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Administrative Review
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November 23, 2020

MEMORANDUM TO: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

THROUGH: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Abdelali Elouaradia
Director
AD/CVD Operations, Office IV

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2017-2018 Antidumping Duty Administrative Review Certain Softwood Lumber Products from Canada

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I. SUMMARY

On February 7, 2020, the Department of Commerce (Commerce) published its *Preliminary Results* in the 2017-2018 administrative review of the antidumping duty (AD) order of certain softwood lumber products (softwood lumber) from Canada.[1] The period of review (POR) is June 30, 2017 through December 31, 2018. This administrative review covers three mandatory respondents: Canfor,[2] Resolute,[3] and West Fraser,[4] and 250 non-selected producers/exporters that we did not individually examine. Based on our analysis of the comments received, we made

[1] *See Certain Softwood Lumber Products from Canada: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017–2018,* 85 FR 7282 (February 7, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] As described in the PDM, we have treated Canfor Corporation; Canadian Forest Products Ltd.; and Canfor Wood Products Marketing Ltd. (collectively, Canfor) as a single entity. *See Preliminary Results* PDM at 5.

[3] As described in the PDM, we have treated Resolute Growth Canada Inc.; Forest Products Mauricie LP; Société en commandite Scierie Opitciwan; Resolute-LP Engineered Wood Larouche Inc.; Resolute-LP Engineered Wood St-Prime Limited Partnership; and Resolute FP Canada Inc. (collectively, Resolute) as a single entity. *See Preliminary Results* PDM at 6.

[4] As described in the PDM, we have treated West Fraser Mills Ltd.; Blue Ridge Lumber Inc.; Manning Forest Products Ltd.; and Sundre Forest Products Inc. (collectively, West Fraser) as a single entity. *See Preliminary Results* PDM at 6-7.

certain changes to our margin calculations for Canfor, Resolute, and West Fraser and the non-selected producers/exporters. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

General Issue

Comment 1 Particular Market Situation Allegation

Canfor's Issues

Comment 2 Canfor's Reported Grades
Comment 3 Canfor's Reported Costs
Comment 4 Valuing Affiliated Transactions Involving Canfor's Grande Prairie Mill
Comment 5 Valuing Canfor's Seed Purchases
Comment 6 Canfor's Price George Sawmill's Purchases of Electricity
Comment 7 Ministerial Error Regarding Canfor's Inventory Carrying Costs Incurred in the United States

Resolute's Issues

Comment 8 Whether to Adjust Resolute's Grade Groups and Grade Equivalents
Comment 9 Whether to Adjust for DINVCARU and INVCARU
Comment 10 Whether to Adjust Resolute's Costs for Other Direct Charges
Comment 11 Zeroing

Differential Pricing Issues

Comment 12 The Differential Pricing Analysis is Inconsistent with the AD Agreement
Comment 13 The Cohen's d and Ratio Tests are Irrational
Comment 14 Time Periods for the Cohen's *d* Test
Comment 15 Simple Average of Variances in the Cohen's *d* Coefficient
Comment 16 External Factors Which Explain the Price Differences
Comment 17 Cohen's *d* test is Subject to Rule-Making Procedures

West Fraser's Issues

Comment 18 Whether Commerce Should Modify West Fraser's Reporting of Alternate Grades
Comment 19 Whether Commerce Should Apply Facts Available Due to Discrepancies in West Fraser's Reported Tally Sales
Comment 20 Whether to Apply Offsets to West Fraser's General and Administrative (G&A) Expense Ratio
Comment 21 Whether Commerce Should Allocate Certain Affiliate Expenses to West Fraser G&A Expenses
Comment 22 Whether Commerce Should Offset West Fraser's G&A Expenses for Greenhouse Gas Credits

Comment 23 Whether Commerce Should Include Equity-Based Compensation in G&A Expenses
Comment 24 Whether Commerce Should Exclude Foreign Exchange Gain in West Fraser's Financial Expense Ratio

Company Name Issues

Comment 25 Iterations of Olympic's Name
Comment 26 Listing of Tolko's Name in the Final Results

II. BACKGROUND

As noted above, on February 7, 2020, Commerce published its *Preliminary Results*.[5] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these final results until July 28, 2020.[6] On June 5, 2020, Commerce extended the deadline of these final results until September 24, 2020.[7] On July 21, 2020, Commerce tolled all for all preliminary and final results in administrative reviews by an additional 60 days, thereby extending the deadline for these final results until November 23, 2020.[8]

On March 9, 2020, nine parties submitted case briefs or letters in lieu of case briefs.[9] On March 19, 2020, six parties submitted rebuttal briefs.[10] While the Committee Overseeing Action for

[5] *See Preliminary Results*.
[6] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19," dated April 24, 2020.
[7] *See* Memorandum, "Extension of Deadline for Final Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Certain Softwood Lumber Products from Canada," dated June 5, 2020.
[8] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.
[9] *See* Carrier Forest Products Ltd. and Carrier Lumber Ltd.'s (Carrier) Letter "Letter in Lieu of Case Brief," dated March 9, 2020; Canfor's Case Brief "Case Brief," dated March 9, 2020; Government of Canada's Case Brief "Case Brief of the Government of Canada," dated March 9, 2020; Olympic Industries, Inc. and Olympic Industries ULC's (Olympic) Case Brief "Case Brief," dated March 9, 2020; Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (the petitioner)'s Case Brief "Case Brief," dated March 9, 2020; Resolute's Case Brief "Resolute's Case Brief," dated March 9, 2020; Tolko Marketing and Sales Ltd., Tolko Industries Ltd., and Gilbert Smith Forest Products Ltd.'s (Tolko) Letter "Letter in Lieu of a Case Brief," dated March 9, 2020; and West Fraser's Case Brief "Case Brief of West Fraser Mills Ltd.," dated March 9, 2020.
[10] *See* Canfor's Rebuttal Brief "Canfor Rebuttal Brief," dated March 19, 2020; Government of Canada's Rebuttal Brief "Canadian Parties' Rebuttal Brief," dated March 19, 2020; Petitioner's Rebuttal Brief "Rebuttal Brief," dated March 19, 2020; Resolute's Rebuttal Brief "Resolute's Rebuttal Brief," dated March 19, 2020; Sierra Pacific Industries' Rebuttal Brief "Sierra Pacific Industries," dated March 19, 2020; and West Fraser's Rebuttal Brief "Rebuttal Brief of West Fraser Mills Ltd.," dated March 19, 2020.

Lumber International Trade Investigations or Negotiations (petitioner),[11] Resolute, and West Fraser requested hearings,[12] all three hearing requests were withdrawn.[13]

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 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.

[11] The petitioner is the Coalition, an *ad hoc* association whose member are: U.S. Lumber Coalition Inc.; Collum's Lumber Products, L.L.C.; Hankins, Inc.; Potlatch Corporation; Rex Lumber Company; Seneca Sawmill Company; Stimson Lumber Company; Swanson Group; Weyerhaeuser Company; Carpenters Industrial Council; Giustina Land and Timber Company; and Sullivan Forestry, Consultants, Inc.

[12] *See* Petitioner's Letter "Petitioner's Hearing Request," dated February 10, 2020; West Fraser's Letter "West Fraser Mills Ltd.'s Hearing Request," dated March 9, 2020; Resolute's Letter "Request For Hearing," dated March 9, 2020.

[13] *See* West Fraser's Letter "Withdrawal of Request for a Hearing," dated April 10, 2020; Petitioner's Letter "Withdrawal of Petitioner's Hearing Request," dated April 10, 2020; Resolute's Letter "Resolute's Withdrawal Of Request For A Hearing," dated April 13, 2020.

- 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 Harmonized Tariff Schedule of the United States (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:

4406.11.0000; 4406.91.0000; 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; 4418.50.0030; 4418.50.0050 and 4418.99.10.00.

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. DISCUSSION OF THE ISSUES

Comment 1: Particular Market Situation Allegation

Petitioner:

- The Government of Canada (GOC) implemented industrial policies that encouraged the use of sawmill by-products in the cogeneration of electricity and steam. The GOC's subsidization and intervention in the cogeneration of electricity and steam, with the use of lumber by-products that were previously considered surplus, has created a cost advantage for lumber producers.
- These GOC subsidies and interventions create a particular market situation (PMS) because they "adversely impact the reliability of using respondents' cost data to determine whether sales have been made in the ordinary course of trade."
- The petitioner's PMS allegation demonstrated a reasonable basis for believing that a PMS exists with respect to distortive GOC subsidies impacting respondents' cost of production (COP) and Commerce should have initiated a PMS inquiry.
- Commerce has found government subsidization of the costs of inputs results in a PMS in previous cases, *e.g.*, *Circular Welded Pipe Tubes from Thailand*, *Biodiesel from Argentina*, *CORE from Korea*, and *Circular Welded Pipe from Korea*. This instant PMS allegation shows similar evidence of such distortions as the subsidies provided by the GOC were previously found to be countervailable by Commerce and also function as a tool of the government's support for the Canadian forest industry.
- Softwood lumber producers are beneficiaries of GOC subsidies for energy inputs and subsidies for the use of lumber by-products in cogeneration facilities for the production of electricity and steam.
- Record evidence shows that the GOC intervened to support the cogeneration of electricity and steam using lumber by-products that were previously considered "surplus" and by purchasing electricity generated from such processes for more-than-adequate renumeration. Record evidence also shows that respondents reduced their COP as a result of these subsidies.
- The information presented in the petitioner's PMS allegation was sufficient for initiating an inquiry and confirms that the issues are comparable to those raised in cases where Commerce affirmatively found a PMS to exist.
- Commerce erred in its determination that the instant PMS allegation was indistinguishable from the PMS allegation filed in the underlying investigation which Commerce denied.
- In the underlying investigation and this instant review, Commerce did not find that a PMS existed because it determined that the petitioner failed to provide evidence demonstrating a connection between subsidy benefits provided to the bioenergy industry and softwood lumber producers. However, in this administrative review, record evidence demonstrates that Canadian softwood lumber producers use lumber by-products to produce bioenergy and are part of the bioenergy industry which receives subsidies from the GOC.

- The totality of the record evidence supports Commerce finding that lumber producers are members of the bioenergy industry and that the respondents' lumber by-products are regularly used in the production of bioenergy.
- Commerce preliminarily determined that lumber by-products were primarily consumed by pulp and paper producers and not used for bioenergy production. Commerce mistakenly conflated woodchips and lumber by-products that are used in the production of bioenergy, *i.e.*, wood residue (sawdust, shavings, and bark) which are used in the production of bioenergy. Prior to subsidized bioenergy production, wood residue was burned in incinerators or placed in landfills and their value was transformed by their use in bioenergy production.
- Woodchips are not the focus of the petitioner's PMS allegation and should not be the focus of Commerce's analysis, because woodchips are not used in the production of bioenergy, have historically had value as an input to pulp and paper, and continue to be sold as a pulp and paper input even after the GOC began subsidizing the bioenergy industry.
- When the petitioner stated that "under the ordinary course of trade {lumber by-products} would have been destined for the incinerator or landfill, it was referring to sawdust, shavings, and bark – not woodchips.
- In its preliminary PMS determination, Commerce disputed the petitioner's by-product argument with information from the underlying investigation that has been placed on the record of the current administrative review. However, Commerce placed the public version of this information on the record and it has no purpose for this review as it relates to a separate and distinct record. Commerce should only rely on information from this instant administrative review.
- Record evidence demonstrates that the GOC's subsidies of bioenergy production resulted in COP distortions for the respondents due to lower energy costs.
- Record evidence shows that various respondents received subsidies for building cogeneration facilities and that this led to lower energy costs, because the respondents were then able to sell electricity and reduce reliance on other forms of energy, *i.e.*, natural gas and outside energy suppliers.
- Capital investments by the GOC in cogeneration facilities enabled respondents to become more energy efficient and thereby reduce costs.
- Commerce's preliminary finding that many of the subsidies and cogeneration facilities have been in place for a number of years, thereby undermining the potential impact on COP is not in accordance with its past practice where it has determined that the length of time a subsidy has been in place need not be taken into account when evaluating a PMS allegation. In *Biodiesel from Argentina*, Commerce found that the statute does not preclude a PMS finding, even if a market distortion had been in place for several years.
- Contrary to Commerce's claims, the petitioner did provide Commerce with suitable COP adjustments to apply to the margin calculation. Specifically, Commerce should increase the cost of energy inputs purchased by the respondents and increase the respondents' COP in their energy consumption patterns.

Respondents:

- The petitioner has failed to meet its burden to establish a PMS by failing to demonstrate adequately that alleged distortions occurred with respect to claimed GOC bioenergy subsidies and with respect to alleged GOC energy subsidies.
- In the underlying investigation, Commerce determined that the bioenergy industry is not a significant market for lumber by-products. Similarly, in the administrative review, Commerce preliminarily determined the petitioner also failed to establish that the bioenergy market is a significant market for lumber by-products.
- The petitioner argues that rather than focusing on woodchips (the highest value by-product), Commerce should focus on the lesser-valued by-products. However, this focus on the lesser-valued by-products is not reasonable because, in the underlying investigation, Commerce determined that the lesser-value lumber by-products were incapable of having enough of an impact to cause a PMS because they represented a small portion of the value of softwood lumber by-products in general. The petitioner has provided no evidence to the contrary.
- The petitioner has provided no facts to indicate that any general industry dynamics have changed since the underlying investigation. In fact, the petitioner itself acknowledge that woodchips continue to be sold as a pulp and paper input.
- The petitioner is taking inconsistent positions with respect to presumptions about market changes. Regarding by-products and bioenergy, the petitioner asserts that Commerce cannot assume that industry dynamics remain the same in the months since the underlying investigation concluded, specifically with regard to the fact that bioenergy programs are not a significant market for high-value lumber by-product sales. However, regarding its PMS energy allegation, the petitioner asserts that Commerce should assume that the amount of energy required to convert timber into subject lumber has not changed for over ten years.
- The petitioner has attempted to consolidate the softwood lumber and pulp and paper industries into a single industry and conflate it with an undefined "bioenergy industry" in an attempt to imply the existence of distortions in the softwood lumber industry that do not exist. The softwood lumber and pulp and paper industries are separate and cost distortions in one does not automatically mean there are cost distortions in the other.
- Many of the petitioner's arguments are premised on the notion that Commerce should adjust for a change in a company's business practices rather than adjusting for actual cost distortions.
- Despite its claims to the contrary, the petitioner never provided any information to explain how Commerce should adjust the respondents' costs to reflect the petitioner's claims regarding the sale of lumber by-products. While it claimed to address this matter in its case brief, the adjustments presented only relate to its energy PMS allegation.
- Regarding the petitioner's energy PMS allegation, the petitioner has argued that energy subsidies should lead Commerce to adjust the energy inputs purchased by the respondents from unrelated suppliers and energy sourced from internal/affiliated cogeneration facilities.
- The petitioner has argued that Commerce should increase the cost of energy purchased by respondents from unrelated suppliers by the "all-others" subsidy rate from the provincial governments bioenergy and electricity subsidy programs calculated in the countervailing

duty (CVD) investigation of *Uncoated Groundwood Paper from Canada (UGW Paper*) because the rate is indicative of distortions in the Canadian energy market. The petitioner has failed to establish that there is such a distortion and also failed to justify the basis for this particular adjustment.

- The types of electricity and energy programs that Commerce had found countervailable in Canada could not have impacted softwood lumber costs because Commerce has not found sawmills' purchases of electricity to be subsidized, nor has it found the electricity rates that utilities charge lumber producers to be distorted.
- Commerce has found that if provincial electricity rates are "market determined" prices, then those rates cannot be distorted for purposes of a PMS allegation.
- In addition, any electricity subsidies to products other than softwood lumber cannot support a finding of PMS for lumber products because the requisite link between the alleged market conditions and the impact on lumber input costs is missing. Several programs from *UGW Paper* were tied to pulp and paper and not lumber and it would be inappropriate to use rates related to those programs in a lumber review.
- Electricity represents less than 2.5 percent of the manufacturing costs of lumber in Canada so any possible distortion to respondents' costs would be *de minimis*.
- Commerce has never undertaken a CVD investigation specific to electricity, natural gas or any other energy input used in the production of lumber. The petitioner has failed to demonstrate how the "all others" subsidy rate from *UGW Paper* relates to the respondents in lumber or the PMS allegation.
- Applying the CVD rate from *UGW* would result in a double remedy because any benefit to lumber production from electricity programs will be offset in the companion CVD case.
- The petitioner also proposed that Commerce make an additional adjustment to account for changes in the types and amounts of energy inputs consumed by the respondents since 2009 (*i.e.*, time periods prior to the alleged GOC intervention in energy). However, there is no legal basis for a "consumption based" adjustment. The statute does not authorize Commerce to impute costs for inputs not actually used to produce subject merchandise or to otherwise artificially increase respondents' actual consumption of energy inputs.
- No legal basis exists to reconstruct the respondents' energy costs as they historically existed long before exportation and conditions, and practices from 2009 do not meet the "reasonable time prior to the exportation of the subject merchandise" definition of ordinary course of trade.
- Movements by lumber producers towards more efficient and less-polluting measures cannot be viewed as outside of the ordinary course of trade when the same trends have occurred world-wide. There is no evidence that this is specific to the Canadian lumber market which is required for a PMS allegation.
- The petitioner's suggested adjustments to respondents COP to account for these subsidies is based on the presumption that the amount of energy to produce lumber has not changed since 2009. However, record evidence indicates that the amount of energy used in production declined between 1997 and 2007. If there was a decline then, there is no reason to think it would not also decline in the ordinary course of trade for the next 10 years.
- The petitioner's suggestion to make a consumption adjustment would essentially be double counting the producers' costs by rolling back energy use patterns by a decade.

- Commerce cannot make a PMS adjustment without first initiating and conducting a PMS investigation. Commerce should not do so here.

