countervailing duties." Therefore, the final results of this expedited review will not be the basis for the assessment of countervailing duties, pursuant to 19 CFR 351.214(k)(3)(iii).

In contrast, the purpose of administrative reviews is to assess final duty liability,[168] and the period examined in an administrative review differs from the period of investigation covered by an expedited review.[169] Because this is an expedited CVD review, Commerce acted in accordance with 19 CFR 351.214(k)(3)(i) by setting the period of review for January 1, 2015, through December 31, 2015, which was the period of investigation in the underlying investigation. The petitioner's observation that the period of review in this expedited review is a year and a half before the beginning of the presumptive first period of review for administrative reviews pursuant to 19 CFR 351.213(e)(2) is therefore not pertinent to this proceeding.

Furthermore, because the purpose of the expedited review is to provide a mechanism through which exporters or producers can obtain an individual cash deposit rate at an earlier date than through an administrative review of an order,[170] the date for requesting an expedited review must necessarily be earlier than that of an administrative review. Under 19 CFR 351.214(k)(1) an exporter must submit a request for an expedited review within 30 days of the publication of the order. The *Proposed Rule Preamble* explained that the 30-day deadline is meant "to allow {Commerce} to manage its limited resources efficiently…This is a reasonable time limit, because a noninvestigated exporter will be aware of its status long before an order is published."[171] Commerce will generally initiate the expedited review the month following the

---

[166] *See* 19 CFR 351.214(k); *see also Final Rule Preamble*, 62 FR at 27321.
[167] *See Final Rule Preamble*, 62 FR at 27321.
[168] *See* section 751(a) of the Act; 19 CFR 351.213(a).
[169] *See* 19 CFR 351.213(e)(2).
[170] *See Final Rule Preamble*, 62 FR at 27321 ("The objective {of an expedited review} is to provide a noninvestigated exporter with its own cash deposit rate prior to the arrival of the first anniversary month of the order, at which point the exporter may request an administrative review.").
[171] *See Proposed Rule Preamble*, 61 FR at 7318-7319.

month in which the request for review is due.[172] In this case, Commerce published the CVD Order in January 2018, received a request for an expedited review within 30 days thereafter, and initiated this review in March 2018, in accordance with 19 CFR 351.214(k). Commerce was not required, as the petitioner contends, to wait until after the anniversary date of January 3, 2019, to initiate this expedited review, because this is not an administrative review governed by the timeline in 19 CFR 351.213(b).

In addition, in suggesting that section 751(a) of the Act conflicts with 19 CFR 351.214(k)(3)(i), the petitioner appears to conflate the timeline for requesting an administrative review with the period of time examined in an expedited review.[173] Section 751(a)(1) of the Act and related regulations at 19 CFR 351.213(b) state that parties may request an administrative review each year during the anniversary month of the publication of an order. Under 19 CFR 351.214(k)(3)(i), on the other hand, it states that the period of time examined in an expedited review is the period of investigation. In other words, not only do section 751(a)(1) of the Act (and related regulations at 19 CFR 351.213(b)) and 19 CFR 351.214(k)(3)(i) pertain to separate types of proceedings – administrative and expedited reviews – with different timelines, they also refer to different aspects of administrative and expedited reviews – *i.e.* the initiation of the review and the time-period covered by the review.

With respect to Commerce's previous expedited CVD reviews, we do not disagree that in its analysis in *Lumber IV*, Commerce's very first expedited CVD review, Commerce cited to section 751(a) of the Act as granting "authority" for the "conduct of" "such" a "review."[174] However, as Commerce explained in that same paragraph, the "concept of expedited reviews in countervailing duty proceedings {was} very recent,"[175] and Commerce admitted it was still learning how to conduct and apply such a review. We now find that Commerce's citation to section 751(a) of the Act as granting "authority" in the *Lumber IV Initiation Notice* was legally erroneous, as was its citation in the *Preliminary* and *Final Results* of that review to section 751(a)(1) of the Act as one of the authorities to which the "expedited reviews and notice(s)" were "issued and published."[176] In fact, Commerce should have explained in those notices and determinations that it was issuing and publishing its determinations in accordance with section 103(a) of the URAA, 19 CFR 351.221(a) and (b), and 19 CFR 351.214(k), as we have explained above. Notably, in *Lumber IV*, Commerce did, at least, clearly state that 19 CFR 351.214(k) is the regulatory provision which provides for expedited reviews for non-investigated exporters.[177]

---

[172] *See* 19 CFR 351.214(k)(2).

[173] *See* Petitioner Case Brief at 9 ("{I}n order to conduct a review pursuant to authority under section 751(a) of the Act, {Commerce} could not have begun its review until at least January 3, 2019, the 'anniversary' of the CVD Order. {Commerce's} regulation at section 214(k)(3)(i), however, states that the period of review for an 'expedited CVD review' is 'the period of investigation used by the Secretary in the investigation that resulted in the publication of the countervailing duty order.' To the extent that {Commerce's} regulations conflict with the unambiguous language of the statute, {Commerce} must follow its statutory requirements.")

[174] *See Lumber IV Expedited Review Initiation*, 67 FR at 46956.

[175] *Id.*

[176] *See, e.g.*, *Softwood Lumber from Canada Expedited Review Prelim*, 67 FR at 52950; *see also Softwood Lumber from Canada Expedited Review Final 2002*, 67 FR at 67391; and *Softwood Lumber from Canada Expedited Review Final 2003*, 68 FR at 24439.

[177] *See Softwood Lumber from Canada Expedited Review Prelim*, 67 FR at 52948.

In the recent expedited CVD reviews for *Supercalendered Paper from Canada*,[178] *CTL Plate from China*,[179] and *CORE from Korea*,[180] Commerce also made clear that it initiated and conducted those reviews pursuant to the authority granted by 19 CFR 351.214(k). However, we recognize that, in some of those expedited CVD reviews, Commerce also made reference to section 751(a) of the Act, which may have caused confusion regarding the authority pursuant to which Commerce conducts expedited CVD reviews. For example, in the preliminary results of the CVD expedited reviews of *Supercalendared Paper from Canada* and *CTL Plate from China*, Commerce stated that the determination was "issued and published pursuant to {section} 751(a)(1) . . . of the Act and 19 CFR 351.214(h) and (k),"[181] whereas in the final results of those reviews Commerce simply stated that "{t}his determination is issued and published in accordance with 19 CFR 351.214(k)."[182] To be clear, although we correctly cited to 19 CFR 351.214(h) and (k) as authorities to which Commerce conducted and issued its preliminary results of expedited review in *Supercalendared Paper from Canada* and *CTL Plate from China*, we acknowledge that we also incorrectly mirrored language appearing in the *Preliminary Results* of *Lumber IV* in those reviews referencing section 751(a) of the Act.

The references to section 751(a) of the Act in multiple cases may, we believe, be a result of confusion over the somewhat unique legal sources which provide the authority to conduct an expedited CVD review and provide jurisdiction for judicial review. First, as explained, 19 CFR 351.214(k) derives its authority from section 103(a) of the URAA, and not the Act. Further, the placement of paragraph (k) under 19 CFR 351.214, a regulation that references section 751 of the Act in its title ("New shipper reviews under section 751(a)(2)(B) of the Act") also complicates the issue overall, because as the Government explained in its Motion to Dismiss in *Irving Paper Limited*, final determinations under that regulation "may be contested under 28 U.S.C. § 1516a(a)(2)(A)," and, thus, provide courts "jurisdiction under 28 U.S.C. § 1581(c)."[183] Finally, Commerce initially cited to section 751(a) of the Act several times in its first expedited CVD review, *Lumber IV*, and administratively, Commerce officials frequently rely on similar previous proceedings for guidance and citations to legal authorities in drafting initiation, preliminary determination, and final determination notices. Taken together, we find these factors may have contributed to the incorrect citation to section 751(a) of the Act in the expedited reviews cited above. We have no intention of making the same mistake in this proceeding.

Finally, we disagree with the GOC that section 751(b)(1) of the Act, which applies to changed circumstance reviews, provides legal authority for Commerce to conduct expedited CVD

---

[178] *See Supercalendered Paper from Canada Expedited Review Initiation*, 81 FR at 6506; *see also Supercalendered Paper from Canada Expedited Review Prelim*, 81 FR at 85520; and *Supercalendered Paper from Canada Expedited Review Final*, 82 FR at 18897.

[179] *See CTL Plate from China Expedited Review Initiation*, 82 FR at 23197; *CTL Plate from China Expedited Review Prelim*, 83 FR at 12337; and *CTL Plate from China Expedited Review Final*, 83 FR at 34115.

[180] *See CORE from Korea Expedited Review Initiation*, 81 FR at 68405. The expedited review for *CORE from Korea* was rescinded before Commerce issued a preliminary determination. *See CORE from Korea Expedited Review Rescission*, 82 FR 7798.

[181] *See Supercalendered Paper from Canada Expedited Review Prelim*, 81 FR at 85521; *see also CTL Plate from China Expedited Review Prelim*, 83 FR at 12338.

[182] *See Supercalendered Paper from Canada Expedited Review Final*, 82 FR at 18897; *see also CTL Plate from China Expedited Review Final*, 83 FR at 34116.

[183] *See* United States Response to Questions from the Court at 1.

reviews.[184] As stated above, Commerce conducts expedited CVD reviews pursuant to 19 CFR 351.214(k), which Commerce promulgated in accordance with section 103(a) of the URAA.

Accordingly, for the reasons we have provided, there is no statutory conflict as argued by the petitioner, and there is no legal reason Commerce should rescind this expedited review and assign the respondents the all-others rate from the investigation.

**Comment 4:** Whether Section 736(c) of the Act Can Serve as the Basis for Conducting CVD Expedited Reviews

*The Petitioner's Comments*

- In litigation related to the CVD expedited review of *Supercalendared Paper from Canada*, Commerce appeared to argue that section 736(c) of the Act, which applies to antidumping expedited reviews, creates a gap that provides Commerce with the authority to promulgate regulations and conduct expedited CVD reviews.[185]
- Contrary to Commerce's statement, the language of section 736(c) of the Act is unambiguously narrow and demanding. For example, reviews are subject to the following requirements under section 736(c)(3) of the Act: (1) a review may only be conducted where the underlying investigation "has not been designated as extraordinarily complicated;" (2) a requestor must present "credible evidence" that the amount by which its normal value exceeds the export price (or constructed export price) is "significantly less" than the amount specified in the AD order; and importantly, (3) the determination of such a review "shall be the basis for the assessment of antidumping duties."[186]
- The strict and narrow criteria under section 736(c) of the Act are inapplicable to CVD orders and present no "gaps" that would permit Commerce to conduct CVD expedited reviews, particularly as currently administered under 19 CFR 351.214(k).[187]
- To the contrary, section 736(c) of the Act supports the interpretation that "reviews" under the Act must serve as the basis for the assessment of AD/CV duties, rather than solely as the basis for estimated duties.[188]
- Therefore, Commerce lacks the authority to conduct an expedited review under section 736(c) of the Act and should rescind the review and assign the respondents the all-others rate from the CVD order.[189]

[184] The GOC does not articulate the events, such as a change in company name, that would constitute a changed circumstance warranting a changed circumstance review under the facts of this case.
[185] *See* Petitioner Case Brief at 5, 10-11, fn. 30 (citing Irving Motion to Dismiss at 10 ("Section {736(c)} provides for expedited antidumping reviews without mentioning expedited countervailing duty reviews. However, Commerce, within its discretion, 'filled the gap' created by the statutory language when it promulgated its regulation at {19 CFR 351.214(k)} and…that regulation provides that such reviews are subject to the requirement of {section 751(a)}")).
[186] *See* Petitioner Case Brief at 11.
[187] *Id.* at 5, 11.
[188] *Id.* at 11.
[189] *Id.* at 2-3.

*GOC and GNB's Comments*

- The petitioner's claims that the United States has acknowledged that its authority to conduct expedited reviews derives from section 736(c) of the Act are misleading. The United States has explicitly stated that it has full authority under the URAA to promulgate regulations under 19 CFR 351.214(k).[190]
- The United States has acknowledged in prior cases, and Canada agrees, that {section 736(c) of the Act is} not the basis of Commerce's authority to promulgate the expedited review regulation at 19 CFR 351.214(k).[191]
- The petitioner erroneously states that in *Irving Paper Limited*, Commerce appeared to argue that section 736(c) of the Act creates a gap pursuant to which Commerce derives its authority to promulgate regulations for CVD expedited reviews. Rather, Commerce stated that it based its authority under section 103(a) of the URAA.[192]

**Commerce's Position:** Commerce does not base its authority to promulgate regulations for CVD expedited reviews on a gap in section 736(c) of the Act, but rather on section 103(a) of the URAA, as explained in Comment 1. Section 736(c) of the Act authorizes Commerce to allow the posting of a bond or other security in lieu of the deposit of estimated duties for a 90-day period under certain conditions, including where a determination will be made within 90 days after the publication of the order.[193] To be sure, there is a gap in section 736(c) of the Act to the extent that it concerns deposits of "estimated antidumping duties" and does not expressly apply to expedited reviews of non-investigated exporters or producers in countervailing duty proceedings.[194] Commerce's authority to promulgate regulations regarding CVD expedited reviews does not arise, however, from the gap in section 736(c) of the Act, but under section 103(a) of the URAA.

With respect to the petitioner's argument about the United States' Motion to Dismiss in *Irving Paper Limited v. United States*, the United States never claimed that the regulations for expedited CVD reviews at 19 CFR 351.214(k) were promulgated pursuant to section 736(c) of the Act. The United States, in that motion, stated that section 736(c) of the Act refers to antidumping reviews but does not reference expedited CVD reviews.[195] The United States further explained that it exercised its authority to fill a statutory gap by promulgating 19 CFR 351.214(k), but never argued, in fact, that it promulgated that regulation pursuant to section 736(c) of the Act.[196] Rather, in response to a question from the Court in that litigation, Commerce clarified that it promulgated its regulations for expedited CVD reviews pursuant to section 103(a) of the URAA:[197]

---

[190] *See* GNB Rebuttal Brief at 1.
[191] *See* GOC Rebuttal Brief at 4.
[192] *See* GNB Rebuttal Brief at 4.
[193] *See* section 736(c)(1); *see also* section 736(c)(3) (providing for "{s}ecurity in lieu of duty pending early determination of duty").
[194] *Id.*
[195] *See* Petitioner Objection to Expedited Review at Exhibit 1 (citing Irving Motion to Dismiss at 10).
[196] *Id.*
[197] *See* United States Response to Questions from the Court at 3.

> Is it Defendant's position that 19 U.S.C. § 1673e(c) of the antidumping statute creates a gap that provides the authority for Commerce to promulgate regulations for an expedited review of a noninvestigated producer/exporter in a CVD proceeding?
>
> No… Commerce's authority to promulgate regulations regarding CVD expedited reviews does not arise…from regulations promulgated to fill the gap in 19 U.S.C. § 1673e(c).[198] Instead, Commerce's authority to promulgate Uruguay Round Agreements conforming regulations is provided in section 3513(a) of title 19.[199]

We find that answer to the CIT fully responds to the petitioner's argument in this regard. For the reasons we've explained, we disagree with the petitioner and find that Commerce has the authority to conduct an expedited CVD review. Accordingly, we find that there is no basis for Commerce to rescind this review on the basis of section 736(c) of the Act as requested by the petitioner.

**Comment 5:** Whether Commerce Should Account for Respondents' Purchases of Subject Merchandise/Rough-Hewn Lumber and Whether Commerce Should Assign the "All-Others" Rate from the CVD Order to the Respondents in the Current Proceeding

*The Petitioner's Comments:*

- In the *Preliminary Results*, Commerce did not address how purchases and subsequent exports of subsidized Canadian softwood lumber affect the rates of the respondents making those purchases and exports.[200] Commerce should account for the purchases of subject merchandise made by respondents during the POI and reported in Commerce's initial questionnaire response, [201] as both the statute and Commerce's regulations require the imposition of CVD rates for purchases of in-scope merchandise that are subsequently exported to the United States.[202]
- Pursuant to section 701(a)(l) of the Act, Commerce is required to countervail all countervailable subsidies provided "with respect to the manufacture, production, or export of a class or kind of merchandise imported ... into the United States."[203]
- Commerce's regulations provide that if a countervailable subsidy is provided with respect to the manufacture or production of subject merchandise, and the manufacturer or producer sells the subject merchandise to an unrelated distributor that subsequently exports the product to the United States, that merchandise is subject to countervailing duties, even if the distributor/exporter did not receive any subsidy and purchased the subject merchandise from the subsidized producer in an arm's-length transaction.[204]

---

[198] *See* section 736(c) of the Act.
[199] *See* section 103(a) of the URAA.
[200] *See* Petitioner Case Brief at 19.
[201] *Id*. at 20-21 which contains business proprietary information.
[202] *Id.* at 21.
[203] *Id*.
[204] *Id*. at 21-22.

- Commerce's regulation, 19 CFR 351.107(a), provides for "the establishment of cash deposit rates in situations where the exporter is not the producer of subject merchandise."[205] Further, Commerce's regulation, 19 CFR 351.107(b), provides for the establishment of cash deposit rates for nonproducing exporters using: (1) combination rates based the combination of the exporter and its supplying producer(s), or (2) applying the "all-others rate" in the case of a new supplier that does not have either a previously established combination cash deposit rate, or a noncombination rate established for the exporter and producer in question, for which no cash deposit rate was established for the producer at issue.[206]
- The *Final Rule Preamble* states that, "…{Commerce} calculates countervailable subsidy rates on the basis of any subsidies provided to the producer, as well as those provided to the exporter in any investigation or review involving exports by a nonproducing exporter. As a result, rates established for particular combinations of exporters and producers are the most accurate rates.…"[207]
- Commerce has stated that combination rates may not always be appropriate, stating:

> {T}he Department intends to apply the producer's rate to entries for deposit purposes if the Department has not established a rate for the particular exporter/producer combination or the exporter alone. If the producer's rate is applicable, but Commerce has not established a rate for that producer, Commerce will apply the "all-others" rate.[208]

- Although combination rates may not always be appropriate, Commerce indicated its desire to avoid applying the all-others rate in this way by "establish{ing} a deposit rate for each producer that it investigates or reviews, even if during the {POI} or review the producer happened to be selling to the United States through a reseller." [209]
- This was done to ensure that producers who later exported directly to the United States would have their own cash deposit rate.[210]
- Commerce should apply a combination rate that is based on the all-others rate applied to the producer of the lumber supplied to the expedited review respondent, plus the subsidy rate calculated for the expedited review respondent that resold/remanufactured lumber it purchased from that producer. Thus, under such an approach, even if the respondent obtains a *de minimis* rate and would otherwise be excluded from the *Order*, it would be subject to the all-others rate of its unaffiliated supplier and therefore potentially be included in the *Order*.[211]
- The *Final Rule Preamble* further states that, with respect to attribution, the trading company provision under 19 CFR 351.525(c) applies to "trading companies (or any firm that only sells and does not produce subject merchandise)."[212]
- For any respondent that acted as a pure reseller of subject merchandise produced by other Canadian companies, *e.g.*, D&G and its cross-owned company, Portbec, Commerce should

---

[205] *Id*. at 22.
[206] *Id*. at 21-22.
[207] *Id*. at 23 (citing to the *Final Rule Preamble*, 62 FR at 27303).
[208] *See Final Rule Preamble*, 62 FR at 27303.
[209] *Id*.
[210] *Id*. at 23.
[211] *See* Petitioner Case Brief at 2 (citing 19 U.S.C. § 1671d(c)(1)(B)(i)(I)).
[212] *Id*. at 24.

calculate producer-exporter combination rates using the same methodology applied in the investigation of *Sinks from China*. Commerce should calculate such combination rates even if the respondent in question receives a *de minimis* subsidy rate with respect to its own operations and activities. This approach is consistent with Commerce's regulations and ensures that all subsidies bestowed upon the production and export of the subject merchandise are subject to appropriate remedies while mitigating the potential for circumvention of those remedies.[213]

- Based on the following four reasons, Commerce should explicitly state that any merchandise produced by Scierie Leduc or Groupe Crete Inc. and exported by D&G or its cross-owned affiliates is subject to a combination of the rate calculated for D&G and the rate applicable to each producer, *i.e.*, the all-others rate (14.19 percent). First, Commerce's regulations clearly intend for it to capture all subsidies bestowed on the production and export of the subject merchandise, regardless of whether those activities occur within the same corporate entity. Second, while Commerce's regulations provide that the agency will revert to the producer's rate if it "has not established previously a combination cash deposit rate" pursuant to 19 CFR 351.107(b)(1)(i) "or a noncombination rate for the exporter in question," this expedited review is predicated on establishing a rate for the respondent exporters. Third, Portbec resold and exported subject merchandise produced by two different companies, and calculated combination rates will ensure the proper application of combination rates when other producers sell through the same exporter. Finally, combination rates are critical to mitigating the potential for circumvention and under-collection of duties that would arise in the absence of such rates, as it will ensure all parties know that Commerce intends to capture all subsidies bestowed upon the production and export of the subject merchandise, and that the CVD Order is not undermined by the potential for circumvention.[214]
- Both of Portbec's suppliers are currently subject to the all-others rate of 14.19 percent. If Commerce continues to calculate a *de minimis* subsidy rate for D&G and Portbec in the final results and subsequently chooses to exclude that company group from the CVD Order pursuant to 19 C.F.R. § 351.214(k)(3)(iv), the incentives for Portbec's suppliers are evident.[215]
- In *Lumber IV*, Commerce calculated aggregate provincial subsidy rates by including "softwood lumber, including softwood lumber that undergoes some further processing (so-called 'remanufactured' lumber)" in the sales denominator, recognizing that it is appropriate to countervail subsidies bestowed upon remanufactured lumber just as it countervailed subsidies bestowed on "primary" lumber. Thus, for any respondent that acted as a remanufacturer and exporter of the subject merchandise in this expedited review (*e.g.*, Rustique and D&G), Commerce should ensure that it captures all such subsidies. Commerce's current approach fails to do so. Specifically, by including the sales of all such remanufactured products in a respondent's denominator, but excluding any subsidies bestowed on that lumber in the course of its production by an unaffiliated "first" or "primary" mill from the numerator, Commerce has effectively eliminated those initial subsidies from the final rate calculated for those remanufactured products.[216]
- Commerce can remedy the aforementioned omission by following the same approach discussed above with respect to pure resellers, *i.e.*, by calculating combination rates for

[213] *Id.* at 24-28.
[214] *Id*. at 26-28.
[215] *Id.* at 28.
[216] *Id.* at 29-33.

remanufactured products exported by the respondents consistent with *Sinks from China*. Thus, as in the case of respondents that act as resellers, Commerce should calculate combination rates applicable to companies that remanufacture and export lumber purchased from other Canadian companies, even if the respondents have an individual subsidy rate of *de minimis*.[217]

*GOC, D&G/Portbec, Lemay, NAFP, and Rustique's Comments*

- The petitioner's position is incorrect because it amounts to an improper presumption that subsidies to an input product passed through to the purchaser of that product in an arm's length sale. The petitioner's position is legally wrong, and the method supported is also precluded by the fact that Commerce did not ask the questions necessary to establish: (1) what level of subsidization, if any, might exist on the input product purchased from the unrelated supplier; or (2) what specific exportable finished products the rough lumber is turned into.[218]
- D&G/Portbec and Rustique, buy rough-hewn lumber at arm's length from unrelated producers, process this lumber into a downstream product, and export a portion of this lumber to the United States. In both cases, rough-hewn lumber accounts for only a small portion of the respondents' overall acquisition of wood inputs used to make subject merchandise.[219]
- Neither the statute nor Commerce's regulations require the imposition of CVD rates for purchases of merchandise bought at arm's length.[220]
- The petitioner's reliance on section 701(a)(1) of the Act for the proposition that it is irrelevant whether merchandise was purchased at arm's length has been refuted by the CAFC. In *Delverde, Srl v. United States*,[221] the CAFC interpreted section 701(a)(1) of the Act, in conjunction with sections 771(5)(A) and (5)(B) of the Act, as requiring a determination that the applicable exporter/producer receive both a "financial contribution" and a "benefit."[222]
- Considering that Commerce may not presume a pass-through of a benefit, and absent an affirmative determination by Commerce to the contrary, the expedited review respondents do not receive benefits from the lumber that they purchased at arm's length. In *Certain Steel Products from the Federal Republic of Germany*, Commerce found that subsidies "{b}estowed upon the manufacturer of an input do not flow down to the purchaser of that input, if the sale is transacted at arm's length. In an arm's-length transaction, the seller generally attempts to maximize its total revenue by charging as high a price and selling as large a volume as the market will bear."[223]
- Commerce's "input supplier" regulation (19 CFR 351.525(b)(6)(iv)) only authorizes the attribution of subsidies provided to the input supplier to the downstream producer where certain conditions are met. Among those conditions is that "there is cross-ownership between an input supplier and a downstream producer." Thus, when there is no affiliation between the input supplier and the downstream producer, as is the case with respect to the two respondents

[217] *Id*. at 32-34.
[218] *See* GOC Rebuttal Brief at 1-2.
[219] *Id*. at 19.
[220] *Id*.
[221] *See* GOC Rebuttal Brief at 20-23 (citing *Delverde, 202 F.3d* at 1366-1367; *see also* D&G Rebuttal Brief at 3-4).
[222] *Id*. at 20.
[223] *See Certain Steel from Germany*, 47 FR at 39351.

at issue, there is no basis to attribute the subsidy to the input producer to the downstream product.[224]