Commerce's Position:

The petitioner submitted its PMS Allegation on August 7, 2019.[14] In the PMS Allegation, the petitioner defined the following two distortions to COP: (1) GOC bioenergy subsidies are provided to pulp and paper producers to ensure the continued consumption of lumber by-products, such as *woodchips* (emphasis added), sawdust and shavings, even when traditional demand for paper and pulp products has steeply declined; and (2) GOC subsidies to softwood lumber producers have artificially lowered the cost of energy inputs, particularly for steam, natural gas and electricity.[15] Immediately preceding this language, the petitioner states that "wood residuals," *i.e.*, lumber by-products, were destined for the incinerator or landfill prior to subsidization by the GOC.[16] However, at no time in its discussion of "wood residuals" and landfills did the petitioner indicate that woodchips were not included in its description of "wood residuals." On the contrary, in its PMS Allegation, the petitioner described woodchips as lumber by-products when it stated that "the GOC's subsidization of the cogeneration of steam and electricity results in at least two distortions in the cost of the production of softwood lumber: (1) the GOC has artificially lowered the cost of energy for pulp and paper producers to ensure these producers' continued consumption of lumber byproducts such as *woodchips* (emphasis added), sawdust, hog fuel and shavings, even when traditional demand for paper and pulp products has steeply declined …"[17] Therefore, when Commerce analyzed the petitioner's PMS Allegation, we understood lumber by-products to include woodchips, sawdust, shavings and hog fuel because that is how the petitioner, on more than one occasion in its PMS Allegation, described lumber by-products. As noted in the Preliminary PMS Memorandum, Commerce did not determine that the allegation warranted further investigation because, based on record evidence[18] and a prior determination,[19] we found this PMS Allegation to be virtually indistinguishable from the PMS allegation filed in the underlying investigation.[20]

However, now in its case brief, the petitioner asserts that the focus of its PMS Allegation should only be on bark, shavings, and hog fuel, but not on woodchips. As noted above, the petitioner's argument in its case brief is a contradiction of its own allegation, where it listed woodchips first, when noting the types of lumber by-products that were the bases of its PMS Allegation.[21] In its case brief, the petitioner claims that it can cite to record evidence to support its contention that Commerce was confused and that Commerce conflated the issue of woodchips with sawdust,

[14] *See* Petitioner's Letter, "Certain Softwood Lumber Products from Canada; Refiling of Allegation of a Particular Market Situation Regarding Respondents' Cost of Production," dated August 7, 2019 (PMS Allegation) at 1.
[15] *See* PMS Allegation at 2.
[16] *Id*.
[17] *Id.* at 10.
[18] *See* Memorandum, "Certain Softwood Lumber Products from Canada – Supplemental Questionnaire Response from the Less-Than-Fair-Value-Investigation," dated November 12, 2019 (Record Evidence Memorandum).
[19] *See Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 82 FR 51806 (November 8, 2017) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (IDM) at Comment 17.
[20] *See* Memorandum, "First Antidumping Duty Administrative Review: Decision on Particular Market Situation Allegation," dated January 31, 2020 (Preliminary PMS Memorandum).
[21] *See* PMS Allegation at 2.

shavings and bark when analyzing the petitioner's PMS Allegation. However, the petitioner simply cites to Exhibit 6 of its PMS Allegation as support for its argument that it only meant that sawdust, shavings and bark were destined for the incinerator before GOC intervention – not woodchips. In reviewing Exhibit 6, we found that Exhibit 6 is a 2004 report from an industry association that discusses bark, sawdust and shavings as examples of wood residue. However, aside from noting that bark, sawdust and shavings are wood residue, there is no information in Exhibit 6 to support the petitioner's claim that woodchips are not the focus of its PMS Allegation.[22]

Next, regarding the petitioner's arguments that lumber by-products are consumed by bioenergy producers, Commerce noted that the petitioner made a similar PMS allegation in the underlying investigation.[23] In the underlying investigation, we determined that bioenergy programs are not a significant market for lumber by-product sales.[24] Specifically, Commerce found that, "the GOC and respondents provided record evidence to demonstrate that, while a portion of low-value by-products (*e.g.*, bark) may be used in bioenergy production, nearly all high-value by-products (*e.g.*, woodchips) are used in pulp and paper production."[25] This distinction made between woodchips and other lesser-value lumber by-products (*e.g.*, shavings, bark, *etc.*), is also critical to the petitioner's current PMS Allegation. Specifically, as noted above, the petitioner's PMS Allegation is based on the premise that, were it not for the GOC subsidization of lumber by-products in the bioenergy sector, lumber by-products, including woodchips, would be treated as waste and sent to landfills. However, as noted in our Preliminary PMS Memorandum, based on record evidence and a prior determination, we found this allegation to be inapposite. Further, as noted in the Preliminary PMS Memorandum, and as confirmed by the petitioner in its case brief, woodchips are a high-value and high-volume by-product that are primarily sold to pulp and paper producers. Therefore, and as also confirmed by the petitioner in its case brief, woodchips have always been too valuable to be treated as waste or sent to landfills. In addition, the petitioner's case brief also confirms that woodchips are primarily sold to pulp and paper producers, *i.e.*, not the bioenergy sector. Hence, our determination regarding woodchips in the underlying investigation has not altered. There is no record evidence in this administrative review to demonstrate that woodchips are no longer high-value by-products that are primarily consumed by the pulp and paper industry and not destined for a landfill. Therefore, the first factor of the PMS Allegation regarding wood chips, specifically, is not supported.

Concerning the argument regarding lower-value by-products, which petitioner alleges is the only outstanding argument in their case brief, we also find that the PMS Allegation is insufficient to warrant further investigation. As noted in Commerce's Preliminary PMS Memorandum, in the underlying investigation, the GOC and respondents provided record evidence consisting of 10 years of sales data to demonstrate that, while a portion of those lower-value lumber by-products were used in the production of bioenergy, the remaining portion were used in sectors not related to bioenergy.[26] Commerce placed the public version of these sales data on the record of this

[22] *See* PMS Allegation at 2.
[23] *See* Preliminary PMS Memorandum at 4.
[24] *Id.* at 4.
[25] *Id.*
[26] *Id.* at 5.

administrative review.[27] The petitioner argues that the data are irrelevant to this instant administrative review. We disagree. First, although we redacted the price information from the underlying investigation showing the high-value and high-volume of woodchips in the public version placed on the record of this administrative review, our analysis of that data was clearly and publicly stated in the published final determination of the underlying investigation. The petitioner provided no evidence in its PMS Allegation to either distinguish or dispute these findings.[28] Therefore, based on the lack of new facts or distinguishing evidence between the underlying investigation and this current administrative review, we continue to find insufficient evidence to support the existence of a PMS with respect to lumber by-products.

Regarding the petitioner's argument concerning energy costs, the petitioner alleged that GOC subsidies to softwood lumber producers have artificially lowered the cost of energy inputs, particularly for steam, natural gas and electricity.[29] The petitioner alleged that these subsidies are in the form of investments in cogeneration facilities and agreements that require the GOC to purchase all of the electricity produced from the cogeneration facilities, as well as subsidies in the form of credits related to environmental improvements, *e.g.*, greenhouse gas credits. In addition, the petitioner alleges that these cogeneration facilities have enabled lumber producers to produce their own energy which reduces their need for outside energy sources.[30] In our Preliminary PMS Memorandum, we found that although Commerce had previously found certain energy subsidies to be countervailable, the petitioner's PMS Allegation did not demonstrate how these countervailable subsidies specifically distorted the COP of lumber producers for purposes of a PMS.[31] We continue to find that the petitioner has not demonstrated how subsidies distort the COP of lumber.

Specifically, the subsidies listed by the petitioner as evidence of distortion actually relate to the pulp and paper industry, not softwood lumber.[32] For example, the petitioner provided a chart where it compared the subsidy rates of three separate proceedings: *UGW Paper, Supercalendered Paper*,[33] and *Lumber CVD V*.[34] Of these three proceedings, *UGW Paper* had the most countervailable programs (19), while *Supercalendared Paper* and *Lumber CVD V* each had 7 countervailable programs.[35] The petitioner argues that the "all others" subsidy rate from *UGW Paper* should be used to adjust the COP of softwood lumber. In *UGW Paper*, Resolute's subsidy rate is 4.63% and the "all others" subsidy rate is 6.04%.[36] By comparison, in *Lumber CVD V*, the highest subsidy rate is 0.80%. While the petitioner cites to *Lumber CVD V* as evidence of subsidies in the lumber industry, it argues that the "all others" subsidy rate from a non-lumber proceeding, *i.e.*, *UGW Paper*, should be used to adjust the COP of the lumber

[27] *See* Record Evidence Memorandum.
[28] *See Softwood Lumber from Canada* IDM at Comment 17.
[29] *See* PMS Allegation at 2.
[30] *See* PMS Allegation at 28-42.
[31] *See* Preliminary PMS Memorandum at 7.
[32] *See* PMS Allegation at 8-9 and 32-33.
[33] *See Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper*), and accompanying IDM.
[34] *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 CVD V*), and accompanying IDM.
[35] *See* PMS Allegation at 8-9.
[36] *Id*.

produced by the respondents. However, while *UGW Paper* also involves Resolute, one of the respondents from this administrative review, the petitioner's focus on *UGW Paper* has not demonstrated how the "all others" subsidy rate from an unrelated paper proceeding is relevant to the COP of the lumber industry or demonstrated that the COP of the lumber industry is outside the ordinary course of trade, as required by section 773(e) of the Tariff Act of 1930, as amended, (the Act).

Lastly, the petitioner asserts that it provided information to Commerce to explain how the respondents' COP should be adjusted to account for the impact of the alleged PMS. However, this simply is not the case. The petitioner provided neither a suggested calculation nor a narrative proposal for how Commerce should adjust the respondents' COP to adjust for the distortions in the value of lumber by-products. Nevertheless, this matter is moot because, given the reasons discussed above, we continue to find that the petitioner's PMS Allegation is insufficient and Commerce will not make a PMS adjustment for lumber by-products in the final results.

Canfor's Issues

Comment 2: Canfor's Reported Grades

Petitioner:

- In reporting the physical characteristic grade, Canfor classifies what it considers appearance grades under its self-created categories J-grade, square edge, and prime. However, as it admits, these appearance grades would fall under existing National Lumber Grades Authority (NLGA) grades.
- Canfor acknowledges that "imperfections" are "not necessarily 'defects, ' in that they do not affect the structural quality of the lumber, but they do affect its appearance, and therefore, its market value."[37] Thus, Canfor's J-grade, square edge, prime, and appearance grade products are used in the same applications as #2 "structural" graded lumber products. Because Canfor acknowledges that the products it reported as appearance grades would fall under existing NLGA grades because it identified the NLGA grades under which all lumber classified under appearance grades would fall.[38] For all shipments for which Canfor reported in the grade field the appearance grade, Commerce should change the grade field from the appearance grade to the NLGA grade.

Canfor:

- In reporting certain grades under its company-specific appearance grades Canfor expressly followed Commerce's instructions instructing that if "you use grades which you believe have no NLGA equivalent, identify the grades and provide specifications for those grades."[39]

[37] *See* Petitioner's Case Brief at 57 (citing Canfor's August 20, 2019 Supplemental Questionnaire Response (Canfor's August 20, 2019 SQR) at 8).
[38] *Id.*
[39] *See* Canfor's Rebuttal Case Brief at 2 (citing Canfor's July 11, 2019 Section B, C, and D Questionnaire Response (Canfor's July 11, 2019 BCDQR) at B-14 and C-13).

- Canfor provided all grading specifications for the company-specific appearance grades it reported.[40]
- The reported appearance grades are stamped on each piece of lumber classified as such[41] and the appearance grade appears on each commercial invoice and other sales documentation.[42]
- The petitioner ignores the fact that Commerce verified and relied on Canfor's appearance grades for purposes of defining the grades during the original investigation, without objection from the petitioner. In the verification Commerce noted that:

  "...for some of its products with features with fewer defects and an appearance exceeding the quality specified by the NLGA, Canfor created the following three appearance or proprietary grades: JGrade, Square edge, and Select. Canfor officials identified all of the criteria used to grade products into these proprietary grades. Canfor provided pictures of examples of each type of appearance grade as well as actual boards demonstrating each grade. All of Canfor's proprietary grades were described as containing as few or less defects than the NLGA grades."[43]

- The petitioner points to no evidence on the record of this review that would undermine Canfor's accurate and verified grade code methodology.
- Even the petitioner acknowledges that appearance grades are widely used in the North American softwood lumber market.[44]

Commerce's Position:

We disagree with the petitioner. To the extent the petitioner's argument is premised on the supposition that respondents may only report unique proprietary appearance grades for lumber that would not fall within an existing NLGA grade, we disagree. From the outset of this proceeding, and the previous investigation, Commerce has acknowledged that certain softwood lumber that has fewer appearance defects or has other characteristics that distinguish it from other lumber of the same NLGA grade can be classified under grades outside the existing NLGA grading hierarchy. In the previous investigation, Commerce stated:

> To the extent that the grades reported by the respondents *did not follow the grading system established by the {NLGA}*, Commerce requested that all respondents assign the NLGA equivalent grade for all sales, along with

[40] *Id.* (citing Canfor's June 14, 2019 Section A Questionnaire Response (Canfor's June 14, 2019 AQR) at Exhibit A-25).
[41] *Id.* (citing Canfor's July 11, 2019 BCDQR at B-14 and C-13).
[42] *Id.* (citing Canfor's August 20, 2019 SQR at 7).
[43] *Id.* at 3-5 (citing Canfor's Submission, "Response to Petitioner Comments on Canfor Second Supplemental Section D Response," dated December 20, 2019 (Canfor's December 20, 2020 Submission), at 4, which included the abovementioned excerpt from Commerce's Verification Report for Canfor from *Softwood Lumber from Canada*. *See* Memorandum, "Verification of the Sales Response of Canfor Corporation, Canadian Forest Products Ltd., and Canfor Wood Products," dated July 25, 2019 at 20).
[44] *Id.* at 5 (citing *Buying & Selling Softwood Lumber & Panels, Random Lengths*, 2007 at 37 (emphasis in original), placed on the record by Resolute in Resolute's January 3, 2020 Supplemental Questionnaire Response (Resolute's January 3, 2020 SQR) at Exhibit TSBC-2).

> supporting documentation describing the physical characteristics of any non-NLGA grade. Certain of Slocan's proprietary grades *have specifications above existing NLGA grade categories*. For these grades, we assigned a new code representing a non-NLGA, premium grade product (*emphasis added*)."[45]

To Commerce's knowledge, the NLGA grading hierarchy covers all types of dimension of lumber under review. Thus, when Commerce's questionnaire instructed respondents to: "use grades which you believe have no NLGA equivalent, identify the grades and provide specifications for those grades. For instance, if your company sells merchandise according to "appearance" grades, please separate such lumber into appropriate grades,"[46] Commerce is instructing parties in situations where it sells to a higher and more specific standards identified by appearance or proprietary grades, to report the applicable appearance grade, rather than the NLGA grade.

Commerce has relied significantly on the publication *Random Lengths* in reaching numerous decisions in this proceeding. Appearance grades were described by *Random Lengths*:

> Appearance grades are regular board and dimension grades with special limitations on appearance characteristics – particularly wane. ("Wane" is the absence of wood, or the presence of bark along an edge or comer.) The reason for the proliferation of appearance grades is the growth of "big box" stores. These stores move a lot of lumber by catering to do-it-yourselfers. Do-it-yourself shoppers often sort through many pieces of lumber to get the few perfect pieces they need. This inevitably means that a percentage of each unit is left at the bottom of the pile, largely unsaleable, even though it is probably "on grade." Because these stores' business is based upon high volume and quick inventory turnover, having 10-15 percent of each unit left over because it doesn't "look" good is not acceptable. So these large merchandisers have requested lumber that is not only "on grade" but also looks good. The result is "appearance grades." In all regions outside the South, this material is generally called Appearance Grade or J-grade; in the south it is called either Appearance or Prime Grade (variously). Wherever it comes from, it is (usually) #2&Btr with light-to-no wane. Not all mills produce this grade, but depending on market conditions the premium is typically in the range of $20-60/mbf above the regular #2&Btr price.[47]

On the basis of these facts, we determine that certain customers of softwood lumber pay a premium for a piece of softwood lumber that has a better appearance than softwood lumber classified under the same NLGA grade and used for the same application. Thus, to the extent the petitioner is arguing that reporting the appearance or proprietary grades is unjustified because there is no real distinction, such as price differences, between appearance grade lumber and less

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[45] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products from Canada*, 66 FR 56062 (November 6, 2001); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002).

[46] *See* Commerce's Letter, Initial AD Questionnaire, dated May 17, 2019.

[47] *See* Resolute's January 3, 2020 SQR at Exhibit TSBC-2: *Buying & Selling Softwood Lumber & Panels, Random Lengths*, 2007 at 37 (emphasis in original).

attractive lumber of the same NLGA grade, as described by the influential softwood lumber publication cited above, softwood lumber customers commonly do recognize, and pay premiums for, lumber meeting certain specifications for appearance relative to softwood lumber falling under the same NLGA grade that do not meet the higher appearance standards established by the proprietary grade.

We also disagree with the petitioner's argument that Canfor has either misreported the fact that it does sell appearance and other proprietary grades or otherwise failed to support its reporting of appearance and/or proprietary grades. Canfor reported that it sells its dimension lumber according to certain appearance grades and other proprietary grades to meet particular needs of its customers.[48] Canfor explained that the NLGA grade as well as its own appearance grade or other proprietary grade is stamped on such wood[49] and that the appearance grade or proprietary grade appears on the commercial invoice.[50] In reporting its sales data for the product characteristic for grades, Canfor reported product characteristics for grades that are consistent with these appearance or proprietary grades.[51] For matching hierarchy purposes, Canfor stated that its appearance and other proprietary grades were reported together with lumber not reported under an appearance or other proprietary grade in the product characteristic matching hierarchy such that products would first match to products with similar strength, reliability, and appearance.[52] Canfor further placed on the record photographs and other documentation contrasting appearance and other proprietary grades with lumber that would fall under the same NLGA grade not sold as proprietary grades, which supported its classification of proprietary grades and their placement in the matching hierarchy.[53] Commerce verified all of the above in the investigation and found no discrepancy with Canfor's contention that its reporting and placement in the matching hierarchy was consistent with how the appearance or proprietary grades were sold.[54] Commerce noted and Canfor confirmed that its reporting of appearance or proprietary grades were identical in this review to the appearance and proprietary grades reported in the investigation.[55]

Comment 3: Canfor's Reported Costs

Petitioner:

- Commerce should calculate Canfor's costs on the basis of adverse facts available (AFA) as a result of Canfor's failure to act to the best of its ability to cooperate with

[48] *See* Canfor's July 11, 2019 BCDQR at B-15.
[49] *Id.*
[50] *See* Canfor's August 20, 2019 SQR at 7.
[51] *See* Canfor's July 11, 2019 BCDQR at B-15 and C-14.
[52] *See* Canfor's August 20, 2019 SQR at 10 and Exhibit B-30.
[53] *Id.* at Exhibit B-31.
[54] *See* Canfor's December 20, 2020 Submission at 4.
[55] *See* Canfor's August 20, 2019 SQR at 5-6.

Commerce's requests for information and its repeated submission of information with critical cost reporting discrepancies.

- Canfor ignored Commerce's requests to provide a complete cost reconciliation despite being asked to do so four times.[56] In past cases, Commerce has applied AFA to companies not providing a complete cost reconciliation.[57]
- The financial documents that Canfor provided in response to Commerce's repeated requests were not based on the unconsolidated financial records of Canadian Forest Products Ltd. (CFP). Without those records, Commerce cannot reconcile Canfor's reported costs to the audited consolidated financial statements, and it cannot base Canfor's general expenses on the unconsolidated financial statement of CFP, which is the producer of all of Canfor's softwood lumber.
- When companies are "collapsed" pursuant to Commerce regulations, a respondent is still required to report costs based on each distinct legal entity's unconsolidated financial records.[58]
- Contrary to its assertions, Canfor's unconsolidated costs are not limited to those of Canfor Corporation, CFP, and CWPM Ltd.[59] CFP's internal income statement, which is the basis of Canfor's cost reconciliation and G&A expense calculation, includes not only the activities of CFP, but the activities of Canfor Pulp Products Inc. (CPPI) and other legal entities[60] and is done inconsistently.[61] Canfor's reconciliation at Exhibit D-34 of Canfor's August 28, 2019 questionnaire similarly does not demonstrate that Canfor was able to isolate the costs of CFP from those of other separate legal entities of Canfor.
- Canfor failed to provide its general and administrative expenses in the form and manner requested despite four separate requests from Commerce[62] and failed to provide information with regard to the cost of services provided by its holding company, Canfor Corporation, despite being asked to do so five times.[63]
- Canfor submitted a revised G&A expense ratio calculation; however, the changes and corrections Canfor made were insignificant and unresponsive to Commerce's request that

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[56] *See* Petitioner's Case Brief at 62 (citing Canfor's July 11, 2019 BCDQR at 47-50 and Exhibit D-20; Canfor's August 28, 2019 Supplemental Questionnaire Response (Canfor's August 28, 2019 SQR) at 5-6 and Exhibit D-34; and Canfor's November 21, 2019 Supplemental Questionnaire Response (Canfor's November 21, 2019 SQR) at 11, 15, and 21).

[57] *See Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*; *2015-2016*, 83 FR 6163 (February 13, 2018), and accompanying IDM at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) and accompanying IDM at Comment 14.

[58] *See Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483 (June 29, 2017) (*Steel Flanges from India*), and accompanying IDM at Comment 2.

[59] *See* Petitioner's Case Brief 72 (citing Canfor's January 8, 2020 Supplemental Questionnaire Response (Canfor's January 8, 2020 SQR) at 6).

[60] *See* Petitioner's Case Brief at 72 (citing Canfor's August 28, 2019 SQR at 19-20).

[61] *See* Petitioner's Case Brief at 72-73 (citing Canfor's August 28, 2019 SQR at 19-20; *see also* Canfor's June 14, 2019 AQR at A-9).
Exhibits A-5 – A-6.

[62] *See* Petitioner's Case Brief (citing Canfor's July 11, 2019 BCDQR at 45-46; Canfor's August 28, 2019 SQR at 23-24; and Canfor's November 21, 2019 SQR at 16-19.

[63] *See* Petitioner's Case Brief (citing Canfor's July 11, 2019 BCDQR at 26 and Exhibit D-11; Canfor's August 28, 2019 SQR at 17 and Exhibit D-29; and Canfor's November 21, 2019 SQR at 24 – 25.

the G&A expense ratio reflect CFP's unconsolidated financial statements or stand-alone trial balance.[64]

Canfor:

- The petitioner has not argued – and cannot argue – that there is any discrepancy in the cost of production information submitted by Canfor in this review. Canfor has reconciled the total costs reported in its submitted costs to the cost of goods sold in CFP's financial statement, which Canfor refers to as the CFP Legal Roll-Up, and through that statement, to the audited financial statement of Canfor Corporation, which is the only audited financial statement that exists for Canfor.
- As Canfor has repeatedly explained, the only audited financial statement that exists is the consolidated financial statement for Canfor Corporation. Canfor does not prepare a stand-alone, unconsolidated financial statement for CFP, and because the reason for a trial balance is to support a financial statement there is also no stand-alone trial balance for CFP that is prepared as part of Canfor's normal cost accounting system. Commerce verified this fact during its on-site verification of Canfor during the original investigation. Canfor has followed in this review the same cost reporting methodologies, and the same reconciliation format, that was accepted by Commerce during the original investigation and which was thoroughly reviewed and verified by Commerce's cost verification team at that time.[65]
- The petitioner's repeated insistence that Canfor should have based its cost reconciliation on "CFP's audited financial statement" is thus disingenuous and appears to be a transparent attempt to sow confusion.
- Each company is structured differently according to the particularities of its corporate structure and the fact that certain companies maintain their books in a particular way does not mean that Canfor should or could do the same.
- Canfor has prepared its cost reconciliation using the accounting records prepared by Canfor in the normal course of business, including the audited financial statements of Canfor Corporation and CPPI, the CFP Legal Roll-Up (which includes all companies owned by CFP with the exception of CPPI).
- The expenses related to the few services for softwood lumber production and sales provided by Canfor Corporation were included in Canfor reported G&A expense.

Commerce's Position:

We disagree with the petitioner. According to section 776(a) of the Act, Commerce shall use the facts otherwise available in reaching a determination if: (1) necessary information is not available on the record; or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i).

[64] *See* Canfor's January 8, 2020 SQR at Exhibit D-76.
[65] *See* Canfor's Case Brief at 4-5.

Further, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available.

In this case, we disagree that application of facts available under section 776(a) of the Act, l*et al*one application of AFA under section 776(b) of the Act, is warranted. In particular, we find that all necessary information is available on the record of this administrative review, and Canfor has not withheld information, failed to provide information within established time limits, significantly impeded this proceeding, or provided information that cannot be verified. We find that, throughout the course of this administrative review, Canfor has demonstrated its willingness to cooperate with Commerce's requests for information, and it has answered each request for information to the best of its ability. Therefore, we find no basis to apply facts available or facts available with an adverse inference in this case.

In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Canfor reported its costs according to its normal books and records which followed Canadian GAAP

While Canfor may have initially made certain errors in reporting and reconciling costs, these errors were ultimately corrected in response to supplemental questionnaires. The petitioner has neither cited to any errors in the corrected costs used to calculate Canfor's preliminary margin, nor has the petitioner identified any errors in Canfor's corrected reconciliation of its reported costs to the audited income statement of Canfor Corporation.[66]

The petitioner's arguments rely on what entities' costs should be in the cost reconciliation and which entities' costs should be reported as general and administrative expenses. We note for reporting purposes the collapsed entity Canfor consists of three entities commonly referred to in the petitioner's comments: Canfor Corporation, CFP, and Canfor Wood Products Marketing Ltd. (CWPM Ltd.). Canfor Corporation is the holding company of Canfor and performs a small number of corporate functions for the companies it owns.[67] CFP is the main operating entity for Canfor Corporation, as it produces and sells the softwood lumber.[68] Essentially, the only other product sold by the holdings of Canfor Corporation are those by CPPI, which purchases CFP's by-product and processes it into pulp and paper.[69] There are other minor entities owned directly or indirectly by Canfor Corporation, including Canfor Wood Products International Ltd. (CWPIL) and CWPM Ltd., which have no impact on reported costs, and also Vernon Seed Orchard Company Limited and Huallen Seed Orchard Co., Ltd., which have only a minimal impact on reported costs.[70] The only financial statements and cost accounting system capturing

[66] *See* Canfor's August 28, 2019 SQR at Exhibit D-33.
[67] *Id.* at A-7.
[68] *Id.*
[69] *Id.*
[70] *Id.* at Exhibit A-3.

all softwood lumber costs reported to Commerce are those of Canfor Corporation, the holding company of Canfor which includes the consolidated financial results of all entities in the group.[71] Further, the consolidated financial statements of Canfor Corporation are audited, while there are no audited financial statements of CFP.[72] The financial reporting of Canfor is structured such that Canfor Corporation and the companies it wholly owns directly or indirectly, which include CFP, CWPIL and CWPM Ltd., are heavily intertwined operationally and by transactions, and thus, to efficiently account for costs, they are treated as one accounting entity.[73]

As detailed above, the petitioner has opposed allowing Canfor to reconcile its reported costs to the consolidated financial and accounting system of Canfor Corporation. In making this argument, the petitioner relied heavily on *Steel Flanges from India*. This reliance is misplaced because Commerce did not apply AFA in the *Steel Flanges from India* case, and in describing why we were not applying AFA, we stated that "while {the respondent} provided {Commerce} with the requested information and an explanation for information not in the form specifically requested by [Commerce}, its cost reporting methodology was reasonable, and, thus, {the respondent} acted to the best of its ability in reporting its costs to {Commerce}."[74] We further noted in that case that, "had costs been reported using the methodology that the petitioners suggest{ed}, the resulting COP would {have} be{en} less accurate. Lastly, as we find that because the respondent's reporting of raw materials costs was reasonable, no adjustment to Norma's reported direct materials costs is necessary."[75] Further, in rejecting the petitioners' argument to apply AFA in *Steel Flanges from India*, we cited to section 773(f)(1)(A) of the Act as requiring Commerce to rely on the costs as recorded in a company's normal books and records, unless such costs do not reasonably reflect the costs associated with the production of the merchandise under consideration.[76] As noted above, Canfor reconciled the reported costs to the only audited financial statements containing Canfor's reported costs on the record, which are the consolidated records of Canfor Corporation, and the petitioner has not cited to any other discrepancy between Canfor's normal books and records and the costs it reported to Commerce. Thus, Canfor's reporting approach works, and the petitioner has not cited to anything that would cause Commerce to reject Canfor's reporting methodology and accounting system in the format and structure presented. The case to which the petitioner cites for support in its argument to reject Canfor's costs as reported and to instead apply AFA, in fact, supports the notion that when the reported costs and reconciliation by a respondent are not in the form requested, but are accurate and complete, Commerce will not apply AFA.

While the petitioner cited to *Steel Flanges from India* and also the reporting of costs by Resolute and West Fraser to support its notion that the reported costs of a respondent must be reconciled to an unconsolidated financial statement, the accounting structures of these companies are different than Canfor's. In *Steel Flanges from India,* each factory comprising the collapsed entity was a separate legal entity that reported separate cost databases, and these cost databases were later consolidated to make the cost file used to calculate the respondent's margin.[77] This is

[71] *See* Canfor's January 8, 2020 SQR at 3.
[72] *See* Canfor's June 14, 2019 AQR at 6-8 and 38-40.
[73] *Id*. at 38-39.
[74] *See Steel Flanges from India* IDM at Comment 2.
[75] *Id.*
[76] *Id.*
[77] *Id.*

not the case for Canfor, where all of the costs for all of the lumber mills making subject merchandise were within one legal entity, CFP.[78] The petitioner also noted that certain reported costs by the two other mandatory respondents in this review, Resolute and West Fraser, were reconciled to the unconsolidated financial statements of individual legal entities. However, the reason why it was necessary for Resolute and West Fraser to reconcile certain reported costs to the financial statements of individual companies was due to the fact that, similar to the situation in *Steel Flanges from India,* these individual companies, which consisted of numerous individual lumber mills, were separate legal entities[79] and, as such, the costs were reported separately and then weight averaged together in a consolidated cost database.[80] That is not the case for Canfor, where all lumber mills are owned by one company, CFP, and so were not attributed to individual lumber mills.[81]

In its submitted reconciliation of the reported costs to the consolidated financial statements of Canfor Corporation, Canfor identified the itemized costs of each component of costs of Canfor Corporation,[82] which included the separate costs of CFP.[83] The total of these itemized costs used to produce softwood lumber reconciled to the costs reported to Commerce.[84] However, despite the fact that its system essentially only operates on a consolidated basis, Canfor has nevertheless directly reconciled the CFP-specific costs in this itemization to the costs recorded in CFP's internal financial statement, which it refers to as the CFP Legal Roll-Up.[85] Thus, not only has Canfor demonstrated that its reported costs reconcile to its consolidated financial statements, it also demonstrated that its reported costs reconcile to CFP's financial statement. Canfor has, in fact, done what the petitioner accuses it of not doing.

While, the petitioner is correct that the CFP Legal Roll-Up is not entirely unconsolidated to include the operations of CFP alone, Canfor has identified the costs of each component company contained in the CFP Legal Roll-Up, and the sum of each company's costs reconcile to the total costs identified in the CFP Legal Roll-Up.[86] Further, Canfor has demonstrated how the costs in the CFP Legal Roll-Up, added to the costs identified in the audited financial statements of CPPI, reconcile with both the costs in the consolidated financial statements and cost accounting records of Canfor Corporation,[87] as well as to the costs reported to Commerce.[88] The petitioner has not only failed to cite to any discrepancy by Canfor in reconciling its reported costs to the

[78] *See* Canfor's June 14, 2019 AQR at A-7 and Exhibit A-2.
[79] *See* Resolute's June 10, 2019 Section A Questionnaire Response at 8-9 and Exhibit A-2; *see also* West Fraser's June 10, 2019 Section A Questionnaire Response at 1-2.
[80] *See* Memorandum, "Resolute Preliminary Sales Analysis Memo," dated January 31, 2020; *see also* Memorandum, "West Fraser Preliminary Sales Analysis Memo," dated January 31, 2020.
[81] *See* Canfor's June 14, 2019 AQR at A-2.
[82] *See* Canfor's August 28, 2019 SQR at Exhibit D-33; *see also* Canfor's June 14, 2020 AQR at Exhibit A-16.
[83] *See* Canfor's June 14, 2020 AQR at Exhibits A-19, A-20, and A-21.
[84] *Id*.
[85] *Id.* at Exhibit A-16; *see also* Canfor's August 28, 2019 SQR at Exhibit D-33; Canfor's November 21, 2019 SQR at Exhibit D-53; and Canfor's January 8, 2020 SQR at Exhibit D-77.
[86] *See* Canfor's November 11, 2019 SQR at Exhibit D-33.
[87] *See* Canfor's November 21, 2019 SQR at Exhibit D-53; *see also* Canfor's January 8, 2020 SQR at Exhibit D-77.
[88] *See* Canfor's November 11, 2019 SQR at Exhibit D-33 reconcile the costs in the consolidated financial statements and cost accounting system of Canfor Corporation to the reported costs. Canfor's November 21, 2019 SQR at Exhibit D-53 and Canfor's January 8, 2020 SQR at Exhibit D-77 reconcile the costs in the consolidated financial statements to the CFP Legal Roll-Up.

consolidated financial statements, the petitioner has cited to no discrepancies with the reconciliation of Canfor's reported costs to the costs reported in the CFP Legal Roll-Up.

Next we address the petitioner's arguments related to the calculation of G&A expenses and collapsing of Canfor Corporation, CFP and CWPM Ltd. The petitioner argues that the most important issue with regard to reported G&A costs is the fact that "Canfor's unconsolidated costs are not limited to those of Canfor Corp., CFP, and CWPM Ltd,"[89] and include those of CPPI, as well. However, as described above, costs in these collapsed records can and were itemized by Canfor in detailing its reported G&A costs. In doing so, Canfor identified which costs by which entity were included and excluded from the numerator of the reported G&A ratio. In doing so Canfor specifically excluded the G&A costs of CPPI as well as other costs not related to G&A costs.[90] Meanwhile, the costs of the services provided by Canfor Corporation as recorded in Canfor Corporation's cost records have been included in Canfor's reported G&A.[91]

The petitioner states that it is not usual under Commerce practice to collapse a holding company, such as Canfor Corporation, into a single entity with the producer CFP and the exporter CWPM Ltd. However, this review was initiated on all three companies as one collapsed entity,[92] and it was done so consistent with the petitioner's request that we review Canfor as a collapsed entity consisting of Canfor Corporation, CFP and CWPM Ltd.[93] In the underlying investigation, Commerce treated Canfor Corporation, CFP, and CWPM Ltd. as a single legal entity,[94] and we have initiated this review for Canfor Corporation, CFP, and CWPM Ltd. as a collapsed entity,[95] consistent with the petitioner's own request that we review the three companies as a collapsed entity[96] and in accordance with our policy, as indicated in the initiation *Federal Register* notice.[97] Indeed, the record supports treating these three entities as one collapsed entity. Canfor Corporation, CFP and CWPM Ltd. are all located in the same location, the management of each entity overlaps with the management of the other two entities, there is complete sharing of sales information among all three entities, and all production and pricing decisions regarding softwood lumber are shared.[98] Also, all of the accounting records, financial system and audited financial statements covering CFP are maintained by Canfor Corporation, and Canfor Corporation owns 100 percent of CFP. For these reasons among others, Commerce has treated Canfor Corporation, CFP, and CWPM Ltd. as a single entity since the preliminary determination of the underlying investigation.

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[89] *See* Petitioner's Case Brief at 72.
[90] *See* Canfor's January 8, 2020 SQR at 3-5.
[91] *See* Canfor's January 8, 2020 SQR at 3-5 and Exhibit D-76.
[92] *See Certain Softwood Lumber Products from Canada: Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 12209 (April 1, 2019) (*AR1 Initiation*).
[93] *Id.* at 10-11.
[94] *See Certain Softwood Lumber Products from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 29833 (June 30, 2017) (*Softwood Lumber Preliminary Determination*), unchanged in *Softwood Lumber from Canada*.
[95] *See Softwood Lumber Preliminary Determination* at 5.
[96] *See* Petitioner's Letter, "Request for Administrative Review," dated February 28, 2019*; see also AR1 Initiation*.
[97] *See AR1 Initiation* at 12209 ("For any company subject to the review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes.").
[98] *See* Canfor's July 26, 2019 Supplemental Questionnaire Response (Canfor's July 26, 2019 SQR) at 2-3.

The petitioner argues that since Canfor Corporation should not be treated as part of the collapsed entity, Commerce should apply the transactions disregarded rule to professional services provided by Canfor Corporation. However, as noted, since Canfor Corporation and CFP are part of the collapsed entity, there are no affiliated transactions between Canfor Corporation and CFP and therefore the transactions disregarded rule does not apply.

Because we are treating Canfor Corporation, CFP, and CWPM Ltd. as a single entity, and because Canfor Corporation did not invoice CFP or CWPM Ltd. for the G&A services it provided to them,[99] we have based Canfor Corporation's G&A services performed on behalf of the collapsed entity on the costs as reported in Canfor Corporation's consolidated accounting records. However, as demonstrated by Canfor, most of the reported G&A costs are based on those incurred by CFP.[100] As with the manufacturing costs, the reported G&A costs reconcile not only to the financial statements of Canfor Corporation, but also to the financial records of CFP.[101]

The petitioner also claims that Canfor's response to the changes and corrections made in response to Commerce's requests concerning reporting G&A expenses "were insignificant and unresponsive to Commerce's request that the G&A expense ratio reflect CFP's unconsolidated financial statements or stand-alone trial balance."[102] To be clear, we indicated in a supplemental questionnaire issued to Canfor that Canfor should not limit its reported G&A costs to those of CFP.[103] We made this request because, as noted above, some of the G&A expenses incurred on behalf of softwood lumber production were only incurred by Canfor Corporation, and Canfor Corporation never charged CFP or CWPM Ltd. for these services.[104] Further, the petitioner has not identified how Canfor's responses in its January 8, 2020 SQR were inaccurate or otherwise unresponsive. Furthermore, the petitioner has cited to no discrepancy between the G&A costs it reported to Commerce and the G&A costs recorded on the books and records of both Canfor Corporation and CFP.

Additionally, we note that Canfor's accounting system was verified in both the sales and cost verification from the investigation, and no errors arising from this accounting system were noted in the final determination.[105] Furthermore, accounting documents covering the investigation period are also on this record,[106] and they indicate that no changes were made to the accounting system and methodology for reporting sales and costs between this review and that verified in the investigation. Moreover, the petitioner has cited to no such changes to the cost accounting system or cost reporting methodology between the investigation and this administrative review. Finally, as was the case in the investigation, the petitioner has also not cited to any discrepancy between the books and records of Canfor Corporation or CFP and the costs reported to Commerce.

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[99] *See* Canfor's January 8, 2020 SQR at 2.
[100] *Id.* at 3-5 and Exhibit D-76.
[101] *Id*.
[102] *See* Petitioner's Case Brief at 72.
[103] *See* Canfor's January 8, 2020 SQR at 5-6.
[104] *See* Canfor's November 21, 2019 SQR at 25.
[105] *See Softwood Lumber from Canada* IDM.
[106] *See, e.g.*, Canfor submitted its consolidated 2016 financial statements in its June 14, 2020 AQR at A-16.