- The petitioner cites section 701(a)(1) of the Act for the proposition that, because the countervailable subsidy provided to the original manufacturer of the product was provided with respect to the production or manufacture of the "class or kind of merchandise" subject to the investigation (and not with respect to an input to the production or manufacture of subject merchandise), no question of "upstream subsidies" or "passthrough" is raised by the situation of the "independent remanufacturer." However, there is nothing in either the statute or the regulations that supports this interpretation.[225]
- Logs are inputs under the petitioner's definition, and such subsidies to logs would not be attributable to the respondents that are subject to the expedited review under 19 CFR 351.525(b)(6)(iv), where the logs were purchased in an arms-length sale.[226]
- The petitioner incorrectly relies on two regulations, the combination rate provision (19 CFR 351.107(b)) and the trading company provision (19 CFR 351.525(c)) to argue that Commerce should cumulate subsidies to the unrelated supplier of the input with those of respondent companies. However, neither of these provisions applies to this proceeding because both apply only to "nonproducing exporters," while the companies at issue here are producers of subject merchandise.[227] Moreover, the combination rate provision, 19 CFR 351.107, authorizes, but does not require, Commerce to establish a "combination" cash deposit rate for merchandise that is exported to the United States by a company that is not the producer of the merchandise.[228]
- D&G and Rustique are both producers of subject merchandise and do not export any softwood lumber to the United States that they do not produce through further manufacture. Portbec engages in a combination of reselling and contracting for further manufacture, but Portbec is affiliated with D&G and these two companies together have been assigned one CVD rate. Thus, the combined D&G/Portbec entity is a producing exporter and not eligible for the combination rate treatment under 19 CFR 351.107.[229]
- Commerce should not countervail NAFP's lumber purchases in its final results because NAFP's purchased lumber is not exported to the United States.[230]
- The trading company provision at 19 CFR 351.525(c) is also inapplicable because this provision only applies to "trading companies (or any firm that only sells and does not produce subject merchandise)."[231]
- The petitioner's dependence on *Sinks from China* is erroneous because that case applied the 19 CFR 351.525(c) provision, which does not apply to the companies in question.[232]
- Any purchases of logs or lumber at arm's length would extinguish any subsidies received by the source of the logs/lumber. These arguments are also detailed in an economic report

[224] *See* GOC Rebuttal Brief at 21.
[225] *Id*. at 22.
[226] *Id*.
[227] *Id*. at 23-24.
[228] *Id*. at 25-26.
[229] *Id*. at 23-24.
[230] *See* NAFP Rebuttal Brief at 2 and 4-5.
[231] *Id*. at 24 (citing to *CVD Final Rule*, 63 FR at 65404).
[232] *See* GOC Rebuttal Brief at 24 (citing Petitioner Case Brief at 24-27 and citing *Sinks from China*, 78 FR at 13017).

prepared by Dr. David Reishus, titled "Economics of Pass-Though Relevant to the Expedited Review" submitted in the GOC's May 15, 2018 submission.[233]

- The record of this proceeding has closed, and there is no information on the record as to the extent to which these unrelated suppliers might have received any subsidies because Commerce did not request such information.[234]
- Commerce is not required to impose a combination rate, even when conditions for the combination rate provision would be applicable. Specifically, 19 CFR 351.107(b) authorizes, but does not require, Commerce to apply combination rates to nonproducing exporters.[235]
- If Commerce were to now impose some type of combination rate based, at least in part, on assuming that the supplier of the input received subsidies equivalent to the 14.19 percent "all-others" rate, this would amount to the improper application of "facts available." Courts have repeatedly taken the position that, as a prerequisite to the application of "facts available," there must be noncompliance with a question. However, there was no such request made by Commerce in this case.[236]
- Specifically, under section 782(d) of the Act, Commerce must inform the respondent of the nature of the deficiency and, to the extent practicable, provide the party with an opportunity to remedy or explain the deficiency. Commerce never informed the respondents of a deficiency within the meaning of section 782(d) of the Act, and thus, is thereby precluded from a "facts available" approach under section 776(a) of the Act, which, in this case, would be to simply assume, with no basis whatsoever, that a supplier received subsidies equivalent to the "all-others" rate.[237]
- Contrary to the petitioners' assertion, the most accurate rates are the rates that reflect the benefits received by the expedited review company, which are limited to the countervailable subsidies that they received.[238]
- Concerning Rustique, it would be impossible to apply a combination rate to the companies' exports, as Rustique performs further manufacturing on all the lumber it acquires at arm's length, and these inputs are commingled with Rustique's log inputs. There is no separate line or category of finished products that are made using rough-hewn lumber purchased inputs. Thus, even if Commerce had tried to develop a factual record for doing so, it would simply be impossible to apply a combination rate to some subset of Rustique's U.S.-bound shipments.[239]
- Concerning Lemay, for the final results, Commerce should confirm the *de minimis* subsidy rate calculated for Lemay in the *Preliminary Results*, exclude Lemay from the *Order*, and issue instructions to refund Lemay's CVD cash deposits. [240]
- The petitioner erroneously attempts to link Portbec's insignificant exports to the United States with the incorrect figure for Portbec's lumber purchases because more than half of this amount was purchased from D&G itself. Furthermore, Portbec previously reported that "[t]he vast

[233] *See* D&G Rebuttal Brief at 4 (citing GOC May 16th SQNR Response at Exhibit GOC-ER-SUPP2-CRA-ACCA-2, David Reishus, Ph.D., Economics of Pass-Through Relevant to Expedited Reviews).
[234] *See* GOC Rebuttal Brief at 25.
[235] *Id*. at 25-27.
[236] *See* D&G Rebuttal Brief at 3-4 (citing *Delverde*, 202 F.3d at 1366-1367).
[237] *See* GOC Rebuttal Brief at 27.
[238] *Id*. 27-28.
[239] *See* GOC Rebuttal Brief at 28.
[240] *See* Lemay Rebuttal Brief at 2-3.

majority of its transactions are made on a back to back basis (buying Canadian lumber from U.S. importers and reselling to U.S. buyers)."[241]

**Commerce's Position:** We disagree with the petitioner. Almost all the respondents in the expedited review either manufactured lumber from logs from unaffiliated suppliers and/or performed further manufacturing on lumber acquired from unaffiliated suppliers.[242] In other words, logs and lumber are inputs to the respondents' exports to the United States. While section 701(a)(l) of the Act directs Commerce to account for all countervailable subsidies provided "with respect to the manufacture, production, or export of a class or kind of merchandise imported . . . into the United States," that does not mean that Commerce may presume the pass through of benefits received by unaffiliated input suppliers. Rather, 19 CFR 351.523(a) sets out requirements that the petitioner must adequately allege in order for Commerce to investigate upstream subsidies, *i.e.* subsidies received by unaffiliated input suppliers. The petitioner did not submit an upstream subsidy allegation in this review. Accordingly, in the absence of an allegation and initiation of such an allegation, Commerce did not investigate upstream subsidies in this case. Thus, Commerce lacked a basis to attribute subsidies to the log and lumber from unaffiliated suppliers to respondents.

Further, our decision in the expedited review not to examine the respondents' purchases of logs from non-government sources is consistent with our approach in the *Lumber V Final*. For example, except for the British Columbian respondents in which the Log Export Restraint program was at issue, Commerce limited its LTAR questions in the investigation to the mandatory respondents' purchases of Crown-origin standing timber and did not include the respondents' purchases of logs or lumber in the benefit calculation.[243] Further, in the *Lumber V Final*, Commerce explained that:

> for the provision of stumpage for LTAR programs, the benefit in the Department's company-specific subsidy calculations consists solely of Crown-origin standing timber and does not consist of logs. There is no need to consider in the context of the provision of stumpage for LTAR program whether a benefit was conferred upon the respondent firms' purchases of logs.[244]

We also find that the petitioner's reliance on 19 CFR 351.107(b) (the combination rate regulations) and 19 CFR 351.525(c) (the trading company attribution regulation) is misplaced. Under 19 CFR 351.525(c), in order for Commerce to cumulate benefits provided to the trading companies with benefits from subsidies provided to the unaffiliated firm that is producing subject merchandise sold through the trading company, Commerce would need to identify and measure any subsidies provided to each unaffiliated producer/supplier, determine the benefits allocable to the POI, calculate a net countervailable subsidy for each unaffiliated

[241] *See* D&G Rebuttal Brief at 2 (citing D&G's April 12th QR at 2).
[242] *See e.g.*, Rustique April 12th QNR Response at 8; Lemay Usage QNR Response at 5.
[243] *See Lumber V Final* IDM at Comment 14: "In the Primary QNR, the Department requested that the respondent firms report the volume and value of species-specific sawlogs that they acquired, in the form of stumpage, from Crown lands."
[244] *Id*.

producer/supplier, and then cumulate the subsidies the unaffiliated producer/supplier received with subsidies provided to the trading company.[245] Here, the record does not contain information pertaining to subsidies that each unaffiliated producer/supplier received; therefore, we cannot apply 19 CFR 351.525(c). For suppliers that are cross-owned with the mandatory respondents in this expedited review, we attributed subsidies received by these cross-owned companies to the mandatory respondents in accordance with 19 CFR 351.525(b)(6)(ii)-(vi).[246]

We also disagree with the petitioner's argument that Commerce should have examined whether subsidies were provided to unaffiliated producers of lumber that was resold (absent any further manufacturing) by the expedited review respondents. In the past, Commerce has refrained from examining whether a producer of subject merchandise (whose merchandise is resold by the respondent) received subsidies when the amount of such resales is small relative to the respondent's overall sales.[247] In the instant review, D&G/Portbec is a border mill that was verified to have sourced their wood from private sources, mostly in the United States.[248] Further, only a relatively small proportion of D&G/Portbec's business involves sales of merchandise from Canada to the United States.[249] Thus, as it regards reselling activities, the vast majority of D&G/Portbec's transactions involve purchasing Canadian lumber on a duty paid basis in the United States and reselling the lumber to buyers in the United States.[250] Similarly, for Rustique, its purchases of rough-hewn lumber actually represent a very small percentage of its wood fiber inputs.[251] Thus, consistent with Commerce's practice, we have not examined whether subsidies were received by the producers of lumber that the expedited review respondents resold during the POR.

Additionally, having determined that the petitioner's arguments regarding the combination rate and trading company provisions are unfounded, we do not find it necessary to address the arguments made by respondents that application of the all others rate to such respondents would be tantamount to a facts available finding under sections 782(d) and 776(a) of the Act.

The petitioner claims that combination rates are "critical to mitigating the potential for circumvention and under collection of duties,"[252] but, in support of this argument, the petitioner cites only to an excerpt from the *Final Rule Preamble* that applies to AD cases and pertains to concerns about a supplier's ability to direct its merchandise to the United States through

---

[245] *See, e.g., Tetrafluoroethane from China* IDM at 7-9; *see also Aluminum Wire and Cable from China* PDM at 7-10.

[246] *See Preliminary Results* PDM at 9-15. Our approach in this regard is consistent with the *Lumber V Final*. *See Lumber V Prelim* PDM at 12-18; unchanged in *Lumber V Final* IDM at 9.

[247] *See Seamless Pipe from China*, 75 FR at 9170,which states, "{a}lthough any subsidies to the unaffiliated producers would normally be cumulated with subsidies provided to these trading companies pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where their merchandise was not exported to the United States during the POI or accounted for a very small share of respondent's exports to the United States."

[248] *See* D&G Verification Report at 4.

[249] *See* D&G July 25th SQNR Response at Annex M. The percentage of Portbec's exports of subject merchandise to the United States from unaffiliated producers is BPI.

[250] *See* D&G April 12th QR at Q A-2-D.

[251] *See* Rustique April 12th QNR Response at Table 3. The percentage of Rustique's exports of subject merchandise to the United States from unaffiliated producers is BPI.

[252] *See* Petitioner Case Brief at 27.

exporters with a low rate. Further, in the draft version of the CBP instructions issued in this review for the excluded firms, we specified that only lumber that is "produced and exported" by the respondents receiving *de minimis* CVD rates in the final results of the instant review will be excluded from payment of duties. In this situation, the unaffiliated producers that elected to export subject merchandise produced by a respondent, such as D&G, and claim a zero cash deposit rate would be unable to circumvent the payment of duties, as the merchandise would nonetheless be subject to the all-others rate. No interested party commented on this aspect of our preliminary findings, and therefore we intend to issue instructions to CBP with the same language as part of our final results. Thus, the petitioner's claim that the exclusions for the *de minimis* respondents create a circumvention loophole are unsupported because if a company at issue were to attempt to ship resold lumber (on which they have performed no processing) duty-free, CBP would not allow such evasion, because the CBP instructions do not direct such a result.

Finally, with respect to Lemay's argument, we agree. Accordingly, for the final results, Commerce has calculated a *de minimis* subsidy rate for Lemay. Thus, we intend to exclude Lemay from the Order and issue instructions to refund Lemay's CVD cash deposits.

**Comment 6:** Whether the ACCA for Class 29 Assets Program Is *De Jure* Specific

*GOC's Comments*

- The GOC asserts that Commerce cannot equate the existence of limits on a program's usage to *de jure* specificity under section 771(5A)(D)(i) of the Act.[253]
- The CITR do not restrict which enterprises or industries may use the program; instead, the regulations provide that certain activities will not constitute manufacturing or processing for purposes of eligibility to claim the ACCA.
- The GOC argues that activity-based restrictions do not render the ACCA *de jure* specific. Rather, activity-based restrictions are eligibility criteria for use of a program.
- The Act says nothing regarding limitations on the activities conducted by enterprises or industries.[254] Under section 771(5A)(D)(i) of the Act, a domestic program is rendered *de jure* specific if there is an industry- or enterprise-based restriction, not an activity-based one.
- Moreover, the scope of the "exclusion" is limited, and most industries are still eligible. While the CITA excludes from "manufacturing or processing" farming or fishing; logging; construction; operating an oil or gas well; extracting minerals from a natural resource; and other extraction activities, it does not exclude enterprises engaged in those activities from claiming the ACCA for equipment used in non-excluded activities. A program that is available to all producers is not specific merely because some activities are not eligible.[255]
- The GOC further argues that even if the "excluded activities" are treated as "excluded industries," the ACCA would only restrict a small number of "industries," as the ACCA is used

[253] *See* GOC Case Brief at 4 and footnote 9 (citing to *Allegheny*, 112 F. Supp. 2d 1141, 1152, n. 15); *see also PPG Industries*, 978 F. 2d 1232, 1240, the existence of criteria that must be met for a company to be eligible for a program does not make that program *de jure* specific.
[254] *See* section 771(5A)(D)(i) of the Act.
[255] *See, e.g., Cold-Rolled Steel from Russia* IDM at117; and GOC Case Brief at 6.

by every industry in the NAICS and 21,430 enterprises used the deduction in the POR.[256] Commerce has found no *de jure* specificity where the number of industries that could use a program was far smaller than under the ACCA.[257]
- In the *Lumber V Final*, Commerce cited *Nails from Oman* and *CWP from UAE* in support of its position that activity-based exclusions can be a basis for finding *de jure* specificity.[258] However, this case is distinguishable from those cases, which involved a tariff exemption on imported production inputs for industrial enterprises, where those engaged the extraction or refining of petroleum, natural gas, or minerals were not eligible for an industrial license and, thus, could not claim the tariff exemption.

*The Petitioner's Comments*
- The GOC has provided no basis for Commerce to deviate from its consistent findings that the ACCA is a countervailable subsidy.[259]
- Commerce should again reject the GOC's argument that a handful of excluded activities from the definition of manufacturing or processing is irrelevant to Commerce's analysis.
- With regard to the GOC's citation to *PPG Industries*,[260] it supports the standard that "ITA has been given great discretion in administering the countervailing duty laws."[261]

**Commerce's Position:** The GOC's arguments presented herein do not differ substantially from the arguments raised and addressed in the *Lumber V Final*. In the underlying investigation, Commerce found the ACCA for Class 29 Assets program to be *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 deduction is expressly limited to certain enterprises or industries.[262]

The GOC again argues that the CITR excludes "activities" and not enterprises or industries and, therefore, the program is not specific under section 771(5A)(D)(i) of the Act.[263] However, as fully discussed in the *Lumber V Final*, the CITR explicitly excludes certain industries from its definition of manufacturing or processing.[264] That is, enterprises and industries engaged in excluded activities are not eligible for the ACCA for Class 29 Assets program.[265] Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries.

The GOC also reiterates its argument that even if Commerce considered "activities" in its *de jure* specificity analysis, the scope of the activity exclusion is very limited.[266] We continue to

[256] *See* GOC May 16th SQNR Response at Exhibit GOC-ER-SUPP2-CRA-ACCA-1.
[257] *See* GOC Case Brief at 10-13 for reference to prior CVD cases.
[258] *See Lumber V Final* IDM at Comment 68.
[259] *See* Petitioner Rebuttal Brief at 8-11 *(citing Lumber V Final* IDM at Comments 66 through 69; *see also SC Paper from Canada Expedited Review Final* IDM at Comment 32; and *Uncoated Groundwood Paper from Canada Final* IDM at Comment 52).
[260] *See* GOC Case Brief at 7-8.
[261] *See PPG Industries*, 978 F. 2d at 1242.
[262] *See Lumber V Final* IDM at Comment 68.
[263] *See* GOC Case Brief at 3-4.
[264] *See Lumber V Final* IDM at Comment 68.
[265] *Id*.
[266] *See* GOC Case Brief at 9-15.

disagree that the exclusion is very limited, or that this program is broadly available. Section 771(5A)(D)(i) of the Act states that a program is *de jure* specific if the governing authority, or the legislation pursuant to which the authority operates, "expressly limits access to the subsidy." The CITR expressly limits access to the subsidy by excluding certain described categories, such as farming, fishing, and construction, from the definition of "manufacturing or processing."[267]

Further, we continue to disagree with the GOC that activity-based restrictions are simply eligibility criteria for use of the program. Eligibility criteria do not satisfy the statutory requirement for "objective criteria," insofar as they "favor one enterprise or industry over another."[268] As noted, the CITR favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.

Contrary to the GOC's arguments, *CWP from the UAE* and *Nails from Oman*, where Commerce found programs, which excluded certain activities, to be *de jure* specific, support Commerce's specificity finding here. In *CWP from the UAE*, Commerce found *de jure* specificity because the law excluded enterprises involved with the extraction or refining of petroleum, natural gas, or minerals from receiving the benefit of tariff exemptions.[269] We explained that, where there is an explicit exclusion of certain industries in the law itself, such an exclusion is sufficient under section 771(5A)(D)(i) of the Act to support a finding that the law is expressly limited to a group of industries.[270] We further explained that section 771(5A)(D)(i) of the Act directs Commerce to consider "limitations" of availability to the program.[271] Similarly, in *Nails from Oman*, Commerce found that the government expressly limited access to the tariff exemption program to certain establishments and, therefore, the program was *de jure* specific because it excluded other enterprises or industries (*i.e.*, those engaged in the field of oil exploration and extraction and those engaged in the field of extraction of metal ores) from receiving benefits of the program.[272] Akin to those tariff exemption programs, access to the ACCA for Class 29 Assets program is expressly restricted to non-excluded enterprises and industries.

We find no new evidence or arguments on the record to warrant a change in Commerce's finding that the ACCA for Class 29 Assets program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act on the ground that, as a matter of law, eligibility is expressly limited to enterprises and industries that engage in activities that are not excluded from the definition of "manufacturing and processing."

**Comment 7:** Whether the PLTC and FLTC Are Countervailable

*GOC, GOQ and Rustique's Comments*

- The net income of corporate taxpayers in Québec is taxed at a total rate of 26.9 percent – 15 percent in federal income tax and 11.9 in provincial income tax. Corporate taxpayers in

[267] *See Lumber V Final* IDM at Comment 68 for a comprehensive list of exclusions.
[268] *See* section 771(5A)(D)(ii) of the Act.
[269] *See CWP from the UAE* IDM at Comment 1.
[270] *Id*. at 18.
[271] *Id*.
[272] *See Nails from Oman* IDM at Comment 1.

Québec involved in processing forest products are also assessed an additional 10 percent on a portion of their net income related to logging income. This extra 10 percent has never actually been paid by corporate taxpayers because it has been rebated in full through a one third tax credit from the provincial government under Québec's PLTC and a two thirds tax credit by the federal government under the FLTC.[273]

- The PLTC and the FLTC conferred no benefit because they were enacted to ensure that taxpayers in the forestry sector are not subjected to a tax burden greater than the burden placed on taxpayers in other sectors. Specifically, there is no benefit because the net tax result leaves the taxpayer exactly where it would have been if the provincial logging tax had never been assessed.[274]
- The FLTC is designed to prevent double taxation on the same taxable income and to ensure that taxpayers in the forestry sector are not subject to a tax burden greater than the burden placed on taxpayers in other sectors.[275]
- The PLTC and FLTC subsidy programs do not confer a benefit to the companies receiving the tax credit because such programs level the playing field between taxpayers in the forest industry and other sectors of the economy.[276]
- The PLTC and FLTC do not confer a benefit to the company within the meaning of the countervailing duty law. Under section 771(5)(E) of the Act, "{a} benefit shall normally be treated as conferred where there is a benefit to the recipient."[277]
- In *Sri Lanka*[278] and *Inland Steel*,[279] the companies at issue received government funds, but neither was considered to have received a benefit because the companies acted as an intermediary for the government to transfer money to a third-party entity. Similarly in the instant case, Commerce must consider the program as a whole and find that there has been no benefit to the logging companies because the PLTC and FLTC are not a tax credit, nor a tax assistance program, but only a mechanism allowing a transfer of funds from the Federal Government to the GOQ, the calculation of which is based on the results of activities in the logging industry in Québec.[280]
- Tax measures meet the financial contribution requirement if, and only if, revenue "otherwise due" to a government is being "foregone." Rustique asserts that, in deciding whether revenue that a government theoretically could collect, but in fact does not collect, is "otherwise due," Commerce must refer to the prevailing domestic standard and the normative benchmark of the tax system in question.[281]
- Citing the WTO dispute settlement regarding the "Extra-Territorial Income" (ETI) legislation enacted during the WTO dispute the Foreign Sales Corporation (FSC) provisions of the U.S. tax code, the U.S. government argued that its challenged ETI measure did not result in

---

[273] *See* Rustique Case Brief at 2; GOQ Case Brief at 5-6; GOC Case Brief at 23-24.
[274] *See* GOC Case Brief at 25-28; GOQ Case Brief at 5-8; Rustique Case Brief at 2-6.
[275] *See* GOC Case Brief at 23 (citing GOC May 7th SQNR Response at GOC-ER-18 (citing CITA subsection 127(1))); *see also* GOQ Case Brief at 6-8 and Rustique Case Brief at 7.
[276] *See* GOC Case Brief at 22-28; *see also* GOQ Case Brief at 5-8 and Rustique Case Brief at 7.
[277] *See* GOC Case Brief at 25 (citing *CVD Final Rule*, 63 FR at 65359-65361).
[278] *See GOSL v. United States*, 308 F. Supp. 3d at 1379.
[279] *See Inland Steel*, 967 F. Supp. at 1367-1368.; *see also Certain Steel from France*, 58 FR at 37311.
[280] *See* GOC Case Brief at 24-27; *see also* GOQ Case Brief at 5-6; Rustique Case Brief at 2-6; GOC May 7th SQNR Response at GOC-ER-19-GOC-ER-20.
[281] *See* Rustique Case Brief at 3.

foregoing revenue that was otherwise due and therefore conferred no subsidy. Although the defense of the ETI measure failed, the "prevailing domestic standard / normative benchmark" approach remains well-established. Thus, under the logging tax credit programs at issue here, the "prevailing domestic standard" is a 26.9 percent total tax rate on net corporate income, including 11.9 percent at the provincial level. As a factual matter, there is not, and has never been, a provincial tax burden of 21.9 percent (11.9 percent regular plus ten percent logging) actually imposed. The normative benchmark of the tax system calls for treating corporate taxpayers and their net income equally regardless of whether they process forest products.[282]

- As a general rule the GOC and GOQ adhere to the principle that the same income cannot be taxed twice. Therefore, the GOQ provides a credit of one-third and the GOC provides a credit for two-thirds of the tax payable on logging operations. The PLTC and the FLTC operate in tandem to allow the taxpayer to only pay tax on its logging income once. Because relieving the 10 percent tax on logging income actuates the principle against double taxation, the GOQ is not foregoing revenue that is already due and is not providing a financial contribution. As a factual matter, the 10 percent logging tax is not "due" and has never been "due." The PLTC and FLTC do not provide a financial contribution because they do not result in revenue foregone or any other sort of financial contribution to the taxpayer. In the final results, Commerce should determine that there is no revenue foregone as a result of the FLTC and PLTC and, as a result, there is no benefit to taxpayers that utilize the FLTC and PLTC.[283]
- Another method of demonstrating that the FLTC provides no benefit to the softwood lumber producers at issue is by applying the offset provisions of section 771(6)(A) of the Act. Specifically, if the FLTC is a financial contribution, then the provincial logging tax effectively functions as a payment to qualify for the federal credit. Section 771(6)(A) of the Act provides that, in calculating the net countervailable subsidy against which countervailing duties may be levied, Commerce will deduct from the gross subsidy received "any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." In order to claim the FLTC, the taxpayer must first have "paid" the provincial logging tax, so that the provincial logging tax clearly acts as a payment that is similar to an application fee or deposit needed to qualify to receive the FLTC. When the logging tax is subtracted from the FLTC, there is zero net benefit.[284]

*The Petitioner's Comments*

- The PLTC and FLTC subsidy programs provide a financial contribution in the form of government revenue forgone under section 771(5)(D)(ii) of the Act. In the absence of the PLTC and FLTC subsidy programs, D&G, Fontaine, MLI, and Rustique each would have been responsible for the full amount of the Québec provincial tax on logging income during the POR, as one-third of the logging tax is rebated under the PLTC and two-thirds of the logging tax is rebated under the FLTC.[285]

[282] *Id.* at 3-5.
[283] *See* GOQ Case Brief at 7-8; Rustique Case Brief at 2-7.
[284] *See* GOC Case Brief at 28.
[285] *See* Petitioner Rebuttal Brief at 4-5, 28.