Comment 4: Valuing Affiliated Transactions Involving Canfor's Grande Prairie Mill

Petitioner:

- Commerce applied the transactions disregarded rule to Canfor's mill purchases[107] by Canfor's Grande Prairie mill for electricity and another input the identity of which is proprietary (referred to henceforth as "A")[108] from its affiliate Canfor Green Energy.[109]
- In valuing the electricity purchases, Commerce relied on the sales by Canfor Green Energy to the province of Alberta power grid. Commerce should have relied on what Canfor Green Energy would have paid for electricity from an unaffiliated party. This information is on the record in the form of Canfor's purchases from BC Hydro and Power Authority.[110]
- With regard to the purchases made by Canfor's Great Prairie mill of A, Canfor based the price of A on its purchases of A from the period 2005 to 2011 and did not increase the prices from 2005 to 2011 for inflation (or deflation). Further, to account for inflation, Canfor used an arbitrary annual increase of two percent between 2011 and the POR.
- Instead, based on the similarity of the market for input A and that for electricity, Commerce should adjust the reported price by the average quarterly price increases of Canfor's electricity sales to the grid during the POR.

Canfor:

- The petitioner's suggested comparison would distort the purchase price of electricity from BC Hydro because it compares vastly different transactions. Canfor Green Energy only generates electricity on a limited scale and from a single plant by burning lumber by-products generated by the Grande Prairie sawmill. In contrast, BC Hydro is a regional electric utility that is in the business of generating and distributing power throughout the province of British Columbia. BC Hydro is responsible for developing and maintaining the electric power grid, including transmission lines and transformers, throughout the province. BC Hydro's cost structure, and thus, its sales prices for electricity, are necessarily vastly different from that of Canfor Green Energy. Given these differences in the nature of their operations and cost structures, it is not reasonable to value electricity based on Canfor's purchases from BC Hydro.

Commerce's Position:

For the final results, Commerce continues to find that an adjustment of Canfor's reported costs is necessary to reflect the market price of electricity provided by an affiliate. According to section 773(f)(2) of the Act, Commerce may disregard transactions between affiliated persons if those transactions do not fairly reflect the value in the market under consideration (*i.e.*, if they are not

[107] The exact nature of Canfor's purchases from Canfor Green Energy are proprietary. They are identified in the proprietary rebuttal brief of Canfor at 11-12.
[108] The identity of the second item: (A) obtained by the Green Energy Mill from Canfor Green Energy is identified in the proprietary rebuttal brief of Canfor at 11-12.
[109] *See* Petitioner's Case Brief at 74 (citing Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Canfor Corporation, Canadian Forest Products Ltd., and Canfor Wood Products Marketing Ltd.," (Canfor Prelim Cost Analysis Memo) dated January 31, 2020 at 2).
[110] Canfor's purchases of electricity from BC Hydro are identified in Canfor's August 28, 2019 SQR at Exhibit D-36.

made on an arm's-length basis). In applying the "transactions disregarded" provision of the statue, Commerce compares the average transfer price for an input or service paid to an affiliated supplier with the market price for that input or service.[111] Where the transfer price of an input or service is below its market price, Commerce normally will adjust the respondent's reported costs to reflect the market values on the record.

At issue is the determination of the market price to be used in the comparison. We note that there are two valid market prices on the record for electricity from unaffiliated parties in Canada, the market under consideration. This includes the market price of Canfor's purchases of electricity from its unaffiliated supplier and the market price associated with Canfor Green Energy's sales to its unaffiliated customers. Both reflect unaffiliated transactions within the market under consideration for an identical input, electricity. Since both are acceptable market prices, we calculated a weighted-average market price from the two sources for use in our analysis.

With regard to the transactions disregarded analysis for the affiliated purchases by the Grande Prairie mill of input A, we note that there are no POR contemporaneous market prices (*e.g.*, purchases from unaffiliates) on the record. We disagree that it is appropriate to use prices from 2005 to 2011 in our analysis, as this information is significantly outdated. Since input A was purchased from the same affiliated supplier as the electricity that we tested above, we consider it reasonable to apply the results of our transactions disregarded analysis above to the purchases of input A. Accordingly, we adjusted the affiliated purchases of electricity and input A by the results of the percentage the affiliated electricity purchases were below market prices.

Comment 5: Valuing Canfor's Seed Purchases

Petitioner:

- In the province of Alberta, Canfor only purchases seeds from its affiliate Huallen Seed Orchard Company (Huallen).[112] Further, Huallen reported that it only sold seeds to affiliates.[113]
- When no comparable market value is available, Commerce will normally use the affiliated supplier's full cost as the measure of the market price.[114] Therefore, Commerce should base the seed prices on the applicable amount of losses experienced by Huallen during the POR.[115]

Canfor:

- Huallen did not have a loss during 2017 or 2018. Due to Huallen's structure as a trust,

[111] Commerce's preference for establishing a market value is a respondent's own purchases of the input or service from unaffiliated suppliers, and when no such purchases are available, Commerce looks to the affiliated supplier's sales to unaffiliated parties. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying IDM (*Refrigerator-Freezers from Korea*), Comment 17.
[112] *See* Petitioner's Case Brief at 77 (citing Canfor's August 28, 2019 SQR at 15-16).
[113] *Id.* at 15.
[114] *See* Petitioner's Case Brief at 78 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42075 (September 6, 2017), and accompanying IDM at Comment 5.
[115] *See* Petitioner's Case Brief at 78 (citing Canfor June 14, 2020 AQR at 39-40 and Exhibit A-21.

there is very little revenue reported on the financial statements. Any loss in a year is offset by contributions from the trust's owners during the year.
- The price for seeds from Huallen during the POR was higher than the price Canfor paid to both affiliated and unaffiliated companies in British Columbia during the POR.[116]

Commerce's Position:

We disagree with the petitioner. For the final results we continue to find that an adjustment of Canfor's reported costs is not necessary. According to section 773(f)(2) of the Act, Commerce may disregard transactions between affiliated persons if those transactions do not fairly reflect the value in the market under consideration (*i.e.*, if they are not made on an arm's-length basis). In applying the "transactions disregarded" provision of the statue, Commerce compares the average transfer price for an input or service paid to an affiliated supplier with the market price for that input or service.[117] Where the transfer price of an input or service is below its market price, Commerce normally will adjust the respondent's reported costs to reflect the market values on the record.

At issue is the determination of the market price to be used in the comparison. While Canfor did not purchase seeds from unaffiliated suppliers in Alberta, nor did Huallen sell seeds to unaffiliated customers in Alberta, Canfor did purchase seeds from unaffiliated suppliers in British Columbia,[118] which as the only source of market price information on the record, we find these purchases a reasonable source for market price in the comparison. On this basis, record evidence demonstrates that the price Canfor paid Huallen were higher than the price it paid for seeds purchased from unaffiliated parties.[119] Therefore, there is no basis under the transactions disregarded rule to disregard the reported purchase prices.

Comment 6: Canfor's Prince George Sawmill's Purchases of Electricity

Canfor:

- In the *Preliminary Determination*, pursuant to section 773(f)(2) of the Act, Commerce applied the transactions disregarded rule to transactions between Canfor's Prince George (PG) sawmill and CPPI and, in doing so, adjusted Canfor's electricity costs paid to CPPI by the PG sawmill to reflect a market price. Commerce should determine that these were not purchases of electricity from an affiliated party, but were instead payments covering its portion of the bill for electricity supplied by an unaffiliated party, BC Hydro. Thus, Commerce should make no adjustment to the PG sawmill's manufacturing costs.

[116] *See* Canfor's case brief at 78 (citing Canfor's August 28, 2020 SQR at Exhibit D-32).
[117] Commerce's preference for establishing a market value is a respondent's own purchases of the input or service from unaffiliated suppliers, and when no such purchases are available, Commerce looks to the affiliated supplier's sales to unaffiliated parties. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerator-Freezers from Korea*), and accompanying IDM at Comment 17.
[118] *See* Canfor's August 28, 2020 SQR at Exhibit D-32.
[119] *Id*.

- If Commerce does continue to increase the payment reported by Canfor based on the selling, general, and administrative (SG&A) expenses of CPPI, Commerce correctly excluded from the SG&A adjustment freight and other distribution expenses that the petitioner argues need to be added because these freight and other distribution expenses are direct expenses associated with the sales by CPPI to its customers; they are not indirect selling expenses or general expenses related to the entire operations of CPPI.

Petitioner:

- The record demonstrates that a transaction for electricity took place between the PG mill and CPPI. Thus, CPPI serves as an affiliated reseller of electricity from BC Hydro to the PG sawmill, and Commerce's adjustment is consistent with its established practice for applying the transactions disregarded rule in this context.[120]
- Contrary to Canfor's claims, "the substance of the transaction" would not be "exactly the same" if the PG sawmill bought electricity directly from BC Hydro because CPPI's handling of electricity charges goes beyond "administrative convenience" and affects the SG&A expenses of Canfor's PG sawmill.[121]
- In adjusting Canfor's reported total cost of manufacturing (TOTCOM) to account for its Prince George sawmill's purchases of electricity from an affiliated party, Commerce based the adjustment on the SG&A costs of its affiliate CPPI. However, in doing so Commerce omitted from the adjustment its freight and other distribution expenses. These omitted expenses should be included in the adjustment.

Commerce's Position:

For the final results, Commerce finds that an adjustment of Canfor's reported costs continues to be necessary to reflect the market price of electricity that Canfor purchased from its affiliate. As such, section 773(f)(2) of the Act (the transactions disregarded rule) applies to these transactions. For purposes of the transactions disregarded rule, when the respondent purchases inputs from an affiliated supplier, we test the transfer price between the affiliated supplier and the respondent with the available market prices for the input.[122] Available market prices may relate to a respondent's purchases of the same input directly from unaffiliated suppliers, and/or an affiliated reseller's average acquisition price plus the affiliated reseller's SG&A expenses. In this case, we have the price Canfor's affiliated supplier paid to its unaffiliated suppliers for the inputs, plus the affiliated supplier's SG&A as a source for market price.

As such, we have determined to continue to apply the transactions disregarded rule to the transactions between Canfor's PG sawmill and CPPI. Commerce's established practice when the respondent purchases inputs from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted market price for the input (*i.e.*, the affiliate's average acquisition

[120] *See* petitioner's rebuttal brief at 36 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017), and accompanying IDM at Comment 6; *see also* Petitioner's Case Brief at 34 (citing *Softwood Lumber Investigation* and accompanying IDM at Comment 27).
[121] *See* petitioner's rebuttal brief at 36 (citing Canfor's Case Brief at 2).
[122] *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122 (June 18, 2004), and accompanying IDM at Comment 5.

cost plus the affiliate's SG&A costs).[123] Commerce has explained that the inclusion of the affiliate's SG&A expenses ensures that the adjusted market price reflects the affiliates' cost of providing the services.[124] Further, Commerce has applied the transactions disregarded rule in instances where the affiliated services were limited to document handling and acting as the payment intermediary.[125]

In the current proceeding, CFP (of which PG sawmill is part) and CPPI are separate legal entities and both manufacture products (CPPI produces non-subject merchandise). CPPI also functions as a middleman between all the facilities in what it terms the Northwood area (the entities in this area include Canfor's PG sawmill) and the unaffiliated supplier of electricity BC Hydro.[126] While CPPI does not generate the electricity, it does provide the electricity through its single substation,[127] and it is the payment intermediary. While Canfor may consider these transactions to be only a pass-through to its affiliated Northwood area facilities, the fact remains that CPPI provided services to the Northwood area facilities by acting as the document handler (*e.g.*, providing documentation for allocating the costs to the different facilities, invoicing each of the Northwood area facilities, processing the receipt of payments from the Northwood area facilities, *etc*.) and acting as the payment intermediary. Accordingly, we consider it appropriate for the final results to continue to include CPPI's SG&A expenses in the electricity market price computation to account for the services CPPI is providing. Our approach here is consistent with our treatment of the same pattern of payments in the underlying investigation.[128]

We disagree with the petitioner that we should include freight and other distribution expenses in the SG&A adjustment. As noted above, we are attempting to account for the services CPPI provided to the Northwood facilities by acting as the intermediary for the transmission of electricity. Therefore, it not necessary to add the above expenses in the SG&A adjustment.

Comment 7: Ministerial Error Regarding Canfor's Inventory Carrying Costs Incurred in the United States

While we did not receive any comment on the above, Commerce noticed that it had inadvertently not included inventory carrying costs incurred in the United States that were reported in U.S. dollars in calculating Canfor's dumping margin (we had included the costs of inventory carrying costs incurred in the United States that were reported in Canadian dollars). Therefore, for these final results, we have included inventory carrying costs incurred in the United States that were reported in U.S. dollars in calculating Canfor's final dumping margin.[129]

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[123] *Id*.
[124] *Id*.
[125] *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) (*Refrigerator-Freezers from Mexico*), and accompanying IDM.
[126] *See* Canfor's July 26, 2019 SQR at Exhibit A-38; Canfor's August 28, 2019 SQR at 15; Canfor's January 8, 2020 SQR at 9 and Exhibit D-29.
[127] *See Softwood Lumber from Canada* IDM at Comment 27
[128] *See Softwood Lumber from Canada* IDM at Comment 27.
[129] *See* Memorandum, "Analysis of Data Submitted by Canfor Corporation, Canadian Forest Products Ltd., and Canfor Wood Products Marketing Ltd. for the Final Results," dated concurrent with this memorandum.

Resolute's Issues

Comment 8: Whether to Adjust Resolute's Grade Groups and Grade Equivalents

Petitioner:

- All respondents have manipulated Commerce's calculations by incorrectly reporting product characteristics based on appearance in the "NLGA Grade Group" fields (GRDGRPH/U Number 3.3 in the home market and U.S. sales files) and "NLGA Grade Equivalent" fields (NLGAGRDH/U Number 3.4 in the home market and U.S. sales files).[130]
- Canfor, Resolute and West Fraser's misclassification of their appearance grade, select, and premium products, in both the GRDGRP and NLGAGRD fields, is problematic for concordance in Commerce's margin program because the GRDGRP grade group and NLGAGRD grade equivalent are ranked third and fourth in order of importance in the product characteristic hierarchy. Thus, the respondents have distorted Commerce's margin calculation by ensuring that these sales do not match the appropriate NLGAGRD grade equivalent.[131]
- Resolute ignored Commerce's instructions in supplemental questionnaires to correct certain errors in its reporting of GRDGRP grade group and NLGAGRD grade equivalent.[132]
- After explaining it added new GRDGRP grade groups H and I to account for premium and select lumber products due to higher quality, higher prices, and visual grading,[133] Resolute complied with Commerce's instructions to eliminate its H and I GRDGRP grade groups and assign proprietary grade products into existing grade group(s).[134] However, Resolute continued to incorrectly assign premium and select lumber product codes NLGAGRDH/U "810" and "820," within existing GRDGRP grade groups.[135]
- At Commerce's further request, Resolute reported that it eliminated its product codes NLGAGRDH/U "810" and "820," by reassigning NLGAGRDH/U 810 to NLGAGRDH/U 310 and NLGAGRDH/U 820 to NLGAGRDH/U 110.[136] However, Resolute failed to make the latter change and Commerce issued another supplemental questionnaire to Resolute noting the oversight. Resolute's failure to comply with Commerce's four supplemental questionnaire directing it to correct its product characteristics warrants the application of AFA by reassigning premium and select lumber into existing grade groups and grade equivalents.

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[130] *See* Petitioner's Case Brief at 42-44.
[131] *Id*.
[132] *Id*.
[133] *See* Petitioner's Case Brief at 46 (citing Resolute's Letter, "Softwood Lumber from Canada: Resolute Canada's Response to Supplemental Section B & C Questionnaire Questions 1 through 6," dated September 23, 2019 (Resolute's September 23, 2019 SQR) at SBC-5 and SBC6.
[134] *See* Petitioner's Case Brief at 47-48 (citing Resolute's Letter, "Softwood Lumber from Canada: Resolute Canada's Response to Supplemental Section A, B & C Questionnaire," dated November 12, 2019 (Resolute's November 12, 2019 SQR) at SABC-6 and Exhibits SABC-28 and SABC-29.
[135] *See* Petitioner's Case Brief at 48 (citing Commerce's Letter, "Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada: Section B & C Supplemental Questionnaire," dated December 20, 2019 (Commerce 3rd Supplemental Questionnaire) at 2).
[136] *See* Petitioner's Case Brief at 48 (citing Resolute's January 3, 2020 SQR at TSBC-2).

Resolute:

- Resolute argues that it has complied with Commerce's reporting requirements and AFA is unwarranted.
- Resolute contends that based on its proprietary standards (including pencil wane and decay) and customer demands, it initially reported new GRDGRP grade groups for its premium and select lumber because they are of higher grades of structural light framing and stud products that have physical and price differences from stud or structural light framing categories.[137]
- Resolute coded premium and select lumber within existing GRDGRP grade groups in the investigation, however, in the review it determined that creating new GRDGRP grade groups was more appropriate.[138]
- Notwithstanding its position on GRDGRP grade group, Resolute eliminated GRDGRP grade groups H and I at Commerce's request.[139] And, Resolute argues it was not instructed to alter its NLGAGRDH grade equivalents.[140]
- At Commerce's request, Resolute reassigned premium light framing products from "810" to "310", and select stud products from "820" to "110," but argued that "810" and "820" are more properly assigned to NLGAGRD grade equivalents "305" and "105," respectively.[141]
- Subsequently, Commerce officials instructed Resolute to report its proprietary lumber under Resolute's proposed hierarchy.[142]
- Resolute has complied with Commerce's reporting requests and provided all requested documentation. Thus, AFA is not warranted.

Commerce's Position:

We disagree with the petitioner. In Commerce's 3rd Supplemental Questionnaire, we requested that Resolute revise its NLGAGRDH/U 810 and NLGAGRDH/U 820 grade designations and assign a grade equivalent based on the existing grades in the Stud and Structural Light Framing grade groups.[143] In Resolute's 3rd Supplemental Response, it reported that it revised both NLGAGRDH/U 810 and NLGAGRDH/U 820 grade designations by reassigning NLGAGRDH/U 810 to NLGAGRDH/U 310 and NLGAGRDH/U 820 to NLGAGRDH/U 110.[144] In reviewing Resolute's January 3 response, Commerce noted that Resolute failed to

[137] *See* Resolute's Letter, "Softwood Lumber from Canada: Resolute's Rebuttal Brief," dated March 20, 2020 (Resolute's Rebuttal Brief) at 2 (citing Resolute's July 9, 2019 Sections B, C, and D Questionnaire Response (Resolute's July 9, 2019 BCDQR) at C-6 to C-8).
[138] *Id*.
[139] *See* Resolute's November 12, 2019 SQR at SABC-6.
[140] *See* Resolute's Rebuttal Brief at 4 (citing Commerce's Letter, "Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada: Section A, B & C Supplemental Questionnaire," dated October 23, 2019 (Commerce 2nd Supplemental Questionnaire)) at 3-4.
[141] *See* Resolute's January 3, 2020 SQR at TSBC-2.
[142] *See* Resolute's Case Brief at 5 (citing Commerce Letter, "Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada: Section B & C Supplemental Questionnaire," dated January 10, 2020 (Commerce 4th Supplemental Questionnaire) at 2.
[143] *See* Commerce 3rd Supplemental Questionnaire at 2.
[144] *See* Resolute's January 3, 2020 SQR at TSBC-2.

change NLGAGRDH/U 810 to NLGAGRDH/U 310. Accordingly, Commerce issued another supplemental questionnaire requesting that Resolute correct this oversight.[145]

We also noted in Resolute's January 3, 2020 SQR that Resolute preferred reporting grade equivalents pursuant to the methodology explained on page TSBC-4 of its January 3 response. Specifically, Resolute explained that:

> {Commerce} should, therefore, preserve the distinction between Resolute's proprietary grades and the NLGA standard grades. The proper matching hierarchy would place Resolute's proprietary grades above the NLGA grades to account for the superior quality of Resolute's proprietary grades. Therefore, the proper NLGAGRDH/U code for Resolute's Select Studs would be NLGAGRDH/U=105, and Resolute's Premium Structural Light Framing would be NLGAGRDH/U=305.[146]

Accordingly, in our January 10 supplemental questionnaire at question 2, we instructed that Resolute, "should report the grade equivalents listed under its proposed hierarchy as explained on page TSBC-4 of its January 3, 2020, supplemental response in the Field 3.4 NLGA Grade Equivalent."[147] To that end, Resolute revised its reported NLGAGRDH/U 810 and NLGAGRDH/U 820 grade designations and assigned a grade equivalent based on its explanation provided at page TSBC-4 of its January 3 response.[148] Commerce notes that question 1 of our January 10 supplemental questionnaire instructed Resolute to correct a mistake based on Resolute's prior reporting methodology for Field 3.4 NLGA Grade Equivalent. However, because Resolute's response to question 2 included a revision to its reported NLGAGRDH/U 810 and NLGAGRDH/U 820 grade designations, Resolute's answer to question 1 in Commerce's January 10 supplemental questionnaire is effectively irrelevant.

Further, Resolute's proposed grade equivalent reporting methodology is consistent with Commerce's instructions in its original questionnaire, in which Commerce instructed that, "if your company (Resolute) sells merchandise according to "appearance" grades, please separate such lumber into appropriate grades."[149] As Resolute explained in its responses and Rebuttal Brief, Resolute's premium grade lumber is held to a higher standard than lower grade standards, which Resolute claims are visible to the untrained eye.[150] For instance, the higher grades of lumber have strict proprietary standards for physical characteristics such as pencil wane and decay, among others.[151]

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[145] *See* Commerce 4th Supplemental Questionnaire at Question 1.
[146] *See* Resolute's January 3, 2020 SQR at TSBC-4.
[147] *See* Commerce 4th Supplemental Questionnaire at Question 2.
[148] *See* Resolute's January 3, 2020 SQR at TSBC-4 and Resolute's January 14, 2020 Supplemental Questionnaire Response (Resolute's January 14, 2020 SQR) at FSBC-2 and FSBC-3.
[149] *See* Initial AD Questionnaire at B-9, "If you use grades which you believe have no NLGA equivalent, identify the grades and provide specifications for those grades. For instance, if your company sells merchandise according to "appearance" grades, please separate such lumber into appropriate grades."
[150] *See* Resolute's Rebuttal Brief at 3 (citing Resolute's September 23, 2019 SQR at SBC-4 and SBC-5).
[151] *See* Resolute's Rebuttal Brief at 3 (citing Resolute's September 23, 2019 SQR at SBC-4 to -6 and Exhibit SBC-3.

Moreover, Resolute explained that while premier lumber grades demand a higher price due their physical appearance, all grades of lumber can be used for studs.[152] Resolute's explanation confirms Commerce's requirement that Resolute report all lumber into an existing grade group (*e.g.*, studs) but to assign lumber grades based on a hierarchy of the lumber within the grade group. Based on record evidence, Resolute has followed Commerce's instructions by assigning higher priced premium and select lumber a higher grade equivalent (*i.e.*, NLGAGRDH/U 810 to NLGAGRDH/U 310 and NLGAGRDH/U 820 to NLGAGRDH/U 110).[153]

While Resolute was issued more than one supplemental questionnaire on this issue, Resolute provided complete responses to all of our questions. Furthermore, Resolute was instructed to eliminate GRDGRP grade groups H and I and to report its NLGAGRD grade equivalent based on its proposed methodology. Resolute complied with all of our requests in its supplemental questionnaire responses.[154]

Accordingly, for the final results, we have determined that Resolute provided a complete response to Commerce's supplemental questionnaires and AFA is not warranted.

Comment 9: Whether to Adjust for DINVCARU and INVCARU

Petitioner:

- In the *Preliminary Results*, Commerce stated that "{w}e also deducted expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, bank charges, and warranty expenses) and indirect selling expenses (including inventory carrying costs)."[155] However, Commerce did not make certain adjustments associated with the above statement.[156] The petitioners argue that Commerce should make adjustments pursuant to Commerce's narrative directly above.

Resolute:

- Inventory carrying costs incurred at the mills in Canada as reported in DINVCARU are not a commercial activity occurring in the United States and should not be included as a constructed export price (CEP) deduction in this review, as Commerce decided in the investigation.[157]
- On the basis of an asserted relationship to a U.S. sale, rather than particular commercial activities, the petitioner argues that Commerce should deduct Resolute's reported DINVCARU costs for its CEP sales.
- Under 19 CFR section 351.402(b), the mill-specific inventory carrying costs Resolute incurred in Canada do not reflect any commercial activity in the United States. The commercial activity of maintaining the inventory of subject merchandise occurs in

[152] *See* Resolute's September 23, 2019 SQR at SBC-4.
[153] *See* Resolute's January 3, 2020 SQR at TSBC-2.
[154] *See* Resolute's September 23, 2019 SQR; Resolute's November 12, 2019 SQR; Resolute's January 3, 2020 SQR; and Resolute's January 14, 2020 SQR.
[155] *See* Petitioner's Case Brief at 94.
[156] *See* Resolute's Final Analysis Memorandum for discussion of this proprietary issue.
[157] *See* Resolute's Rebuttal Brief at 8.

Resolute's mills in Canada. Thus, Commerce should reject petitioner's argument and leave DINVCARU out of the calculation of CEP expenses for Resolute's CEP sales.

- With regard to INVCARU, Resolute argues that Commerce's long-standing practice is to deduct movement expenses to calculate the U.S. net price for an export price (EP) sale.[158] Inventory carrying costs reported in INVCARU are not a movement expense and, therefore, should not be deducted for the calculation of the U.S. net price.
- Commerce's preliminary margin calculation correctly used the domestic indirect selling expenses (DINDIRSU) and inventory carrying costs incurred in Canada (DINVCARU) for a potential commission offset calculation. Commerce should not change its margin calculation for the final.

Commerce's Position:

We agree with the petitioner, in part. We agree that we should adjust Resolute's CEP price to account for DINVCARU. We do not agree, however, that Commerce should adjust EP to account for INVCARU.

Resolute reported inventory carrying costs (DINVCARU) for both EP and CEP transactions in its initial questionnaire response.[159] Specifically, Resolute reported that:

> For its home market and U.S. market sales of reportable merchandise, Resolute Canada incurred inventory carrying costs related to storage time at the mill, Canadian reload centers, and consignment warehouses located in Canada and the United States. At the mill and the Canadian reload centers, Resolute Canada does not separately track the finished goods inventory by market. Therefore, Resolute Canada calculated a single set of mill-specific inventory days which it then used to calculate the inventory carrying costs reported in the fields INVCARH and DINVCARU. Resolute Canada calculated separate inventory carrying days for Canadian and U.S. consignment warehouses which it used to calculate the inventory carrying costs reported in the fields INVCAR2H and INVCARU.[160]

According to Resolute's reporting detailed above, Resolute calculated DINVCARU for both EP and CEP sales. Commerce stated in its *Preliminary Results* that, in accordance with section 772(c)(2)(A) of the Act, for CEP sales we, "deducted expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, bank charges, and warranty expenses) and indirect selling expenses (including inventory carrying costs)."[161] The expenses Resolute reported in DINVCARU are indirect expenses incurred by Resolute in Canada, but they are associated with commercial activities in the United States.[162] Consistent with 19 CFR 351.402(b), Commerce will adjust for "expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, *no*

[158] *See* Resolute's Rebuttal Brief at 10 (citing section 772(c)(2)(A) of the Act).
[159] *See* Resolute's July 9, 2019 BCDQR at B-37 and B-38.
[160] *See* Resolute's July 9, 2019 BCDQR at B-37 and B-38.
[161] *See Preliminary Determination* and accompanying PDM at 13.
[162] *See* Resolute's Final Analysis Memorandum.

matter where or when paid."[163] Therefore, although the expenses reported in DINVCARU were incurred in Canada, because they are associated with commercial activities in the United States, and pursuant to our *Preliminary Results* and section 772(c)(2)(A) of the Act, we have determined to adjust the CEP price for DINVCARU for these final results.[164]

With regard to INVCARU, Resolute reported that INVCARU is comprised of U.S. inventory carrying costs without distinguishing between EP and CEP sales.[165] Pursuant to section 772(c)(2)(A) of the Act, in addition to any applicable export tax described in section 772(c)(2)(B) of the Act, Commerce only adjusts EP price for movement expenses. Commerce does not take into consideration U.S. indirect selling expenses when calculating EP sale price, the same way Commerce does not take into consideration credit expenses in EP situations.[166] Thus, for the final results, we have determined not to adjust EP price for INVCARU because this field is not a movement expense but rather an opportunity costs reported for CEP transactions.[167]

Comment 10: Whether to Adjust Resolute's Costs for Other Direct Charges

Petitioner:

- Commerce should adjust Resolute's total reported manufacturing costs to exclude the line item described as "other direct charges" from the company's Lumber Operating Income reports (LOI reports).[168]

Resolute:

- No adjustment is necessary since the other direct charges are not part of the total manufacturing costs on the LOI reports. Rather, the other direct charges, along with the net inventory variation, are added to the TOTCOM to calculate the cost of sales (COS).[169]

Commerce's Position:

We disagree with the petitioner. For these final results, we have not adjusted Resolute's total reported manufacturing costs to exclude the other direct charges since, as explained directly below, the other direct charges are not present in the company's total manufacturing costs. In Resolute's LOI reports, Resolute first calculates the total COM.[170] Next, Resolute adds two line items for "other direct charges" and "inventory variation" to TOTCOM to calculate COS on the LOI reports.[171] Thus, in the overall reconciliation, which starts with COS, Resolute reversed, or excluded, the other direct charges and inventory variation adjustments from COS to reach TOTCOM, rather than including the amounts.[172] Hence, we agree with Resolute that it is

[163] *See* 19 CFR 351.402(b) (emphasis added).
[164] *See* Resolute's Final Analysis Memorandum.
[165] *See* Resolute's July 9, 2019 BCDQR at B-37 and B-38.
[166] *See* section 772 of the Act.
[167] *See* Commerce's Initial AD Questionnaire at Field Number 51.2.
[168] *See* Petitioner's Case Brief at 96-98.
[169] *See* Resolute's Rebuttal Brief at 6-7.
[170] *See* Resolute's July 9, 2019 BCDQR at Exhibit D-27.
[171] *See* Resolute's July 9, 2019 BCDQR at Exhibit D-27.
[172] *See* Resolute's July 9, 2019 BCDQR at Exhibit D-28.

unnecessary to exclude the other direct charges from COM, since these charges were never part of the COM calculation.

Comment 11: Zeroing

GOC:

- Commerce's methodology of zeroing is not required by statute, and Commerce should change its practice to comport with the United States' obligations under the World Trade Organization Antidumping Agreement (AD Agreement). The application of a WTO-consistent approach, without zeroing, would demonstrate that the weighted-average dumping margin for each of the three mandatory respondents will be zero or *de minimis*.[173]

Resolute:

- Zeroing is not the result of any formal rulemaking with notice and public opportunity to comment. Thus, Commerce is free to live up to its international obligations and not use zeroing in its final results for Resolute.
- Since 2004, the WTO Appellate Body and WTO Panels consistently have held, in a variety of contexts, that Commerce's zeroing is inconsistent with Articles 2.4 and 9.3 of the AD Agreement. The Appellate Body observed in *Washers From Korea-AB Report* that the first sentence of Article 2.4.2 of the AD Agreement requires "that dumping and margins of dumping have to be established for the product under investigation 'as a whole.'" Commerce's "practice" that requires the exclusion of a significant part, the values that are not dumped. The Appellate Body stated that Article 2.4.2 says that a finding of differential pricing authorizes the administering authority to use the A-to-T method, and then only in "limited circumstances," but zeroing is not a permissible "limited circumstance" for use of the A-to-T method.
- The continuation of zeroing in international trade disrespects the principle of American commitment to the rule of law.
- Commerce continued reliance on zeroing further violates its "ultimate statutory obligation … to calculate margins as accurately as possible."[174]

Petitioner and Sierra Pacific:

- Commerce noted that WTO findings (such as in *Washers From Korea-AB Report*) are not self-executing under U.S. law. Commerce has noted in its determinations that the Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law unless and until they have been adopted pursuant to the specified statutory scheme established in the Uruguay Round Agreements Act (URAA).

Petitioner:

- In the April 2019 decision *Lumber from Canada-Panel Report*,[175] a WTO panel concluded that WTO rules do not prohibit zeroing. Further, numerous holdings of the

[173] *See* GOC's Case Brief at 3.
[174] *See* Resolute's Case Brief at 7.
[175] *See United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*, WT/DS534/R (April 9, 2019) (*Lumber from Canada-Panel Report*).

> CAFC have expressly and repeatedly held that Commerce's application of an alternative comparison methodology, with zeroing, is consistent with U.S. law when the statutory requirements of section 777A(d)(1)(B) of the Act are met.[176]

Commerce's Position:

We disagree with the GOC and Resolute. WTO findings are not self-executing under U.S. law.[177] The CAFC has held that 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 URAA.[178] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[179] Indeed, the SAA noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[180] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to supersede automatically the exercise of Commerce's discretion in applying the statute.[181] Commerce has not revised or changed its use of zeroing, nor has the United States adopted changes to its practice pursuant to the URAA's implementation procedure. Lastly, contrary to Resolute's assertion, Commerce is acting in accordance with and full respect for the law.

Commerce also disagrees with Resolute's concept that the use of zeroing precludes Commerce from calculating an accurate weighted-average dumping margin. To the contrary, the purpose of resorting to an alternative comparison method is to reveal masked dumping[182] where the A-to-A method cannot take into account the significant differences U.S. prices.[183] Further, the CAFC has recognized this purpose:

> In addition, the exception contained in {section 777A(d)(1)(B) of the Act} indicates that Congress gave Commerce a tool for combating targeted or masked dumping by allowing Commerce to compare weighted average normal value to individual transaction values when there is a pattern of prices that differs significantly among purchasers, regions, or periods of time. Commerce has indicated that it likely intends to continue its zeroing methodology in those situations, thus alleviating concerns of targeted or masked dumping.[184]

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[176] *See*, *e.g.*, *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1345-49 (Fed. Cir. 2017) (*Apex 2017 II*); *Union Steel v. United States*, 713 F.3d 1101, 1108-09 (Fed. Cir. 2013).
[177] *See, e.g.*, Statement of Administrative Action Accompanying the URAA, H.R. Rep. No. 403-316, 842, reprinted in 1994 U.S.C.C.A.N. 4040 (SAA) at 659 ("WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."); *see also Corus Staal* at 1343, 1349.
[178] *See Corus Staal* at 1343, 1347-49, *cert. denied* 126 S. Ct. 1023 (2006); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).
[179] *See, e.g.*, 19 U.S.C. 3533, 3538 (sections 123 and 129 of the URAA).
[180] *See* SAA at 659.
[181] *See, e.g.*, 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).
[182] *See* SAA at 842-843.
[183] *See* section 777A(d)(1)(B)(ii) of the Act.
[184] *See U.S. Steel v. United States*, 621 F.3d 1351, 1363 (Fed. Cir. 2010).

The use of zeroing precisely permits Commerce to determine a more accurate assessment of a respondent's dumping.

Accordingly, for the final results, we will continue to apply zeroing to calculate each respondent's weighted-average dumping margin consistent with the statute, regulations and Commerce's practice.[185]

Differential Pricing Issues

Comment 12: The Differential Pricing Analysis is Inconsistent with the AD Agreement

GOC:

- Commerce's differential pricing analysis is inconsistent with the AD Agreement on several accounts.
    - The differential pricing analysis fails to identify a pattern of prices that differ significantly and "amounts to 'aggregating random and unrelated price variations.'"
    - The ratio test aggregates sales that pass the Cohen's *d* test by all three bases (*i.e.*, purchasers, regions and time periods).
    - The pattern of prices includes prices that are higher as well as lower.
    - There is no qualitative analysis included in the determination of whether prices differ significantly.
    - The differential pricing analysis includes zeroing, which unfairly inflates the magnitude of the margin of dumping.
- Therefore, Commerce should comply with its international obligations.

Petitioner and Sierra Pacific:

- Commerce noted that WTO findings (such as in *Washers From Korea-AB Report*) are not self-executing under U.S. law. Commerce has noted in its determinations that the CAFC has held that WTO reports are without effect under U.S. law unless and until they have been adopted pursuant to the specified statutory scheme established in the URAA.[186] Commerce has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to sections 123 of the URAA's implementation procedures. Thus, it is Resolute and not Commerce that demonstrates disrespect for the rule of law in the United States.

Commerce's Position:

[185] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

We disagree with the GOC. As discussed above, WTO findings are not self-executing under U.S. law.[187] The CAFC has held that 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 URAA.[188] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[189] Indeed, the SAA noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[190] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to supersede automatically the exercise of Commerce's discretion in applying the statute.[191] Commerce has not revised or changed its use of the differential pricing analysis, nor has the United States adopted changes to its practice pursuant to the URAA's implementation procedure.

Comment 13: The Cohen's *d* and Ratio Tests Are Irrational

Resolute:

- The Cohen's *d* test can result in 100 percent of the sales found to pass the test. It is irrational for all of the sales to be significantly different from all of the same sales. This illogical outcome is due to Commerce's failure to define an appropriate comparison group. For the sales in each test group, whether the sales in that test group passed or failed the Cohen's *d* test, those sales are then included in the comparison group for comparison with the sales in the other test groups. As a result, for each comparison of the sales prices in each test group, the sales in the comparison group are different, which "leads to the absence of a consistent and stable comparison or 'normal' group."[192]
- Following the results of the Cohen's *d* test, Commerce divides Resolute's sales into two groups: (1) sales that pass the Cohen's *d* test demonstrate "a pattern of pricing;" and 2) sales that do not pass the Cohen's *d* test do not demonstrate "a pattern of pricing."
- Based on these two groupings, Commerce has failed to demonstrate that the prices in the "pass" group differ significantly from the prices in the "fail" group. If Commerce did perform a Cohen's *d* test based on these two groups, *i.e.*, the "pass" and "fail" groups, then this would demonstrate whether the pattern of prices that "pass" differ significantly from the pattern of prices that "fail."
- The results of the application of this approach demonstrates that the "vast majority of the transactions defined as 'PASS' by {Commerce} do not meet the appropriate 'group-to-group' basis under the test relied upon by {Commerce}."[193]

Petitioner and Sierra Pacific:

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[187] *See, e.g.*, SAA at 659 ("WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."); *see also Corus Staal* at 1343, 1349.
[188] *See Corus Staal* at 1343, 1347-49, *cert. denied* 126 S. Ct. 1023 (2006); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).
[189] *See, e.g.*, 19 U.S.C. 3533, 3538 (sections 123 and 129 of the URAA).
[190] *See* SAA at 659.
[191] *See, e.g.*, 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).
[192] *See* Resolute's Case Brief at 13.
[193] *Id.* at 15.