- The language of the statute indicates that such a program is revenue forgone by the GOC, as subsection 127(1) of the Canadian Income Tax Act (CITA) provides that a taxpayer "may take a tax credit (a deduction from the tax otherwise payable) for a taxation year."[286]
- As the GOC explained, when enacting this provision in the 1960s, "{i}t is estimated that this {FLTC} concession may reduce revenues by {C}$3 million net in a full year and {C}$1½ million in 1962-63."[287] Such evidence demonstrates that the PLTC and FLTC subsidy programs provided a financial contribution in the form of foregone tax revenue.[288]
- Rather than a comparison between different companies, section 771(5)(E) of the Act and 19 CFR 351.509(a) require that a calculation be based on the difference between the tax the company actually paid under the subsidy program and the tax the company would have paid absent the tax program.[289]
- In accordance with its statutory and regulatory requirements, Commerce properly calculated the benefit as the difference between the income tax a respondent actually paid during the POI using the PLTC and FLTC subsidy programs and the tax the respondent would have paid in the absence of these programs.[290]

**Commerce's Position:** The GOC, GOQ and Rustique's arguments have not led us to reconsider the preliminary finding that the FLTC and PLTC are countervailable. The GOQ has decided to apply a tax on loggers' income within the province of Québec and the GOC and GOQ have decided to apply tax credits that can be used to offset the logging income taxes paid. The GOC provides a tax credit on a company's federal income tax return equal to two-thirds of the provincial tax that the company has paid for logging on its provincial tax return and the GOQ provides a tax credit equal to the remaining one-third of the provincial tax imposed on logging income.[291]

With the credit from the federal government, the loggers are paying less tax than they otherwise would have paid, a fact to which GOC tacitly admitted when it stated that "due to differences in the provincial and federal legislation, situations could occur where the FLTC may be less than 2/3 of the logging taxes paid, resulting in the taxpayer being out of pocket for some part of the logging tax."[292] Thus, the GOC's statement demonstrates that in the absence of the FLTC subsidy program, eligible firms would be "out of pocket" for the entirety of the provincial tax on logging income. During the enactment of this provision, the GOC explained "{i}t is estimated that this {FLTC} concession may reduce revenues by {C}$3 million net in a full year and {C}$1½ million in 1962-63."[293] Thus, it is evident that the FLTC constitutes a financial

[286] *See* Petitioner Rebuttal Brief at 25 (citing Letter from the GOC to the Department, "Response of the Government of Canada and the Governments of Manitoba, Ontario, Québec, and Saskatchewan to the Department's March 27, 2017 Supplemental Questionnaire," C-122-858 (Investigation) dated April 7, 2017, at GOC-SUPP1-2 (GOC April 7 SQR)).
[287] *See* Petitioner Rebuttal Brief at 25 (citing GOC May 7th SQNR Response at Exhibit GOC-ER-CRA-FLTC-1 (Federal Budget – April 10, 1962).)
[288] *See* Petitioner Case Brief at 25.
[289] *See* Petitioner Case Brief at 26 and 30 (citing section 771(5)(E)); *see also* 19 CFR 351.509(a).
[290] *See* Petitioner Case Brief at 26.
[291] *See* GOC May 7th SQNR Response at GOC-ER-19, GOC-ER-20.
[292] *Id*. at GOC-ER-19.
[293] *See* Petitioner Case Brief at 25 (citing GOC May 7th SQNR Response at Exhibit GOC-ER-CRA-FLTC-1 (Federal Budget – April 10, 1962)).

contribution in the form of revenue foregone, within the meaning of section 771(5)(D)(ii) of the Act. We also continue to find that the PLTC is a financial contribution in the form of revenue foregone, pursuant to section 771(5)(D)(ii) of the Act, because by providing a tax credit, the GOQ refrains from collecting revenue that would otherwise be due. We continue to find that the FLTC and PLTC tax programs are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, because eligibility for both the FLTC and PLTC tax rebates are expressly limited by law to corporations that are part of the forest industry. Further, we continue to find that the FLTC and PLTC programs provide a benefit in the amount of the difference between the tax the company paid and the tax the company would have paid absent the tax credits, as provided in 19 CFR 351.509(a)(1).

The GOC, GOQ, and Rustique argue that the FLTC and PLTC subsidy programs do not confer a benefit to the companies receiving the tax credit because such programs level the playing field between taxpayers in the forest industry and other sectors of the economy.[294] We disagree with such arguments because they misinterpret the statute and Commerce's regulations regarding the calculation of a subsidy benefit. Instead of a comparison between tax rates paid by different sectors, section 771(5)(E) of the Act and 19 CFR 351.509(a) require that the benefit calculation be based on the difference between the tax the company actually paid with the subsidy program and the tax the company would have paid absent the tax program. Therefore, in accordance with the statute and regulations, Commerce calculated the benefit as the difference between the income tax a respondent actually paid during the POI using the FLTC and PLTC programs and the tax the respondent would have paid in the absence of these programs.

The GOC, GOQ, and Rustique also argue that there is no revenue foregone because Québec and Canada have a policy against double taxation, and Québec has never in fact received or expected to receive the 10 percent logging tax. However, the record is clear that corporate taxpayers in Québec involved in processing forest products are assessed an additional 10 percent on a portion of their net income related to logging income. Québec has never received the 10 percent logging tax only because both the GOC and GOQ have decided to apply tax credits that can be used to offset the logging income taxes paid. Additionally, as referenced above, the estimates during the enactment of the provision for the FLTC noted a potential reduction in revenues by {C}$3 million net in a full year at that time, and the parties have not rebutted these estimates of reduced revenue by the GOC. Thus, we find that the GOC and GOQ's expectations not to receive the 10 percent logging tax do not impugn our finding that revenue has been foregone based on the FLTC and PLTC subsidy programs.

With respect to the argument of "double taxation," both the federal government and the provincial government may levy taxes how they see fit, subject to their country's legislative initiatives. The concept of "double taxation" is not uncommon, as it currently exists in other tax regimes. The mere occurrence of double taxation and the Canadian government's decision to eliminate such taxation does not render the FLTC and PLTC not countervailable.

The GOC claims that to claim the FLTC, the taxpayer must first have "paid" the provincial logging tax, so that the provincial logging tax clearly acts as a payment that is similar to an application fee or deposit, within the meaning of section 771(6)(A) of the Act, needed to qualify

[294] *See* GOC Case Brief at 22-28; GOQ Case Brief at 5-8; Rustique Case Brief at 7.

to receive the FLTC. According to the GOC, when the logging tax is subtracted from the FLTC, pursuant to section 771(6)(A) of the Act, there is zero net benefit. Contrary to the GOC's arguments, section 771(6)(A) of the Act does not apply to the FLTC because the taxes in this case do not constitute an application fee or a deposit. Section 771(6)(A) provides that Commerce "may subtract from the gross countervailable subsidy the amount of any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." Commerce has, only in limited circumstances, provided offsets under 771(6)(A) of the Act, because the plain language of section 771(6)(A) of the Act is clearly limited to an application fee, deposit, or similar payment paid to qualify for the benefit of the countervailable subsidy. These limited circumstances can include fees paid to commercial banks for the required letters of guaranteed or necessary application processing charges for obtaining a loan.[295] Commerce does not interpret 771(6)(A) of the Act to mean we can offset taxes on which a potential subsidy benefit could be based.

The GOC argues that Commerce must consider the program in its entirety as there has been no benefit to the logging companies. Through the imposition of the provincial logging tax, and the simultaneous crediting of the total amount of that tax by the provincial and the federal governments, the GOC contends there has been no net impact on the tax liability of the logging companies. Rather, according to the GOC, the only impact is that the provincial government received an increase in revenue for two thirds of the logging taxes that have been effectively financed by the federal government. The GOC claims that this is not the situation described in the *CVD Preamble*, where Commerce explained that it will not consider the "effects" of a subsidy on a firm's behavior.[296]

We disagree with the GOC's assertion and find that it conflicts with several principles set forth in Commerce's CVD regulations. As the GOC acknowledges, Commerce does not account for the effects of the subsidy when determining whether such a subsidy is countervailable pursuant to section 771(5)(C) of the Act.[297] Furthermore, the financial arrangement between with GOC and GOQ is not a factor that we consider in our benefit analysis. Under 19 CFR 351.509(a), a direct tax benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program. As noted above, the FLTC and PLTC reduce the logging tax that the respective company would have otherwise paid. The fact that the participating company does not receive funds directly, but rather through such tax credits, does not render these tax credits not countervailable.

We further find the claim that the FLTC and PLTC are not countervailable because they do not confer a net benefit is similar to the comments that Commerce rejected in the *Lumber V Final* with respect to the accelerated depreciation (ACCA) program (*i.e.*, the argument that there is no net benefit conferred under the ACCA because the lower income, and resultant tax savings, in the year in which the respective taxpayer claimed the accelerated depreciation will be offset by

[295] *See Welded Line Pipe from Turkey*; *see also PET Film from India*.
[296] *See* GOC Case Brief at 27, citing the *CVD Preamble*, 63 FR at 65361; *see also* 19 CFR 351.503(c).
[297] *See* GOC Case Brief at 27.

increased net income (and higher tax payments) in future years).[298] The GOQ has applied an additional tax on loggers that the GOC and GOQ decided to offset, which results in a benefit to the loggers. Similar to the issue here, the *CVD Preamble* references a situation where the government imposes an additional cost to a firm (in this example an environmental regulation) and then creates a subsidy to reduce that firm's cost of compliance. The *CVD Preamble* is clear that, in this example involving an environmental regulation, there are two separate government actions and that even though the two government actions, taken together, may leave the firm with higher cost, the government action in providing a subsidy to reduce compliance cost is fully countervailable.[299] Similarly, in the issue of the logging tax credits, there are two government actions: (1) the GOQ imposes an additional tax on loggers; and (2) the GOC and GOQ provide a tax credit for the provincial tax on logging income. Thus, the government actions in providing a subsidy via the FLTC and PLTC, which reduce the company's logging tax that is otherwise due, are fully countervailable.

Commerce does not find that *Off-the-Road Tires from Sri Lanka*[300] (the determination at issue in *GOSL v. United States*) and *Inland Steel* are germane to the specific facts related to this issue. In the case of *Off-the-Road Tires from Sri Lanka*, the issue was whether the rubber purchasers received countervailable subsidies. Rubber purchasers serving as a conduit for subsidization of rubber producers could not be charged with receiving a countervailable benefit, merely because government money passed through them. In *Inland Steel*, Commerce found that government funds that the recipient was obligated to forward to a third party did not provide a countervailable benefit to the intermediary.[301] In contrast, in the instant review, the logging tax credits are not flowing through an intermediary or to a third party but are, instead, received in the form of a tax credit directly by the respective company from the government.

We also disagree with the respondents' related argument that the FLTC and PLTC confer no benefit on respondents because the programs act as a transfer of funds from the federal to the provincial government. Although respondents characterize the purpose of the FLTC and PLTC as a transfer of funds from the GOC to the GOQ, the fact remains that Québec has a law requiring corporate taxpayers in the logging industry to pay an additional 10 percent tax. The FLTC and PLTC provide a remission from the tax and therefore, it constitutes a benefit, in accordance with section 771(5)(E) of the Act and 19 CFR 351.509(a), in the amount of the difference between the tax a company actually paid under the subsidy program and the tax the company would have paid absent the tax program.

Furthermore, the record evidence for the FLTC does not demonstrate this is a direct transfer of funds from the federal to the provincial government because the GOC tax credits are applied against each individual company's tax returns.[302] Thus, this is, in fact, a transfer from the GOC to the company directly. Any arrangement that the GOC and GOQ make regarding the relative

---

[298] *See, e.g., Lumber V Final* IDM at 200-201 (citing *CVD Preamble*, 63 FR at 65375-65376, explaining that for accelerated depreciation programs Commerce will calculate ". . . the tax benefits from accelerated depreciation schemes on a year by year basis," as opposed to on a prospective basis).
[299] *See CVD Preamble*, 63 FR at 65361.
[300] *See Off-the-Road Tires from Sri Lanka*, 82 FR at 2949; *see also Off-the-Road Tires from Sri Lank Order*, 82 FR at 12556.
[301] *See Inland Steel*, 967 F. Supp. at 1367-1368.
[302] *See, e.g.*, Rustique April 12th QNR Response at Exhibit I at 13.

proportion of the logging tax to be credited by the federal and provincial governments, and the purpose of such an arrangement, is beyond the purview of what Commerce is able to consider under the Act and its regulations. The fact that the GOC assumes a greater share than the GOQ of crediting the logging tax does not change the fact that respondents received a benefit in the form of credits on taxes they would otherwise be obligated to pay.

Rustique asserts that, in deciding whether revenue that a government theoretically could collect, but, in fact, does not collect, is "otherwise due," Commerce must refer to the prevailing domestic standard and the normative benchmark of the tax system in question. According to Rustique, the "prevailing domestic standard" in Québec is a 26.9 percent total tax rate that does not include the extra 10 percent tax on logging income, because the normative benchmark of the tax system calls for treating corporate taxpayers and their net income equally regardless of whether they process forest products.[303] We disagree with this argument. As stated above, with respect to taxes, the financial contribution occurs when a government foregoes or does not collect revenue that is otherwise due. The GOQ has decided to apply a tax on loggers' income within the province of Québec. The GOC and the GOQ have, in fact, decided to forego the revenue that is otherwise due by applying tax credits and, thus, we find that the program constitutes a financial contribution that benefits the respondents under sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a).

**Comment 8:** Whether BDC Loans Are Specific and Countervailable

*The Petitioner's Comments*

- Commerce should reverse its decision in the *Preliminary Results* and find that the BDC Loans are *de facto* specific because the actual recipients of the subsidy are limited in number.[304]
- The petitioner claims that it is Commerce's practice to determine whether a subsidy is "widely used" throughout an economy by comparing the number of actual subsidy users to the number of corporations in the relevant jurisdiction.[305] However, in the *Preliminary Results*, Commerce did not follow this practice for the BDC loans.[306]
- In the investigation, the GOC reported 1,940,000 corporate Canadian tax filers for the POR.[307] A comparison of the total number of actual recipients of the BDC loans for the period April 1, 2014, through March 31, 2016, to the total number of corporations in Canada for calendar year 2015, indicates that the recipients of the BDC loans are limited in number.[308] Therefore, the loans are not "widely used" throughout the economy and must be found *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy were limited in number.[309] Furthermore, the BDC Loans constitute a financial contribution provided by an

[303] *See* Rustique Case Brief at 4-5.
[304] *See* Petitioner Case Brief at 34.
[305] *See* Petitioner Case Brief at 35-36 (citing to *SC Paper from Canada Expedited Review Final* IDM at Comments 28 and 29; and *Lumber V Final* IDM at 191.
[306] *See Preliminary Results* PDM at 38-39.
[307] *See Lumber V Preliminary* PDM at 74.
[308] *See* Petitioner Case Brief at 37 for proprietary information on the BDC loan recipients.
[309] *Id.* at 37-38.

authority – the BDC – under section 771(5)(B) of the Act, which conferred a benefit upon Industries Daveluyville and Groupe Matra during the POR.[310]

- The BDC has a history of supporting the Canadian softwood lumber industry as evidenced in the GOC's June 1, 2017, "Announced Funding to Softwood Lumber Producers," which provided for C$105 million in BDC financing.[311]
- The BDC operates six different business lines, with each focusing on a different sector with its own targeted objectives and, thus, programs administered through these lines should be evaluated for specificity on the basis of whom those lines actually serve.[312]
- The bank's special focus on high-risk new businesses and SMEs is another indication that the BDC intervenes in the market on behalf of specific industries. Therefore, Commerce should not make a blanket finding that the BDC loans are not specific.[313]
- Because the BDC Loans meet the statutory requirements for countervailable subsidies, Commerce should countervail the programs in the final results.[314]

*GOC's Comments*

- Commerce correctly determined in the *Preliminary Results* that the BDC Loans are not *de jure* or *de facto* specific.[315]
- Commerce based its preliminary finding on an examination of verified data covering all the industries that received the BDC loans in question, broken down by NAICS codes.[316] The data indicate a wide disbursement of loans across 11 broad NAICS categories that encompass the entire economy with no predominant or disproportionate use of the loans by the softwood lumber industry.[317]
- Contrary to the petitioner's claim, Commerce did consider the number of enterprises that received the BDC loans and the fact that the loans were spread across a broad cross-section of industries throughout the economy. Therefore, Commerce's finding that the loans were not *de facto* specific under section 771(5A)(D)(iii) of the Act is consistent with the statute and guidance provided in the SAA, in that the BDC loans were made available to a wide range of industries and "spread through {the} economy."[318]
- Specificity findings are case-by-case determinations taking into account all the facts and circumstances of a particular case.[319] The alleged disproportionality of a program must be based on the specific facts of a given case, rather than by mechanically applying a single method in all cases.[320]

---

[310] *Id.* at 38.
[311] *Id*. at 39-40 (citing to Commerce's Letter to the GOC, "Questions Regarding the Government of Canada's Funding," dated June 20, 2017).
[312] *See* Petitioner Case Brief at 41.
[313] *Id.* at 45.
[314] *See* Petitioner Case Brief at 38.
[315] *See* GOC Rebuttal Brief at 30.
[316] *See Preliminary Results* PDM at 38-39.
[317] *See* GOC Rebuttal Brief at 31.
[318] *Id.* (citing to SAA at 930).
[319] *See* GOC Rebuttal Brief at 32 (citing to *Royal Thai Government*, 341 F. Supp. 2d 1315, 1319, *aff'd* in part, reversed in part, and remanded, 436 F.3d 1330).
[320] *Id*. (citing to *AK Steel Corp.*, 192 F.3d 1367, 1385); and SAA at 930, which states "given the purpose of the specificity test as a screening mechanism, the weight accorded to particular factors will vary from case to case."

- The petitioner's specificity calculation, which relies on the number of corporate Canadian tax filers, is irrelevant to specificity. The calculation will result in a specificity finding any time that a loan program, such as the BDC program, has a relatively limited customer base spread throughout the country.[321]
- Commerce must reject the petitioner's arguments about the BDC's purported "repeated support for particular industries and enterprises."[322] In the investigation, Commerce did not consider the GOC's June 1, 2017, announcement because such proposed programs post-dated the POI (*i.e.*, 2015), which is also the POR of this expedited review.[323]
- Commerce must also reject the petitioner's suggestion to evaluate the specificity of the financing at issue by examining different BDC loan programs.[324] Those other BDC products are not under review and were not used by any of the expedited review companies. Commerce's regulations provide that specificity determinations are to be based "solely on the basis of the availability and use of the particular program in question," unless there has been a finding of "integral linkage" with another program. There has been no integral linkage finding in this proceeding and hence no basis to consider any other BDC Programs in making a specificity determination.[325]
- Also, contrary to the petitioner's arguments, the GOC asserts that the regulations preclude a specificity finding based on the BDC's focus on helping SMEs.[326]

*Groupe Matra's Comments*

- The petitioner's comparison of the number of BDC borrowers against the number of corporate Canadian tax filers is irrelevant as many taxpayers do not borrow or have reason to borrow.[327]
- If Commerce were to follow the petitioner's suggestion and consider other BDC loan programs, distinct from the loans[328] under investigation and not used by the respondents, then Commerce would be abrogating its regulations at 19 CFR 351.502(c).

**Commerce's Position:** The petitioner's arguments do not lead us to reconsider our preliminary finding that the BDC loan program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Specificity findings are case specific and based on the record evidence of each proceeding. As discussed in the *Preliminary Results*,[329] we conducted a specificity analysis of the verified BDC loan data, which consisted of "number of new loans," "number of clients with new loans," and "value of new loans," for the softwood lumber industry and non-softwood lumber industries for fiscal years 2001 through 2015.[330] The data indicate that the loan program is not limited to

[321] *See* GOC Rebuttal Brief at 32.
[322] *See* Petitioner Case Brief at 40.
[323] *See* GOC Rebuttal Brief at 32-33.
[324] *See* Petitioner Case Brief at 41.
[325] *See* GOC Rebuttal Brief at 33 (citing to 19 CFR 351.502(c)).
[326] *See* GOC Rebuttal Brief at 33 (citing to 19 CFR 351.502(e), where "The Secretary will not regard a subsidy as being specific … solely because the subsidy is limited to small or small- and medium-sized firms.").
[327] *See* Groupe Matra Rebuttal Brief at 2.
[328] *Id*. at 3.
[329] *See Preliminary Results* PDM at 38-39.
[330] *See* GOC September 4th SQNR Response at Exhibit GOC-ER-SUPP4-BDC-11; and GOC October 5th SQNR Response at Exhibit GOC-ER-SUPP6-BDC-1.

an enterprise or an industry, and that the softwood lumber industry is not the predominant user of the BDC's loan program, nor did it receive a disproportionately large amount of the financing provided by the BDC.[331]

Furthermore, under 19 CFR 351.502(e), Commerce will not regard a subsidy as specific under section 771(5A)(D) of the Act solely because the subsidy is limited to SMEs. Evidence on the record indicates that the BDC's focus is providing assistance to SMEs. The GOC reported that 99 percent of the BDC's loan users are SMEs that generally have fewer than 100 employees.[332] In addition, the *BDC Act* states that, in carrying out its activities, the BDC "must give particular consideration to the needs of small and medium-sized enterprises."[333] Within its 2015 Annual Report, the BDC explains that it plays an important role in helping Canadian SMEs "to become more competitive, innovate, increase their efficiency and explore new markets, at home and abroad. As a complementary long-term lender and investor that takes higher risks and offers greater flexibility, BDC works to ensure that SMEs have the opportunity to grow and succeed."[334] However, the fact that the BDC loan program targets SMEs, which constitute the majority of loan recipients, does not establish specificity under Commerce's regulations, which specifically state at 19 CFR 351.502(e) that Commerce "will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to small firms."

On the basis of the above facts, we find the BDC loan program not to be *de facto* specific under section 771(5A)(D)(iii) of the Act. Because the BDC loans are not *de jure* or *de facto* specific under section 771(5A) of the Act, we determine that the BDC loan program is not countervailable.

**Comment 9:** Whether Commerce Correctly Determined Specificity for Various Tax and Employment Programs

*GOQ's Comments*

- Noting that the statute and its legislative history do not specify how Commerce must determine that the recipients of the subsidy are limited in number, the GOQ refers Commerce to *AK Steel* and *Bethlehem Steel*.[335] Citing to *Bethlehem Steel I*, the GOQ states that a *de facto* specificity analysis is not just an analysis of whether less than all the companies in the province used the program.[336]
- Rather, when deciding whether a program is limited in number, Commerce must look to whether: (1) benefits were limited to a few companies or industries, or many companies in a wide range of industries participated; (2) any industry or company received a predominant or disproportionate amount in the context of the business that the company is involved in; and (3)

[331] The loan data are business proprietary information. *See* GOC September 4th SQNR Response at Exhibit GOC-ER-SUPP4-BDC-11; and GOC October 5th SQNR Response at Exhibit GOC-ER-SUPP6-BDC-1.
[332] *See* GOC September 4th SQNR Response at 5.
[333] *Id*. at Exhibit GOC-ER-SUPP4-BDC-1 (at "Purpose" para. 4(2)).
[334] *Id*. at Exhibit GOC-ER-SUPP4-BDC-2 (at "Activities" page 17).
[335] *See* GOQ Case Brief at 9-12 (citing to *AK Steel Corp.*, 192 F.3d 1367, 1385); *see also Bethlehem Steel*, 140 F. Supp. 2d 1354, 1367-1369.
[336] *See* GOQ Case Brief at 12.

in the case of discounts given pursuant to a standard mechanism, whether any industry is afforded favorable treatment.[337]

- Though Commerce preliminarily found the actual recipients of the various programs to be "limited in number," its *de facto* specificity determinations did not explain why the programs are considered to be limited given record evidence on the variety of companies and industries that participate in the programs.[338]
- The GOC thus claims that it has been denied an opportunity to provide meaningful comments on Commerce's decision with regard to the FDRCMO, Immigrant Investor Program, and Tax Credit for On-the-Job Training Period.[339]

*The Petitioner's Comments*

- Commerce properly determined that the three subsidy programs are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act.[340]
- The GOQ does not contest Commerce's findings with an assertion that any of the programs had a large number of recipients.[341] Rather, the GOQ relies on a misunderstanding of *Bethlehem Steel* to insist that the relevant inquiry is whether "benefits were limited to a few companies or industries, or {whether} many companies in a wide range of industries participated."[342]
- Notwithstanding that the statute requires no such inquiry, Commerce should find that *Bethlehem Steel* is not germane to its evaluation of the programs at issue here because: (1) the analysis that Commerce undertook 20 years ago is not binding on its analysis today; and (2) Commerce need not analyze these programs in the same way that it analyzes electricity programs.[343]
- Also, the petitioner argues that the GOQ misreads *Bethlehem Steel* by claiming that it stands for the proposition that "the *de facto* specificity analysis is not just an analysis of whether less than all of the companies in the province used the program."[344] The petitioner asserts that an absolute standard was not at issue in the Court's discussion of Commerce's "limited user" analysis,[345] and Commerce did not apply an absolute standard here.[346]
- Consistent with the *Preliminary Results*, Commerce should continue to evaluate whether the number of actual recipients of each program at issue was limited when compared to the number of companies operating in Québec for the final results.[347]
- Further, Commerce need not analyze whether any of the subsidy programs evinced predominant or disproportionate use by the sawmill or wood products industry when a limited number of recipients establishes specificity.[348]

---

[337] *Id.*
[338] *Id.*
[339] *Id.* at 13.
[340] *See* Petitioner Rebuttal Brief at 16.
[341] *Id*. at 20.
[342] *Id*.
[343] *Id.* at 21.
[344] *Id*. at 22.
[345] *See Bethlehem Steel*, 140 F. Supp. 2 at 1368-69.
[346] *See* Petitioner Rebuttal Brief at 22.
[347] *Id.*
[348] *Id.* (citing SAA at 931; and section 771(5A)(D)(iii) of the Act).

- Lastly, Commerce's preliminary findings included citations to the record which were clear and those citations included the actual figures at issue – and are the exact same evidence and figures that the GOQ discusses in its brief. It is therefore unclear what opportunities for comment were denied.[349]

**Commerce' Position:** We do not find *AK Steel* and *Bethlehem Steel* to be relevant to the specificity analysis conducted for the tax and employment programs which led Commerce to preliminarily find each program to be specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number.

In this review, Commerce, as required by the statute and as directed by the SAA, examined information on the record and used a reasonable methodology for analyzing whether the tax and employment programs are specific. When a program is not specific on a *de jure* basis, the statute requires Commerce to determine whether the program is specific under section 771(5A)(D)(iii) of the Act whereby Commerce must analyze the distribution of benefits among actual users to determine whether the benefits are provided on a *de facto* specific basis. Section 771(5A)(D)(iii)(I)-(IV) of the Act provides that "{w}here there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist:

> **(I)** The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
> **(II)** An enterprise or industry is a predominant user of the subsidy.
> **(III)** An enterprise or industry receives a disproportionately large amount of the subsidy.
> **(IV)** The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others."

The SAA makes clear that when Commerce applies this test, "the weight accorded to particular factors will vary from case to case."[350] Commerce's regulations also provide that in *de facto* specificity analyses, Commerce "will examine the factors contained in {section 771(5A)(D)(iii)} of the Act sequentially in order of their appearance. If a single factor warrants a finding of specificity, {Commerce} will not undertake further analysis."[351] Furthermore, "in determining whether the number of industries using a subsidy is small or large, Commerce could take account of the number of industries in the economy in question."[352]

In conducting our analysis of whether the programs at issue are *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act, we followed the specificity test as set forth within the SAA. The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out

[349] *See* Petitioner Rebuttal Brief at 23.
[350] *See* SAA at 931.
[351] *See* 19 CFR § 351.502(a).
[352] *See* SAA at 931.

only those foreign subsidies which truly are broadly available and widely used throughout an economy."[353] 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."[354] Therefore, in light of the SAA, the specificity provision is intended to capture those subsidies that are not broadly available and widely used throughout an economy. In that regard, based on the GOQ's questionnaire responses, we examined whether the benefits of each program are limited in number on an enterprise or industry basis, which the GOQ agrees is the first consideration when determining whether a program is *de facto* specific.[355]

As discussed further below, we find that the record demonstrates that there were a limited number of users for the Workforce Skills Development and Recognition Fund, Immigrant Investor Program, and Tax Credit for On-the-Job Training Period. *See* Comment 10, 11, and 12, respectively. Because Commerce made a finding that the actual recipients of the subsidies were limited in number according to the first factor in the *de facto* specificity test under the Act,[356] Commerce was not obligated to further examine other factors under the Act, including whether a particular industry is a predominant user of the subsidy or receives a disproportionately large amount of the subsidy.[357]

Therefore, we find that *AK Steel* and *Bethlehem Steel* are not applicable to our analysis of the tax and employment programs at issue in this investigation. In *AK Steel*, the CAFC affirmed Commerce's specificity analysis in light of facts and circumstances of that particular case and explained that "*(d)eterminations of disproportionality and dominant use* are not subject to rigid rules, but rather must be determined on a case-by-case basis taking into account all the facts and circumstances of a particular case."[358] We note that in *CTL Plate from Korea 1999* (litigated in *Bethlehem Steel*), Commerce based its negative *de facto* specificity determination, with regard to an electricity discount program, on an analysis of *disproportionate* and *predominant use*.[359] Therefore, we find that *AK Steel* and *Bethlehem Steel*, which addressed disproportionality and dominant use, are not applicable to our analysis of the tax and employment programs, where we found that the actual recipients are limited in number, in accordance with section 771(5A)(D)(iii)(I) of the Act.

**Comment 10:** Whether the Workforce Skills Development and Recognition Fund (aka, FDRCMO) Is *De Facto* Specific

*GOQ's Comments*

- Based on usage data from the GOC, Commerce preliminarily found that this program is *de facto* specific because a limited number of companies received grants under the program,

[353] *See* SAA at 911 and 929.
[354] *See* SAA at 930.
[355] *See* GOQ Case Brief at 12.
[356] *See* section 771(5A)(D)(iii)(I).
[357] *See* section 771(5A)(D)(iii)(II)-(III).
[358] *See AK Steel*, 192 F.3d at 1385 {emphasis added}.
[359] *See CTL Plate from Korea 1999*, 64 FR at 73186 and 73192-93{emphasis added}.

relying on 2015 tax filing data for corporations and individuals in business within Québec.[360]

- The GOQ argues that a determination that a program is limited in number because less than all of the taxpayers in the province used the program is not consistent with the statute or judicial interpretations of the statute.[361]
- Despite the fact that the GOQ provided the monetary amounts approved under FDRCMO to different industries from FY 2004 to FY 2017,[362] and provided specific amounts received by the sawmills and wood preservation sector, Commerce did not consider whether numerous companies in different industries received benefits or whether the softwood lumber industry received a predominant or disproportionate share of the benefits.[363]
- The GOQ's inability to provide the exact number of companies that received assistance under the program does not relieve Commerce of its obligation to analyze whether a limited number of companies or enterprises received grants under the program based on the available evidence.[364]
- Commerce should reconsider the record information and find that Workforce Skills Development and Recognition Fund is not *de facto* specific.

*Interested parties did not submit rebuttal comments*.[365]

**Commerce's Position:** Contrary to the GOQ's arguments, we did not ignore the evidence that it submitted on the record for this program when conducting our specificity analysis. As required by the statute and directed by the SAA, we examined the record and used a reasonable methodology for analyzing whether this grant program is specific.[366] Because the GOQ was unable to provide the exact number of companies approved for assistance under the program, we relied on the data the GOQ was able to provide based on its record keeping, *i.e.*, the number of projects approved under the FDRCMO for each fiscal year.[367]

The GOQ stated that the purpose of the assistance is to support the development of workforce skills, targeting basic training and literacy to raise skill levels and the improvement of competitivity of *businesses*.[368] Given the nature of this provincial program and the usage data submitted, it is reasonable to compare the number of FDRCMO projects approved to the total number of tax filers, inclusive of corporations and individuals in business, within Québec for 2015, to determine whether the recipients of assistance was limited in number.[369] Though there

[360] *See* GOQ Case Brief at 13.
[361] *Id*. at 13-14.
[362] *See* GOQ May 7th SQNR Response at Exhibit QC-FDRCMO-7.
[363] *See* GOQ Case Brief at 14.
[364] *Id*.
[365] The petitioner provided general rebuttal comments on this topic as summarized under Comment 9 "Whether Commerce Correctly Determined Specificity for Various Tax and Employment Programs."
[366] *See Preliminary Results* PDM at 21-22 and footnote 121, where we identified the source documentation, *i.e.*, GOQ May 18th SQNR Response at Exhibit QC-FDRCMO-7; and GOQ August 17th SQNR Response at 1.
[367] *See* GOQ May 7th SQNR Response at GRANT-56-57, and Exhibit QC-FDRCMO-7.
[368] *Id*. at GRANT-45 and GRANT-52 {emphasis added}.
[369] The GOQ reported that in 2015, 442,933 corporate tax filers and 652,619 individuals in business filed a tax return in Québec. *See* GOQ August 17th SQNR Response at 1. The total number of projects approved under the program by fiscal year is proprietary information. *See* GOQ May 7th SQNR Response at Exhibit QC-FDRCMO-7.

may have been more than one company involved in each project,[370] the data indicate that a small number of companies received grants under the program.[371] Therefore, consistent with the *Preliminary Results*, we continue to find that the number of recipients of assistance under the FDRCMO was limited in number under section 771(5A)(D)(iii)(I) of the Act.[372] As explicitly stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those subsidies that are truly broadly available and widely used throughout an economy. Because the record reflects that FDRMCO is not widely used throughout the provincial economy, the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

**Comment 11:** Whether the Immigrant Investor Program Is *De Facto* Specific

*GOQ's Comments*

- Commerce preliminarily found this program to be *de facto* specific because "there were a limited number of companies, on an enterprise basis that received grants under the Immigrant Investor program."[373]
- Commerce relied on charts submitted by the GOQ that provided data on the grants given to the different industries of the Québec for each fiscal year from April 1, 2011, to March 31, 2016, and in the aggregate for the period April 1, 2011, to March 31, 2016.[374]
- The information demonstrates the Immigrant Investor program was, and is, widely used across different industries and is not specific to any industry or group of industries. Especially not the softwood lumber industry. Therefore, the Department should determine that the Immigrant Investor program is not *de facto* specific for the final results.

*Interested parties did not submit rebuttal comments*.[375]

**Commerce's Position:** The GOQ asserts that the Immigrant Investor program was spread among a diverse base of users and, thus, not *de facto* specific. We disagree that the diversity or variety of users is relevant to our specificity analysis under section 775 (5A)(D)(iii)(I) of the Act.

The SAA states with respect to the analysis of specificity: "{t}he Administration intends to apply the specificity test in light of its original purpose, which 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."[376] Therefore, in light of the SAA, the specificity provision in section 771(5A)(D)(iii)(I) of the Act is intended to capture those subsidies that are not broadly available and widely used throughout an economy. Section 775(5A)(D)(iii) and sub-section (I) of the Act explicitly state that "{w}here there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of

[370] *See* GOQ May 7th SQNR Response at GRANT-56.
[371] *Id*. at Exhibit QC-FDRCMO-7; and GOQ August 17th SQNR Response at 1.
[372] *See Preliminary Results* PDM at 21-22.
[373] *See Preliminary Results* PDM at 23.
[374] *See* GOQ Case Brief at 15.
[375] The petitioner provided general rebuttal comments on this topic as summarized under Comment 9 "Whether Commerce Correctly Determined Specificity for Various Tax and Employment Programs."
[376] *See SAA* at 929. The *SAA* "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act…." 19 USC 3512(d).

the following factors exist: The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." Commerce looks at whether a program is provided to a limited number of companies on a case by case basis.[377]

In this expedited review, the data indicate that a small number of companies received grants under this program.[378] Therefore, consistent with the *Preliminary Results*, we continue to find that the number of recipients of assistance under the Immigrant Investor program was limited in number,[379] and therefore is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

**Comment 12:** Whether the Tax Credit for On-the-Job Training Period Is *De Facto* Specific

*GOQ's Comments*

- Commerce preliminarily found this program to be *de facto* specific because the recipients of the tax credit are limited in number on an enterprise basis when compared to the total number of corporate and individual business tax filers in Québec. The GOQ argues that Commerce applied an incorrect test and ignored the record evidence.
- The GOQ asserts that it provided information on the number of companies and the amount of credits that were disbursed to different sectors of the Québec economy from calendar year 2012 to 2015, which indicate that a large number of companies received credits across nine economic sector groupings representing dozens of industries.[380]

*Interested parties did not submit rebuttal comments*.[381]

**Commerce's Position:** The GOQ reported that the purpose of this tax credit is to encourage businesses and individuals in business throughout Québec to take on trainees and improve the professional skills of young workers.[382] The GOQ also reported the total number of companies that claimed the tax credit in 2015.[383] Given the nature of this tax program, it is reasonable to compare the actual number of companies that received the tax credit in 2015, to the total number of tax filers, inclusive of corporations and individuals in business, within Québec for 2015, to determine whether the program is limited in number.

Contrary to the GOQ's arguments, we did not ignore the evidence it submitted on the record (*i.e.*, Exhibit QC-SUPP2-C09-17, which contained information on the GOQ's disbursements under the program between 2012 and 2015). In fact, we relied on that program usage data to conduct

[377] *See AK Steel Corp. v. United States*, 192 F.3d 1367, 1384 (CAFC 1999).
[378] *See* GOQ October 11th SQNR Response at Exhibit QC-SUPP7-IMIN-1. *See also* GOQ Verification Report at page 7 of Exhibit VE-3. Information is business proprietary.
[379] *See Preliminary Results* PDM at 22-24.
[380] *See* GOQ May 18th SQNR Response at Exhibit QC-SUPP2-C09-17.
[381] The petitioner provided general rebuttal comments on this topic as summarized under Comment 9 "Whether Commerce Correctly Determined Specificity for Various Tax and Employment Programs."
[382] *Id*. at 36 and 42 {emphasis added}.
[383] *Id*. at Exhibit QC-SUPP2-C09-17.

our specificity analysis in the *Preliminary Results*.[384] The figures, reported by the GOQ, indicate that the actual number of recipients who benefited from the tax credit during the POR relative to the total number of tax filers during the POR, are limited in number on an enterprise basis.[385] Therefore, for these final results, we continue to find the Tax Credit for On-the-Job Training Period to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

**Comment 13:** Whether the Tax Credit for Investments Relating to Manufacturing and Processing Equipment Is *De Jure* Specific

*GOQ's Comments*

- Commerce's preliminary finding that this tax credit is *de jure* specific is incorrect because it mistakes the objective activity criteria of the program as targeting specific industries or companies.
- Manufacturing and processing equipment, which is not an industry or group of industries, is purchased and used by companies in a wide variety of industries and, therefore, this credit is neither *de jure* nor *de facto* specific.
- This tax credit is granted for the capital cost of qualified equipment, including equipment falling in classes 29, 43, 50, or 53. As such, the specific equipment classes encompass a wide variety of equipment used in many industries and, therefore, the tax credit is not limited to certain industries that can use the qualified equipment.
- Record evidence indicates that the tax credit is neither limited to any industry of group of industries nor does one industry, account for a predominant or disproportionate share of credits under the program.[386]

*The Petitioner's Comments*

- In the *Lumber V Final*, when discussing similar programs, Commerce explained that the governing laws "exclude{d} certain enterprises or industries from the definition of manufacturing or processing," which meant that those "enterprises or industries {were} ineligible for the tax credit programs under investigation."[387] The facts are identical with regard to this tax credit and, therefore, justifies a finding of *de jure* specificity.
- The petitioner notes that CITA explicitly excludes from eligibility aluminum producing and oil refining corporations, and "qualified property" does not include assets used in operating an ethanol or cellulosic ethanol plant.
- Although the credit applies to assets falling under multiple tax classes, the CITR explicitly excludes the same list of industries that are excluded by other programs such as the ACCA.
- Commerce has previously explained that such eligibility qualifications "limit access to the tax credits by excluding the enterprises or industries engaged in the activities identified in {the law}."[388] Commerce should continue to find that this tax credit is d*e jure* specific and need not address the GOQ's *de facto* arguments.

---

[384] *See Preliminary Results* PDM at 30 and footnote 165, where we identified the source documentation, *i.e.*, GOQ May 18th SQNR Response at QC-SUPP2-C09-17; and GOQ August 17th SQNR Response at 1.
[385] *See* GOQ May 18th SQNR Response at Exhibit QC-SUPP2-C09-17; and GOQ August 17th SQNR Response at 1.
[386] *See* GOQ May 7th SQNR Response at Exhibit QC-RQ-C85-23, Exhibit QC-RQ-C85-25, and QC-RQ-5.
[387] *See Lumber V Final* IDM at 220.
[388] *Id*.

**Commerce's Position:** We disagree with the GOQ, and continue to find, as we did in the *Preliminary Results*,[389] that this program is *de jure* specific, within the meaning of section 771(5A)(D)(i) of the Act because recipients are limited, by law, to companies which purchase qualified "manufacturing or processing" equipment. As described in the *Preliminary Results*, the GOQ provides a tax credit for investment in manufacturing or processing equipment.[390] According to the GOQ, this credit was implemented in order to stimulate investments in such equipment and to support certain regions with struggling economies.[391] To qualify for the tax credit,[392] the purchased 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.[393]

Contrary to the GOQ's argument, it is irrelevant that the credit is granted for the cost of qualified equipment that fall under multiple classes of property. The CITR defines manufacturing and processing, and explicitly excludes certain enterprises or industries from the definition.[394] We find this program akin to the ACCA for Class 29 Assets program (*see* Comment 6) and therefore have adopted that same reasoning herein. Additionally, 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.[395] 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."[396] Therefore, consistent with Commerce's prior determination with regard to this program,[397] we continue to find this tax credit to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

In light of the above, we need not consider the GOC's arguments pertaining to *de facto* specificity.

**Comment 14:** Whether the SR&ED Tax Measure Is *De Facto* Specific

*GOC's Comments*

- Commerce violated a fundamental principle of administrative law when it found the SR&ED program countervailable because Commerce did not provide a reasoned explanation as to why it departed from its precedent[398] and did not explain why the same measure was not specific in

[389] *See Preliminary Results* PDM at 28-29.
[390] *Id*.
[391] *See* GOQ May 7th SQNR Response at QC-49.
[392] The basic rate of the tax credit for investment is four percent. *Id*.
[393] *Id*.
[394] *Id.* at Exhibit QC-RQ-C85-3 (paragraph 130R12).
[395] *See* SAA at 930.
[396] *Id*.
[397] *See Uncoated Groundwood Paper from Canada Final* IDM at Comment 62.
[398] *See* GOC Case Brief at 17-19 (citing *e.g.*, *Compressors from Singapore*, 61 FR at 10316, and *Cold-Rolled Steel from Russia* IDM at 20-21.)

the past, but is specific in this review.[399] In the *Lumber V Final*, Commerce simply dismissed its previous practice on the grounds that its prior practice pre-dated the URAA. However, language in the SAA states that the URAA's changes to the statute did not require a change to Commerce's practice.[400]

- Commerce's comparison of the actual number of users to the total corporate tax filers is an unlawful method of analyzing *de facto* specificity.[401] Commerce should have examined the number of enterprises using a program, considering all relevant circumstances, including the representativeness of the industries represented by the users in the economy. If Commerce had undertaken this analysis, then it would not have found the program to be *de facto* specific.[402] Alternatively, in prior cases where Commerce has found a limited number of users under a given subsidy program to be *de facto* specific, the number of users has been smaller than those using the SR&ED program during the POR.[403]
- Commerce's approach of comparing the number of users of a tax program to the total number of corporations filing tax returns during the relevant period is inconsistent with the Act.[404] Commerce has replaced the required inquiry, under section 771(5A)(D)(iii)(I) of the Act, into the number of eligible enterprises using a program with an analysis of the percentage of eligible enterprises using a program.[405] The analysis that Commerce used in this review was rejected in *Carlisle Tire* where the CIT held that it would be absurd to countervail government programs that are available to all industries and sectors.[406] Alternatively, if Commerce continues to evaluate the percentage rather than the number of users of the program, then Commerce must take into account all of the facts and circumstances of the program when determining the numerator and denominator of the calculation.[407] Not all corporations would be expected to make research and development expenditures each year, or at all, and Commerce should use a numerator and denominator that takes these circumstances into account.[408]

*The Petitioner's Comments*

- Commerce should not readdress comments on findings made in the *Lumber V Final*.[409]
- Commerce has previously considered and rejected each of the arguments raised by the GOC in its case brief.[410]

---

[399] *See* GOC Case Brief at 16 (citing *OCTG from Canada*, 51 FR at 15038, and the *Lumber II Prelim*, 51 FR at 37458).
[400] *Id.*
[401] *Id.* at 17.
[402] *Id.*at 17-18 (citing *e.g.*, *Royal Thai Government*, 341 F. Supp. 2d at 1319, *Bethlehem Steel Corp.*, 140 F. Supp. 2d at 1368-1370, and *AK Steel Corp.*, 192 F.3d at 1383-1385).
[403] *Id.* at 18-19 (citing *e.g.*, *Compressors from Singapore*, 61 FR at 10316, and *Cold-Rolled Steel from Russia* IDM at 20-21).
[404] *Id.* at 20.
[405] *Id.*
[406] *Id.* at 21 (citing *Carlisle Tire*, 564 F. Supp. at 838).
[407] *Id.*
[408] *Id.* at 22.
[409] *See* Petitioner Case Brief at 11-13.
[410] *Id.*

**Commerce's Position:** In the *Preliminary Determination*, Commerce found that the SR&ED Tax Credit was *de facto* specific because the number of actual recipients, relative to the total number of corporate tax filers, is limited on an enterprise basis in accordance with section 771(5A)(D)(iii)(I) of the Act.[411] We based this determination on our finding in the *Lumber V Final* and that parties had not provided any new evidence regarding this program as part of this review.[412]

As Commerce explained in the *Lumber V Final*,[413] the SAA states that 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.[414] 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."[415] The SAA also states that, in determining whether the number of industries or enterprises using a subsidy is large or small, Commerce can take into account the number of industries or enterprises in the economy in question.[416] 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.[417] Thus, we have followed the instructions of the SAA and our practice in determining whether this program is *de facto* specific, and we continue to disagree with the GOC's argument that we were required to analyze only the absolute number of users under section 771(5A)(D)(iii)(I) of the Act.

Furthermore, section 771(5A)(D)(iii)(I) of the Act, which provides the first factor in the *de facto* specificity test under the statute, does not require Commerce to examine whether the governments took actions to limit the number of recipients of the federal or provincial tax credits. We also note that if a single factor warrants a finding of specificity, {Commerce} will not undertake further analysis."[418] Because we made a specificity finding under section 771(5A)(D)(iii)(I) of the Act, the first factor in the *de facto* specificity test under the Act, we were not obligated to examine other factors under the Act, or to consider government actions in limiting the actual number of recipients of the federal and provincial tax credit programs.

Commerce considered whether the recipients were limited in number on an industry or enterprise basis. The number of enterprises (*i.e.*, companies) that received the federal tax credit is limited to 19,490 enterprises out of about 1,940,000, or about 1 percent of the potential corporate tax filers.[419] The GOC has argued that the fact that the number of users that received this tax credit is limited reflects only that these companies conducted eligible research, not that the Canadian

---

[411] *See Preliminary Results* PDM at 26.
[412] *Id.*
[413] *See Lumber V Final* IDM at 190.
[414] *See* SAA at 930 (referencing *Carlisle Tire*, 564 F. Supp. 834 (CIT 1983)).
[415] *Id.*
[416] *Id.* at 931.
[417] *See Cold-Rolled Steel from Korea* IDM at Comment 13.
[418] *See* 19 C.F.R. 351.502(a).
[419] *See Lumber V Final* IDM at 190; *see also* GOC Case Brief at 16,17, and 19; Petitioner Case Brief at 36;

Revenue Agency limited the recipients.[420] We continue to reject this argument because section 771(5A)(D)(iii)(I) of the Act does not require the administering authority to actively limit the program, but instead states that a program is specific if the "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."

The GOC argues that Commerce is ignoring its previous findings, over thirty years ago, in *OCTG from Canada* and *Lumber II Prelim* that this program is not specific, departs from prior precedent,[421] and that Commerce failed to provide a reasoned explanation of why the program is "suddenly specific now."[422] We have not ignored those prior determinations, nor has Commerce simply "dismissed" determinations made in cases prior to the URAA.

In *OCTG from Canada*, Commerce stated the following as it regards investment tax credits or ITCs provided under the SR&ED program:

> We determine that 20 and 35 percent scientific research ITCs, whether sold or used by the company performing the research, do not confer domestic subsidies because they are not limited to a specific enterprise or industry, or group of enterprises or industries, or to companies in specific regions.[423]

Commerce conducted a similar analysis in *Lumber II Prelim*:

> Because research and development ITCs are not limited to a specific enterprise or industry or group of enterprises or industries, or to companies within specific regions, we preliminarily determine them to be not countervailable.[424]

The GOC argues that 19,490 users of this program is "large" and that the users represent "every sector in the Canadian economy."[425] In essence, the GOC argues that Commerce was wrong in comparing the number of users of the program with the total number of tax return filers instead of comparing the number of users of the program with only those companies that conduct research and development (and therefore hypothetically could have benefited from the program). The GOC seems to suggest that the users would seem less "limited" when viewed through the lens of potential users only.

However, as we've explained, Commerce looks at the economy as a whole in determining whether or not the number of industries or enterprises receiving a subsidy is, in fact, limited.[426] Commerce's analysis in this expedited review, as well as its analysis in the underlying

---

[420] *See* GOC Case Brief at 21-22.
[421] *See* GOC Case Brief at 17-19 (citing e.g., *Compressors from Singapore*, 61 FR at 10316 and *Cold-Rolled Steel from Russia* IDM at 20-21.)
[422] *See* GOC Case Brief at 16.
[423] *See OCTG from Canada*, 51 FR at 15038-15039.
[424] *See Lumber II*, 51 FR at 37453.
[425] *See* GOC Case Brief at 17.
[426] *See* SAA at 930.

investigation, was therefore fully consistent with Commerce's current practice, regulations, and the language of the SAA accompanying the change in the law as part of the URAA.

Commerce issued *OCTG from Canada* and the *Lumber II Prelim*[427] prior to a significant change to the countervailing duty law, *i.e.*, they predate the URAA and the statutory provisions applicable to this determination. Nonetheless, the GOC makes the proposition that Commerce has wrongfully applied the relevant provisions under the Act because the Act was only supposed to memorialize Commerce's practice 30 years ago, and when Commerce applied that practice 30 years ago, it concluded that this program was not specific. Such a claim presumes much, including that Congress did not intend to alter the countervailing duty law in enacting the URAA. Although the SAA states that "the substance of the specificity test in section 771(5A) generally reflects existing law and practice," it also states that "some provisions of the countervailing duty law were altered by the URAA amendments."[428] Further, as the CIT has held, it is not always appropriate to rely on law that predates that URAA in looking for support for a specificity analysis.[429] Finally, again, the SAA makes clear that Commerce considers the economy as a whole in determining if the number of users of a subsidy are limited, no matter Commerce's analysis and conclusions before the passage of the URAA.