- Under the Chevron test, the GOC and Resolute can only succeed in their argument if they can show: (1) that the statutory text demonstrates that Congress clearly intended Commerce to measure whether prices among test groups "differ significantly" only by comparing the average price to one test group with an average that includes the test group, and never to an average that excludes the test group; or (2) if Congress has not spoken directly to this question, that Commerce's chosen methodology does not effectuate Congress' intent. However, neither the GOC nor Resolute argues that the statutory text precludes the Cohen's *d* test as Commerce applied it. Further, Resolute's arguments do not show that Commerce's application of the methodology in this review was unreasonable.

Petitioner:

- In prior decisions, Commerce has determined that: (1) certain situations at the outer range of potential results (*i.e.,* 100 percent or 0 percent), are not unreasonable simply because of the numerical result; (2) as the statute does not state there must exist a pattern between a purchaser, region and time period and all sales of the comparable merchandise, Commerce reasonably structured the Cohen's *d* test to compare the mean price to a given purchaser, region or time period with the mean price to all other purchasers, regions or time periods, respectively.

Commerce's Position:

As an initial matter, there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method cannot account for such differences. On the contrary, carrying out the purpose of the statute[194] here is a gap-filling exercise properly conducted by Commerce.[195] As explained in the *Preliminary Results*, as well as in various other proceedings,[196] Commerce's differential pricing

[194] *See Koyo Seiko Co., Ltd. v. United States*, 20 F. 3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

[195] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous, and an agency's interpretation is reasonable); *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (*Apex 2014*) (applying *Chevron* deference in the context of Commerce's interpretation of section 777A(d)(1) of the Act).

[196] *See, e.g.*, *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 5; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018), and accompanying IDM (*Second OCTG Review*) at Comment 8; *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4.

analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

The purpose of the Cohen's *d* test is to determine whether, for comparable merchandise, the prices to a given purchaser, region or time period differ significantly from the prices of all other sales. The purpose of the ratio test is to evaluate the extent of the significant price differences, found as a result of the Cohen's *d* test, constitute a pattern of prices that differ significantly. The results of the Cohen's *d* test do not determine whether a pattern existed during the period under examination.

We find Resolute's assertion that a determination that all sales passing the Cohen's *d* test (*i.e.*, the results of the ratio test is 100 percent) is irrational, to be meritless. If an exporter makes sales to two purchasers, A and B, and the sale prices to Purchaser A are found to differ significantly from the sale prices to Purchaser B, then logically the sale prices to Purchaser B will also differ significantly from the sale prices to Purchaser A. In this situation, all sale prices are reasonably found to differ significantly.

Resolute asserts that Commerce's approach in the Cohen's *d* test is flawed because the comparison group is different for each test group, *i.e.*, the comparison group has no consistency or stability. Further, Resolute states that the validity of the comparison group is compromised because it "comingles" sales which either "pass" or "fail" the Cohen's *d* test. If one were to extend Resolute's logic that the flaw of the Cohen's *d* test is that the comparison group includes sales from each of the test groups, then the comparison group would be a nullity since each U.S. sale is at some point a part of a test group, and the sales which constitute each test group are either found to pass or fail the Cohen's *d* test.

To the contrary, Commerce finds that the Cohen's *d* test reasonably reflects the statutory requirement to determine whether prices differ significantly "among purchasers, regions or periods of time." In the example above, whether the price differences are significant or insignificant, the comparison of prices to Purchaser A to the prices to Purchaser B, in the first instance, and then the comparison of prices to Purchaser B to the prices to Purchaser A, explicitly replicate the text of the statute to compare prices between different groups. Each comparison involves the prices to a given purchaser, region or time period with all other prices of comparable merchandise to other purchasers, regions or time periods.

Under Resolute's suggested modification of the differential pricing analysis in the *Preliminary Results*, Commerce would aggregate the results of the Cohen's *d* test into two groups, one which includes sales which pass the Cohen's *d* test and a second which includes sales which do not pass the Cohen's *d* test, and then conduct a second-level Cohen's *d* test on these two groups of sales to determine whether a "pattern of prices" exists. Commerce does not believe that this approach would be reasonable. The purpose of the Cohen's *d* test is not to evaluate whether a pattern exists, but rather to examine whether the prices of merchandise to a distinct purchaser, region or time period differ significantly with the prices of comparable merchandise to all other purchasers, regions or time periods, respectively. The pattern is then discerned based on testing the extent of these prices that differ significantly with the ratio test.

Resolute's proposal would misuse the Cohen's *d* test beyond its purpose of examining the degree of difference between two groups of data, *i.e.*, sales that "pass" the Cohen's *d* test and sales that "fail" the Cohen's *d* test. This proposal would cloak an evaluation of the extent of the prices that differ significantly. It would do this by reevaluating whether the pricing behavior to multiple purchasers, regions, or time periods differs from those to other, multiple purchasers, regions, or time periods. Additionally, the result of the proposed analysis would say nothing about the extent of the sales whose prices differ significantly (*i.e.*, the "pass" group could be 10 percent of the sales or 80 percent of the sales of comparable merchandise), but would only commingle the pricing behavior to multiple purchasers, regions, or time periods which have already been found to individually exhibit significantly different pricing behavior, and whose only relationship is that they have either passed or not passed the Cohen's *d* test when examined individually. Further, individual sales could separately "pass" or "fail" the Cohen's *d* test such that the same sale would be included in both of Resolute's "pass" and "fail" groups for this second-level Cohen's *d* test; consequently, the same sale could be compared to itself. For this reason, we reject Resolute's proposed methodological change to Commerce's Cohen's *d* test.

Comment 14: Time Periods for the Cohen's *d* Test

West Fraser:

- The preponderance of West Fraser's sales that pass the Cohen's *d* test in Commerce's differential pricing analysis (which permitted the use of the average-to-transaction method) was based on time period analysis alone. Under 10 percent of West Fraser's sales would have passed the Cohen's *d* test if the analysis had been limited to West Fraser's sales by purchaser or region.
- The very significant differences in the lengths of the time periods used by Commerce results in a corresponding skew to the number and value of sales in each period. If Commerce modified these quarterly time periods to six almost precisely evenly divided quarters, the sales values would reflect much less variation among the quarters than the distribution used in Commerce's preliminary analysis.
- Commerce previously made such an adjustment to quarterly periods in the 2014-2015 and 2017-2018 administrative reviews of *Warmwater Shrimp from India*.[197] Commerce has also determined that time period should be of equal duration or adjusted for logical reasons in the 2017-2018 administrative review of *Diffusion-Annealed, Nickel-Plated Flat Rolled Steel Products from Japan*,[198] in the 2011-2012 administrative review of *Copper Pipe from China*,[199] in the 2015–2016 administrative review of *Large Residential*

[197] *See Certain Frozen Warmwater Shrimp from India, Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014-2015*, 81 FR 62867 (September 13, 2016) (*Warmwater Shrimp from India 2014-2015*); *Certain Frozen Warmwater Shrimp from India*, *Final Results of Antidumping Duty Administrative Review*; 2017-2018 84 FR 57847 (October 29, 2019) (*Warmwater Shrimp from India 2017-2018*).
[198] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan, Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments;* 2017-2018 84 FR 64042 (November 20, 2019) (*Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan*).
[199] *See Seamless Refined Copper Pipe and Tube from the People's Republic of China*, *Final Results of Antidumping Duty Administrative Review;* 2011-2012, 79 FR 23324 (April 28, 2014) (*Copper Pipe from China*).

Washers from Korea,[200] and in the 2017 administrative review of *Stainless Steel Bar from Brazil*.[201]

- Evenly dividing the POR in quarters conforms to the Court of International Trade (CIT) ruling in *Apex 2016*,[202] in which the court observed that the purpose of Commerce's analysis was to determine the extent in which a respondent's U.S. prices are differentially priced. To satisfy this purpose with respect to time periods, the time periods should be of equal duration.
- West Fraser proposes adjusting the June 30, 2017-August 30, 2017 quarter by adding the one day of June 30, 2017 to the July–September 2017 quarter, which would cause a 56.2 percent decrease in the standard deviation among sales in the different quarters. This adjustment would be consistent with Commerce's previous determinations.

Resolute:

- The imbalanced quarters in Commerce's analysis skewed the results of the Cohen's *d* test, resulting in significantly more sales passing that test than would have passed using standard (or normal) quarters of three full months each. Commerce should use its own standard equal quarters of approximately 90 days each by adding the single day of June 2017 to the quarter comprised of July, August, and September 2017, with remaining quarters comprised of successive three-month periods, each of approximately 90 days.

Petitioner:

- West Fraser's contention that Commerce should align the sale dates to calendar quarters in its Cohen's *d* test is a results-driven argument. Commerce has a longstanding practice relying on the first day of the month in which sales are reported when defining quarters for its Cohen's *d* test.
- None of the cases that West Fraser cites support its request to redefine the quarters. In the administrative reviews of *Warmwater Shrimp from India*, Commerce made no statement regarding the distribution of sales among the quarters. Commerce simply observed that using date of entry to base its time periods was "logical" given that the lag between the date of shipment and the date of entry resulted in distortions in grouping sales, and "more than four quarters" for a POR covering 12 months. Commerce found the same distortion based on time lag between the date of shipment and the date of entry in the 2017-2018 administrative review of *Diffusion-Annealed, Nickel-Plated Flat Rolled Steel Products from Japan*. In *Copper Pipe from China*, Commerce used monthly rather than quarterly time periods due to contractually determined monthly fluctuations in the respondent's prices. In *Large Residential Washers from Korea*, Commerce declined to use quarters beginning at the start of the calendar year rather than the start of the POR on the basis of a seasonality adjustment because the petitioner's proposal would create five quarters in a 12-month POR. In *Stainless Steel Bar from Brazil* Commerce allowed for a

[200] *See Large Residential Washers from Korea, Preliminary Results of the Antidumping Duty Administrative Review; 2015-2016,* 82 FR 12536 (February 28, 2017) (*Large Residential Washers from Korea Prelim*); *Large Residential Washers from Korea, Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42788 (September 12, 2017) (*Large Residential Washers from Korea Final*).
[201] *See Stainless Steel Bar from Brazil, Final Results of Antidumping Duty Administrative Review; 2017*, 84 FR 14912 (April 12, 2019) (*Stainless Steel Bar from Brazil*).
[202] *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1330 (CIT 2016) (*Apex 2016*).

seven-day expansion of the second quarter, but this has a fundamentally different impact on Commerce's analysis than shifting every quarter of a 19-month POR, as West Fraser seeks in this case. The logic underpinning Commerce's approach in these cases are not at issue here.

- West Fraser has identified no instance in which Commerce has modified the quarterly periods for its Cohen's *d* analysis as a result of the sales distribution resulting from a first POR, *i.e.*, a POR that is often longer and less uniform than the standard 12-month POR. There is no statutory requirement that Commerce modify the quarterly periods to even out the number or quantity of sales in each quarter. West Fraser's argument simply reflects the fact that its preferred definition of quarters allows it to minimize observed price differences that it admits are fully consistent with the nature of the lumber industry and market conditions during the POR.

Commerce's Position:

We agree with West Fraser and Resolute, in part. Generally, Commerce's Cohen's *d* test incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. As we stated in the *Preliminary Results*, Commerce defined the time periods by the quarter within the POR being examined based upon the reported date of sale.[203] In this review, Commerce invited interested parties to recommend an alternative to the default definition of time periods in the Cohen's *d* test, as well as its other group definitions, as we have consistently considered.[204]

The POR for an administrative review typically covers "entries, exports, or sales of the subject merchandise during the 12 months immediately preceding the most recent anniversary month,"[205] such that Commerce's default definition of time periods in the Cohen's *d* test results in four time periods of equal duration into which U.S. prices can be grouped, consistent with the statutory requirement to consider price differences between different time periods. This does not mean that the number or volume or value of the sales in each time period are necessarily the same, but that the duration of each time period is roughly the same given the typical POR. The exception to the typical POR is the first review of an order where the beginning day of the POR is the date of publication of the preliminary or final determination in the less-than-fair-value investigation and not the first day of the month following the anniversary month of the proceeding.

Among other determinations cited by West Fraser, we find that the final results in the two reviews of *Warmwater Shrimp from India* are instructive. In *Warmwater Shrimp from India 2014-2015*, Commerce defined the universe of U.S. sales as those associated with entries during the POR; where the date of sale preceded the date of entry of the subject merchandise. As a

[203] Purchasers are based on the reported or consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. *See* PDM at 9.
[204] *See Preliminary Results* PDM at 11. ("Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding." *See, e.g.*, *Copper Pipe from China,* and the accompanying IDM at Comment 6.
[205] *See* 19 CFR 351.213(e)(1)(i).

result, when the time periods for the Cohen's *d* test were defined based on the date of sale where the first quarter began on the first day of the POR, five quarters were found to exist because of the difference, or "lag," between the date of sale and the date of entry of the reported U.S. sales.[206] In order to address this dissonance with Commerce's goal of defining time periods of equal duration, Commerce changed the definition of time periods for the Cohen's *d* test in the final review to be based on the date of entry rather than the date of sale which rebalanced the time periods to cover periods of equal duration for the date of entry.

Similarly, in *Warmwater Shrimp from India 2017-2018*, Commerce defined the time periods based upon the reported date of entry rather than the date of sale, explicitly for the purpose of creating four time periods of equal duration.[207] Due to "time on the water" time lag between the date of sale and date of entry, quarter periods defined by date of sale resulted in five quarters in which the first and last quarters were truncated. Thus, the default "quarters" based on the date of sale skewed the number and value of sales in each time period, and using entry date to define the quarters had the effect of creating more balanced time periods.[208] In making this determination, Commerce specifically noted that this does not necessarily mean that the number or quantity of the sales in each quarter should be equal.[209]

Likewise, in *Diffusion-Annealed, Nickel-Plated Flat Rolled Steel Products from Japan*, Commerce modified the default definition of time periods used in the Cohen's *d* test to ensure that these time periods were of equal duration. Further, as in *Warmwater Shrimp from India 2014-2015*, this change was brought about by a change in the definition of the universe of U.S. sales to where the respondent reported the U.S. sales associated with the entries during the POR.

Commerce's change in the default time periods from quarters to months in *Copper Pipe from China* was the result of the pricing behavior of the respondent, and therefore the facts of that review differ from the instant review. In *Large Residential Washers from Korea Prelim*, Commerce notes that the petitioner argued that Commerce should modify the default definition of time periods in the Cohen's *d* test, which Commerce stated that the petitioner had failed to support in its pre-preliminary comments.[210] The petitioner's arguments for the *Large Residential*

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[206] *See Warmwater Shrimp from India 2014-2015* IDM at Comment 2. For example, consider the situation where the time lag between the date of sale and the date of entry is consistently five weeks. In the circumstances found in *Warmwater Shrimp from India 2014-2015*, when the time periods for the Cohen's *d* test are defined by date of sale, Quarter 1 (the first three months of the review period), Quarter 2 and Quarter 3 will each span three months of sales. Quarter 0 (the three month before the first day of the POR) will have five weeks of sales because of the time lag between date of sale (used to define the time periods) and date of entry (used to define the universe of U.S. sales). Similarly, Quarter 4 (the last three months of the POR) will be missing five weeks of sales because of the time lag. Therefore, the initial quarter, Quarter 0, spans only five weeks, and Quarter 4 spans less than two months.

[207] *See Warmwater Shrimp from India 2017-2018*, accompanying IDM at Comment 1 ("As noted in earlier reviews, there is an unpredictable relationship between the date of U.S. sale and the date of entry, such that time periods based on the date of U.S. sale would result in quarters of unequal duration... As a result, four time periods of equal duration are the basis for considering whether Magnum's U.S. prices differed significantly between different time periods during the period of review.").

[208] *Id.*

[209] *Id.* ("There is no expectation that the number of or quantity of the U.S. sales in any time period, region or to purchasers are equal. Indeed, the analysis assumes that they will be different and sets a minimum limit for the number and quantity of sales in either the test or comparison groups to avoid possible unrepresentative comparisons of the average prices between the two groups.").

[210] *See Large Residential Washers from Korea Prelim* PDM at 6.

Washers from Korea Final was limited to the default definition of regions for the Cohen's *d* test, and thus West Fraser's reliance on this review is not relevant to the instant review. In *Stainless Steel Bar from Brazil*, the POR was shorter then twelve months because of the revocation of the underlying antidumping duty order, and as a result the last quarter used in the Cohen's *d* test did not cover a full three months. This factual circumstance is different than that in the instant review, and therefore we do not find it instructive here.

In this instance, this is the first administrative review of the antidumping order in this proceeding. Consequently, the first day of the POR, June 30, 2017through December 31, 2018, is the date of publication of the preliminary determination in the less-than-fair-value (LTFV) investigation.[211] As noted above, this is an exception to the typical POR where the first day of the POR is defined by the anniversary month of the proceeding.[212] As a result, the time periods in the Cohen's *d* test which Commerce established in the *Preliminary Results* do not consistently cover periods of equal duration. The first quarter, as defined, can only cover two months and one day, *i.e.*, June 30, 2017through August 31, 2017. The last, *i.e.*, seventh, quarter can only cover one month, *i.e.*, December 1, 2018 through December 31, 2018. To address this imbalance in the duration of the time periods, for the final results, Commerce has defined the time periods in the Cohen's *d* test for Canfor, Resolute and West Fraser to include six time periods, with the first time period encompassing the first day of the POR and the following three months, and the subsequent time periods covering exactly three months each. Commerce's actions in this review are consistent with the concepts explained in *Warmwater Shrimp from India 2014*-2015 and Warmwater *Shrimp from India 2017-2018* where the duration of the time periods are to be as equal as possible.

Comment 15: Simple Average of Variances in the Cohen's *d* Coefficient

Resolute:

- Commerce calculated the pooled standard deviation, denominator of the Cohen's *d* coefficient, by using the simple average of the variances of the test and comparison groups. The CAFC vacated the use of a simple average rather than weighted average to calculate the pooled standard deviation.[213] Commerce should use a weighted average to calculate the pooled standard deviation or explain why it should not.

Petitioner:

- The CAFC in *Mid Continent Steel* did not hold that the use of a simple average is necessarily unreasonable. Using a simple average is a consistent, predictable approach because it considers all pricing behavior equally. Using a simple average also ensures that an exporter's pricing behavior in the test group is as important to the exporter's own pricing behavior as it is to all other purchasers, regions, or time periods. Commerce should continue to apply that practice because it is a reasonable exercise of the discretion afforded to it in conducting its differential pricing methodology.

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[211] *See Certain Softwood Lumber Products from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 29833 (June 30, 2017).
[212] *See* 19 CFR 351.213(e)(1)(ii).
[213] *See Mid Continent Steel & Wire, Inc. v. United States*, 940 F.3d 662, 673-75 (Fed. Cir. 2019) (*Mid Continent Steel CAFC*).

Commerce's Position:

Although Resolute cites to *Mid Continent Steel CAFC* to argue that we should change our methodology for this review regarding the calculation of the pooled standard deviation as the denominator of the Cohen's *d* coefficient, we disagree with Resolute that the CAFC rejected the use of a simple average in this calculation. The CAFC vacated the CIT's final judgment affirming Commerce use of a simple average and ordered that Commerce provide additional explanation for its use of a simple average. Subsequently, the CIT remanded this issue to Commerce[214] and this litigation is still inconclusive as a decision on the remand order is pending.[215] Accordingly, for these final results, we continue to use the simple average of the variances of the test and comparison groups to calculate the pooled standard deviation, consistent with Commerce's practice as set forth in our *Preliminary Results*.

Comment 16: External Factors Which Explain the Price Differences

Resolute:

- Commerce must fully address the external factors which have resulted in the observed price differences.
- External factors explain conclusively why a large number of sales appears to "pass" the Cohen's *d* test, especially on the basis of periods of time.
- A sustained decline in prices for softwood lumber products over the POR was a direct consequence of a decline in demand for new housing, the most plausible explanation for why sales during the POR had "prices … that differ significantly among periods of time."
- Commerce is distorting basic economic laws of supply and demand to find "predatory pricing."

West Fraser:

- Because lumber is largely a commodity product, the pricing of lumber producers (including West Fraser) tends to rise and fall with general market fluctuations. The "time periods" variations reflected in Commerce's "ratio test" simply reflected the declining market conditions in the latter part of the POR.

Petitioner and Sierra Pacific:

- West Fraser's general contention that West Fraser's lumber sale prices tend to rise and fall with general market fluctuations is without merit, as the statute "does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews."[216]

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[214] *See* Memorandum, "*Mid Continent Steel & Wire, Inc. et al. v. United States*, Court No. 15-00213 (December 3, 2019)," dated concurrently with this memorandum.

[215] *See* "Final Results of Redetermination Pursuant to Court Order," dated June 16, 2020, issued pursuant to *Mid Continent Steel*, available at http://enforcement.trade.gov/remands/index.html.

[216] *See JBF RAK LLC v. United States*, 790 F.3d 1358, 1368 (Fed. Cir. 2015) (quoting *JBF RAK LLC v. United States,* 991 F. Supp. 2d 1343, 1355 (CIT 2014).

- The purpose of the Cohen's *d* test is not to evaluate whether a pattern exists, but rather to examine whether the prices of merchandise to a distinct purchaser, region or time period differ significantly with the prices of comparable merchandise to all other purchasers, regions or time periods, respectively. The existence of a pattern is then discerned based on the extent of these prices that differ significantly with the ratio test.
- The CAFC has repeatedly rejected claims that Commerce must show, for example, that the "pattern" of price variation results from a respondent's intent to target particular customers, regions, or time periods with especially low prices.[217] Accordingly, Commerce should not conduct a "qualitative analysis" that might explain the pattern of prices and should reject Resolute's arguments that "the housing market caused" the pricing pattern.

Commerce's Position:

We disagree with Resolute and West Fraser. The CAFC has explicitly stated that Commerce is not required to identify the cause of the price differences, if any, which are found to exist among purchasers, regions or time periods.[218] Further, contrary to Resolute's assertion, the purpose of the Cohen's *d* and ratio tests are not to identify "predatory pricing," and nor does the statute contemplate any such purpose.

Comment 17: Cohen's *d* Test is Subject to Rule Making Procedures

Resolute:

- The Cohen's *d* test has never been subject to public notice and comment and never presented for rulemaking. Commerce has declared it a "practice," but has never provided the legally required explanation and justification for the change and has bypassed proper rulemaking. If this practice were subjected to the rulemaking process, it would fail because it is technically unsound and unlawful.

Petitioner and Sierra Pacific:

- The CIT has already held that Administrative Procedures Act (APA)[219] rulemaking is not required with respect to Commerce's differential pricing analysis.[220]
- Commerce has explained that its differential pricing analysis is the product of Commerce's "experience over the last several years," and further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Commerce developed its approach over time, while gaining experience and obtaining input. Commerce's explanation is sufficient, and its adoption of the differential pricing analysis was not arbitrary.

Commerce's Position:

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[217] *Id.*
[218] *See JBF RAK*; *see also Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 608 Fed. Appx. 948, 949 (Fed. Cir. 2015).
[219] *See* 5 U.S.C. 553.
[220] *See Apex Frozen Foods Pvt. Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (CIT 2016).

We disagree with Resolute that Commerce is obligated to go through APA rulemaking in establishing the differential pricing analysis. The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."[221] Further, Commerce normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of its proceedings, on a case-by-case basis.[222] As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.[223] The CAFC has also held that Commerce's meaningful difference analysis was reasonable.[224] Moreover, the CIT in *Apex 2014* held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was sufficiently explained, and thus did not require APA rulemaking, stating:

> Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method." Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}" and is the product of Commerce's "experience over the last several years... further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.[225]

Moreover, as we noted previously, the CIT acknowledged in *Apex 2014* that as Commerce "gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the average-to-average comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method."[226] Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each investigation or administrative review, such as in this review and the definition of time periods in the Cohen's *d* test.

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[221] *See* 5 U.S.C. 553(b)(3)(A).
[222] *See Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).
[223] *See Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); *see also Washington Raspberry*, 859 F. 2d at 902-03; *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).
[224] *See Apex 2017 II*, 862 F.3d at 1347-51.
[225] *See Apex 2014*, 37 F. Supp. 3d at 1308, 1322.
[226] *Id.*

West Fraser's Issues

Comment 18: Whether Commerce Should Modify West Fraser's Reporting of Alternate Grades

Petitioner:

- In this review, West Fraser classified certain of its products based on their appearance rather than the appropriate NLGA grade, which does not comply with NLGA standards or Commerce's reporting requirements in the antidumping questionnaire. While Commerce has not allowed respondents to segregate lumber into an entirely different category of a NLGA grade group due to appearance differences (Commerce restricts model matching within NLGA grade groups), West Fraser attempts such segregation of appearance grades with grade codes, not in conformance with Commerce's illustrative examples provided in its supplemental questionnaire.
- West Fraser has not adequately explained the NLGA grade codes that it has assigned to certain appearance grade products, both in relation to each other and in relation to other products of the same NLGA grade group.
- Commerce should reclassify West Fraser's NLGA grade codes for its appearance products to conform with other products in the same grade groups, to correct West Fraser's distortion of Commerce's margin calculation.

West Fraser:

- The petitioner's claim that appearance grade products must be reported with the same NLGA grade as other products with the same purpose is not supported by either the statute or Commerce's prior determination in the investigation. Rather, the statute emphasizes the importance of matching products with identical physical characteristics, and after this, the purpose of the merchandise, and merchandise approximately equal in merchandise value. The statute requires that when Commerce matches merchandise that "does not have the same physical characteristics," it makes a reasonable adjustment for such differences.
- Commerce acknowledged the significance of appearance to both lumber grading and commercial value in the LTFV investigation, and in *Lumber IV*.[227] Commerce's initial questionnaire to West Fraser expressly referenced the possibility of distinguishing "appearance grade" products from other dimension lumber in the product characteristics and required that West Fraser identify such products separately from other NLGA-graded products.
- West Fraser reported in detail how its appearance grade products are physically different from existing NLGA grades, and how these appearance grades commanded a higher price. Commerce did not request that respondents limit NLGA grade reporting based on

[227] *Lumber IV* refers, generally, to the antidumping duty order on certain softwood lumber products and subsequent segments in softwood lumber proceedings (*Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 36068 (May 22, 2002)). This order was rescinded in 2006 (*Notice of Rescission of Antidumping Duty Reviews and Revocation of Antidumping Duty Order: Certain Softwood Lumber Products from Canada*, 71 FR 61714 (October 19, 2006)). Citations referring to *Lumber IV* in this memorandum are to this softwood lumber proceeding.

basic use applications, and Commerce expressly permitted the use of company-specific guidelines in its questionnaire.

Commerce's Position:

We disagree with the petitioner that West Fraser cannot report unique proprietary grades for appearance grade lumber that may not match to other lumber within the same NLGA grade group. From the outset of this administrative review, and in fact from the outset of the previous investigation, Commerce has acknowledged that certain softwood lumber that has fewer appearance defects or has other characteristics that distinguishes it from other lumber of the same NLGA grade can be classified under grades outside the existing NLGA grading hierarchy. In the previous investigation of *Lumber IV*, Commerce stated:

> To the extent that the grades reported by the respondents *did not follow the grading system established by the {NLGA}*, {Commerce} requested that all respondents assign the NLGA equivalent grade for all sales, along with supporting documentation describing the physical characteristics of any non-NLGA grade. Certain of Slocan's proprietary grades *have specifications above existing NLGA grade categories*. For these grades, we assigned a new code representing a non-NLGA, premium grade product (*emphasis added*)."[228]

To Commerce's knowledge, the NLGA grading hierarchy covers all types of dimension lumber under review. Thus, when Commerce's questionnaire instructed respondents to "use grades which you believe have no NLGA equivalent, identify the grades and provide specifications for those grades. For instance, in our questionnaire we stated, if your company sells merchandise according to 'appearance' grades, please separate such lumber into appropriate grades,"[229] Commerce instructed parties that, in situations where it sells to a higher and more specific standard identified by appearance or proprietary grades, to report its merchandise as such, rather than report the NLGA grade. In doing so, Commerce has relied on the publication *Random Lengths* in reaching numerous decisions in this proceeding. Appearance and other proprietary grades were described by *Random Lengths* as follows:

> "Appearance grades are regular board and dimension grades with special limitations on appearance characteristics – particularly wane. ("Wane" is the absence of wood, or the presence of bark along an edge or comer.) The reason for the proliferation of appearance grades is the growth of "big box" stores. These stores move a lot of lumber by catering to do-it-yourselfers. Do-it-yourself shoppers often sort through many pieces of lumber to get the few perfect pieces they need. This inevitably means that a percentage of each unit is left at the bottom of the pile, largely unsaleable, even though it is probably "on grade."

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[228] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products from Canada*, 66 FR 56062 (November 6, 2001); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002).

[229] *See* Initial AD Questionnaire at B-9.

> Because these stores' business is based upon high volume and quick inventory turnover, having 10-15 percent of each unit left over because it doesn't "look" good is not acceptable. So these large merchandisers have requested lumber that is not only "on grade" but also looks good. The result is "appearance grades." In all regions outside the South, this material is generally called Appearance Grade or J-grade; in the south it is called either Appearance or Prime Grade (variously). Wherever it comes from, it is (usually) #2&Btr with light-to-no wane. Not all mills produce this grade, but depending on market conditions the premium is typically in the range of $20-60/mbf above the regular #2&Btr price."[230]

On the basis of these facts, we have determined that customers of softwood lumber pay a premium for a piece of softwood lumber that has a better appearance than softwood lumber classified under the same NLGA grade and used for the same application. Thus, to the extent that the petitioner contends that appearance grades are unjustified, and that price comparisons between these appearance grades with regular boards should be matched without distinguishing them, we find that such a methodology is not supported by the facts on the record. We agree generally with West Fraser's statements that Commerce should apply a methodology that distinguishes appearance grades with regular boards.[231] The record supports that there is distinction between appearance grade lumber and less attractive lumber of the same NLGA grade. As described by *Random Lengths*, softwood lumber customers commonly do recognize and pay premiums for lumber meeting certain specifications for appearance relative to softwood lumber falling under the same NLGA grade that does not meet the higher appearance standards established by the proprietary grade. As such, respondents such as West Fraser can report a grade code that is appropriate for these appearance or proprietary grades.

While the petitioner contends that West Fraser is using its NLGA grading as another means to "segregate lumber based on appearance differences into an entirely different category of a NLGA grade group," West Fraser has modified its reporting of NLGA grade groups (the ALTGRDGRPH/U fields) such that its appearance or proprietary grade product sales in the home and U.S. markets would only match if they were in the same standard NLGA grade group (*e.g.*, Light Framing, Structural Light Framing, *etc*.) applicable to ordinary boards, and not to just appearance or proprietary grade product. West Fraser reported that all of the grading in its home market and U.S. sales databases were placed in a hierarchy in order that higher quality products would first match to identical and then similar products, in the ALTNLGAGRDH/U fields.[232] Additionally, West Fraser provided examples in which certain appearance grade products "defy categorization as either above or below the standard NLGA Grades," thus West Fraser created the alternative grade codes in the ALTNLGAGRDH/U fields to ensure that appearance grade

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[230] *See* Resolute's January 3, 2020 SQR at Exhibit TSBC-2: *Buying & Selling Softwood Lumber & Panels, Random Lengths*, 2007 at 37 (emphasis in original).

[231] West Fraser states "Generally, the appearance grade nature of these products means that they are more valuable than products that would appear to be otherwise comparable were the comparisons based solely on the NLGA grading criteria. This is because the appearance grade products exceed the NLGA grading requirements in many respects but may not meet certain NLGA grading criteria that are less relevant to the commercial value of appearance grade products." *See* West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. A-122-857: Response to the Fourth Supplemental Sections B, C and D Antidumping Duty Questionnaire," dated January 7, 2020 (West Fraser's January 7, 2020 SQR) at S4BCD-3.

[232] *See* West Fraser January 7, 2020 SQR at S4BCD-2.

products are matched with comparable products.[233] Regarding the petitioner's specific contention that West Fraser has not adequately explained the NLGA grade codes that it has assigned to certain appearance grade products (in relation to each other and in relation to other products of the same NLGA grade group), Commerce specifically requested additional information regarding the products identified by the petitioner, and West Fraser adequately responded to Commerce's request with additional information.[234] Lastly, the petitioner has not offered a specific rebuttal to West Fraser's explanation for its grading of these products.

Comment 19: Whether Commerce Should Apply Facts Available Due to Discrepancies in West Fraser's Reported Tally Sales

Petitioner:

- Consistent with Commerce's approach in the investigation, West Fraser reported the company's random/mixed length sales in the HM and United States (*i.e.*, tally sales) based on the length-specific background prices rather than on the invoiced gross unit prices, which are the same for all lengths in the invoice tally. The correct reporting of these length-specific background prices is also critical to Commerce's net realizable value (NRV) cost allocations.
- West Fraser has failed to properly identify tally transactions in its databases by reporting: (1) instances in which there is only one sales observation associated with a given tally number; and (2) instances in which the length-specific background prices and the unadjusted tally prices are the same. It is unclear whether the sales at issue are indeed tally sales, or whether the reported prices are adjusted or unadjusted.
- Commerce addressed aspects of these discrepancies in its supplemental questionnaires to West Fraser. To the extent that West Fraser's response remains deficient, Commerce should apply a facts available margin to West Fraser's reported tally transactions by assigning the highest net price for the CONNUM in the home market sales database and lowest net price for the CONNUM for U.S. sales.

West Fraser:

- The reported background prices are prices maintained and developed by West Fraser's sales personnel in the normal course of business. However, West Fraser explained in its responses that there were a few products for which it did not maintain background prices, and instances in which there were errors in its records. Commerce requested corrections in its supplemental questionnaires, and for these transactions and other home market (HM) and U.S sales in which West Fraser found similar errors, West Fraser set the tally price and the adjusted length-specific price to be equal. Subsequently, Commerce requested that West Fraser undertake a further recalculation of the reported price and the corresponding expenses for certain HM sales. Thus, the types of "discrepancies" identified by the petitioner have been resolved consistent with Commerce's instructions.

Commerce's Position:

[233] *Id.* at S4BCD-3 through S4BCD-4.
[234] *Id.* at S4BCD-5 through S4BCD-6.

We disagree with the petitioner that West Fraser's reporting of its mixed length "tally" sales warrants the application of partial facts available to all such "tally" sales, pursuant to section 776(a) of the Act. Mixed length "tally" sales are sales of different lengths of boards, on a single invoice, at a single gross unit price.[235] West Fraser reported that the "tally" sale prices are based on length-specific unit "background prices" from its sales system.[236] Generally, Commerce used these "background prices" as the basis of the gross unit price for calculating West Fraser's dumping margin in the *Preliminary Results*, as it did in the investigation for all respondents.[237] We have reviewed the "tally" sale observations identified by the petitioner, in which the "tally prices" and "background prices" are the same, and find that we do not have a factual basis for determining that all of West Fraser's "tally" sales are inaccurately reported.

West Fraser reported that it did not maintain "background" prices for certain products, which represent a small amount of its sales quantity.[238] For certain products where other contemporaneous prices were available, Commerce requested that West Fraser replace mixed-length "tally" prices with contemporaneous prices for the same products.[239] However, where contemporaneous prices of the same products were not available, Commerce requested that West Fraser report the mixed length "tally" price as the gross unit price for such sales as neutral facts available pursuant to section 776(a)(1) of the Act, following the practice we established in *Lumber IV*.[240] Thus, for products in which length-specific prices are not maintained at all (for instance, for products not sold by length)[241], the invoice "tally" price is the price that Commerce used as the gross unit price. Additionally, we confirmed that the total merchandise quantity of the sales at issue represents a very small percentage of HM sales quantity, and an even smaller percentage of U.S. sales quantity. Thus, the petitioner has only identified a relatively small number of data points that do not call the entirety of the submitted sales data into question.

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[235] *See, e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada,* 70 FR 73437 (December 12, 2005) and the accompanying IDM at Comment 1 ("{W}e are defining a random-length sale as any sale which contains multiple lengths, for which a blended (*i.e.*, average) price has been reported. Random-length sales are also known as 'mixed-length' or 'mixed-tally' sales.").

[236] *See* West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. A-122-857: Response to Sections B, C and D of Initial Antidumping Duty Questionnaire," dated July 8, 2019 (West Fraser's July 8, 2019 BCDQR) at B-34; West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. A-122-857: Response to the First Supplemental Sections B and C Antidumping Duty Questionnaire," dated September 11, 2019 (West Fraser's September 11, 2019 SQR) at SB-17; West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. A-122-857: Response to the Second Sections A, B, and C Supplemental Antidumping Duty Questionnaire," dated November 14, 2019 at S2ABC-14.

[237] *See Final Determination*, and the accompanying IDM at Comment 24.

[238] *See* West Fraser's September 11, 2019 SQR at B-34 n.11, C-29 n.7; *see also* West Fraser's July 8, 2019 BCDQR at SB-20 (regarding products for which West Fraser does not maintain guidance prices).

[239] *See* West Fraser's Letter, "Certain Softwood Lumber Products from Canada, Case No. A-122-857: Response to the Third Sections B, C, and D Supplemental Antidumping Duty Questionnaire.," dated December 19, 2019 at S3BCD-2 (regarding certain HM sales for which West Fraser could not obtain other contemporaneous prices).

[240] *See, e.g.*, *Notice of Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission and Postponement of the Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964 (June 12, 2006), citing *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada,* 69 FR 75921 (December 20, 2004) and the accompanying IDM at Comment 5.

[241] *See* West Fraser's September 11, 2019 SQR at SB-23.