In addition, we disagree with the GOC that our specificity analysis for this program is inconsistent with more recent, prior Commerce practice. We've addressed the GOC's arguments with respect to *Bethlehem Steel Corp.* and *AK Steel Corp*, above in Comment 9, and with respect to *Royal Thai Government*, Commerce addressed the unique and distinguishing facts of that case in the *Lumber V Final Determination*.[430] The GOC has made no additional arguments in this case from that in the underlying investigation to have us reconsider our analysis of the facts of *Royal Thai Government* and this program.[431] Because the facts of every subsidy and case are different, the CAFC has acknowledged that Commerce is afforded significant latitude and not subject to rigid rules when determining if a particular program is specific under section 771(5A) of the Act.[432]

The GOC additionally cites to four cases in which Commerce found *de facto* specificity to argue that Commerce's precedent for finding *de facto* specificity based on a limited number of enterprises or industries has involved much smaller numbers than in the instant proceeding:

---

[427] We note that the petition was withdrawn prior to Commerce issuing a final determination and, thus, the findings from the *Lumber II Prelim* do not constitute final decisions by Commerce. *See also* GOC Case Brief at 16 (indicating that the petition was withdrawn prior to Commerce issuing a final determination); *accord Shandong Dongfang Bayley Wood v. United States*, 236 F. Supp. 3d 1346, 1351 (CIT 2017) ("Commerce does not make a 'final decision' in a preliminary determination; it makes a *preliminary* determination.").

[428] *See* SAA at 929.

[429] *See Changzhou Trina Solar Energy Co., v. United States*, 195 F. Supp. 3d 1334, fn. 20 (CIT 2016) (explaining that respondent improperly relied on case law that predated the URAA to "further develop the current statutory and regulatory notion of specificity.").

[430] *See Lumber V IDM* at Comment 64.

[431] *Id*.

[432] *See Royal Thai Government*, 341 F. Supp. 2d at 1335-1336 (citing *AK Steel*, 192 F.3d at 1385); *see also Bethlehem Steel Corp.*, 140 F. Supp. 2d at 1368 ("Commerce on a case-by-case basis *sequentially* analyze each of the four factors listed in {section 771(5A)(D)(iii)}.").

*Citric Acid from China*,[433] *OCTG from Turkey*,[434] *Cold-Rolled Steel from Russia*,[435] and *Compressors from Singapore*.[436] As noted above, the CAFC has stated, Commerce is afforded latitude and not subject to rigid rules when determining specificity.[437] Most importantly, however, as detailed above, Commerce conducts its *de facto* specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis. As the CAFC stated, and as acknowledged by the GOC,[438] specificity "must be determined on a case-by-case basis taking into account all facts and circumstances of a particular case."[439] Because the facts of *Citric Acid from China, OCTG from Turkey, Cold-Rolled Steel from Russia,* and *Compressors from Singapore* were specific to those particular proceedings, Commerce's determinations in those cases are not applicable to this review and do not dictate a particular finding in this review.

Commerce properly determined on the record of this case that the recipients of the SR&ED credit in Canada were limited in number and that the program was therefore d*e facto* specific, in accordance with the Act, regulations and the SAA. As Commerce has explained above, and has explained in at least two other investigations,[440] this program is specific because the number of users was limited.

**Comment 15:** Whether Matra and Sechoirs Should Be Treated Separately

*Groupe Matra's Comments*

- Matra and Sechoirs are separate companies with separate, long histories. They have separate physical locations, separate accounting systems, separate work forces, and separate customer bases. They pay taxes separately and face the market separately. They applied for expedited reviews separately, and Commerce initiated their expedited reviews separately.[441]
- That these two firms have common shareholders does not make them a single enterprise. Exchanging some goods and services for fair market value does not make them a single enterprise. Accessing loan capital together links them to a greater extent than these other factors but does not make them a single enterprise. Their books and records (and accounting systems) remain separate, as Commerce's verifiers experienced first-hand.[442]
- With respect to 19 CFR 351.525(b)(6)(vi), neither of these corporations "can use or direct the individual assets of the other … in essentially the same ways it can use its own assets." Even if having common shareholders "normally" creates such a situation, it has not done so here.

---

[433] *See Citric Acid from China* IDM at 18.
[434] *See OCTG from Turkey* (affirmed in *Borusan*, Supp. 61 F.3d at 1342-1343).
[435] *See Cold-Rolled Steel from Russia* IDM at 117.
[436] *See Compressors from Singapore*, 61 FR at 10316.
[437] *See Royal Thai Government*, 341 F. Supp. 2d at 1335-1336 (citing *AK Steel*, 192 F.3d at 1385); *see also Bethlehem Steel Corp.*, 140 F. Supp. 2d at 1368 ("Commerce on a case-by-case basis *sequentially* analyze each of the four factors listed in {section 771(5A)(D)(iii)}.").
[438] *See* GOC Case Brief at 21.
[439] *See AK Steel*, 192 F.3d at *1385; Royal Thai Government*, 341 F. Supp. 2d at 1335-1336 (Commerce's determinations of *de facto* specificity "are not subject to rigid rules, but rather must be determined on a case-by-case basis.").
[440] *See Lumber V Final* IDM at Comment 65; *see also Uncoated Groundwood Paper from Canada Final* IDM at Comment 61.
[441] *See* Groupe Matra Case Brief at 2.
[442] *See* Groupe Matra Case Brief at 3.

There is, in short, no sound reason to deny these companies the separate subsidy calculations for which they have validly applied.[443]

*The Petitioner's Comments*

- According to 19 CFR 351.525(b)(6)(vi), "{c}ross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets." This section of the Commerce's regulations explains that this standard will normally "be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."
- The *CVD Preamble* further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the regulation's cross-ownership definition include those where: the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). For example, cross-ownership exists where corporation A owns corporation B (or vice versa), or where A and B are both owned by corporation C. Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.
- Groupe Matra acknowledges that Matra and Sechoirs have been "owned by the same trio of individual shareholders" since 2012.[444] Groupe Matra also acknowledges that the companies "do some business with each other" and that the companies have – since 2016 – prepared a "Groupe Matra" financial statement that contains consolidated financial information for Matra and Sechoirs.[445]
- Record evidence also demonstrates that "{t}op management of Matra oversees operations of {Sechoirs}."[446] For example, Jean-Francois Drouin owns 1/3 of Matra and 1/3 of Sechoirs and is responsible for sales at both companies. Similarly, Nicholas Drouin owns 1/3 of Matra and 1/3 of Sechoirs and is responsible for plant operations at both companies. Steve Grondin owns the remaining 1/3 interest in both Matra and Sechoirs. Frederic Gagne manages finances for both Matra and Sechoirs. Finally, Vincent Nadeau manages human resources for both companies. The fact that Matra's and Sechoirs' lender requested a consolidated financial statement is unsurprising given the total overlap in ownership and management between the two companies.[447]
- Groupe Matra's argument that the two companies should "not be compress{ed} into one" is based on a flawed understanding of Commerce's regulations. In this case, there is no possible set of facts that could result in a finding contrary to the cross-ownership determination made by Commerce in the *Preliminary Results*.

[443] *See* Groupe Matra Case Brief at 3.
[444] *See* Petitioner Rebuttal Brief at 45.
[445] *Id*. (citing Groupe Matra Case Brief at 3).
[446] *Id.* (citing Matra Usage QNR Response at 2 and Sechoirs Usage QNR Response at 2).
[447] *Id*.

- Matra and Sechoirs are "owned and operated by the same ownership group" and share management level employees.[448] For this reason, Commerce should continue to find that Matra and Sechoirs are cross-owned corporations within the meaning of 19 CFR 351.525(b)(6)(vi).

**Commerce's Position**: We disagree with Groupe Matra and continue to find Matra and Sechoirs cross-owned pursuant to 19 CFR 351.525(b)(6)(vi). According to Commerce's regulations, "cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."[449] The *CVD Preamble* further explains that it was necessary to differentiate between cross-ownership and affiliation because, "reliance upon the affiliated party definition would result in {Commerce} expending unnecessary resources collecting information from corporations about subsidies which are not benefitting the production of the subject merchandise."[450]

The record evidence demonstrates that Matra and Sechoirs are under the common ownership of Jean-Francois Drouin, Nicholas Drouin, and Steve Grondin.[451] In addition to common ownership, Jean-Francois Drouin manages sales for both Matra and Sechoirs; Nicholas Drouin manages plant operations for both companies; Frederic Gagne manages the finance department for both companies. Vincent Nadeau manages the human resources department for both companies.[452] In its case brief, Groupe Matra characterizes the transactions between Matra and Sechoirs as "exchanging some goods and services."[453] However, these are not merely "some" transactions; rather, a majority of Sechoirs' primary raw material to manufacture subject merchandise is sourced from Matra. Groupe Matra stated in its supplemental response that since, "Matra's shareholders acquired {Sechoirs} up through September 2016, {Matra's} St. Georges plant worked (*sic*) with gross wood inventory of both Matra and {Sechoirs}, transforming it into joint wood. To ease inventory management and accounting, it was decided during 2016 that henceforth Matra would buy gross wood externally and {Sechoirs} would buy joint wood from Matra."[454] We find that the common ownership and the intertwined operations of the firms demonstrate that the "interests of the two corporations has merged to such a degree that one

[448] *Id*. at 46.
[449] *See* 19 CFR 351.525(b)(6)(vi).
[450] *See CVD Preamble*, 63 FR 65401.
[451] The shareholder percentages are business proprietary information. *See* Sechoirs April 17th QNR Response at 3 and Exhibit C (T2 Corporation Income Tax Return – Schedule 9 (Related and Associated Corporations) and Schedule 50 (Shareholder Information)); Matra April 16th QNR Response at Exhibit C (T2 Corporation Income Tax Return – Schedule 9 (Related and Associated Corporations) and Schedule 50 (Shareholder Information)); and Groupe Matra May 11th SQNR Response at page 3 of Exhibit 1.
[452] *See* Sechoirs April 17th QNR Response at 3 and Groupe Matra May 11th SQNR Response at page 3 of Exhibit 1.
[453] *See* Groupe Matra Case Brief at 3.
[454] *See* Groupe Matra May 25th SQNR Response at 3 – 4 and Sechoirs April 17th QNR Response at Exhibit B (Sechoirs' December 31, 2016 and 2016 financial statement at note 15). Some of this information is business proprietary.

corporation can use or direct the individual assets (or subsidy benefits) of the other corporation."[455]

Groupe Matra raises in its case brief that Matra and Sechoirs applied for and Commerce initiated the expedited review on the companies separately.[456] However, Groupe Matra does not cite to any statutory provision, regulation, or Commerce practice that indicates separate applications for an expedited review precludes Commerce from finding these companies cross-owned.

Matra and Sechoirs are producers of subject merchandise under common ownership, management, and significant intertwined operations; therefore, we continue to find Matra and Sechoirs are cross-owned pursuant to 19 CFR 351.525(b)(6)(vi) and will attribute subsidies received by either or both companies pursuant to 19 CFR 351.525(b)(6)(ii) as the collective entity, Groupe Matra.

**Comment 16:** Whether Commerce Should Find Groupe Matra to Be Creditworthy

*Groupe Matra's Comments*

- A commercial bank extended credit to Matra without requiring third party guarantee coverage, that is, based solely on regular underwriting (the borrower's ability to service the debt) and security against the borrower's assets.[457]
- Under Commerce's regulations, receipt of "comparable long-term commercial loans, unaccompanied by a government guarantee," is dispositive evidence of creditworthiness.[458]
- Commerce stated that the new credit extended to Matra was not "comparable" for purposes of 19 CFR 351.505(a)(4)(ii) because it was "inherently linked" to an earlier loan on which IQ guarantee coverage had been purchased.[459] The fact remains, however, that this loan was a fresh extension of credit that the lender was under no obligation to approve, and that this loan was not just comparable but identical to the other loans being examined except for the absence of guarantee coverage. It is also relevant that this occurred in 2013 when Matra's financial ratios were not different from in the other years Commerce examined (2010, 2011, 2012 and 2014). If IQ guarantee coverage was not needed for new credit to be extended in 2013, the same is necessarily true for the neighboring years.[460] There has been (and could be) no allegation that the commercial bank is government-influenced or behaves in anything other than a strictly commercial manner in loan underwriting.[461]
- With regard to the long-term variable rate loans within Matra's and Sechoirs' capital structure, Commerce wrongly insisted on treating what were explicitly long-term loans (typically 7 years in duration) as if they were part of short-term debt.[462] As confirmed at verification, commercial lenders making underwriting decisions in Québec recognize debts of this type as being long term regardless of the categorization applied to them in unofficial corporate balance

[455] *See CVD Preamble*, 63 FR at 65401.
[456] *See* Groupe Matra Case Brief at 2.
[457] *See* Groupe Matra Case Brief at 7.
[458] *See* 19 CFR 351.505(a)(4)(ii).
[459] *See* Groupe Matra – Preliminary Analysis of Uncreditworthiness at 3-4.
[460] *See* Groupe Matra Case Brief at 7 - 8.
[461] *Id.* at 7-8.
[462] *Id*. at 8.

sheets.[463] Categorizing long-term debt as short term provides a false impression that the borrowers were unable to cover interest expenses as they came due. The actual financial situation, as recognized by the commercial lender they continued to transact with successfully, was vastly superior to the bleak picture painted in the *Preliminary Results*.[464]

- None of the ratios Commerce relied on in its creditworthiness analysis correctly reflects the evidentiary record. The actual ratios are in line with the standards Commerce applies in cases where creditworthiness does need to be determined on the basis of financial ratios. Commerce in the final results should reverse the preliminary uncreditworthiness findings and recalculate all loan benefits on the basis of the normal loan methodologies laid out in 19 CFR 351.505(a).[465]

*GOQ's Comments*

- Commerce assigned a total net countervailable subsidy of 5.80 percent to Matra and Sechoirs collectively, Groupe Matra, based on its determination that the firm was "uncreditworthy for those years in which government-provided loans were approved." Commerce's creditworthiness analysis, however, failed to properly consider Groupe Matra's receipt of a long-term loan with a variable interest rate, which was recognized by the lending bank as a "long-term liability."[466]
- Because Commerce will generally consider a firm to be creditworthy if it obtained a long-term loan from a "conventional commercial sourc{e,}"[467] Groupe Matra's receipt of a long-term loan from a commercial bank should be dispositive of its creditworthiness in this case.[468]
- While Commerce's regulations allow "flexibility and discretion in determining which factors to consider and weigh in making its creditworthiness decision{,}"[469] "the receipt . . . of comparable long-term commercial loans, unaccompanied by a government provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy."[470]
- Commerce claims that the separate unguaranteed loan is "inherently linked" to prior loan guaranteed by IQ and, as such, "not comparable."[471] However, IQ's initial guarantee was broken when the commercial bank issued the new loan to Groupe Matra. Indeed, in determining whether a loan is "comparable" to a government-provided loan, Commerce is instructed to consider "similarities in the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated."[472]
- In this instance, the loan at issue, like the government-provided loans pursuant to the IQ Working Capital and Investment Fund Program and IQ's Project Financing, is a variable interest rate, long-term loan, which was provided in Canadian dollars. In finding the unguaranteed loan to be "not comparable," Commerce not only failed to consider its own

[463] *Id*.
[464] *Id*. at 8-9.
[465] *Id*. at 9.
[466] *See* GOQ Case Brief at 19 (citing Groupe Matra Verification Report at 2).
[467] *Id*. (citing 19 CFR 351.505(a)(4)(i) and *Archer Daniels Midland Co.*)
[468] *Id*. (citing Groupe Matra - Preliminary Analysis of Uncreditworthiness at 3).
[469] *Id*. at 20 (citing *Saarstahl AG).*
[470] *Id*. (citing19 CFR 351.505(a)(4)(ii)).
[471] *Id*. at 21 (citing Groupe Matra - Preliminary Analysis of Uncreditworthiness at 3 – 4).
[472] *Id*. (citing 19 CFR 351.505(a)(2)(i).

regulatory definition of "comparable," but also ignored the commercial reality of Groupe Matra qualifying for the additional loan after the original guarantee. Groupe Matra was approved for the new loan from the commercial bank without a guarantee as a result of its performance on the original loan, which is indicative of "its ability to meet its costs and fixed financial obligations with cash flow."[473]

- Pursuant to Commerce's regulations, the existence of this long-term loan from a "conventional commercial sourc{e,}" should have "constitute{d} dispositive evidence that {Groupe Matra} is not uncreditworthy."[474] But in contravention of its regulation, Commerce instead relied on Groupe Matra's unaudited financial statements "as presented," which recognized the long-term loan "as short-term debt due to its variable rate."[475]
- The treatment of long-term loans with a variable interest rate as short term loans by accountants for balance sheet purposes, while correctly based on the *GAAP* in Canada, is not in accordance with internationally accepted accounting principles or the practical terms of the loan and must be adjusted for by bankers "when calculating ratios like the current and quick ratio."[476] Pursuant to this well-established practice, the lending bank, classified the new loan to Groupe Matra as a "long-term liability."[477]
- At verification, officials from Groupe Matra explained that the calculation of the company's submitted financial ratios was based on "an adjustment" to account for "long-term debt renewable within the year," *i.e.*, a long-term loan with a variable interest rate.[478] This adjustment matched the treatment and characterization of the loan by the lending bank. Commerce rejected this adjustment, even though it reflected the actual, verified repayment term of the loan from the lending bank based solely on the "reviewed financial statements." Though a company's financial statements may, "among other factors,"[479] inform Commerce's creditworthiness analysis regarding the company's "present and past financial health,"[480] Commerce's regulations "define loans as short-term or long-term based solely on whether the term of repayment is one year or less (short-term) or more than one year (long- term)." Here, the record is clear that the term of repayment for the loan at issue well exceeds one year.[481]

*The Petitioner's Comments*

- Record evidence demonstrates that the GOQ and Groupe Matra's arguments are without merit. The loan at issue was found by Commerce to be "not a comparable loan term commercial loan" because it was a part of a loan Matra reported with an IQ guarantee.[482] The GOQ argues that the IQ's loan guarantee was "broken" when the lending bank issued the loan at issue to Groupe Matra.[483]

---

[473] *Id*. at 22.
[474] *Id*.
[475] *Id*.
[476] *Id*. at 22-23.
[477] *Id.* at 23 (citing Groupe Matra Verification Report at 5; and *Hot-Rolled Steel from South Africa* IDM at Comment 5.
[478] *Id*.
[479] *Id*.
[480] *Id*.
[481] *Id.* at 23-24.
[482] *See* Petitioner Rebuttal Brief at 47 (citing Groupe Matra - Preliminary Analysis of Uncreditworthiness at 3).
[483] *Id*. at 48 (citing GOQ Case Brief at 21 and Groupe Matra Case Brief at 7-8.

- The supporting documentation that Groupe Matra filed, however, contradicts the GOQ's and Groupe Matra's assertions.[484] The GOQ's questionnaire responses also confirm that such a loan was not "broken" when the bank issued the loan at issue to Groupe Matra.[485]
- As such, Commerce properly found that such a loan was "inherently linked to the loan guaranteed by IQ." Given such a finding, Groupe Matra's arguments that the loan at issue "were not government loans" is without merit.[486]
- Contrary to the GOQ's assertions, the *CVD Preamble* is clear that "a single commercial loan" is not dispositive evidence that a firm was creditworthy. Rather the analysis is whether "the commercial loans are comparable to the government loan."[487] As the GOQ reported in its supplemental response, the loan structure of the unguaranteed loan is not comparable to any other of Groupe Matra's loans.[488]
- The GOQ faults Commerce for relying on the financial statements submitted by Groupe Matra "as presented," arguing that "while correct based on the Generally Accepted Accounting Principles (GAAP) in Canada," Commerce should have nonetheless made certain adjustments to its current and quick ratios.[489] Section 351.505(a)(4)(i)(B) of Commerce's regulations makes clear that in examining the present and past financial health of the respondent at issue, Commerce should evaluate the "various financial indicators calculated from the firm's financial statements and accounts." In this proceeding, Commerce followed such requirements by relying on Groupe Matra's financial statements, which were verified by Commerce and in compliance with Canadian generally accepted accounting standards. Commerce frequently relies on the generally accepted accounting principles of the country of export in determining the reliability of a company's records and costs and was reasonable in doing so here.[490] As such, the GOQ's arguments are without merit.[491]

**Commerce's Position:** We disagree with Groupe Matra and the GOQ. Under 19 CFR 351.505(a)(4)(i)(A), Commerce looks to whether the company received commercial long-term loans in assessing the company's creditworthiness. As stated above, Commerce normally considers a company's receipt of a long-term loan from a commercial source to be dispositive of

[484] *Id*. (citing Matra Verification Exhibits at Exhibit 1). Information is business proprietary.
[485] *Id*. at 49 (citing GOQ July 10th SQNR Response at Exhibit QC-SUPP-RENFORT-8). Information is business proprietary.
[486] *Id*. at 50.
[487] *Id*. at 50-51 (citing *CVD Preamble* at 63 FR 65347, 65367).
[488] *Id*. at 52 (citing GOQ July 10 SQR at Exhibit QC-SUPP-UNIQ-4). Information is business proprietary.
[489] *Id*. (citing GOQ Case Brief at 22-23; see also Groupe Matra Case Brief at 8).
[490] *Id*. at 53 (citing *Solar Cells from China* IDM at Comment 23 ("Section 775 of the Act and 19 CFR 351.311(b) direct {Commerce} to examine apparent subsidy practices discovered during the course of a proceeding and not alleged in the petition (if {Commerce} "concludes that sufficient time remains"). As noted, the financial statements and 20-Fs of the company respondents made numerous references to the receipt of various "subsidies" and "government grants;" many of these items were booked into accounts used for recording subsidies under the PRC GAAP. Thus, the companies' own documents indicated practices that appeared to provide countervailable subsidies, and {Commerce} properly examined these programs under section 775 of the Act and 19 CFR 351.311(b)."); 19 USC § 1677b(f)(1)(A) (in the antidumping context, {Commerce} will rely on a company's costs if it is "based on the records of the exporter or producer of the merchandise, {and} such records are kept in accordance with generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.") (emphases added).
[491] *Id*. at 53.

its creditworthiness.[492] Groupe Matra and the GOQ argue that Matra's loan without an IQ guarantee is a comparable commercial loan. The *CVD Preamble* clearly states, "our longstanding practice that creditworthiness determinations are made on a year-by-year basis. For example, if we are trying to determine whether a firm is creditworthy in 1998, we will look to whether the firm has negotiated commercial loans in 1998."[493] Because Matra's loan without an IQ guarantee was approved in another year, it is not dispositive of Matra's creditworthiness in 2010, 2011, 2012, and 2014; and Sechoir's creditworthiness in 2012 and 2014.[494] Further, the GOC argues that once Matra's loan without an IQ guarantee was approved, the original RENFORT IQ guarantee that the loan was connected to, was broken. However, documentation in our verification exhibit for the RENFORT IQ loan guarantee indicates IQ invoiced Matra the guarantee fee for the entire outstanding balance of the loan in question, and Matra paid the invoice during the POR.[495] Therefore, documentary evidence contradicts the GOC's assertion.

Pursuant to 19 CFR 351.505(a)(4)(i)(B), Commerce will examine, "the present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts." Because the companies' financial statements are in accordance with Canadian GAAP, Commerce reviewed the financial indicators as presented in the financial statements.[496] The financial indicators indicate that for certain years, Matra and Sechoirs had negative cash flows, which indicates that Matra and Sechoirs were unable to meet costs and fixed financial obligations, pursuant to 19 CFR 351.505(a)(4)(i)(C). Also, the very nature of the RENFORT loan guarantee program was to provide working capital and investment to companies experiencing financial difficulties; support companies facing stricter credit conditions; and experiencing difficulties in terms of access to sources of financing to improve their working capital and finance the purchase of production equipment.[497] Therefore, taken in totality, Commerce continues to find for the final results, Matra uncreditworthy in 2010, 2011, 2012, and 2014; and Sechoirs uncreditworthy in 2012 and 2014. Thus, we have not changed any of the loan guarantee or allocated grant calculations for the final results.

**Comment 17:** Whether Commerce Erred in Its Analysis of IQ Guaranteed Loans

*Groupe Matra's Comments*

- The loans to Matra and Sechoirs were not government loans but provided by a private lender based on: (1) regular underwriting (the borrower's ability to service the debt); (2) security against the borrower's assets; and (3) further security in the form of partial loan guarantee coverage which the borrower purchased from IQ. Therefore, what Commerce should examine is whether the price paid to IQ for partial guarantee coverage was lower than the price a private financial institution would have charged for the same partial guarantee coverage.[498]

[492] *See* 19 CFR 351.505(a)(4)(ii).
[493] *See CVD Preamble*, 63 FR at 65367.
[494] *See* Groupe Matra - Preliminary Analysis of Uncreditworthiness at 3 – 4.
[495] *See* Matra Verification Exhibits at Exhibit 6. This contain business proprietary information.
[496] *Id*. at 4.
[497] *See* GOQ July 10th SQNR Response at 2.
[498] *See* Groupe Matra Case Brief at 9 (citing 19 CFR 351.506(a)(1) (benefit "exists to the extent that the total amount a firm pays for the loan with the government-provided guarantee is less than the total amount the firm would pay for

- The underlying loans under review were obtained "on the market;" thus, the only remaining inquiry is a possible "difference in guarantee fees." Even if Commerce wrongly continues to focus on overall debt service rather than on the guarantee fee itself, it cannot compare debt service on these heavily secured loans against a benchmark built upon unsecured Canadian lending rates.[499]
- The comparison used in the *Preliminary Results* is, in this respect, not consistent with the record facts or with 19 CFR 351.506(a), which specifies that Commerce "will select a comparable commercial loan in accordance with 351.505(a)." In turn, 19 CFR 351.505(a) states that in selecting a comparable loan Commerce "will place primary emphasis on similarities in the structure of the loans."[500]
- The analysis Commerce must undertake, and that its regulations seek to ensure, is a counterfactual analysis. If Matra and Sechoirs had not purchased IQ guarantee coverage, what they would have faced was a market price for lending secured by assets. By using the same benchmark it used in regard to unsecured CEDQ loans, Commerce highlighted the flaw in its hugely inflated calculations associated with the IQ guarantees.[501]
- If nothing else, the calculations for one of Matra's loans needs to be revised. A substantial portion of Matra's loan balance that was outstanding during 2015 was not even covered by an IQ guarantee and therefore cannot be countervailable.[502]

*Interested parties did not submit rebuttal arguments regarding this issue.*

**Commerce's Position:** We disagree with Groupe Matra. Under 19 CFR 351.506(a)(1) a benefit exists on a government loan guarantee to the extent that the total amount a firm pays for the loan with the government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any differences in guarantee fees. Further, the *CVD Preamble* states:

> the interest rate on the guaranteed loan will be compared with either: (1) the interest rate on a comparable unguaranteed (and, hence, riskier) loan that was obtained, or could have been obtained, by the firm; or (2) the interest rate on a comparable commercially guaranteed loan that was obtained, or could have been obtained, by the firm. In the latter case, we would expect that the two guaranteed loans would have similar risk levels and that the interest rates would be similar, assuming that the loans are comparable as defined above. Of course, we would also adjust for differences in guarantee fees as paragraph (a)(1) directs us to do.[503]

Groupe Matra argues that Commerce should only compare the difference between the fees it paid for its IQ guarantee versus the guarantee fees paid in connection with a loan obtained from a

---

a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any difference in guarantee fees")).

[499] *See* Groupe Matra Case Brief at 9-10.

[500] *Id*. at 10.

[501] *Id*.

[502] *Id*.

[503] *See CVD Preamble*, 63 FR at 65370.

commercial bank. As Commerce's regulations explicitly state, the proper comparison is the difference between the interest rates and guarantee fees, not just the difference in guarantee fees. Groupe Matra did not provide any comparable commercially guaranteed loan as a benchmark, and as explained in Comment 16, Groupe Matra did not receive any comparable commercial loans. Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), where the firm has no comparable commercial loans, Commerce "may use a national average interest rate for comparable commercial loans." On the record are the national average prime business loan interest rates from the Bank of Canada, provided by the GOC, as benchmark rates for Canadian dollar-denominated long-term loans.[504] Contrary to Groupe Matra's assertions, the *CVD Preamble* as referred above, instructs Commerce to compare the interest rates on Matra's and Sechoirs IQ guaranteed loans with the interest rate on a comparable unguaranteed loan. Thus, for the final results, we continue to use the national average prime business loan interest rates from the Bank of Canada plus the risk premium for uncreditworthiness as the benchmark for all of Groupe Matra's loans.

Groupe Matra argues that Commerce must revise one of Matra's loan calculations because the outstanding loan balance during the POR was not covered by an IQ guarantee; however, Groupe Matra cites to no record evidence to support its assertion. To the contrary, documentation in our verification exhibit for that RENFORT IQ loan guarantee indicates IQ invoiced Matra the guarantee fee for the entire outstanding balance of the loan in question and Matra's total payments for all IQ guarantee fees for the POR.[505] Thus, we have not made any changes to the loan calculations for the final results.

**Comment 18:** Whether Commerce Should Continue to Apply Partial AFA to the Immigrant Investor Program

*Groupe Matra's Comments*

- The Immigrant Investor grants examined at verification were fully disclosed and discussed in the questionnaire responses. An Immigrant Investor contract typically results in a series of equal grant disbursements in each of the four years following approval. In the case of both Matra and Sechoirs, every disbursement under every Immigrant Investor contract has been far below 0.5 percent of sales, and therefore, the grant amounts are far too small to be attributed to the POR under Commerce's allocation rules.[506]
- As a result, the only way Immigrant Investor grants could possibly have affected either Matra's or Sechoirs' expedited review calculation was if there was a disbursement occurring in (and expense-able in) 2015. There was one such disbursement– the fourth payment under an Immigrant Investor contract for Matra, which Matra duly reported receiving in its initial questionnaire response.[507]
- Matra also reported on another Immigrant Investor contract whose disbursements started in 2016, which falls outside of the POR of the expedited reviews.[508] Sechoirs, which had no

[504] *See* GOC May 16th SQNR Response at Exhibit GOC-ER-SUPP2-CED-1.
[505] *See* Matra Verification Exhibits at Exhibit 6. This contain business proprietary information.
[506] *See* Group Matra Case Brief at 4-5.
[507] *See* Groupe Matra Case Brief at 5.
[508] *Id*. at 5.

Immigrant Investor contracts yielding a disbursement in 2015, did not initially report its usage of the program outside the POR.[509] Upon review after the filing deadline, Sechoirs realized that Commerce also wanted to know about Immigrant Investor grants received prior to 2015 but during the allocation period, even if those grants were too small to allocate over time.[510] In fact, Sechoirs' subsidiary Bois Ouvre de Beauceville had received Immigrant Investor grants in 2008, 2009 and 2010, pursuant to a contract signed in 2007. Groupe Matra sought to add this information to the record with a voluntary submission on May 4, 2018. Commerce rejected that submission on account of its voluntary nature, and then gave Sechoirs an opportunity to re-submit the same information on May 11, 2018.[511] Sechoirs did so, and the reporting on Immigrant Investor grants could not have been more complete.[512]

- The Immigrant Investor aid that Commerce claims to have discovered at verification has been inflated by several-fold by Commerce via adverse inferences in order to end up with a benefit amount large enough to allocate to the POR.[513]
- In fact, the Immigrant Investor aid in question was fully disclosed, and it is completely irrelevant to Commerce's expedited review calculations. There was no failure to report, no lack of cooperation, nothing but a rapid correction of a harmless oversight. There is no gap in the record justifying any sort of resort to facts available, much less to AFA. The narrative portion of the May 11, 2018, submission confirmed that Matra's use of the program throughout the allocation period had already been fully reported.[514]
- The correct amount to include in Matra's expedited review calculation is the amount of the single disbursement that Matra received in 2015. The correct amount to include in Sechoirs' expedited review calculation in relation to the Immigrant Investor program is zero.[515]

*The Petitioner's Comments*

- Commerce correctly concluded that Groupe Matra failed to act to the best of its ability in providing information regarding the grant disbursements it received from the Immigrant Investor subsidy program. Specifically, Commerce found that, despite being asked twice to provide information about the grant assistance it received from this program, Groupe Matra failed to do so. As a result, Commerce determined, on the basis of AFA, that Matra used and benefited from the program and assigned the firm an AFA subsidy rate of 0.14 percent.[516]
- Commerce properly rejected Groupe Matra's attempts to submit information beyond the scope of "minor corrections" at verification with respect to newly found disbursements of the Immigrant Investor program. Commerce has made clear that the only information that it would accept on verification of a respondent's questionnaire responses are "insignificant changes or corrections."[517]
- Commerce found that Matra received the disbursements in 2008, 2009, and 2010, and not any of its affiliates. In instances where Commerce verified the records of Sechoirs or any other

[509] *Id*. at 5 (citing Sechoirs April 17th QNR Response).
[510] *Id*. at 5.
[511] *Id*.
[512] *Id*. at 5-6 (citing to Groupe Matra May 11th SQNR Response at 8).
[513] *Id*. at 6.
[514] *Id*. at 6 (citing Groupe Matra May 11th SQNR Response at 13).
[515] *Id*. at 7.
[516] *See* Petitioner Rebuttal Brief at 53-54 (citing to *Preliminary Results* PDM at 18-19, 23).
[517] *Id*. at 55 (citing *CDMT from India* IDM at Comment 1).

Matra affiliates, the names of such affiliates were expressly used by Commerce.[518] For example, when verifying the company's usage of the Tax Credit for Investments Relating to Manufacturing and Processing Equipment subsidy program, Commerce "reviewed Matra and Bois Ouvre's general ledger entries and Notice of Assessments from Revenu Québec."[519]

- Commerce verified that the financial statements and records of "Matra," on one hand, and "Sechoirs" and another cross-owned affiliate, "Bois Ouvre," on the other hand, were maintained separately until 2016.[520] Commerce verified each of these separate entities, explaining that "{w}e reviewed the chart of accounts for each company and identified where transactions, including the receipt of the investigated subsidies, are recorded."[521] Given the thoroughness of Commerce's verification, and Groupe Matra's maintenance of separate recordkeeping between cross-owned affiliates, the newly discovered subsidies were properly attributed to "Matra" and not to Sechoirs or Bois Ouvre.[522]
- It is well settled that Commerce's application of AFA does not require it to find that a respondent had intent to impede the investigation. The statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent. The law requires Commerce to apply facts available when the necessary information is not on the record, or when an interested party: (1) withholds information that has been requested by the Department; (2) fails to provide such information by the deadlines established, or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides information that cannot be verified.[523]
- In the *Preliminary Results*, Commerce detailed how it explicitly asked Matra to report the assistance it received for the Immigrant Investor program, and despite having five opportunities to do so, at verification, Commerce discovered Groupe Matra failed to report all disbursements it received from the program.[524]
- Groupe Matra now claims that the amounts discovered by Commerce during verification were reported in its May 11, 2018, questionnaire response and belong to its cross-owned affiliates, Sechoir and Bois Ouvre.[525] Exhibit 4 of this submission explained that Bois Ouvre received annual disbursements for each year in 2008, 2009, and 2010.[526] Following Groupe Matra's May 11, 2018, submission, Commerce explicitly asked the companies a third time about the funds it received from the Immigrant Investor program in a May 17, 2018, second supplemental questionnaire.[527]
- Commerce gave Matra numerous opportunities to clarify and correct the information it submitted regarding its Immigrant Investor disbursements for not only Matra, but its cross-owned affiliates. Verification revealed, however, that the record lacked full and complete reporting on the assistance Matra received from the program. Commerce has repeatedly found, "{t}he purpose of verification is to verify the accuracy of information already on the record,

[518] *Id*. at 56.
[519] *Id*. at 56 (citing Groupe Matra Verification Report at 6).
[520] *Id*. (citing Groupe Matra Verification Report at 3).
[521] *Id*.
[522] *Id*. at 56.
[523] *Id*. at 57.
[524] *Id*. at 57 (citing *Preliminary Results* PDM at 18-19).
[525] *Id*. at 59 (citing Groupe Matra Case Brief at 6-7).
[526] *Id*. and Groupe Matra May 11th SQNR Response at Exhibit 4.
[527] *Id*. at 60 (citing Groupe Matra May 11th SQ at 7).

not to continue the information-gathering stage of {Commerce's} investigation."[528] Consistent with those findings, Matra's verification did not serve as an opportunity for it to put new information on the record or to clean up its previously deficient responses.[529]

- Matra's contentions that information Commerce discovered through verification could have resolved the deficiencies in the information it submitted regarding the Immigrant Investor program are without merit. Commerce's preliminary application of AFA was not, therefore, intended to "punish" Groupe Matra for intentional obstructionist conduct but was required to fill a gap as a result of the Groupe Matra's repeated failure "to provide information by the deadlines in the form and manner requested." As a result, Commerce's finding that it must apply AFA was appropriate because Matra: (1) withheld the necessary information that was requested; (2) significantly impeded the investigation with respect to the program; and (3) failed to provide information by the deadlines in the form and manner requested.[530]

**Commerce's Position**: As we explain below, we determine that Groupe Matra failed to fully disclose in a timely manner the extent to which it received certain subsidy benefits and that the application of partial AFA is warranted.

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

Further, section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petitioner, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting facts available with an adverse inference from the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[531] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[532]

We disagree with Groupe Matra that the Immigrant Investor grants examined at verification were fully disclosed and discussed in the questionnaire responses. Therefore, we have continued to

[528] *Id*. at 61 (citing *OCTG from Turkey* IDM at Comment 9); *see also Flanges from Italy AD Final IDM* at Comment 1: "{V}erification is not an opportunity to provide information not previously placed on the record."
[529] *Id.* at 61.
[530] *Id.* at 61-62.
[531] *See, e.g., Drill Pipe from China* IDM at 7; *see also Semiconductors from Taiwan*, 63 FR at 8932.
[532] *See* SAA at 870.

apply AFA to the grant disbursements Matra received in 2008, 2009, and 2010, which Commerce discovered at verification.

Groupe Matra claims that the subsidy disbursements from the Immigrant Investor program Commerce discovered at verification are actually disbursements to Matra's cross-owned affiliate, Bois Ouvre, as reported in its supplemental questionnaire response.[533] However, Groupe Matra's assertion is not supported by record evidence.

Commerce requires respondents to report all grants received under a given grant program that they received during the POR and the years encompassing the AUL period, in accordance with 19 CFR 351.524(b)(2), which states that grants that exceed 0.5 percent of the relevant sales denominator may be allocated over the respondent's AUL period using the grant allocation methodology provided under 19 CFR 351.524(d). Accordingly, in the initial questionnaire, Commerce instructed Groupe Matra to report all grant assistance received during the period January 1, 2006, through December 31, 2015.[534] Commerce followed up with Groupe Matra on this issue with supplemental questionnaires on May 9 and 11, 2018.[535] Groupe Matra reported Matra and Bois Ouvre's usage of the Immigrant Investor grants program for certain years in its questionnaire responses.[536] Bois Ouvre was approved for the Immigrant Investor grants program in 2007 and received disbursements in 2008, 2009, 2010, and 2011.[537] Commerce conducted the "0.5 percent test" on the approval amount and determined to expense the grants in the year of Bois Ouvre's receipt of the grant disbursements in its preliminary calculations.[538]

Commerce also accounted for the approval and disbursements Groupe Matra reported in its questionnaire responses for Matra in its preliminary calculations;[539] however, Groupe Matra failed to report Matra's usage of the program for the entire AUL period. As described in the verification outline and report, Commerce verifies non-use by examining any evidence of subsidies provided by the government under any subsidy program.[540] During Commerce's examination of Matra's accounting system at verification, we queried the accounting system covering the AUL and discovered that Matra received previously unreported disbursements for the Immigrant Investor program in 2008, 2009, and 2010.

We find that, despite being provided multiple opportunities to do so, Groupe Matra failed to adequately report in a timely manner all the grants it received under the Immigrant Investor program during the time period encompassing the AUL period. Groupe Matra withheld the necessary information that was requested, significantly impeded the investigation proceeding with respect to this program, and failed to provide information by the deadlines in the form and manner requested; thus, Commerce must rely on "facts otherwise available" for purposes of

[533] *See* Groupe Matra May 11th SQNR Response at 8 and Exhibit 4.
[534] *See* Initial Questionnaire at Part II, III.A.8 – Other Subsidies.
[535] *See* Groupe Matra May 9th SQ at 3 and Groupe Matra May 11th SQ at 7.
[536] *See* Groupe Matra May 11th SQNR Response at 8, 12-13 and Exhibit 4; also Groupe Matra May 25th SQNR Response at 10, 21 – 23 and Exhibits 7 and 16.
[537] *See* Groupe Matra May 11th SQNR Response at Exhibit 4.
[538] *See* Groupe Matra Preliminary Calculations Memorandum at excel tab "Grant Programs."
[539] *See* Groupe Matra Preliminary Calculations Memorandum at excel tab "Grant Programs."
[540] *See* Groupe Matra Verification Outline at 9 and Groupe Matra Verification Report at 6 and 9.

these preliminary results with regard to this program, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (B) of the Act. Moreover, we find that Groupe Matra failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we find that an adverse inference in selecting from the available facts is warranted pursuant to section 776(b) of the Act. Thus, pursuant to sections 776(a) and (b) of the Act, we have continued to apply adverse inferences when deriving the subsidy rate applicable to Groupe Matra.[541]

Therefore, for the reasons detailed above, we continue to find Groupe Matra withheld necessary information that was requested of it and did not act to the best of its ability to comply with our requests for information. Thus, as AFA, pursuant to sections 776(a) and (b) of the Act, we have continued to apply adverse inferences when deriving the subsidy rate applicable to assign an AFA rate to Groupe Matra under this program as described in the *Preliminary Results*.[542]

As explained in the *Preliminary Results*, record evidence indicates that, under the Immigrant Investor Program, the amount of financial assistance cannot exceed C$250,000 over a three-year period.[543] Thus, consistent with our practice,[544] we have continued to apply an adverse inference that Matra was approved for the maximum benefit of C$250,000 in 2008. Further, we have continued to infer that Matra received three equal disbursements in 2008, 2009, and 2010, because our verification indicated that Matra received a disbursement in each of those years.[545] Accordingly and consistent with the *Preliminary Results*,[546] we applied the highest benefit of C$250,000 in 2008 to Matra and, because this grant amount was greater than 0.5 percent of Matra's sales in 2008, we allocated each disbursement of C$83,333.33 in 2008, 2009, and 2010 over the AUL, in accordance with 19 CFR 351.524(d).

**Comment 19:** Whether it Was Proper for Commerce to Consider New Subsidy Allegations in an Expedited Review

*GOC/GNB/NAFPs' Comments*

- Commerce improperly initiated investigations of several new subsidy allegations made in this expedited review, including the "New Brunswick Property Tax Incentives for Private Forest Producers" program.[547]
- There is no statutory or regulatory support for investigating new subsidy allegations as part of an expedited review. Specifically, 19 CFR 351.301(c)(2)(iv) permits the petitioner to submit a new subsidy allegation in administrative reviews, new shipper reviews, and changed circumstances reviews but not in CVD expedited reviews. Given that CVD expedited reviews

[541] *See Preliminary Results* PDM at 18-19, and 22-24.
[542] *See Preliminary Results* PDM at 18-19, and 22-24.
[543] *See Preliminary Results* PDM at 19 (citing GOQ May 18th SQNR Response at 10 and Exhibit QC-SUPP2-IMIN-1).
[544] *See Rebar from Turkey* IDM at Comment 6 "Calculation of the Export Revenue Tax Deduction for Icdas."
[545] *See* Group Matra Verification Report at 6.
[546] *See Preliminary Results* PDM at 19.
[547] *See* GNB Case Brief at 5-7; *see also* NAFP Case Brief at 8-10.

are referred to in other sections of the regulations (for example, 19 CFR 351.214(k)), the omission from 19 CFR 351.301(c)(2)(iv) should be presumed to be intentional.[548]

- Commerce should interpret its authority consistent with U.S. obligations under Article 19.3 of the SCM Agreement, because the expedited review procedure under 19 CFR 351.214(k) was created specifically to implement Article 19.3, the purpose of which is to establish rates for new participants based on the same measures that were examined in the underlying investigation. Thus, if alleged subsidies were not investigated in the original investigation, the SCM Agreement indicates that they cannot be investigated in an expedited review.[549]
- The WTO dispute panel in *Supercalendered Paper from Canada Panel Report* recently found that investigating new subsidies in an expedited review is inconsistent with Article 19.3 of the SCM Agreement.[550]

*The Petitioner's Comments*

- Section 775 of the Act provides Commerce the authority to investigate discovered subsidies in a CVD proceeding that were not included in the countervailing duty petition.[551]
- Because Commerce's authority to conduct a CVD expedited review is pursuant to sections 751(a)(2)(B) or 751(a) of the Act, Commerce has the authority to initiate new subsidy allegations under section 702(b)(1) of the Act and has done so in previous CVD expedited reviews.[552]
- WTO obligations cannot provide the sole justification for actions taken by Commerce in AD/CVD proceedings, because only U.S. law, not the WTO Agreement, can govern the conduct of these proceedings.[553]
- No findings made by a WTO dispute settlement panel or Appellate Body shall have any effect until the recommendations have been evaluated pursuant to the Section 129 process and USTR has directed Commerce to implement the findings. Before Commerce can implement such findings, USTR must first inform the WTO that the United States intends to comply with the WTO's recommendations. However, USTR has not informed the WTO that it intends to comply with the WTO recommendations in the *Supercalendered Paper from Canada Panel Report*, nor has it asked Commerce to conduct a Section 129 proceeding. In fact, USTR is appealing the findings in *Supercalendered Paper from Canada Panel Report*. Thus, the recommendations in that *Report* have no bearing on this proceeding.

**Commerce's Position:** We find that our initiation of new subsidy allegations in this expedited review was consistent with both Commerce's regulations and the SCM Agreement, and that the

---

[548] *See* GNB Case Brief at 5-6; *see also* NAFP Case Brief at 8.
[549] *See* GNB Case Brief at 6; *see also* NAFP Case Brief at 8-10.
[550] *See Supercalendered Paper from Canada Panel Report* a paras 7.290 and 7.292. "{A}n expedited review should be aimed at putting, to the greatest extent possible, a non-investigated, cooperating exporter into the situation it would have been in, had it been investigated in the original investigation, on the basis of the measures covered by that investigation. Allowing the inclusion of any new subsidy allegations in the expedited review would frustrate the purpose of Article 19.3 as discussed above . . . In light of the above, the Panel finds that the USDOC's inclusion of new subsidy allegations in the context of the expedited review … was not consistent with Article 19.3 of the SCM Agreement."
[551] *See* Petitioner Rebuttal Brief at 3-5.
[552] *See Supercalendered Paper Expedited Review Prelim* PDM at pages 2-4.
[553] *See* Petitioner Rebuttal Brief at 3-5.

WTO dispute panel's conclusions in the *Supercalendered Paper from Canada Panel Report* have no bearing on this proceeding. The purpose of an expedited review, similar to an investigation, is to examine the potential subsidization of a particular product and determine the individual countervailing duty rate for a specific company under review. Each company has unique operations, and in-turn, would be eligible for different types of subsidization depending on its own particular circumstances. To limit the examination to programs that were examined in the investigation would limit Commerce's ability to examine the extent to which a company was subsidized during the investigation period. As such, the investigation of new subsidy allegations in an expedited review is a permissible method of examining the potential subsidization of a particular company under review. Moreover, because one possible result of an expedited review is the exclusion from the countervailing duty order if a company is found to have received subsidies at a zero or *de minimis* rate,[554] the obligation on Commerce to investigate subsidies must necessarily extend to all potential subsidization received by a company subject to an expedited review.[555]

The GOC, GNB and NAFP argue that that 19 CFR 351.301(c)(2)(iv) permits the petitioner to submit a new subsidy allegation in administrative reviews, new shipper reviews, and changed circumstances reviews but not in CVD expedited reviews. Further, they have added that expedited reviews are referred to in other sections of the regulations, noting specifically 19 CFR 351.214(k). As such, they hold that the omission from 19 CFR 351.301(c)(2)(iv) should be presumed to be intentional, and therefore, indicative that the regulations were written specifically to exclude new subsidy allegations in expedited reviews.

We disagree. As an initial matter, there is no language in the regulations (or in the Act) that specifically prohibits new subsidy allegations to be submitted in expedited reviews. Further, the respondent parties' reliance on the specific references to expedited reviews in 19 CFR 351.214(k) and the absence of such references in 19 CFR 351.301(c)(2)(iv) as the basis for excluding new subsidies from expedited reviews is misplaced. Specifically, 19 CFR 351.301 addresses time limits for submitting factual information, with 19 CFR 351.301(c)(2)(iv) specifically addressing time limits for filing new subsidy allegations. Time limits in regulations do not grant Commerce authority to, or prevent it from, accepting types of allegations and facts, including new subsidy allegations.

The GOC, GNB and NAFP correctly state that expedited reviews are not specifically mentioned in this section of the regulations. On the other hand, section 19 CFR 351.214(k) specifically stipulates that expedited reviews in countervailing duty proceedings shall be conducted in accordance with the provisions applicable to new shipper reviews, with certain exceptions not applicable here. In other words, 19 CFR 351.214(k) states that the schedule for conducting

[554] *See* 19 CFR 351.214(k)(3)(iv).

[555] On one hand the GOC, GNB and NAFP claim that Commerce has the authority to conduct an expedited review, covering the period of investigation, essentially as an extension of the investigation for those companies which were not specifically investigated during the investigation, but on the other hand they argue that if there comes to the attention of Commerce on the record that there is a possibility of additional subsidies which were conveyed to those companies during the period of investigation, Commerce does not have the authority to investigate those subsidies. It appears to be an attempt to argue that respondents can get all of the perks, but none of the challenges, of an investigation in an expedited review. Such an argument is not only illogical, but as we explain in our response herein is grounded in neither the Act nor regulations.

expedited reviews will be the same as schedule for conducting new shipper reviews. As such, when the regulations subsequently discuss the deadlines for the submission of factual information (as in 19 CFR 351.301(c)(2)(iv)) for new shipper reviews), it is understood that these deadlines also apply to expedited reviews. Therefore, on this basis as well, we find that the fact that expedited reviews are not specifically mentioned in 19 CFR 351.301(c)(2)(iv) is in no way indicative of a prohibition on examining new subsidy allegations in expedited reviews. Instead, the regulations have already established that schedules and deadlines for conducting an expedited review, including the deadline applicable to the filing of new subsidy allegations, are the same deadlines that would be applicable in a new shipper review. As such, we find our initiation of new subsidy allegations in this expedited review is consistent with the regulations. Next, the GOC, GNB and NAFP argue that Article 19.3 of the SCM Agreement was established to provide for the calculation of subsidy rates for new participants specifically and only using the same measures examined in the underlying investigation, and therefore, a subsidy that was not investigated in the original investigation cannot be investigated in an expedited review. That is not a correct reading of Article 19.3 of the SCM Agreement. Article 19.3 of the SCM Agreement states:

> Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.[556]

The obligation outlined in Article 19.3 stipulates that an investigating authority must provide an expedited review to an exporter who is subject to a countervailing duty investigation but was not individually investigated.[557] However, there is no specific language in the SCM Agreement that expressly states or implies restrictions or prohibitions on the investigation of newly alleged subsidies during the conduct of an expedited review.