Moreover, in reviewing HM and U.S. sales in which the reported mixed length "tally prices" and prices based on "background prices" are the same, we note that there are some circumstances in which this occurs in accurately reported information. In reviewing West Fraser's sales, we have found that in certain instances, sales observations identified as "tally" sales were apparently sold at length-specific prices, and thus the reported "tally" price was in fact equal to a length-specific price. For such sales, Commerce would have used a length-specific price as the gross unit price. Additionally, of all items making up a tally, the possibility exists that one item in the tally may have a "tally" price that equals its length-specific price. This can happen in instances in which one item is the largest item in a tally sale that is based on a weighted average, or where the price of a specific length happens to be the average of the tally sale when prices are closely grouped together. Finally, it is possible, at least in rare instances, that on a per-unit basis, two different lengths of board can have the same unit price irrespective of the fact that they are part of a "tally" sale. Where this occurs in a "tally" sale consisting of only two items, a tally price and a length-specific price would be the same for both sales, and such sales would be correctly reported. For these reasons, the petitioner's contention that any reported price in which the mixed-length "tally" price is equal to the length-specific price must necessarily be inaccurate is speculative, and not based on facts of the record.

Comment 20: Whether to Apply Offsets to West Fraser's G&A Expense Ratio

Petitioner:

- Commerce should disallow certain negative amounts (*i.e.*, offsets) that were included in the numerator of the G&A expense ratio calculation. These negative G&A expenses were reallocated to the West Fraser operating entities, along with positive G&A expenses, from the G&A expenses incurred by related parties on behalf of the West Fraser operating entities.
- In a supplemental response West Fraser explained that the negative amounts in question were the profits earned by the related parties when providing G&A services to the West Fraser operating entities.
- In accordance with the transactions disregarded rule, Commerce should value transactions with related parties at the higher of the transfer price or the market price of the services. In this case the market price of the G&A services is the cost of the G&A services incurred by the related parties, and the transfer price is the price paid by the operating entities to the related parties for the G&A services.
- Thus, the G&A services should be valued at the transfer price which includes the profits earned by the related parties for the services, and therefore the reallocated G&A expenses should not be reduced by the profits earned by the related parties.

West Fraser:

- Commerce properly included both positive and negative G&A expenses recorded by related parties who provided G&A services to the West Fraser operating entities in the calculation of the G&A expense ratio.
- West Fraser complied with Commerce's questionnaire instructions to include amounts in the G&A expense ratio calculation for administrative services performed by a parent company or other affiliated parties.

- The operating entities record G&A expenses for services rendered by the affiliated service companies. It is necessary to include the negative G&A expenses recorded by the affiliated service companies to arrive at the G&A costs actually incurred for these services in the calculation of the G&A expense ratio.
- It is appropriate to record these G&A expenses at cost because the affiliated service entities are consolidated as part of West Fraser Timber, Ltd. (WFT).
- The resulting zeroing out of the positive and negative amounts reconciles the G&A expenses incurred by the operating entities with West Fraser's audited financial statements.

Commerce's Position:

As the lumber operating companies and the affiliated service providers are not collapsed and treated as a single entity, we disagree with West Fraser that we should use the affiliated service providers' cost to value the services in question. Commerce would use the affiliates' cost of producing the services only if the entities were treated as a single, collapsed entity. Under 19 CFR 351.401(f), Commerce will treat two or more affiliated producers as a single entity "where those producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities and the Secretary concludes that there is significant potential for the manipulation of price or production." In this case, the affiliated service companies neither have production facilities for similar or identical products, nor do they sell subject merchandise. Therefore, neither criterion of the regulation for collapsing has been met. The operating companies own lumber mills that produce the merchandise under consideration whereas the affiliated companies from which they purchase certain services (*e.g.*, transportation services) do not own equipment that would enable them to produce the merchandise under consideration. Therefore, we have not collapsed the operating companies and the affiliated service companies for the purpose of determining the value of the services provided by the affiliated service companies in the calculation of the COP.

Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount reflected in the market under consideration. In applying the statute, Commerce normally compares the transfer price paid by the respondent to affiliated parties for production inputs or services provided to the prices paid between two unaffiliated persons for the same inputs or services (*i.e.*, a market price). In this review period, the operating companies (*i.e.*, lumber mills) did not purchase like services from unaffiliated suppliers, nor did the affiliated service companies sell these services to unaffiliated purchasers. Thus, because we were unable to establish a market price based on information on the case record, we compared the transfer price to the service providers' cost of the services. Because the transfer price exceeded the affiliated supplier's cost of the services, we valued the services from the affiliated service providers at the transfer price between affiliates.

We agree that West Fraser complied with Commerce's questionnaire instructions to include amounts in the G&A expense ratio calculation for administrative services performed by a parent company or other affiliated parties for the "positive" G&A expenses recorded by affiliated parties. These expenses were G&A expenses included in the financial statements of the affiliated companies and were G&A expenses incurred by the affiliated companies on behalf of

the operating companies. West Fraser properly reallocated these expenses to the operating companies for the purpose of calculating the operating companies' G&A expense ratios. However, the "negative" G&A expenses (*i.e.*, offsets) in question represent the affiliated services providers' profits on the sale of services to the operating companies. The expenses for these services were recorded on the books and records of the operating companies through the transfer prices paid by the operating companies to the affiliated companies, and so no reallocation was necessary. Although the profits at issue were eliminated upon consolidation when the consolidated financial statements of WFT were prepared, Commerce does not calculate the G&A expense ratio on a consolidated basis.[242] The G&A expenses included in the unconsolidated financial statements of the operating companies were included at the transfer price of those services.

Comment 21: Whether Commerce Should Allocate Certain Affiliate Expenses to West Fraser G&A Expenses

Petitioner:

- In calculating the G&A expense ratio, certain G&A expenses that were incurred by members of the consolidated group within WFT and allocated to other producing consolidated group members should be allocated entirely to West Fraser Mills, Ltd. (WFM).
- There is no record evidence that WFT's G&A expenses related to any specific entity within the WFT consolidated group. Under such circumstances, WFT's G&A expenses should be allocated to WFT's direct subsidiaries that have their own G&A expenses and cost of goods sold (COGS). The record shows that WFM is the only direct subsidiary of WFT that has its own G&A expenses and COGS, and therefore the entire amount of unrecovered WFT G&A expenses should be assigned to WFM.
- No further allocation of G&A expenses from WFM is appropriate because WFM is itself an operating company and does not have unrecovered operating expenses.

West Fraser:

- The petitioner's argument that West Fraser should have assigned all unallocated G&A expenses solely to one entity is unsupported by any authority and would generate an inaccurate response.
- West Fraser complied with Commerce's instructions to include in the reported G&A expenses an amount for administrative expenses performed by a parent company or other affiliated party using COGS as the allocation basis for these G&A expenses.
- It was necessary to apportion G&A expenses incurred by other affiliated companies to West Fraser operating entities because the affiliated companies provided services to all of the operating units. The petitioner's approach would wrongly allocate these G&A expenses to one entity rather than all of the entities that benefitted from the services of the affiliates.

[242] *See Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination*, 77 FR 17413 (March 26, 2012), and accompanying IDM at Comment 33 (*BMRFs from Korea*).

- Commerce's instructions to allocate these expenses by COGS rationally connects and assigns these costs to the operating unit's usage of the affiliated companies' services.

Commerce's Position:

We agree with West Fraser. Commerce's section D questionnaire instructed West Fraser to "{i}nclude in your reported G&A expenses an amount for administrative services performed on your company's behalf by its parent company or other affiliated party."[243] West Fraser responded by allocating to the West Fraser operating entities (*i.e.*, West Fraser entities containing COGS) the G&A expenses incurred by affiliated companies on behalf of the operating companies. This allocation was made on the basis of each operating company's relative amount of its own G&A expenses. In a supplemental questionnaire, Commerce further instructed West Fraser to "use cost of goods sold as the allocation basis for unallocated G&A,"[244] and West Fraser revised the allocation, accordingly. The petitioner argues that all the allocated G&A expenses should be allocated to only one entity, WFM. However, the record shows that the G&A expenses at issue benefited all of the operating companies, not only WFM, as West Fraser stated "the unallocated G&A is for corporate services of WFT and relates to all entities that are consolidated in WFT."[245] As such, it is appropriate to allocate G&A expenses incurred by the affiliated companies on behalf of the operating companies back to all the operating companies who benefited from those services, not solely WFM. Commerce's instruction to allocate these expenses by relative cost of goods sold is a reasonable basis for allocating the expenses to the operating companies that benefitted from the provided services incurred on their behalf.

Comment 22: Whether Commerce Should Offset West Fraser's G&A Expenses for Greenhouse Gas Credits

Petitioner:

- Commerce should disallow the offset to the G&A expense ratio taken by West Fraser for greenhouse gas credits.
- West Fraser did not adequately describe this offset nor explain how these greenhouse gas credits related to the general operations of the company when asked by Commerce.
- West Fraser explained that these greenhouse gas credits are sometimes sold to other companies creating a gain for West Fraser. According to the petitioner, this is akin to trading in securities, and therefore it is an investment gain that should be excluded from the G&A expense ratio calculation.

West Fraser:

- West Fraser correctly included gains on the sale of greenhouse gas credits in its G&A expense ratio calculation, and the petitioner provides no reason for Commerce to ignore these real gains in the calculation that were incurred in the normal course of business.
- West Fraser points to the record where Commerce stated that it allowed such offsets if the offset related to the general operations of the company. Commerce did not request additional information from West Fraser's description of the offset or its justification for

[243] *See* West Fraser's July 8, 2019 BCDQR at D-39.
[244] *See* West Fraser's January 7, 2020 SQR at S3D-14.
[245] *See* West Fraser's September 23, 2019 SQR at D-22.

its inclusion in the G&A expense ratio calculation, and so the petitioner's claim that West Fraser information was inadequate cannot be a reason for Commerce to reverse its decision from the preliminary results to permit this offset.
- The petitioner's claim that the credits were akin to investment gains is invalid as West Fraser did not speculatively purchase the credits. West Fraser earned the credits in the normal course of business and then disposed of them like it would other assets in the normal course of business, similar to by-products from its mills.

Commerce's Position:

Section 773(b)(3)(B) of the Act provides that, for purposes of calculating COP, Commerce shall include "an amount for selling, general and administrative (SG&A) expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question."[246] The law does not prescribe a specific methodology for calculating the G&A expenses. Where the statue is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to the discretion of Commerce. Because there is no bright-line definition in the Act of what constitutes G&A expenses or precisely how to calculate a G&A expense rate, Commerce has developed a consistent and predictable approach to calculating and allocating G&A expenses.[247] It is Commerce's practice to include income offsets to G&A expenses if they relate to the general operations of the company as a whole and not to a separate line of business, and the offsets do not have to be related directly to the production of subject merchandise.[248] In this case, the record shows that the gain associated with greenhouse gas credits does not relate to a separate line of business, but rather relates to the operations of the company as a whole. Therefore, we consider it reasonable to include the gain as an offset in the G&A expense ratio calculation.

In a supplemental D questionnaire response, West Fraser described the offset for greenhouse gas credits and explained how the gains underlying the offset related to the general operations of the company. Specifically, this gain results from West Fraser's normal business operations. That is, West Fraser earns greenhouse gas credits through its normal operations, and when excess credits exist they can be resold to other emitters leading to the gains. The earning and sale of those credits are related to West Fraser's general operations as a whole, and we do not consider it a separate profit-making activity or investment.

Comment 23: Whether Commerce Should Include Equity-Based Compensation in G&A Expenses

Petitioner:
- Commerce should include equity-based compensation in the calculation of West Fraser's G&A expense ratio calculation that was excluded from the calculation.

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[246] *See section* 773 of the Tariff Act of 1930, as amended (the Act).
[247] *See BMRFs from Korea*.
[248] *See Certain Cold-Rolled Carbon Steel Flat Products from Taiwan, Notice of Final Determination of Sales at Less Than Fair Value*, 67 FR 62104 (October 3, 2002), and accompanying IDM at Comment 6; *see also Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Final Results of Antidumping Duty Administrative Review*, 79 FR 37284 (July 1, 2014), and accompanying IDM at Comment 2.

- West Fraser did not adequately explain how these costs were included in the G&A expense ratio calculation when asked by Commerce, and the record demonstrates that they could not have been included in the G&A expense ratio calculation.

West Fraser:

- West Fraser erroneously omitted equity-based compensation from its calculation of the general and administrative expense ratio, and it should be included in the calculation for the final results.

Commerce's Position:

The record shows that equity-based compensation, an expense line item on WFM's unconsolidated financial statements, was omitted from West Fraser's calculation of the G&A expense ratio. Therefore, we adjusted the calculation of the G&A expense ratio to include this expense.

Comment 24: Whether Commerce Should Exclude Foreign Exchange Gain in West Fraser's Financial Expense Ratio

Petitioner:

- Commerce should adjust West Fraser's financial expense ratio calculation to exclude foreign exchange gains on intercompany financing from the numerator of the calculation.
- It is not reasonable to include these gains because the underlying assets and expenses were eliminated as part of consolidation entries in the consolidated financial statements and because the gain would have been incurred by one of the consolidated entities on transactions with another consolidated entity.
- Although these gains are included in the consolidated financial statements and are in accordance with GAAP, including the gains in the calculation of the financial expense ratio calculation would not reasonably reflect the costs associated with the production and sale of the merchandise.

West Fraser:

- The petitioner's premise that it is not reasonable to include the foreign exchange gain on intercompany financing because the underlying assets and expenses were eliminated as part of the consolidation entries in the consolidated financial statements is incorrect. Although the underling loan is eliminated as part of consolidation, the foreign exchange gain on the loan is not eliminated because it represents a true foreign exchange gain to WFT.
- The Canadian lending entity incurred a foreign exchange gain as a result of changes in exchange rates over the course of a U.S. dollar-denominated loan, while the borrowing U.S. entity did not incur a corresponding foreign exchange loss because it conducts its operations in U.S. dollars.
- The foreign exchange gain is properly included in the consolidated financial statements of WFT, and there is no reason to omit it from West Fraser's interest expense calculation.

Commerce's Position:

We disagree with the petitioner that Commerce should exclude the foreign exchange gain at issue from the calculation of the financial expense ratio. In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.[249] Although the underlying loan related to this foreign exchange gain may have been eliminated upon preparing the consolidated financial statements, a foreign exchange gain resulting from foreign exchange transactions or translations associated with the loan warranted inclusion in West Fraser's consolidated financial statements. Those financial statements were audited and prepared in accordance with GAAP in Canada. Commerce normally includes in the financial expense ratio calculation all foreign exchange gains and losses from the consolidated financial statements of the respondent's highest-level parent company.[250] This approach recognizes that the critical factor in analyzing the appropriate amount to include in the COP and constructed value is not the source of the foreign exchange gain or loss, but rather how the entity as a whole manages its foreign currency exposure. As such, we find it reasonable to include this foreign exchange gain in the calculation of the financial expense ratio.

Company Name Issues

Comment 25: Iterations of Olympic's Name

Olympic:

- Olympic filed its review request on February 28, 2019, requesting the following company names for review:

    1. Olympic Industries, Inc.
    2. Olympic Industries ULC
    3. Olympic Industries Inc-Reman Code
    4. Olympic Industries ULC-Reman Code
    5. Olympic Industries ULC-Reman

    Commerce initiated the review with respect to all of these company names.[251] However, on February 28, 2020, Commerce released the memo cited above, indicating that it intended to remove several of the name iterations, and leave only "Olympic Industries Inc./Olympic Industries ULC," stating that it was doing so because "the suffixes of 'Reman' and 'Remand Code' are not part of legal name."[252]
- It is important that those name iterations are listed in any customs instructions that Commerce may issue to ensure proper cash deposits and assessment of final duties.

[249] *See Light-Weight Rectangular Pipe and Tube from Mexico, Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 35649 (June 24, 2008), and accompanying IDM at Comment 10.
[250] *See Silicomanganese from Brazil, Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 14**.**
[251] *See Certain Softwood Lumber Products from Canada: Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 12209 (April 1, 2019).
[252] *See* Olympic's Case Brief at 1-2 (citing Memorandum, "Correction of Company Names on the Record," dated February 28, 2020) (Company Names Memorandum).

Olympic included those name variants in its review request because they appear on commercial documents used to make entry due to the unique manner of cross-border trade in this product. Removing them, as Commerce intends, may result in the inaccurate collection of deposits and/or assessment of final duties.

- In the event that Commerce insists on removing the name variants from the Federal Register notice, Olympic urges Commerce to include them in any customs instructions.

Petitioner:

- These "name iterations" Olympic argues that Commerce include in the final results and in customs instruction do not appear to be legal entities or have any existence distinct from Olympic.
- Moreover, including the various "name iterations" proposed by Olympic in the final results and in future customs instructions would frustrate, rather than assist, the accurate assessment of duties. Accordingly, Commerce's final results should reference only "Olympic Industries, Inc./Olympic Industries ULC."
- Olympic offers no legal authority for the premise that it should be allowed to use whatever name variant{}... on commercial documents used to make entry" that it so wishes.
- Commerce's instructions are clear that entries exported by "Olympic Industries Inc./Olympic Industries ULC" will be subject to this administrative review. If entries exported by Olympic are liquidated incorrectly, it can file an administrative protest with U.S. Customs and Border Protection (CBP).

Commerce's Position:

We agree with Olympic. The CBP data for all softwood lumber entries into the United States for this POR are on the record[253] and no one has cited to information in this data or elsewhere that would call into dispute Olympic's contention that the company is operating under the five iterations of its name or that the name variants appear on commercial documents used to make entry. Thus, there is no information to dispute that regardless of which of the five iterations the entry documents list Olympic, all such entries are entitled to Olympic's AD rate. The petitioner has not cited to any record evidence that restricts parties from listing iterations of its name on CBP instructions or in federal register notices. As our draft instructions indicate, it is common practice to include several iterations of an individual exporter or producer on cash deposit instructions.[254] Thus, to facilitate the accurate application of AD duties, we have included all five name iterations of Olympic in the final results and in CBP instructions of this review.

Comment 26: Listing of Tolko's Name in the Final Results

Tolko:

[253] *See* Memorandum, "First Administrative Reviews of the Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada: Results of Customs and Border Protection Queries," dated April 2, 2019, and accompanying CBP Data.
[254] *See* Company Names Memorandum

- Tolko was correctly listed as a respondent in the *Preliminary Results*, but it was subsequently excluded from the February 28, 2020 memorandum identifying the corrected list of respondent names for the final results.[255]
- Consistent with the *Preliminary Results*, in the upcoming final results, Commerce should list Tolko as "Tolko Industries Ltd./Tolko Marketing and Sales Ltd./Gilbert Smith Forest Products Ltd." in both the Federal Register and Commerce's instructions to CBP.

Commerce's Position:

We agree with Tolko. The exclusion of Tolko from the February 28, 2020 memorandum was inadvertent. We have listed Tolko as Tolko Industries Ltd./Tolko Marketing and Sales Ltd./Gilbert Smith Forest Products Ltd. in the final results and in instructions to CBP.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in this administrative review and the final weighted-average dumping margins in the *Federal Register*.

☒ ☐

Agree Disagree

11/23/2020

X

Signed by: JOSEPH LAROSKI

Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

[255] *Id.*