Furthermore, to the extent that "an *individual* countervailing duty rate for the exporter" is to be established as a result of this review, one would logically presume that if there is an allegation on the record that the exporter at issue specifically received the benefits of a subsidy during the period of investigation that companies investigated during the investigation did not benefit from, WTO member investigating authorities would be able to investigate that subsidy to be assured that the "individual countervailing duty rate for the exporter" is accurate and addresses all injurious subsidization. This is not to say that newly alleged subsidies cannot also be investigated that apply to companies both investigated and not investigated during the original investigation, but it is important to note that the GOC, GNB and NAFP's argument fails to acknowledge that an exporter subject to an expedited review might have benefited from subsidies that other companies did not. Under their argument, Commerce would be powerless to

[556] *See* 19 U.S.C. § 3538(b); Uruguay Round Agreements Act, H.R. 5110, § 129, Pub. Law 103-465 (1994). Such a provision governs obligations under the SCM Agreement and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

[557] Contrary to the petitioner's assertion, Commerce does not conduct expedited CVD reviews pursuant to sections 751(a)(2)(B) or 751(a) of the Act. As explained in comment 1, Commerce fulfills its Article 19.3 obligation to conduct expedited CVD reviews under 19 CFR 351.214(k), which Commerce promulgated pursuant to section 103(a) of the URAA.

address such injurious subsidization in an expedited review. There is no basis in the text of the SCM Agreement for such an obligation or restriction, much less the Act or the regulations.

Finally, the GOC, GNB and NAFP state that the WTO dispute panel in *Supercalendered Paper from Canada Panel Report* concluded that investigating new subsidies in an expedited review is inconsistent with Article 19.3 of the SCM Agreement. However, this finding has no relevance to this expedited review. As an initial matter, conclusions by WTO dispute panels do not displace U.S. law. In fact, 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).[558] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically supersede the exercise of Commerce's discretion in applying the statute WTO reports "do not have power to change U.S. law or to order such a change."[559] Rather, U.S. law stipulates all WTO findings shall not impact any Commerce determinations unless and until the recommendations have been evaluated pursuant to the Section 129 process and USTR has directed Commerce to implement the Section 129 determination. Neither of these have occurred. Moreover, USTR is appealing the findings made by the WTO in the *Supercalendered Paper from Canada Panel Report*, so the *Report* is not final and conclusive.

Therefore, for the reasons discussed above, we find that it was lawful and otherwise appropriate to consider new subsidy allegations in this expedited review.

**Comment 20:** Whether New Brunswick's Property Tax Incentives for Private Forest Producers Is Countervailable

*GNB/NAFP's Comments*

- The statutory property assessment rules regarding freehold timberland in the New Brunswick Assessment Act (Assessment Act) are not specific, nor do they constitute government revenue foregone.[560]
- In order for a tax policy to be countervailable, it must provide differential treatment within a classification of similarly situated property. Otherwise, there is no basis to conclude that the revenue has been foregone or that such financial contribution is specific. This is consistent with the SAA,[561] findings by the courts,[562] and Commerce's practice.[563]
- The assessment rules for freehold timberland (C$100 per hectare) apply equally to both individuals and companies that own real property, regardless of end use or owner.
- The Assessment Act does not discuss any policy to incentivize any part of the wood products industry, nor does it mention any forestry industry or enterprise, or any intended or actual end

[558] *See Corus Staal*, 395 F.3d at 1347-1349, *Corus Staal II*, 502 F.3d at 1375, and *NSK*, 510 F.3d 1379-1380.
[559] *See* SAA at 659.
[560] *See* GNB Case Brief at 7-17; *see also* NAFP Case Brief at 10-23.
[561] *See* SAA at 925 ("identify the commercial entity, such as a firm or industry, to which the government or public body provides a financial contribution.").
[562] *See Changzhou Trina Solar Energy*, 195 F.Supp.3d at 1349 (citing *Allegheny*, 112 F.Supp.2d at 1152 n.15: "{a] principal purpose of the specificity requirement for countervailability is 'to differentiate between those subsidies that distort trade by aiding a specific company or industry, and those that benefit society generally … and thus minimally distort trade, if at all.'").
[563] *See Lumber IV – Final AR1* IDM at 27; *see also Lumber IV – Final AR2* IDM at 18.

use by any forest sector industries. The assessment policy for freehold timberland applies to a significant area of real property in New Brunswick and a large and diverse number of owners.

- Record evidence confirms that a large and diverse number of individuals and enterprises own freehold timberland and receive the same property assessment rate, and there is not a single industry or enterprise that is a predominant owner of such property.
- Commerce misinterpreted the Assessment Act when it found that the effective property tax rate for freehold timberland under Section 17 of the Assessment Act is less than the property tax rate would be with the application of the assessment policy for other categories of real property under Section 15 of the Assessment Act. Commerce has made an unsupported presumption that one of these statutory policies of Section 15 is a baseline that represents the predominant policy in New Brunswick.
- Because the GNB treats all timberland the same for property tax purposes, the legislated assessment rate of C$100 per hectare does not give rise to a financial contribution in the form of government revenue foregone that would otherwise be due. Further, since the assessment rate for timberland is broadly available and widely used throughout the province, and is not limited to an enterprise or industry, it is not specific.
- Even if the Assessment Act did expressly limit the timberland assessment rates to an enterprise or industry, New Brunswick's timberland assessment for property tax purposes cannot be *de jure* specific because the legislation sets forth "objective criteria or conditions" for eligibility, eligibility is automatic, and the eligibility are strictly followed.[564]

*The Petitioner's Comments*

- Section 17(2) of the Assessment Act states that all freehold timberland parcels are to be assessed at C$100 per hectare. Without this specific tax exception, all real property shall be assessed at its real and true value as of January 1 of the year for which the assessment is made.[565]
- By foregoing tax revenue that would have been collected if the timberland were assessed based on its "real and true value," the GNB has provided a financial contribution.
- Commerce has found that preferential tax rates for certain industries or activities and not others constitute financial contributions in the form of revenue foregone, and that it is irrelevant that the differential tax scheme is supported by a policy rationale.[566]
- Commerce correctly found that the GNB'S Property Tax Incentives for Private Forest Producers program was *de jure* specific under section 771(5A)(D)(i) of the Act because the program is expressly limited to owners of freehold timberland.[567]
- For a land parcel to be classified as freehold timberland, it must be 10 hectares or more, and must be for bona-fide use as freehold timberland. The GNB has stated "bona-fide timberland is timberland that is capable of being harvested, adding that even if the trees on the timberland had been cut it would still be considered timberland if it was possible to regenerate the trees on the land."[568]

---

[564] *See* NAFP Case Br. at 22; *see also* section 771(5A)(D)(ii).
[565] *See* Petitioner Rebuttal Brief at 32.
[566] *See* PDM at 27; *SC Paper from Canada Expedited Review Final* IDM at Comment 3.
[567] *See* Petitioner Rebuttal Brief at 35-38.
[568] *See* GNB Verification Report at page 2.

- Commerce has previously rejected arguments by foreign governments who use "activities" or "projects" as proxies for enterprises or industries. As long as a subsidy program's criteria limit eligibility to enterprises or industries (or subsets of industries) engaged in those specific activities or projects (and exclude others) Commerce may make a finding of *de jure* specificity.[569]
- Here, access to the GNB'S Property Tax Incentives for Private Forest Producers program is expressly limited to legal or natural persons in industries that own a large parcel of timberland and use the property as timberland that is "capable of being harvested."

**Commerce's Position:** As discussed in the *Preliminary Results*, land owners in New Brunswick pay property taxes based on the assessed value of the land in accordance with the Assessment Act.[570] Section 15 of the Assessment Act stipulates that all real property shall be assessed at its "real and true value."[571] However, section 17(2) of the Assessment Act states that land classified as freehold timberland is to be assessed at a rate of C$100 per hectare.[572] On this basis, we preliminarily found this program to be countervailable. Specifically, we found the program to be *de jure* specific, because, as a matter of law, under the Assessment Act, eligibility for this tax program is expressly limited to owners of freehold timberland. Further, we found the program provided a financial contribution in the form of government revenue foregone and conferred a benefit to the extent that the property taxes paid by NAFP as a result of this program are less than the taxes the company would have paid absent the program.

For purposes of these final results, we continue to find this program countervailable. When calculating applicable taxes to land holders in New Brunswick, the Assessment Act deliberately stipulates that all real property shall be assessed at its "real and true value." However, record evidence shows that the Assessment Act specifically provides unique assessment methodology, *i.e.*, an assessment methodology distinct from other real property, to freehold timberland that is of a certain size and is designated for a particular use. Specifically, for a land parcel to be classified as freehold timberland, it must be 10 hectares or more, and must be for *bona-fide* use as freehold timberland (*i.e.*, land that is capable of being harvested).[573] These parcels are to be assessed at C$100 per hectare. The GNB did not provide any evidence to show that C$100 per hectare reflect the "real and true value" of freehold timberland. Thus, the GNB is providing a financial contribution, under section 771(5)(D)(ii) of the Act, by foregoing the tax revenue that would have been collected if the freehold timberland were assessed based on its real and true value and conferred a benefit,[574] under section 771(5)(E) of the Act, to the extent that the property taxes paid by NAFP as a result of this program are less than the taxes the company would have paid absent the program. Additionally, we continue to find the program to be *de jure* specific, under section 771(5A)(D)(i) of the Act, as eligibility for this program is expressly limited to owners of freehold timberland.

---

[569] *See, e.g., CWP from UAE* IDM at Comment 1; *see also CWP from Oman* IDM at Comment 2; and *Nails from Oman* IDM at Comment 1; and *Cold-Rolled Steel from Brazil* IDM at 11; and *Hot-Rolled Steel from Brazil* IDM at 53-54.
[570] *See* GNB NSA QNR Response at Exhibit NSA-15 (New Brunswick Assessment Act).
[571] *Id*.
[572] *Id*.
[573] *See, e.g.*, GNB Verification Report at page 2.
[574] *See* Comment 21 discussing Commerce's benefit calculation.

Both the GNB and NAFP have argued that the property tax assessment rules are (1) not limited to enterprises or industries; (2) do not favor one industry over another; or (3) are used by a large and diverse number of individuals and enterprises, and therefore, are not specific under sections 771(5A)(D)(i), (ii) or (iii) of the Act. Further, they contend that these assessment rules do not result in revenue foregone, and therefore, do not constitute a financial contribution under 771(5)(D)(ii) of the Act. As such, the GNB and NAFP argue that New Brunswick's property tax assessment regime should not be treated as a countervailable subsidy. We disagree with these arguments.

Both the GNB and NAFP have argued that this program is not specific under section 771(5A)(D)(i) of the Act because it is not limited to any enterprises or industries. Specifically, they argue that for entities whose only connection is owning forested properties, this does not constitute an industry or enterprise.[575] Further, both parties add that, as found by the CIT[576] and provided in the SAA,[577] the purpose of the specificity requirement is to differentiate between generally available subsidies; as such, Commerce would have to find that that the Assessment Act expressly limits the property assessment policy for Freehold Timberland to an enterprise, industry or group thereof to make this program countervailable. Finally, both parties point to Commerce's finding for the "British Columbia Private Forest Property Tax" program in *Lumber IV* as an instance in which Commerce properly found specificity,[578] in contrast to the New Brunswick tax program under examination in this expedited review.

First, we disagree with both the GNB and NAFP that this program is not limited to any enterprises or industries. Under the Assessment Act, only individuals or companies that own freehold timberland are eligible for this benefit. Both the GNB and NAFP have stated that owning forested property is not the equivalent of being an industry or enterprise and therefore the program is not specific under 771(5A)(D)(i) of the Act.[579] However, we find that the Assessment Act effectively and expressly restricts the access to the subsidy to a limited number of landholders. As noted above, for a land parcel to be classified as freehold timberland, it must be 10 hectares or more, and must be for *bona-fide* use as freehold timberland (*i.e.*, land that is capable of being harvested).[580] In other words, in order to be eligible for this unique assessment, the property must not only be capable of being harvested as timberland, it also must be of a certain size. As such, we find that this assessment would not be generally available to all landholders throughout the province, but only to a subset of the landholders. Further, the access to the benefit would be effectively limited to potential enterprises involving production of wood and wood-related merchandise because of the type of land at issue.

---

[575] *See* GNB Case Brief at 9; *see also* NAFP Case Brief at 17.
[576] *See Changzhou Trina Solar Energy*, 195 F.Supp.3d at 1349 (citing *Allegheny*, 112 F.Supp.2d at 1152 n.15: "{a] principal purpose of the specificity requirement for countervailability is 'to differentiate between those subsidies that distort trade by aiding a specific company or industry, and those that benefit society generally … and thus minimally distort trade, if at all.'").
[577] *See* SAA at 925: "identify the commercial entity, such as a firm or industry, to which the government or public body provides a financial contribution."
[578] *See Lumber from Canada Expedited Review Rescission* IDM at 27; *see also Lumber IV – Final AR2* IDM at 18.
[579] *See* GNB Case Brief at 9; *see also* NAFP Case Brief at 17.
[580] *See, e.g.*, GNB Verification Report at page 2.

We agree with the GNB and NAFP that the purpose of a specificity analysis is to differentiate between subsidies that distort trade and those that are of benefit to society generally. As stated in the SAA, the role of the specificity test is "to function as an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy."[581] However, we disagree that benefits under the "New Brunswick Property Tax Incentives for Private Forest Producers" program are "broadly available and widely used throughout the economy," as contemplated by the SAA.[582] In fact, the language from the Assessment Act itself specifically indicates that the benefits under this program are not generally available. Beginning on page 25 of the Assessment Act, under the heading "Valuation of Real Property," the GNB details how properties within the province are to be assessed. The first sentence, at section 15, of the Assessment Act states:

> Notwithstanding any other public or private Act or any tax agreement, but subject to sections 15.1, 15.11, 15.2, 15.3, 15.4, 15.5, 16, 17 and 17.1 and to subsection 3(1) of An Act to Comply with the Request of The City of Saint John on Taxation of the LNG Terminal, all real property shall be assessed at its real and true value as of January 1 of the year for which the assessment is made.[583]

Thus, the Assessment Act states that all real property, with certain exceptions, is to be assessed at its "real and true value." Moreover, one of these exceptions is that land classified as freehold timberland under section 17(2) will be assessed at C$100 per hectare. A such, we find that the language from the Assessment Act itself indicates that the benefits accorded to holders of freehold timberland under this program are not broadly available throughout the economy. Further, for a land parcel to be classified as freehold timberland, it must be 10 hectares or more, and must be for bona-fide use as freehold timberland (*i.e.*, land that is capable of being harvested). As such, eligibility under this program is further limited to entities that own large parcels of timberland and who use the property as timberland. In other words, the provision stipulated under section 17(2) does not benefit society generally, instead, it provides a unique assessment methodology to owners of a certain type of property (*i.e.*, timberland that is 10 hectares or larger in size, and is capable of being harvested). Therefore, Commerce's preliminary finding that as a matter of law, eligibility for this tax program is expressly limited to certain users was appropriate.

Finally, we disagree with the GNB and NFAP's argument that Commerce's finding for the "British Columbia Private Forest Property Tax" program in *Lumber IV* is significantly different than the instant case. In *Lumber IV*, Commerce found the program countervailable on the basis that the Government of British Columbia levied property taxes on forest land at different rates depending on whether the forest land was "managed" or "unmanaged."[584] In other words, Commerce found the program to provide a financial contribution, benefit, and to be specific on the basis that it treated different categories of forest land differently. A similar situation exists in the current program under review. Specifically, as discussed above, in order for a property to be classified as freehold timberland the land must meet specific criteria (*i.e.*, must be 10

[581] *See* SAA at 929.
[582] *See* GNB Case Brief at 17.
[583] *See, e.g.*, GNB NSA QNR Response at Exhibit NSA-15.
[584] *See Lumber IV – Final AR1* IDM at page 27; *see also Lumber IV – Final AR2* IDM at page 18.

hectares or more and must be for bona-fide use) to be eligible for the C$100 per hectare assessment. Thus, land that would not otherwise be considered freehold timberland would not receive the unique assessment if it did not meet the specific criteria discussed above. As such, in the case of both "New Brunswick Property Tax Incentives for Private Forest Producers" and "British Columbia Private Forest Property Tax" programs, Commerce finds that the provincial government is providing differential treatment to forest land based on certain criteria.
In addition to arguing the program is not *de jure* specific under 771(5A)(D)(i) of the Act, both the GNB and NAFP have argued that the program is also not *de facto* specific under 771(5A)(D)(ii) and (iii) of the Act. However, since we have found the program to be specific under 771(5A)(D)(i) of the Act, whether the program is specific under 771(5A)(D)(ii) or (iii) of the Act is moot. The SAA explains that "the *de jure* prong of the specificity test recognizes that where a foreign government expressly limits access to a subsidy to a sufficiently small number of enterprises, industries or groups thereof, further inquiry into the actual use of the subsidy is unnecessary."[585]

Regarding financial contribution, both the GNB and NAFP argue that Commerce incorrectly found that the GNB's assessment policy for freehold timberland constituted government revenue foregone. Specifically, the GNB argues that Commerce misinterpreted the Assessment Act and that Commerce should not have read section 17 of the Assessment Act as an exception to section 15. Further, both the GNB and NAFP contend that, in order for Commerce to find a property tax regime to be countervailable, the tax regime must provide differential treatment within a classification of similarly situated property.[586] However, we find these arguments unpersuasive.

First, we disagree with the GNB's characterization that the sections of the Assessment Act following section 15 are not departures from the baseline policy. As discussed above, the first sentence of section 15 of the Assessment Act states that, aside from certain exceptions, "all property shall be assessed at its real and true value as of January 1 of the year for which the assessment is made."[587] Thus, this first sentence under "Valuation of Real Property" indicates that there is a baseline policy for the GNB. Specifically, the Assessment Act stipulates that, unless a property falls under an exception, it will be assessed at its real and true value as of the beginning of the year in which the assessment is being made. In other words, the GNB has established a policy to assess the value of property within the province based on its real and true value, and has provided certain exceptions to this rule, including the valuation of freehold timberland. On this basis, we conclude that these exceptions represent departures from the standard policy to which "ordinary" property is subject.

Next, both the GNB and NAFP have stated that Commerce must find that the Assessment Act provided differential treatment within a classification of similarly situated property in order to identify government revenue foregone. Both parties again point to Commerce's finding for the "British Columbia Private Forest Property Tax Program" in *Lumber IV* to support their argument. Specifically, they stipulate that in *Lumber IV*, Commerce found differential taxation

[585] *See* SAA at 930.
[586] *See* GNB Case Brief at 18; *see also* NAFP Case Brief at 24.
[587] *See, e.g.*, GNB NSA QNR Response at Exhibit NSA-15.

for the same type of land (private forest land) and therefore, a financial contribution in the form of revenue foregone arose.[588] However, we disagree with the GNB and NAFP.

In determining whether the government has foregone revenue, both the GNB and NAFP have asserted that Commerce must find that a tax regime provides differential treatment within a classification of similarly situated property. However, they have provided no support (*i.e.*, regulations or case precedent) for this requirement that Commerce's evaluation of this program must be made by "similarly situated property." Instead, consistent with the Act, Commerce evaluated whether the record evidence demonstrating the GNB's treatment of freehold timberland in comparison with its treatment of all other property within the province constituted a countervailable subsidy, *i.e.*, was a financial contribution provided by an authority, specific, and provided a benefit to the recipient. As explained above, the record evidence demonstrates that this program is a countervailable subsidy. Thus, Commerce's analysis is reasonable.

Finally, even if the GNB's and NAFP's argument that there must be different treatment between similarly situated property were true, record evidence shows that freehold land is not treated consistently across the province. As discussed above, in order for a property to be classified as freehold timberland, and thus eligible for the C$100 per hectare assessment, the property must be 10 hectares or more and must be for bona-fide use. As such, Commerce finds that the GNB's tax regime under the Assessment Act provides differential treatment within a classification of similarly situated property (*i.e.*, timberland that is eligible for the C$100 per hectare assessment and timberland that is not eligible for a special assessment).

**Comment 21:** Whether the Benefit Analysis for New Brunswick's Property Assessment System Should Be Adjusted

*The Petitioner's Comments*

- Commerce should not have included certain transactions in calculating the average value of timberland property in New Brunswick in the *Preliminary Results*.[589]

*GNB/NAFP's Comments*[590]

- If Commerce does do a benchmark analysis, the appropriate benchmark would be the statutory valuation for freehold timberland of C$100 per hectare, and there is no evidence that the GNB departed from that rate for any companies within the province.
- Record evidence demonstrates that the bare land value of Maritime timberland, which encompasses New Brunswick, is less than C$100 per hectare.
- If Commerce were to continue with the methodology used in the *Preliminary Results*, comparing the assessed rate to an average of certain sales during the POR, it should adjust the benchmark calculation. In particular, Commerce should remove the value of trees and other crops that are included in sales transaction values, but not included in property assessment for the freehold timberland and farm woodlot properties. Evidence on the record allows Commerce to calculate a benchmark that only reflects the value of the underlying timberland.

[588] *See* GNB Case Brief at 19; *see also* NAFP Case Brief at 15.
[589] *See* Petitioner Case Brief at 45-49.
[590] *See* GNB Case Brief at 19-22; NAFP Case Brief at 23-32.

- Commerce should not make the adjustment proposed by the petitioner in calculating the average value of timberland property in New Brunswick.

*The Petitioner's Rebuttal Comments*[591]
- Commerce's use of actual sales prices of timberland in New Brunswick during the POR is supported by record evidence and represents the best available benchmark to measure the "full market value" of NAFP's timberland properties.
- The relevant inquiry for measuring the benefit conferred is what is the amount the firm would have paid in the absence of the GNB's statutorily stipulated assessment value of C$100 per hectare for timberland properties. Under the Assessment Act, the majority of property is assessed at the full market value of such property, whereas the assessment for freehold timberland property does not take into account the value of standing crops or unharvested timber. Thus, absent this program, timberland properties would be assessed at their full market value, which includes the value of trees on the property.
- The benchmark Commerce selected is also reliable and represents the best available benchmark on the record.

**Commerce's Position:** To calculate a benefit under this program in the *Preliminary Results*, we determined the extent to which the property taxes paid by NAFP as a result of this program were less than the taxes the company would have paid absent the program.[592] In other words, we calculated the property taxes the company would have paid if its land were assessed at its "real and true value." To determine the taxes the company would have paid, we first calculated the average value of timberland property using private sales of timberland in the province during the POR.[593] Using these property values, we calculated an assessed value for NAFP's property, and the taxes the company would have paid based on this assessed value, absent the program. Finally, to calculate a benefit, we subtracted the taxes that NAFP actually paid during the POR for these holdings.[594]

For purposes of these final results, we have continued to use private sales of timberland properties to determine the "real and true" value of the property, and the applicable property taxes that NAFP would have paid absent this program. As noted above, we find that section 15 of the Assessment Act, in which real property is to be assessed at its real and true value, represents the baseline policy for assessing property values in the province. Therefore, we find that actual sales of timberland in New Brunswick during the POI provide the best information to calculate the "real and true value" of the timberland NAFP held during this time.

However, we agree with the GNB's and NAFP's argument that it is appropriate to make an adjustment to this value and remove the value of standing timber on this land. Section 1 of the Assessment Act provides a definition of "real property." Within this definition, at section 1(f), the Assessment Act explicitly excludes "growing or non-harvested crops in or on land."[595] As such, the record demonstrates that the value of the trees (*i.e.*, "non-harvested crops") would not

[591] *See* Petitioner Rebuttal Comments at 41-43.
[592] *See Preliminary Results* PDM at 27.
[593] *Id.*
[594] *Id.*
[595] *See* GNB NSA QNR Response at Exhibit NSA-15.

be included in any assessment if timberland were to be valued using the baseline methodology under section 15 of the Assessment Act. Therefore, for purposes of this final, we have calculated an average value of timberland property in New Brunswick during the POR exclusive of the value of standing timber.

To determine that value of the underlying timberland (*i.e.*, the value of the land minus the value of the standing timber), we have relied upon information contained in the Court of Queen's Bench of New Brunswick's finding in *Higgins and Tuddenham*.[596] We find that this information from *Higgins and Tuddenham* provides the best information available on the record as it provides timberland values in New Brunswick. Specifically, in *Higgins and Tuddenham*, the GNB had determined compensation payable regarding timberland in New Brunswick,[597] by relying on the evaluation of an appraiser to establish the total value of the land.[598] Because this evaluation was made prior to the POR, we have used it for these final results to calculate a ratio of the value of the underlying land to the total value of the timberland (*i.e.*, the value of the underlying land plus the value of the standing timber thereon).[599] We then applied this ratio to the average value of timberland property sold to determine the value of the underlying land (the value of the timberland minus the value of the standing timber thereon) during the POR.[600] We then measured the benefit as the difference between the property taxes that NAFP would have paid on that land value and the property taxes NAFP paid (at the applicable assessment of C$100 per hectare). In contrast, the other valuation reports cited by NAFP, may include but, do not specifically discuss the value of land in New Brunswick.[601]

Finally, for these final results, we have not made the adjustments that the petitioner proposed in our calculation of the average value of timberland property sold.[602] A more detailed discussion of our position, which requires reference to business proprietary information, is presented in NAFP's calculation memorandum.[603]

**Comment 22:** Whether Commerce Should Correct Fontaine's Total Sales Amount

*Fontaine's Comments*

- Commerce should revise the total sales amount used as the denominator to account for the freight revenue amounts that were submitted as a correction and reviewed by Commerce at

[596] *See* Petitioner Comments on NAFP September 6th QNR Exhibit 5 (citing *Higgins and Tuddenham).*
[597] *Id.*
[598] *Id.* at paragraph 17 ("The province hired James MacDonald of Appraisals Ltd. to prepare an evaluation of the appropriate compensation to be paid to Mr. Higgins and Mr. Tuddenham for the expropriations.") and paragraph 45 ("At 7.216 hectares Mr. MacDonald determined that the value of the underlying land, using this method, was $2,706.00. The total value of the land expropriated including stumpage and cut-over land as appraised by Mr. MacDonald was $12,200.00. In my opinion his approach was reasonable, and I accept the appraisals of the market values of the expropriated lands as set out in Mr. MacDonald's reports.")
[599] *See* NAFP Final Calculations Memorandum.
[600] *Id.*
[601] *See* NAFP Case Brief at 29-30. For example, NAFP cites to a valuation of Bowater Mersey timberland for the government of Nova Scotia and a noble mineral exploration sale which involved a "large Canadian timberland property."
[602] *See* Petitioner Case Brief at 45-49.
[603] *Id.*

verification.[604] Fontaine reported the correction because it had originally reported its sales on an FOB factory basis and not on an FOB port basis, as requested by Commerce.[605]

*The Petitioner's Comments*

- Commerce should not use Fontaine's revised sales data in its calculation and should rely on the export sales values that Fontaine provided to Commerce prior to verification.[606]
- Fontaine submitted an entirely new set of export sales data at verification, six months after the deadline for new factual information for questionnaire responses and two weeks after the deadline for new factual information had expired.[607] The revised data are not information that corrected information that was previously on the record, but changes that substantially affect the integrity of Fontaine's questionnaire responses.[608]
- The revised export sales figures contain inaccuracies that render the data unreliable.[609]

**Commerce's Position:** In the *Preliminary Results*, Commerce used the total sales value reported in Fontaine's April 13, 2018, questionnaire response as the denominator in calculating the countervailable subsidy rates for Fontaine.[610] We recognize that Fontaine presented revised information at verification, and we accepted those revisions as a minor correction.[611] For purposes of these final results of review, we have used the corrected total sales values that Fontaine presented at verification to calculate the countervailable subsidy rates for Fontaine.

We disagree with the petitioner's characterization that the revised data presented by Fontaine at verification do not correct information that was previously on the record. In the verification agenda sent to Fontaine before the verification, Commerce requested that Fontaine demonstrate that "the reported sales figures are on a FOB factory basis for domestic sales and an FOB port basis for export sales and be prepared to tie transportation and insurance to the general ledger and financial statements."[612] As Fontaine explained to Commerce at the start of verification, Fontaine became aware that it had reported all sales, and not just its domestic sales, on an FOB factory basis as it was preparing the materials that Commerce requested to review at verification.[613] As the verification report indicates, Commerce accepted this correction during the verification and that, after tying Fontaine's reported sales to Fontaine's data, we "found no discrepancies with Fontaine's submissions, as adjusted for the minor corrections."[614] Further, having reviewed Fontaine's revised sales figures, and the rest of Fontaine's submissions, at verification, Commerce does not agree with the petitioner that the data submitted by Fontaine

[604] *See* Fontaine Case Brief at 2.
[605] *Id.*
[606] *See* Petitioner Rebuttal Brief at 62-70.
[607] *Id.*
[608] *Id.*
[609] *Id.*
[610] *See* Fontaine Preliminary Calculation Memorandum at Attachment 2.
[611] *See* Fontaine Verification Report at 2 and VE-1.
[612] *See* Fontaine Verification Outline at 7.
[613] *See* Fontaine Verification Exhibits at VE-1.
[614] *See* Fontaine Verification Report at 2 and 5.

were unreliable. In fact, Commerce found at verification that Fontaine's submissions were consistent with the information Commerce reviewed at verification.[615]

**Comment 23:** Whether Commerce Should Use Fontaine's Taxes Paid in 2015 to Calculate Receipt of Alleged Benefits During the POR

*Fontaine's Comments*

- Commerce should have used Fontaine's 2015 tax return in analyzing the alleged tax programs because Fontaine was legally obligated to pay its taxes during the POR even though the return was filed post-POR.[616] Both federal and provincial laws require it pay its taxes within sixty days of the completion of its fiscal year, which for Fontaine is October 31.
- Any benefit that it may have received by paying taxes was received, according to Commerce's regulations, when Fontaine paid its taxes.
- The *CVD Preamble* addresses the possible conflict between the date when taxes are paid and the date when the tax return is filed and concludes that the date when payment must be made is the operative date.[617]
- Commerce, has in the past, relied on the date when a firm has to pay its taxes to determine the year in which to perform analysis of alleged subsidies.[618]

*The Petitioner's Comments*

- Commerce's approach in the *Preliminary Results* was consistent with its long-standing application of its regulations, and it should maintain its methodology for the final results.[619] Commerce has addressed this issue in past cases and determined that the amount of taxes would not be finalized until it filed the tax return because it is at that time that savings under income tax subsidy programs are definitively known.[620] The record of this review makes clear that Fontaine's actual tax liabilities were not finalized at the time it made its payments.[621]

**Commerce's Position:** In the *Preliminary Results*, Commerce performed benefit calculations on tax programs using Fontaine's 2014 tax return that was filed during the POR.[622] Under 19 CFR 351.509(b)(1), Commerce will find benefits under income tax programs to have been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. The regulation further states that Commerce will normally interpret this date to be the date on which the recipient firm filed its income tax return.

Fontaine argues that Commerce should have used its 2015 tax return in its benefit calculations because the regulation states that Commerce "normally will consider the benefits having been received on the date on which the recipient firm would otherwise have had to pay the taxes

[615] *See* Fontaine Verification Report at 3, 5, 6, 7, and 8.
[616] *See* Fontaine Case Brief at 2-3
[617] *Id*. at 5-6.
[618] *Id*. at 8-9.
[619] *See* Petitioner Rebuttal Brief at 71.
[620] *Id*.
[621] *Id*. at 75.
[622] *See* Fontaine Preliminary Calculation Memorandum at 1.

associated with the exemption or remission."[623] Fontaine contends that since it is required by law to pay its federal and provincial taxes within sixty days of the end of its fiscal year (October 31st) and this payment due date is within the POR, then Commerce should use its 2015 tax return even though it was filed after the POR. We do not agree with Fontaine. As discussed in the *CVD Preamble*,[624] Commerce's goal is to equate the timing of receipt of the benefit with the date the firm knew the amount of its tax liability, and thus the definitive amount of its tax savings under any particular tax-related subsidy program.[625] Based on our experience, the date on which it files its tax return is the date on which a firm knows, definitively, the amount of its tax liability, and thus any attendant savings realized under tax-related subsidy programs.[626]

Commerce has dealt with similar situations in the past. In *Wire Decking from China*,[627] Commerce found that, while the respondent had pre-paid taxes in the year prior to when it filed its tax return, the amount that the respondent owed the government would not be finalized until the firm filed its taxes.[628] Commerce determined that it was appropriate to "equate{} the timing of receipt of income tax benefits with the date on which the recipient firm files its tax return because it is at that time that savings under income tax subsidy programs are definitively known."[629] Commerce followed this same principle in *Drill Pipe from China*, where it determined that the respondent's tax return and not its quarterly payments to the government "constitute{} the correct source for determining the ultimate amount of tax savings realized during the POI."[630] Commerce adopted similar reasoning again, in *Warmwater Shrimp from China*[631] and in *Certain Steel Nails from Oman*.[632]

The record demonstrates that Fontaine makes estimated tax payments throughout the year prior to filing its tax return, but it does not know the full extent of its tax liability until it files its tax return. On the federal tax return, the line on which Fontaine identifies the amount of its payments to the federal government prior to filing its tax return is "installments made."[633] Additionally, the record contains copies of the annual installment plans from the start of a tax year that detail the identical monthly installments that Fontaine will pay to the CRA throughout its fiscal year.[634] It is evident from the record that Fontaine does not have definitive knowledge of the amount of or benefit from the tax credits that it claims until it files its tax return.

Fontaine claims that there are instances where Commerce has diverted from its normal practice of relying on the tax filing date and has calculated a benefit based on the date of payment, citing to *CTL Plate Korea 1999* and *Low Enriched Uranium from France*. We do not find these

---

[623] *See* Fontaine Case Brief at 4 (citing 19 CFR 351.509(b)(1)).
[624] *See CVD Preamble*, 63 FR at 65376.
[625] Further, 19 CFR 351.509(c) indicates that, for purposes of expensing the tax benefit, Commerce will expense the tax exemption, remission, or deferral to the year in which the benefit is considered to have been received.
[626] *See CVD Preamble*, 63 FR at 65376.
[627] *See Wire Decking from China* IDM at Comment 21.
[628] *Id.*
[629] *Id.*
[630] *See Drill Pipe from China* IDM at Comment 12.
[631] *See Warmwater Shrimp from China* IDM at Comment 12.
[632] *See Steel Nails from Oman* IDM at Comment 6.
[633] *See* Fontaine April 13th SQNR Response at Exhibit 5.
[634] *Id.*

arguments persuasive. The program at issue in *CTL Plate Korea 1999* related to a land purchase where the taxes were not due, and the corresponding tax benefit was not received, until the property was registered with the government.[635] Commerce's reasoning in that case is not applicable in this instant review because Fontaine does not receive the benefit of the tax programs until it files its annual tax returns.

Similarly, *Low Enriched Uranium from France* is distinguishable from this review because the program under consideration in that investigation was automatically refundable and the payment made by the respondent, Eurodif, was "deposited in an interest bearing account that was to be reimbursed to Eurodif in full."[636] As Commerce explained, "there was no discretion on the part of the {government of France} as to whether to reimburse Eurodif, or in what amount. Eurodif knew at the time it filed its tax return and deposited the monies that it would receive a full reimbursement of the amount deposited with the government-owned bank of the French Treasury."[637] That is not the case in this review because Fontaine made estimated payments to the federal and provincial governments, but any savings under income tax subsidy programs were not definitively known until it filed its tax return.

Therefore, we determine that Commerce correctly calculated the tax benefit to Fontaine using its 2014 tax return, consistent with 19 CFR 351.509(b)(1).

[635] *See CTL Plate from Korea 1999* IDM at Comment 14.
[636] *See Low Enriched Uranium from France* IDM at Comment 6.
[637] *Id.*

## VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this expedited review and the final subsidy rates in the *Federal Register*.

| ☒ | ☐ |
|---|---|
| Agree | Disagree |

6/28/2019

X 

Signed by: ALEX VILLANUEVA
Alex Villanueva
Senior Director, Office I
Antidumping and Countervailing Duty Operations

## APPENDIX I

## ACROYNM AND ABBREVIATION TABLE

This section is sorted by Complete Name.

| Acronym/Abbreviation | Complete Name |
|---|---|
| ACCA | Accelerated Capital Cost Allowance |
| ASLTC | Alberta Softwood Lumber Trade Council |
| AD | Antidumping Duty |
| AUL | Average Useful Life |
| BDC | Business Development Bank of Canada |
| BDC Act | Business Development Bank of Canada Act |
| CBP | Customs and Border Protection |
| CAFC | Court of Appeals for the Federal Circuit |
| CED | Canada Economic Development for Québec Regions |
| CRA | Canada Revenue Agency |
| CIT | Court of International Trade |
| CITA | Canada's Income Tax Act |
| CITR | Canada's Income Tax Regulations |
| Softwood Lumber | Certain Softwood Lumber Products |
| Petitioner | Committee Overseeing Action for Lumber International Trade Investigations or Negotiations *a.k.a.* COALITION |
| CIFQ | Conseil de l'Industrie forestiere du Québec |
| CEP | Consultations for Employment |
| CIT | Contrat d'intégration au Travail |
| CVD | Countervailing Duty |
| ESDC | Employment and Social Development Canada |
| E&C | Enforcement & Compliance |
| EDC | Export Development Canada |
| FOB | Free On Board |
| FLTC | Federal Logging Tax Credit |
| MPPD | Federal Manufacturing and Processing Profits Deduction |
| FY | Fiscal Year |
| FDRCMO | Fonds de développement et de reconnaissance des compétences de la main d'oeuvre (translated as Workforce Skills Development and Recognition Fund) |
| Fontaine | Fontaine Inc. |
| Natanis | Gestion Natanis Inc |
| GOA | Government of Alberta |
| GBC | Government of British Columbia |
| GOC | Government of Canada |

| | |
|---|---|
| GNB | Government of New Brunswick |
| GOO | Government of Ontario |
| GOQ | Government of Québec |
| HTSUS | Harmonized Tariff Schedule of the United States |
| Daveluyville | Industries Daveluyville, Inc. |
| IQ | Investissement Québec |
| ILRC | Investissements LRC Inc |
| IDM | Issues and Decision Memorandum |
| LEI | Lauzon Enterprises Inc |
| Gesco-Star | Le Groupe Gesco-Star Ltée |
| Warwick | Les Manufacturiers Warwick Ltée |
| PJPF | Les Placements Jean-Paul Fontaine Ltée |
| D&G | Les Produits Forestiers D&G Ltée |
| Portbec | Les Produits Forestiers Portbec Ltée |
| Startrees | Les Produits Forestiers Startrees Ltée |
| MPPD-Q | Manufacturing and Processing Profits Deduction – Québec |
| MLI | Marcel Lauzon Inc. |
| MESI | Ministry of Economy, Science and Innovation |
| MFFP | Ministry of Forests, Wildlife and Parks |
| MTESS | Ministère du Travail, de l'Emploi et de la Solidarité Sociale (translated as Ministry of Work, Employment and Social Solidarity) |
| Rustique | Mobilier Rustique (Beauce) Inc. |
| NBLP | New Brunswick Lumber Producers |
| NFI | New Factual Information |
| NSA | New Subsidy Allegations |
| NAFP | North American Forest Products Ltd. |
| NAICS | North American Industry Classification System |
| OPHQ | Office des Personnes Handicapées du Québec |
| PDM | Preliminary Decision Memorandum |
| POI | Period of Investigation |
| POR | Period of Review |
| PML | Placements Marcel Lauzon Ltée |
| PNF | Placements Nicolas Fontaine Inc |
| PVC | Polyvinyl chloride |
| PDM | Preliminary Decision Memorandum |
| Matra | Produits Matra Inc. |
| Groupe Matra | Produits Matra Inc., Sechoirs de Beauce Inc., Bois Ouvre de Beauceville (1992), Inc., collectively |
| UNIQ | Project Financing |
| PLTC | Provincial Logging Tax Credit |
| QNR | Questionnaire |
| R&D | Research and Development |

| | |
|---|---|
| Roland | Roland Boulanger & Cie Ltée |
| SR&ED | Scientific Research and Experimental Development |
| Lemay | Scierie Alexandre Lemay & Fils Inc. |
| Sechoirs | Sechoirs de Beauce Inc. |
| SMEs | Small- and Medium-sized Enterprises |
| SQ | Supplemental Questionnaire |
| SQNR | Supplemental Questionnaire Response |
| SFDA | Sustainable Forest Development Act |
| Act | Tariff Act of 1930, as amended |
| TISQFE | Temporary Initiative for the Strengthening of Québec's Forest Economies |
| CBP | U.S. Customs and Border Protection |
| Commerce | U.S. Department of Commerce |
| ITC | U.S. International Trade Commission |
| RENFORT | Working Capital and Investment Fund Program |

**APPENDIX II**

**ADMINISTRATIVE DETERMINATIONS/NOTICES, REGULATORY, AND COURT CASES TABLE**

This section is sorted by Short Citation.

| Short Citation | Document Title |
|---|---|
| *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) |
| *Aircraft from Canada Final* | *100- to 150-Seat Large Civil Aircraft from Canada: Final Affirmative Countervailing Duty Determination*, 82 FR 61252 (December 27, 2017) |
| *AK Steel* | *AK Steel Corp. v. United States*, 192 F.3d 1367, 1385 (CAFC 1999) |
| *Allegheny* | *Allegheny Ludlum Corp. v United States*, 112 F. Supp. 2d 1141, 1152, n. 15 (CIT 2000) |
| *Aluminum Wire and Cable from the PRC* | *Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China: Preliminary Affirmative Determination,* 84 FR 13886 (April 8, 2019) and accompanying PDM |
| *Archer Daniels Midland Co.* | *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1345 (CIT 2013) |
| *Bethlehem Steel* | *Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354 (CIT 2001) |
| *Borusan* | *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States,* 61 F. Supp. 3d 1306 (CIT 2015) |
| *CDMT from China* | *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017) |
| *CDMT from India* | *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Determination of Sales at Less than Fair Value*, 83 FR 16296 (April 16, 2018). |
| *Carlisle Tire* | *Carlisle Tire and Rubber Co. v. United States* 564 F. Supp. 834 (Ct. Int'l Trade 1983) |
| *Certain Steel from France* | *Final Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304, 37311 (July 9, 1993) |
| *Certain Steel from Germany* | *Final Countervailing Duty Determination: Certain Steel Products from the Federal Republic of Germany*, 47 FR 39345, 39351 (September 7, 1982) |

| | |
|---|---|
| *Changzhou Trina Solar Energy* | *Changzhou Trina Solar Energy v. United States*, 195 F.Supp.3d 1334, 1349 citing *Allegheny Ludlum Corp. v. United States*, 24 C.I.T. 452, 463, 112 F.Supp.2d 1141 |
| *Citric Acid from China* | *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) |
| *Cold-Rolled Steel from Brazil* | *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 20, 2016) |
| *Cold-Rolled Steel from India* | *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016) |
| *Cold-Rolled Steel from Korea* | *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) |
| *Cold-Rolled Steel from Russia* | *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) |
| *Compressors from Singapore* | *Certain Refrigeration Compressors from the Republic of Singapore*, 61 FR 10315, 10316 (March 13, 1996) |
| *CORE from Korea Expedited Review Initiation* | *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Initiation of Expedited Review of the Countervailing Duty Order*, 81 FR 68404 (Oct. 4, 2016) |
| *CORE from Korea Expedited Review Rescission* | *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Rescission of Countervailing Duty Expedited Review; 2014*, 82 FR 7798 (January 23, 2017) |
| *Corus Staal* | *Corus Staal BV v. United States*, 395 F.3d 1343, 1347-49 (*CAFC* 2005) |
| *Corus Staal II* | *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (CAFC 2007) |
| *CTL Plate from China Expedited Review Initiation* | *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Initiation of Expedited Review of the Countervailing Duty Order*, 82 FR 23197, 23197 (May 22, 2017) |
| *CTL Plate from China Expedited Review Prelim* | *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Preliminary Results of Countervailing Duty Expedited Review*, 83 FR 12337, 12337 (March 21, 2018) |
| *CTL Plate from China Expedited Review Final* | *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Results of Countervailing Duty Expedited Review*, 83 FR 34115 (July 19, 2018) |
| *CTL Plate from Korea 1999* | *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176 (December 29, 1999) |
| *CVD Preamble* | *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) |

| | |
|---|---|
| *CWP from Oman* | *Certain Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Affirmative Countervailing Duty Determination*, 77 FR 64473 (October 22, 2012) |
| *CWP from UAE* | *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination, 77 FR 64465 (October 22, 2012)* |
| *Delverde* | *Delverde, Srl v. United States, 202 F.3d 1360, 1366, 1367 (CAFC 2000)* |
| *Drill Pipe from China* | *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) |
| *FFC* | *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001) |
| *Final Rule Preamble* | *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997) |
| *Flanges from Italy AD Final* | *Notice of Final Determination of Sales at Less Than Fair Value: Finished Carbon Steel Flanges from Italy*, 82 FR 41964 (June 29, 2017). |
| *GOSL v. United States* | *Gov't of Sri Lanka v. United States*, 308 F. Supp. 3d 1373, 1379 (Ct. Int'l Trade 2018) |
| *Higgins and Tuddenham* | *Higgins and Tuddenham v. Province of N.B., 2005 NBQB 237 (CanLII)* |
| *Hot-Rolled Steel from South Africa* | *Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 50412 (October 3, 2001) |
| *Hot-Rolled Steel from Brazil* | *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, and Final Determination of Critical Circumstances, in Part*, 81 FR 53416 (March 24, 2016). |
| *Initiation Notice* | *Certain Softwood Lumber Products from Canada: Initiation of Expedited Review of the Countervailing Duty Order*, 83 FR 9833 (March 8, 2018) |
| *Inland Steel* | *Inland Steel Indus., Inc. v. United States*, 967 F. Supp. 1338, 1367-68 (CIT 1997), aff'd, 188 F.3d 1349 (*CAFC* 1999) |
| Irving Motion to Dismiss | *Irving Paper Limited v. United States*, Court No. 17-00128, Defendant's Opposition to Plaintiff's Motion to Consolidate and Motion to Dismiss, dated Sept. 21, 2017 (*Irving Paper Limited*) |
| Irving Order of Dismissal | *Irving Paper Limited*, Court No. 17-00128, Order of Dismissal, dated July 31, 2018 |
| *Irving Paper Limited v. United States* | *Irving Paper Ltd. v. United States*, No. 17-00128, Slip Op 18-22 (CIT 2018) |
| *United States Response to Questions from the Court* | *Irving Paper Limited v. United States, Court No. 17-00128, Defendant's Response to the Court's December 28, 2017 Order, dated January 30, 2018, at Answer 3.* |
| *Low Enriched Uranium from France* | *Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France*, 66 FR 65901 (December 21, 2001) |

| | |
|---|---|
| *Lumber from Canada Expedited Review Rescission* | *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 II Prelim* | *Preliminary Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 51 FR 37453, 37458 (October 22, 1986) |
| *Lumber IV – Final AR1* | *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 – Final AR2* | *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005) |
| *Lumber IV Expedited Review Initiation* | *Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 46955, 46956 (July 17, 2002) |
| *Lumber V Final* | *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) |
| *Lumber V Prelim* | *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) |
| Marrakesh Agreement | Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994) |
| *Mexico – Beef and Rice* | *Mexico – Definitive Anti-Dumping Measures on Beef and Rice,* WT/DS295/R (Jun. 6, 2005) |
| *Nails from Oman* | *Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015) |
| *NSK* | *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (CAFC 2007). |
| *OCTG from Canada* | *Final Countervailing Duty Determination: Oil Country Tubular Goods from Canada, 51 FR 15037, 15038 (April 22, 1986)* |
| *OCTG from Turkey* | *Notice of Final Affirmative Critical Circumstances Determination Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 79 FR 41964 (July 18, 2014) |
| *Off-the-Road Tires from Sri Lanka* | *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination*, 82 FR 2949 (January 10, 2017) |
| *Off-the-Road Tires from Sri Lanka Order* | *Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Countervailing Duty Order*, 82 FR 12556 (March 6, 2017). |
| *Order* | *Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018) |

| | |
|---|---|
| *Partial Rescission Notice* | *Certain Softwood Lumber Products from Canada: Partial Rescission of Expedited Review of the Countervailing Duty Order*, 83 FR 23424 (May 21, 2018) |
| *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 Film from India* | *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) |
| *PPG Industries* | *PPG Industries, Inc. v United States*, 978 F. 2d 1232,1240 (*CAFC* 1992) |
| *Preliminary Results* | *Certain Softwood Lumber Products from Canada: Preliminary Results of Countervailing Duty Expedited Review*, 84 FR 1051 (February 1, 2019). |
| *Proposed Rule Preamble* | *Antidumping Duties; Countervailing Duties; Proposed Rule*, 61 FR 7308 (February 27, 1996) |
| *Rebar from Turkey* | *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) |
| *Royal Thai Government* | *Royal Thai Government v. United States*, 341 F. Supp. 2d 1315, 1319 (CIT 2004) aff'd in part, reversed in part, and remanded, 436 F.3d 1330 (*CAFC* 2006) |
| *SAA* | Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870 |
| *Saarstahl AG* | *Saarstahl AG v. United States*, 984 F. Supp. 616, 620 (CIT 1997), aff'd in part and rev'd in part on other grounds, 177 F.3d 1314 (*CAFC* 1999) |
| *SC Paper from Canada Expedited Review Final* | *Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) |
| SCM Agreement | Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14. |
| *Seamless Pipe from China* | *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination*, 75 FR 9163 (March 1, 2010) |
| *Semiconductors from Taiwan* | *Notice of Final Determination of Sales at Less Than Fair Value: Static Random-Access Memory Semiconductors from Taiwan*, 63 FR 8909 (February 23, 1998) |
| *Sinks from China* | *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) |

| | |
|---|---|
| *Shandong Dongfang Bayley Wood* | *Shandong Dongfang Bayley Wood v. United States*, 236 F. Supp. 3d 1346, 1351 (CIT 2017) |
| *Softwood Lumber from Canada Expedited Review Final 2002* | *Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 67 FR 67388, 67391 (November 5, 2002) |
| *Softwood Lumber from Canada Expedited Review Final 2003* | *Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 68 FR 24436, 24439 (May 7, 2003) |
| *Softwood Lumber from Canada Expedited Review Prelim* | *Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 67 FR 52945 (August 14, 2002) |
| *Solar Cells from China* | *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) |
| *Steel Nails from Oman* | *Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015) |
| *Supercalendered Paper from Canada Expedited Review Initiation* | *Supercalendered Paper from Canada: Initiation of Expedited Review of the Countervailing Duty Order*, 81 FR 6506 (February 8, 2016) |
| *Supercalendered Paper Expedited Review Prelim* | *Supercalendered Paper from Canada: Preliminary Results of Countervailing Duty Expedited Review*, 81 FR 85520 (November 28, 2016) |
| *Supercalendered Paper from Canada Expedited Review Final* | *Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896, 18897 (April 24, 2017) |
| *Supercalendered Paper from Canada Panel Report* | Panel Report, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/R, circulated July 5, 2018 |
| *Tetrafluoroethane from the PRC* | *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*,79 FR 62594 (October 20, 2014) and accompanying IDM. |
| *Uncoated Groundwood Paper from Canada Prelim* | *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) |
| *Uncoated Groundwood Paper from Canada Final* | *Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018) |
| *URAA* | Uruguay Rounds Agreement Act, H.R. Doc. 103-465 (1994) |
| *United States Response to Questions from the Court* | *Irving Paper Limited v. United States*, Court No. 17-00128, Defendant's Response to the Court's December 28, 2017 Order, |

| | |
|---|---|
| | dated January 30, 2018 (United States Response to Questions from the Court), at Answer 3 |
| *Warmwater Shrimp from China* | *Certain Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (Aug. 19, 2013) |
| *Welded Line Pipe from the Republic of Turkey* | *Welded Line Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 80 FR 14943 (March 20, 2015) |
| *Wire Decking from China* | *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) |

**APPENDIX III**

**CASE-RELATED DOCUMENTS**

**APPENDIX IV**

**NON-USED PROGRAMS**